

**500-09-027075-175 – 500-09-027076-173
500-09-027077-171 – 500-09-027082-171**

COURT OF APPEAL OF QUEBEC

(Montréal)

Appeal from a judgment of the Superior Court, District of Montréal, rendered on September 11, 2017 by the Honourable Justice Stephen W. Hamilton.

Nos. **500-09-027075-175** – 500-11-048114-157 S.C.M.

**In the matter of the Plan of Compromise or Arrangement of
Bloom Lake General Partner Limited *et al*:**

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285

**APPELLANTS
INCIDENTAL RESPONDENTS
(Mises en cause)**

v.

FTI CONSULTING CANADA INC.

**RESPONDENT
INCIDENTAL APPELLANT
(Monitor – Petitioner)**

- and -

VILLE DE SEPT-ÎLES

**MISE EN CAUSE
INCIDENTAL APPELLANT
(Mise en cause)**

(Style of causes continues on following pages)

**JOINT SCHEDULES OF THE PARTIES IN
SUPPORT OF THE PROCEEDINGS IN APPEAL**

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- and -

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

**MISES EN CAUSE
(Debtors)**

- and -

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY, LIMITED
ATTORNEY GENERAL OF CANADA
MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL, and NEIL JOHNSON
HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR
MORNEAU SHEPELL LTD.
RETRAITE QUÉBEC**

**MIS EN CAUSE
(Mis en cause)**

Nos. **500-09-027076-173** – 500-11-048114-157 S.C.M.

**In the matter of the Plan of Compromise or Arrangement of
Bloom Lake General Partner Limited *et al*:**

**ATTORNEY GENERAL OF CANADA, acting on behalf of the
OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS**

**APPELLANT
INCIDENTAL RESPONDENT
(Mise en cause)**

v.

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FTI CONSULTING CANADA INC.

**RESPONDENT
INCIDENTAL APPELLANT
(Monitor – Petitioner)**

- and -

VILLE DE SEPT-ÎLES

**MISE EN CAUSE
INCIDENTAL APPELLANT
(Mise en cause)**

- and -

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

**MISES EN CAUSE
(Debtors)**

- and -

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY, LIMITED
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285
MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL, and NEIL JOHNSON
HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR
MORNEAU SHEPELL LTD.
RETRAITE QUÉBEC**

**MIS EN CAUSE
(Mis en cause)**

Nos. **500-09-027077-171** – 500-11-048114-157 S.C.M.

**In the matter of the Plan of Compromise or Arrangement of
Bloom Lake General Partner Limited *et al*:**

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL and NEIL JOHNSON
as Representatives of the Salaried / Non-Union Employees & Retirees**

**APPELLANTS
INCIDENTAL RESPONDENTS
(Mis en cause)**

v.

FTI CONSULTING CANADA INC.

**RESPONDENT
INCIDENTAL APPELLANT
(Monitor – Petitioner)**

- and -

VILLE DE SEPT-ÎLES

**MISE EN CAUSE
INCIDENTAL APPELLANT
(Mise en cause)**

- and -

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

**MISES EN CAUSE
(Debtors)**

- and -

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY, LIMITED**

**SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285
ATTORNEY GENERAL OF CANADA
HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR
MORNEAU SHEPELL LTD.
RETRAITE QUÉBEC**

MISES EN CAUSE
(Mises en cause)

Nos. **500-09-027082-171** – 500-11-048114-157 S.C.M.

**In the matter of the Plan of Compromise or Arrangement of
Bloom Lake General Partner Limited *et al*:**

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR,
as represented by THE SUPERINTENDENT OF PENSIONS**

**APPELLANT
INCIDENTAL RESPONDENT**
(Mise en cause)

v.

FTI CONSULTING CANADA INC.

**RESPONDENT
INCIDENTAL APPELLANT**
(Monitor – Petitioner)

- and -

VILLE DE SEPT-ÎLES

**MISE EN CAUSE
INCIDENTAL APPELLANT**
(Mise en cause)

- and -

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC**

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**WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

**RESPONDENTS
(Debtors)**

- and -

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES**

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY, LIMITED

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285

ATTORNEY GENERAL OF CANADA

MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL and NEIL JOHNSON

MORNEAU SHEPELL LTD.

RETRAITE QUÉBEC

**MIS EN CAUSE
(Mis en cause)**



**M^e Daniel Boudreault
Philion Leblanc Beaudry Avocats s.a.**

Suite 5400

565 Crémazie Blvd. East

Montréal, Québec

H2M 2V6

Tel.: 514 387-3538

Fax: 514 387-7386

dboudreault@plba.ca

Lawyer for

Syndicat des Métallos, Sections locales 6254 & 6285

M^e Pierre Lecavalier

M^e Michelle Kellam

Department of Justice Canada

Québec Regional Office

East Tower, 9th Floor

Guy-Favreau Complex

200 René-Lévesque Blvd. West

Montréal, Québec

H2Z 1X4

Tel.: 514 283-4042 (M^e Lecavalier)

Tel.: 514 496-4073 (M^e Kellam)

Fax: 514 283-3856

pierre.lecavalier@justice.gc.ca

michelle.kellam@justice.gc.ca

Lawyers for

**The Attorney General of Canada, acting behalf of
the Office of the Superintendent of Financial Institutions**

M^e Andrew J. Hatnay

M^e Amy Tang

Koskie Minsky LLP

Suite 900

20 Queen Street West

Toronto, Ontario

M5H 3R3

Tel.: 416 595-2083 (M^e Hatnay)

Tel.: 416 542-6296 (M^e Tang)

Fax: 416 204-2872

ahatnay@kmlaw.ca

atang@kmlaw.ca

M^e Mark E. Meland

M^e Nicolas Brochu

Fishman Flanz Meland Paquin

Suite 4100

1250 Rene-Levesque Blvd. West

Montréal, Québec

H3B 4W8

Tel.: 514 932-4100, ext. 213 / 235

Fax: 514 932-4170

mmeland@ffmp.ca

nbrochu@ffmp.ca

Lawyers for

**Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson,
as Representatives of the Salaried / Non-Union Employees & Retirees**

M^e Douglas C. Mitchell

M^e Edward Béchard-Torres

IMK LLP

Suite 1400

Place Alexis Nihon, Tower 2

3500 De Maisonneuve Blvd. West

Montréal, Québec

H3Z 3C1

Tel.: 514 935-2725 (M^e Mitchell)

Tel.: 514 934-7743 (M^e Béchard-Torres)

Fax: 514 935-2999

dmitchell@imk.ca

ebechardtorres@imk.ca

Lawyers for

Her Majesty in Right of Newfoundland and Labrador,

as represented by the Superintendent of Pensions

M^e Sylvain Rigaud

M^e Chrystal Ashby

Norton Rose Fulbright Canada LLP

Suite 2500

1 Place Ville Marie

Montréal, Québec

H3B 1R1

Tel.: 514 847-4702 (M^e Rigaud)

Tel.: 514 847-6076 (M^e Ashby)

Fax: 514 286-5474

sylvain.rigaud@nortonrosefulbright.com

chrystal.ashby@nortonrosefulbright.com

Lawyers for

FTI Consulting Canada Inc., in its capacity as

Court-appointed Monitor to Bloom Lake General Partner Limited *et al*

M^e Martin Roy

Stein Monast LLP

Suite 300

70 Dalhousie Street

Québec, Québec

G1K 4B2

Tel.: 418 640-4426

Fax: 418 523-5391

martin.roy@steinmonast.ca

Lawyer for

Ville de Sept-Îles

M^e Bernard Boucher

M^e Emily Hazlett

Blake, Cassels & Graydon LLP

Suite 3000

1 Place Ville Marie

Montréal, Québec

H3B 4N8

Tel.: 514 982-4006 (M^e Boucher)

Tel.: 514 982-4023 (M^e Hazlett)

Fax: 514 982-4099

bernard.boucher@blakes.com

emily.hazlett@blakes.com

Lawyers for

Bloom Lake General Partner Limited,

Quinto Mining Corporation,

8568391 Canada Limited,

Cliffs Québec Iron Mining ULC,

Wabush Iron Co. Limited,

Wabush Resources Inc.,

The Bloom Lake Iron Ore Mine Limited Partnership,

Bloom Lake Railway Company Limited,

Wabush Mines,

Arnaud Railway Company, and

Wabush Lake Railway Company, Limited

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SCHEDULE I

JUDGMENT

Judgment by Justice Hamilton J.S.C. on the Monitor's Amended Motion for Directions,
September 11, 2017

Arrangement relatif à Bloom Lake

2017 QCCS 4057

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-048114-157

DATE: September 11, 2017

PRESIDED BY: THE HONOURABLE STEPHEN W. HAMILTON, J.S.C.

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

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

Debtors

And

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY, LIMITED**

Mises en cause

And

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL AND NEIL JOHNSON
SYNDICAT DES MÉTALLOS, SECTIONS LOCALES 6254 ET 6285
MORNEAU SHEPELL LTD, IN ITS CAPACITY AS
REPLACEMENT PENSION PLAN ADMINISTRATOR
RETRAITE QUÉBEC
THE ATTORNEY GENERAL OF CANADA, ACTING ON BEHALF OF
THE OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS
HER MAJESTY IN RIGHT OF NEWFOUNLAND AND LABRADOR,
AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS**

500-11-048114-157

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VILLE DE SEPT-ÎLES

Mises en cause

And

FTI CONSULTING CANADA INC.

Monitor-Petitioner

**JUDGMENT ON THE AMENDED MOTION BY THE MONITOR
FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS (#494)**

INTRODUCTION

[1] The Debtors have filed proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").¹ They owe substantial liabilities under two pension plans, including special payments, catch-up special payments and wind-up deficiencies. The Monitor filed a motion for directions with respect to the priority of the various components of the pension claims and the applicability and scope of the deemed trusts created under the relevant pension legislation.

CONTEXT

[2] On May 19, 2015, the Petitioners Wabush Iron Co. Limited and Wabush Resources Inc. and the Mises-en-cause Wabush Mines (a joint venture of Wabush Iron and Wabush Resources), Arnaud Railway Company and Wabush Lake Railway Company, Limited (together the "Wabush CCAA Parties") filed a motion for the issuance of an initial order under the CCAA which was granted the following day by the court.

[3] Prior to the filing of the CCAA motion, Wabush Mines operated (1) the iron ore mine and processing facility located near the Town of Wabush and Labrador City, Newfoundland and Labrador and (2) the Pointe-Noire port facilities and pellet production facility in Sept-Îles, Québec. Arnaud Railway and Wabush Lake Railway are both federally regulated railways that transported iron ore concentrate from the Wabush mine to the Pointe-Noire port. The operations had been discontinued and the employees terminated or laid off prior to the filing of the CCAA motion.

[4] The Wabush CCAA Parties had two pension plans for their employees which include defined benefits:

- A pension plan for unionized hourly employees at the Wabush mine and Pointe-Noire port, known as the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway

¹ R.S.C. 1985, c. C-36.

Company and Wabush Lake Railway Company, Limited (the "Union Plan")² and

- A hybrid pension plan for salaried employees at the Wabush mine and the Pointe-Noire port hired before January 1, 2013 known as the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (the "Salaried Plan").³

[5] Wabush Mines was the administrator of both Plans.

[6] The majority of the employees covered by the Plans reported for work at the Wabush mine in Newfoundland and Labrador while many reported for work at the Pointe-Nord facility in Québec. In fact, on the current numbers, a slight majority of the Salaried Plan members reported for work in Québec. Moreover, some of the employees worked for Arnaud Railway and Wabush Lake Railway which are federally regulated railways. The current breakdown is as follows:

	Union Plan	Salaried Plan	TOTAL
Newfoundland & Labrador	1,005	313	1,318
Québec	661	329	990
Federal	66	14	80
TOTAL	1,732	656	2,388

[7] Both Plans provide that they are to be interpreted pursuant to the laws applicable in the province of Newfoundland.⁴ Both Plans are registered with the provincial regulator in Newfoundland and Labrador, the Superintendent of Pensions (the "NL Superintendent") pursuant to the Newfoundland and Labrador *Pension Benefits Act, 1997* ("NLPBA").⁵ The federal pension regulator, the Office of the Superintendent of Financial Institutions ("OSFI") has also exercised some regulatory oversight, in particular with respect to the Union Plan,⁶ pursuant to the federal *Pension Benefits Standards Act* ("PBSA").⁷ The Québec regulator, Retraite Québec, has not played an active role in the regulation of the Plans, but it asserts that the Québec *Supplemental*

² Exhibit R-23.

³ Exhibit R-24.

⁴ Exhibits R-23 and R-24, Section 12.06.

⁵ S.N.L. 1996, c. P-40.1.

⁶ It seems that OSFI acted on the erroneous view that no members of the Salaried Plan were covered by the PBSA.

⁷ R.S.C. 1985 (2nd Supp.), c. 32.

Pension Plans Act ("SPPA")⁸ is applicable to the employees who reported for work in Québec.

[8] On June 26, 2015, in the context of approving the interim financing of the Debtors, the Court issued the Suspension Order whereby it ordered the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments and the annual lump sum "catch-up" payments coming due under the Plans, and confirmed the priority of the Interim Lender Charge over the deemed trusts with respect to the pension liabilities. The Court also ordered the suspension of payment of other post-retirement benefits, including life insurance, health care and a supplemental retirement arrangement plan.⁹

[9] On December 16, 2015, the NL Superintendent terminated both Plans effective immediately on the bases that (1) the Plans failed to meet the solvency requirements under the regulations, (2) the employer has discontinued all of its business operations and (3) it was highly unlikely that any potential buyer of the assets would agree to assume the assets and liabilities of the Plans.¹⁰ On the same date, OSFI terminated the Union Plan effective immediately for the same reasons.¹¹

[10] Both the NL Superintendent and OSFI reminded the Wabush CCAA Parties of the employer's obligation upon termination of a pension plan to pay into the pension fund all amounts that would be required to meet the solvency requirements and the amount necessary to fund the benefits under the plan. They also referred to the rules with respect to deemed trusts.¹²

[11] On January 26, 2016, the salaried retirees received a letter from Wabush Mines notifying them that the NL Superintendent had directed Wabush Mines to reduce the amount of monthly pension benefits of the members by 25%.¹³ Retirees under the Union Plan had their benefits reduced by 21% on March 1, 2016.¹⁴

[12] On March 30, 2016, the NL Superintendent and OSFI appointed Morneau Shepell Ltd as replacement administrator for the Plans.¹⁵

[13] The Wabush CCAA Parties paid the monthly normal cost payments for both Plans up to the termination of the Plans on December 16, 2015. As a result, the monthly normal cost payments for the Union Plan were fully paid up to December 16,

⁸ CQLR, c R-15.1, s. 49.

⁹ 2015 QCCS 3064, motion for leave to appeal dismissed, 2015 QCCA 1351 (the "Suspension Order").

¹⁰ Exhibit R-13.

¹¹ Exhibit R-14.

¹² Exhibits R-13 and R-14.

¹³ Exhibit RESP-7.

¹⁴ Affidavit of Terence Watt, sworn December 14, 2016, par. 19.

¹⁵ Exhibit R-15.

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2015.¹⁶ The monthly normal cost payments for the Salaried Plan had been overpaid in the amount of \$169,961 as of December 16, 2015.¹⁷

[14] The Wabush CCAA Parties also generally paid the special payments, until their obligation to make the special payments was suspended in June 2015 by the Court.

[15] With respect to the Union Plan, the status of the special payments is as follows:

- a) The special payments required to be paid prior to the date of the Wabush Initial Order were underpaid in the amount of \$146,776;
- b) One special payment in the amount of \$393,337 was paid after the date of the Wabush Initial Order and before the Suspension Order, which payment constituted an overpayment of \$16,308; and
- c) The special payments after the date of the Suspension Order were not paid and amount to \$3,016,232.¹⁸

[16] With respect to the Salaried Plan, the status of the special payments is as follows:

- a) The special payments required to be paid prior to the date of the Wabush Initial Order were paid in full except for \$3;
- b) One special payment in the amount of \$273,218 was paid after the date of the Wabush Initial Order and before the Suspension Order, which payment constituted an underpayment of \$1; and
- c) The special payments after the date of the Suspension Order were not paid and amount to \$2,185,752.¹⁹

[17] Further, the Wabush CCAA Parties did not make the lump sum "catch-up" special payments that came due after June 2015. The amount payable with respect to the Union Plan is \$3,525,125.²⁰ There are no "catch-up" special payments due with respect to the Salaried Plan.

[18] Finally, the Plans are underfunded.

[19] In December 2016, the actuary filed a report that concludes that the unfunded wind-up liability for the Union Plan as at December 16, 2015 was \$27,486,548.²¹

¹⁶ Exhibit R-17. There is a debate as to whether the Wabush CCAA Parties were required to pay the full monthly payment for December 2015 or only a pro-rated portion. The amount at issue for the period from December 17 to 31, 2015 is \$21,462 according to one calculation or \$22,893 according to another.

¹⁷ Exhibit R-16.

¹⁸ Exhibit R-17.

¹⁹ Exhibit R-16.

²⁰ Exhibit R-17. The Union argues that \$1,175,040 relates to the pre-filing period.

²¹ Exhibit R-26. There is a further wind-up liability of \$2,349,912 set out in the report for the benefits covered by Section 17 PBSA which ranks after the wind-up deficit (referred to as "Priority no.2").

[20] Further, the Plan Administrator filed a wind-up actuarial valuation for the Salaried Plan that estimates the wind-up shortfall as at December 16, 2015 to be approximately \$27,450,000.²²

[21] Both wind-up reports remain subject to review and approval by the pension regulators.

[22] Subject to the comments set out above, the Monitor provides the following summary of the amounts owing to the two Plans:

	Union Plan	Salaried Plan
Normal Cost Payments		
Pre-filing	\$0	\$0
Post-filing	\$0	\$0
Total	\$0	\$0
Special Payments		
Pre-filing	\$146,776	\$3
Post-filing	\$2,999,924	\$2,185,753
Total	\$3,146,700	\$2,185,756
Catch-up Special Payments		
Pre-filing	\$0	\$0
Post-filing	\$3,525,120	\$0
Total	\$3,525,120	\$0
Estimated Wind-Up Deficiency	\$27,486,548	\$27,450,000

[23] Wabush Mines, as plan administrator, filed a proof of claim in respect of the Union Plan that includes a secured claim in the amount of \$29 million and a restructuring claim in the amount of \$6,059,238,²³ and a proof of claim with respect to the Salaried Plan that includes a secured claim in the amount of \$24 million and a restructuring claim in the amount of \$1,932,940.²⁴

[24] The differences in the numbers are not important at this stage. The numbers will be finalized in due course. It is sufficient to note that there are very large claims and that

²² Exhibit R-25.

²³ Exhibit R-19.

²⁴ Exhibit R-18.

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the plan administrator claims the status of a secured creditor with respect to a substantial part of the claims.

[25] It is also important to note that the Wabush CCAA Parties held assets both in Newfoundland and Labrador and in Québec. All or substantially all of the assets have been sold and have generated substantial proceeds currently held by the Monitor.

[26] Of particular relevance given the intervention of the Ville de Sept-Îles, are two transactions approved by the Court on February 1, 2016 that included the sale of immovable property in the Ville de Sept-Îles with respect to which the Ville de Sept-Îles claims unpaid taxes.²⁵ In both instances, the approval and vesting order issued by the Court provided for the vesting of the assets on a free and clear basis, with the net proceeds from both transactions standing in the place and stead of the purchased assets. The result is that the Ville de Sept-Îles claims priority with respect to those proceeds.

[27] In order to determine the priorities of the various claims, the Monitor applies to the Court for an order declaring that:

- a) normal costs and special payments outstanding as at the date of the Wabush Initial Order are subject to a limited deemed trust;
- b) normal costs and special payments payable after the date of the Wabush Initial Order, including additional special payments and catch up payments established on the basis of actuarial reports issued after the Wabush Initial Order, constitute unsecured claims;
- c) the wind-up deficiencies constitute unsecured claims; and
- d) any deemed trust created pursuant to the NLPBA may only charge property in Newfoundland and Labrador.

[28] The Monitor is supported by the Wabush CCAA Parties and the Ville de Sept-Îles. The Monitor's motion is opposed by the Representative Employees, the Union, the Replacement Plan Administrator, Retraite Québec, OSFI and the NL Superintendent (the "Pension Parties").

[29] A preliminary issue arose as to whether the Court should request the aid of the Supreme Court of Newfoundland and Labrador with respect to the interpretation of the NLPBA, and in particular the scope and priority of the deemed trust and the lien created by the NLPBA and whether the deemed trust and the lien extend to assets located outside of Newfoundland and Labrador. On January 30, 2017, the Court decided that it had jurisdiction to deal with those issues and that it would not refer the issues to the Newfoundland and Labrador Supreme Court.²⁶ There was no appeal from that decision.

²⁵ Exhibits R-10 and R-12.

²⁶ 2017 QCCS 284.

[30] Subsequent to the judgment, on March 27, 2017, the government of Newfoundland and Labrador referred a number of questions to the Newfoundland and Labrador Court of Appeal ("NLCA").²⁷

[31] The hearing before the NLCA is scheduled for September 21 and 22, 2017.

POSITION OF THE PARTIES

1. Monitor

[32] The Monitor's position can be summarized as follows:

- The Court should deal with all of the issues now, without waiting for the judgment of the NLCA;
- The SPPA applies to the Québec members of the Plans, the PBSA applies to the federal members, and the NLPBA applies to the Newfoundland and Labrador members;
- The deemed trusts under the SPPA, PBSA and NLPBA and the lien and charge under the NLPBA are limited to normal, special and catch-up payments and do not extend to the wind-up deficiency;
- The deemed trust and the lien and charge under the NLPBA do not extend to assets outside Newfoundland and Labrador;
- The SPPA does not create a deemed trust;
- The deemed trusts under the PBSA and the NLPBA were not triggered because there was no "liquidation, assignment or bankruptcy" of the employer;
- In any event, the deemed trusts under the SPPA, PBSA or NLPBA and the lien and charge under the NLPBA, if they exist, are not effective in proceedings under the CCAA;

2. Wabush CCAA Parties

[33] The positions taken by the Wabush CCAA Parties were largely consistent with the positions taken by the Monitor.

3. Ville de Sept-Îles

[34] The Ville de Sept-Îles was in general agreement with the position of the Monitor and the Wabush CCAA Parties. In addition, it argued that its prior claim against the proceeds of the sale of immovable properties in the Ville de Sept-Îles with respect to unpaid property and water taxes on those properties ranks ahead of the deemed trusts for pension claims.

4. Representative Employees

²⁷ Order-in-Council 2017-103, dated March 27, 2017.

[35] The Representative Employees argue that the NLPBA deemed trust covers the normal payments, the special payments and the wind-up deficit and that the NLPBA, and its deemed trust provisions, apply to all members of the Salaried Plan (and by extension the Union Plan), including those who reported for work in Québec and those who worked on the railways.²⁸

[36] They also argue that there was a liquidation in the course of the present CCAA proceedings and that the NLPBA deemed trusts are fully operative in the context of CCAA proceedings.

5. Union

[37] The Union generally supports the arguments put forward by the Representative Employees and the NL Superintendent, and it supports the regulators for the interpretation of their statutes.

[38] The Union submits that all three statutes create deemed trusts but that only the NLPBA deemed trust covers the wind-up deficit. It argues that the three statutes establish minimum standards and that the Court should apply the most advantageous deemed trust provisions under the three pension statutes, which will benefit all members of the Union Plan (and by extension the Salaried Plan). It also argues that the deemed trust under the NLPBA should extend to all assets of the employer, wherever located.

6. Replacement Pension Administrator

[39] The Replacement Plan Administrator adopts the arguments put forward by the Representative Employees, the Union and the NL Superintendent, and it defers to Retraite Québec and OSFI for the interpretation and application of their statutes.

7. Retraite Québec

[40] Retraite Québec suggests that the Court should answer all of the questions without waiting for the judgment of the NLCA.

[41] It argues that the SPPA applies and regulates the rights of the Québec members of the Pension Plans.

[42] It argues that the protection afforded by the deemed trust under Section 49 SPPA and the unseizability under Section 264 SPPA are limited to unpaid contributions, which include current service contributions, amortization payments and special payments, and do not extend to the solvency deficit on termination of the Plans.

[43] Further, it argues that the deemed trust and unseizability under the SPPA create a priority over all secured and unsecured creditors of the employer, and are valid in the context of CCAA proceedings.

²⁸ They advanced in their argumentation outline a constitutional argument to the effect that the NLPBA had paramouncy over the PBSA under Section 94A of the *Constitution Act*, but they abandoned that argument at the hearing.

8. OSFI

[44] OSFI argues that the PBSA applies in respect of the Plans for the employees who worked on the railways. It argues that the PBSA does not cover the wind-up deficit but it does cover the normal cost payments, the special payments and the special catch-up payments. OSFI argues that the PBSA continues to apply in CCAA proceedings where the debtors have liquidated their assets and do not submit a plan to their creditors.

9. NL Superintendent

[45] The NL Superintendent generally supports the submissions of the Representative Employees, the Union and the Replacement Plan Administrator, although he does not plead that the NLPBA applies to all of the Plan members. He defers to Retraite Québec and to OSFI on any interpretive issues regarding the SPPA and the PBSA respectively.

[46] The NL Superintendent pleads that the Wabush CCAA proceedings are in fact liquidation proceedings and that these liquidation proceedings trigger the deemed trust under the NLPBA. He also pleads that the deemed trust under the NLPBA covers at least part of the wind-up deficiency and that it can attach to the proceeds of property formerly located in Québec.

ISSUES

[47] The Court will deal with the following issues:

1. Should it wait for the judgment of the NLCA on the Reference before rendering its judgment?
2. Which pension statutes apply to which members?
3. What is the proper scope of the protection afforded by the pension statutes?
 - a. Do the pension statutes create a valid deemed trust or other valid charges?
 - b. What is the priority of the deemed trusts and other charges in relation to secured creditors?
 - c. Which amounts owing to the pension fund are covered by the deemed trusts or other charges?
 - d. Do the deemed trusts or other charges created by the NLPBA extend to assets in Québec?
4. Has there been a "liquidation" that triggers the deemed trusts under the PBSA and the NLPBA?
5. Are the deemed trusts and other charges valid in CCAA proceedings?
6. In light of the answers to the preceding questions, what conclusions are appropriate?

ANALYSIS**1. Timing of this judgment in relation to the NLCA Reference**

[48] The first issue for the Court is whether it should delay its judgment until it has the benefit of the judgment of the NLCA on the Reference, or whether it should render its judgment now, without waiting for the NLCA judgment on the Reference. The hearing before the NLCA is scheduled for September 21 and 22, 2017.

[49] In the context of the Monitor's Motion for Directions, a preliminary issue arose as to whether the Court should request the aid of the Supreme Court of Newfoundland and Labrador with respect to the interpretation of the NLPBA, and in particular the scope and priority of the deemed trust and the lien created by the NLPBA and whether the deemed trust and the lien created by the NLPBA extend to assets located outside of Newfoundland and Labrador. On January 30, 2017, the Court decided that it had jurisdiction to deal with those issues and that it would not refer the issues to the Newfoundland and Labrador Supreme Court.²⁹ There was no appeal from that decision.

[50] Instead, on March 27, 2017, the government of Newfoundland and Labrador referred the following questions to the NLCA:

- 1) The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c.C-36. What is the scope of section 32 of the *Pension Benefits Act, 1997*, SNL1996 cP-4.01 deemed trusts in respect of:
 - a) unpaid current service costs;
 - b) unpaid special payments; and
 - c) unpaid wind-up deficits?
- 2) The Salaried Plan is registered in Newfoundland and Labrador and regulated by the *Pension Benefits Act, 1997*.
 - a) (i) Does the federal *Pension Benefits Standards Act*, R.S.C. 1985, c-32 deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?
 - (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*? If so, how is the conflict resolved?
 - b) (i) Does the Quebec *Supplemental Pension Plans Act*, CQLR, c. R-15.1 also apply to those members of the Salaried Plan who reported for work in Quebec?
 - (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplemental Pension Plans Act*? If so, how is the conflict resolved?

²⁹ *Supra* note 26.

(iii) Do the Quebec *Supplemental Pension Plans Act* deemed trusts also apply to Quebec Salaried Plan members?

- 3) Is the *Pension Benefits Act, 1997* lien and charge in favour of the pension plan administrator in section 32(4) of the *Pension Benefits Act, 1997* a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?³⁰

[51] These are the questions that the Representative Employees proposed that the Court should resolve in the present judgment.³¹

[52] If the questions submitted to the NLCA dealt only with issues of Newfoundland and Labrador law, the Court would consider waiting for the decision of the NLCA.

[53] The first and third questions deal with the interpretation of the NLPBA, but the preamble to the first question clearly places the questions in the context of CCAA proceedings. The second question relates to the interpretation of federal and Québec law, the potential conflict between federal law and Québec law on the one hand and the NLPBA on the other, and how those conflicts are to be resolved. Moreover, with its references to the Salaried Plan and employees who worked on the railway or who reported for work in Québec, it is clear that the second question relates specifically to this matter. The NLCA has said that the circumstances of the present matter will provide the context within which the questions will be considered.

[54] These questions are within the jurisdiction of the Court and they are relevant to the judgment that this Court is rendering. The questions put to the NLCA therefore create a risk of contradictory judgments. The situation is unfortunate, but it is not one for which the NLCA or the Court is responsible.

[55] The NLCA has been made aware of the Court's concerns in relation to the scope of the questions that it is being asked to answer. While the NLCA is sensitive to the issue of potential overlap, it has decided for now not to restrict the scope of the questions:

[1] Having heard the submissions of counsel, we are satisfied that the questions set out in the reference put by the Lieutenant-Governor in Council in Order-in-Council 2017-103, should be considered at the hearing in the language stipulated in the Order-in-Council. Whilst we are mindful of the importance of promoting judicial efficiency, we do not consider ourselves to be in a position today to determine the extent to which, if at all, we should decline to answer one or more of the questions posed or to interpret their scope.

[2] That said, we are cognizant of the concerns of some of the participants that the questions may invite the Court to opine in such a way as to impact the decisions of the Quebec CCAA Court that will determine the rights of the parties. Generally speaking, we subscribe to the view that questions posed on a

³⁰ Order-in-Council 2017-103, dated March 27, 2017.

³¹ This may explain why the questions refer to the Salaried Plan and not the Union Plan.

reference should be treated as raising hypothetical questions and not directed at determining parties' rights.

[3] As recognized in case law, a reference is an advisory opinion provided by the Court at the request of the Lieutenant-Governor in Council. The CCAA Court in determining the matter before it may or may not advert to or apply the opinion provided by this Court. That said, the context of a reference is important. Accordingly, hypotheticals are useful to provide a context within which the questions can be considered. The record on the reference, therefore, should be limited to providing that context.

[4] The parties may, of course, make submissions as to whether the Court should decline to answer a question or part thereof, or narrow the scope of a question as part of the submissions made for purposes of the reference hearing.³²

[56] In the circumstances, the Court is left with three options, none of which is particularly good:

- It can proceed to render judgment on all of the issues, without the benefit of the judgment of the NLCA, and thereby run the risk of being contradicted by the NLCA;
- It can wait for the judgment of the NLCA, which might extend to issues which are more properly within the jurisdiction of the Court and place the Court in the position of having some of its issues prejudged by the court of appeal of another province and potentially having to contradict that judgment; or
- It can render judgment on all issues other than the interpretation of the NLPBA.

[57] The Monitor, the Wabush CCAA Parties and the Ville de Sept-Îles plead that the Court should adopt the first position. The Pension Parties generally suggest that the Court should wait.

[58] In these circumstances, and with some hesitation, the Court has decided to adopt the third approach. It will render its judgment first, without waiting for the NLCA. However, it will not decide on the interpretation of the NLPBA, but rather will make certain assumptions:

- Where the NLPBA is identical to the PBSA, the Court will assume that the NLPBA is interpreted in the same way as the PBSA; and
- Where the NLPBA is different from the PBSA, the Court will adopt the interpretation put forward by the NL Superintendent.

[59] The Court will reserve the rights of the parties to ask the Court to revise the conclusions of the present judgment if: (1) the NLCA decides that the interpretation of

³² Ruling on Application for Directions, June 9, 2017.

the NLPBA is different from the interpretation that the Court assumed, and (2) that difference is material to the Court's conclusions.

[60] The Court will not revise its conclusions if the NLCA disagrees with the Court on any issue other than the interpretation of the NLPBA. That will be a matter that the parties can raise on appeal.

2. Application of the three pension statutes

[61] The scope of application of each of the three pension statutes is made clear by each pension statute:

- The SPPA applies to “pension plans provided for ... employees who report for work at an establishment of their employer located in Québec”.³³
- The PBSA applies to “a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees)”.³⁴ The notion of “included employment” includes railways³⁵ and “any work, undertaking or business ... declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more provinces”.³⁶ The Arnaud Rail and Wabush Lake Rail are both railways and both were declared to be works for the general advantage of Canada.³⁷
- The NLPBA applies to “all pension plans for persons employed in the province, except those pension plans to which an Act of the Parliament of Canada applies”.³⁸

[Emphasis added]

[62] To the extent that this raises a question of the interpretation of the NLPBA, the Court notes that the language is clear and that the NL Superintendent states only that the NLPBA “would apply, at the very least, to the benefit of all of the employees who reported for work in the province (s. 5 PBA)”.³⁹

[63] As a result, on the face of the legislation, the Plans are governed by the PBSA with respect to the rail employees, by the SPPA with respect to the non-railway employees who reported for work in Québec, and by the NLPBA with respect to the non-railway employees who reported for work in Newfoundland and Labrador.

[64] Professor Goldstein writes in favour of this multiplicity of governing statutes:

³³ SPPA, s. 1(1).

³⁴ PBSA, s. 4(2).

³⁵ PBSA, s. 4(4)(b).

³⁶ PBSA, s. 4(4)(h).

³⁷ *An Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company*, (1960) 8-9 Eliz. II, ch. 63, s. 3.

³⁸ NLPBA, s. 5.

³⁹ Outline of Argument of the NL Superintendent, May 19, 2017, par. 98.

Plusieurs lois pourraient donc potentiellement s'appliquer au même régime. En principe, il n'y a pas de conflit dans la mesure où chaque loi ne s'applique effectivement et distributivement qu'au profit de chaque catégorie de salariés selon son lieu de travail ou de paiement. Par exemple, si, sur 100 salariés participants au même régime, 60 sont employés en Ontario, 30 au Québec et 10 en Alberta, on considère que l'autorité ontarienne doit veiller à l'application distributive des lois ontarienne, québécoise et albertaine.⁴⁰

[65] Moreover, this multiplicity of governing statutes does not present any particular practical problem. The wind-up reports prepared in relation to the Plans conclude that the Plans are governed by the PBSA for the railway employees, by the SPPA for the non-railway employees who reported for work in Québec, and by the NLPBA for the non-railway employees who reported for work in NL and they calculate the benefits according to the three statutes.⁴¹

[66] The Representative Employees, the Replacement Plan Administrator and the Union contest this conclusion. They argue that the NLPBA should apply to all members under both Plans.

[67] The Representative Employees argue that the Memorandum of Reciprocal Agreement signed by the Quebec Pension Board (the predecessor of Retraite Québec) in 1968 and by the NL Superintendent in 1986⁴² makes the NLPBA applicable to the Plans.

[68] The Court notes at the outset that the Memorandum was signed by representatives of nine provinces, but was not signed by a representative of the federal government. It therefore does not bind the federal government and cannot affect the application of the PBSA.

[69] Moreover, the scope of the Memorandum is limited. It recognizes that a pension plan may be regulated by several statutes. It provides that amongst the various pension regulatory authorities having jurisdiction in relation to a pension plan, the authority of the province where the plurality of the members are employed is the "major authority" and the others are "minor authorities". It provides that a plan need only be registered in the jurisdiction of the major authority. The Pension Parties pleaded that there had been until recently a plurality of members of both Plans in Newfoundland and Labrador. This would explain why both Plans were registered in Newfoundland and Labrador.

[70] The key provision of the Memorandum is section 2:

2. The major authority for each plan shall exercise both its own statutory functions and powers and the statutory functions and powers of each minor authority for such plan.

⁴⁰ Gérald GOLDSTEIN, *Les conflits de loi relatifs aux régimes complémentaires de retraite*, Montréal, Éditions Thémis, 2005, p. 4.

⁴¹ Exhibit R-25, p. 5-6, 8, 27-47 and Exhibit R-26, p. 5.

⁴² Exhibit R-22.

[71] In other words, the Memorandum operates merely as a delegation of powers from the minor authorities to the major authority. It does not in any way affect the application of the relevant statutes:

The major authority is charged with administering the laws of the other province. What this means is that while a multi-jurisdictional pension plan need only be registered in one province, it does not necessarily mean that the laws of the other province do not apply in respect of employees working in that other province. For example, when a multi-jurisdictional pension plan is being wound up, the administrator is required to allocate and account for the assets and benefits by province.⁴³

[References omitted]

[72] This is consistent with Section 74 of the previous version of the SPPA⁴⁴ which was in force when the Memorandum was signed by Québec, which provides for reciprocal registration and inspection, delegation of functions and powers, and carrying out duties on behalf of the Board, but not the exclusion of Québec law. Agreements entered into under Section 74 of the former SPPA remain effective under the new SPPA.⁴⁵

[73] This is to be contrasted with Section 249 of the current SPPA, which allows Retraite Québec to enter into agreements with other provincial authorities or the federal authority to determine to what extent each pension act applies to a plan. Similar provisions are found in Section 6.1 of the PBSA and Sections 8(2) and 8.2(2) of the NLPBA.

[74] Pursuant to these new powers, the federal authority and various provincial authorities entered into Agreements Respecting Multi-jurisdictional Pension Plans in 2011 and 2016. The 2011 and 2016 Agreements expressly provide that in certain circumstances, one pension act applies to the exclusion of the others. However, while Quebec and the federal government are parties to the 2011 and 2016 Agreements, Newfoundland and Labrador is not a party. As a result, the Agreements have no application to the Plans, and they cannot exclude the SPPA and the PBSA and make the NLPBA applicable to the Québec and federal members of the Plans.

[75] The Representative Employees also argue that the Applicable Law clause found at Section 12.06 in both Plans makes the NLPBA applicable to both Plans:

12.06 Applicable Law

⁴³ Ari KAPLAN and Mitch FRAZER, *Pension Law* (Second Edition), Toronto, Irwin Law, 2013, p. 106. See also *Régie des rentes du Québec v. Commission des régimes de retraite de l'Ontario*, 2000 CanLII 30139 (ON SCDC), par. 61; *Boucher c. Stelco inc.*, 2000 CanLII 18866 (QC CS), par. 71, appeals dismissed on other grounds, 2004CanLII 13895 (QC CA) and 2005 SCC 64. Contra, *Dinney v. Great-West Life Assurance Co.*, 2002 MBQB 277, par. 14; *Champagne v. Atomic Energy of Canada Ltd.*, 2012 CanLII 97650 (CA Lab.Arb.).

⁴⁴ CQLR, c R-17 (replaced by c R-15.1).

⁴⁵ SPPA, s. 285.

The Plan shall be interpreted pursuant to the laws applicable in the province of Newfoundland.

[76] The Court notes that, notwithstanding this provision, there are specific provisions in both Plans applicable to employees who report for work in Québec in order to comply with the SPPA.⁴⁶

[77] In any event, the parties to a pension plan cannot pick and choose which pension laws apply to them and which do not. The legislation clearly provides to whom it applies. It leaves no room for the choice of the parties. Article 3118 C.C.Q. provides that a choice of law clause cannot deprive an employee of the protection afforded by the mandatory rules of the state where the employee habitually carries out his work. As a result, this contractual provision cannot be sufficient to set aside the clear language of the three statutes. Moreover, Section 12.06 provides only for the interpretation of the Plans. It does not provide that the Plans are governed by the NLPBA and does not incorporate by reference the provisions of the NLPBA.

[78] Finally, the Union recognizes that the three statutes apply and that the only effect of the Memorandum is to centralize the regulatory functions in one regulator. However, the Union argues that pension legislation enacts only minimum standards. As the three statutes apply to the Plans and each creates a deemed trust that covers certain contributions, the Court should apply the deemed trust that covers the greatest amount.

[79] This argument is based on the assumption that each contribution payable by the employer (whether normal cost payments, special payments, catch-up special payments or wind-up deficits) is a single amount in respect of the whole Plan. This is wrong. As is readily apparent from the detailed calculations included in the Salaried Plan wind-up valuation, the calculation of the contributions is done on a member-by-member basis.⁴⁷ As a result, it is not a single contribution governed by three statutes, but rather the contribution can be divided into three portions each of which is governed by a different statute.

[80] As a result, the Court concludes that the Plans are governed by the PBSA with respect to the railway employees, by the SPPA with respect to the non-railway employees who reported for work in Québec, and by the NLPBA with respect to the non-railway employees who reported for work in NL.

[81] None of the three regulators, Retraite Québec, OSFI and the NL Superintendent, contested this conclusion.

3. Proper scope of the protection afforded by the three pension statutes

a. Do the pension statutes create a valid deemed trust or other valid charges?

i. PBSA

⁴⁶ Section 14 of each Plan.

⁴⁷ Exhibit R-25, p. 27-47.

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[82] Section 8(1) and (2) PBSA provide in part as follows:

8 (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:

[...]

(2) In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

[83] The deemed trust mechanism found in Section 8(1) and (2) PBSA has been used by the federal Parliament and by provincial legislatures to give a special priority to certain claims. It has principally been used in taxation and other statutes, to protect Crown claims. As stated by Justice Gonthier in *Sparrow Electric*:

Namely, such deemed trusts or liens are devices which legislators often employ in order to recover moneys which ought to have lawfully been paid to them but have been unlawfully misappropriated by a debtor who subsequently encounters financial difficulty and is forced into winding up its business.⁴⁸

[References omitted]

[84] The deemed trust under the PBSA operate in the following way:

- The employer is required to hold the amounts separate and apart and is considered to hold them in trust (Section 8(1) PBSA); and
- In the event of the employer's liquidation, assignment or bankruptcy, an amount equal to those amounts is deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate (Section 8(2) PBSA).

[85] The Supreme Court explained the operation of similar provisions (Section 227(4) and (5) of the *Income Tax Act*, relating to unremitted payroll deductions) as follows in *Sparrow Electric*:

31 In the present case, I find the language in s. 227(5) to be clear and unambiguous, especially when viewed as a provision directly following s. 227(4), which renders amounts unremitted as held in trust for Her Majesty. In my view, this section is designed to, upon liquidation, assignment, receivership or bankruptcy, seek out and attach Her Majesty's beneficial interest to property of the debtor which at that time is in existence. The trust is not in truth a real one,

⁴⁸ *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411, par. 19.

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as the subject matter of the trust cannot be identified from the date of creation of the trust: D. W. M. Waters, *Law of Trusts in Canada* (2nd ed. 1984), at p. 117. However, s. 227(5) has the effect of revitalizing the trust whose subject matter has lost all identity. This identification of the subject matter of the trust therefore occurs *ex post facto*. In this respect, I agree with the conclusion of Twaddle J.A. in *Roynat*, supra, where he states the effect of s. 227(5) as follows, at p. 647: "Her Majesty has a statutory right of access to whatever assets the employer then has, out of which to realize the original trust debt due to Her".⁴⁹

[Emphasis added]

[86] In other words, it is not enough for Parliament to simply declare that the debtor is deemed to hold the amounts in trust. The deemed trust under Section 8(1) PBSA is only effective if the property is identified and kept separate and apart. If the property is not identified and kept separate and apart, it is necessary to also have Section 8(2) PBSA, which causes the property to be identified on liquidation, assignment or bankruptcy and deems it to be kept separate and apart even if it is not.

[87] Justice Schragar, then of this court, concluded in *Aveos* that, whether at common law or under Article 1260 C.C.Q., the language of Section 8(1) PBSA was not sufficient for a valid deemed trust and that the language of Section 8(2) PBSA was necessary to the validity of the deemed trust:

[58] Clearly, then, either at common law or in virtue of Article 1260 of the Civil Code of Québec ("C.C.Q."), no real trust exists in the present case since the property subject to the trust is not readily identifiable as funds were not segregated as required by Article 8(1) P.B.S.A., but rather, commingled. This situation is common; thus, the need for the legislator to create the deemed trust in Section 8(2) P.B.S.A. to protect sums due to pension plans.⁵⁰

[Emphasis added]

[88] The Court concludes that the combined effect of Section 8(1) and (2) PBSA is sufficient to create a deemed trust in the event of a liquidation, assignment or bankruptcy of the employer.

ii. SPPA

[89] Section 49 SPPA is very succinct:

49. Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.

[Emphasis added]

[90] Section 49 SPPA simply deems "contributions" to be held in trust, whether or not they have been kept separate from the employer's other property. It includes the

⁴⁹ *Id.*, par. 31.

⁵⁰ *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc. (Arrangement relatif à)*, 2013 QCCS 5762, par. 58.

deemed trust language from Section 8(1) PBSA and the “whether or not the latter has kept them separate from his property” language from Section 8(2) PBSA, but it does not include the following key language found in Section 8(2) PBSA:

In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust is deemed to be held in trust, shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy...

[91] This omission is fatal.

[92] Under *Sparrow Electric*, merely declaring that amounts are deemed to be held in trust is not effective if the property is not identified. It is clear that no property is identified by Section 49 SPPA. It provides only that “contributions” are deemed to be held in trust. A contribution is an obligation and not specific property. *Sparrow Electric* provides that the deemed trust is “revitalized” by providing that, upon a triggering event, an amount equal to the amount that is supposed to be held in trust is carved out of the estate. Without the carve-out on a triggering event, the deemed trust is not effective.

[93] The same principles apply in Québec. In *Sécurité Saglac* and *Nolisair*,⁵¹ the provision at issue was the deemed trust under Section 20 of the *Ministry of Revenue Act*, which read as follows at the relevant time:

20. Every person who deducts, withholds or collects any amount under a fiscal law is deemed to hold it in trust for Her Majesty in right of Québec.

Any such amount must be kept by the person who deducted, withheld or collected it, distinctly and separately from his own funds and, in the event of a winding-up, assignment or bankruptcy, an amount equal to the amount thus deducted, withheld or collected must be considered to form a separate fund not forming part of the property subject to the winding-up, assignment or bankruptcy.

[...]

[Emphasis added]

[94] The words “, whether or not the amount has in fact been held separately from the patrimony of that person or from his own funds” were added at the end of the second paragraph in 1993, after the events giving rise to the litigation but before the judgments of the Court of Appeal.

[95] The Court of Appeal decided, with Justice Fish dissenting, that the pre-1993 Section 20 MRA created a valid deemed trust. The Supreme Court reversed the Court of Appeal, essentially for the reasons given by Justice Fish.

⁵¹ *Quebec (Deputy Minister of Revenue) v. Nolisair International Inc. (Trustee of); Sécurité Saglac (1992) inc. (Trustee of) v. Quebec (Deputy Minister of Revenue)*, [1999] 1 S.C.R. 759, reversing *Sécurité Saglac (1992) Inc. (Syndic de)*, [1997] R.J.Q. 2448 (C.A.) and *Nolisair International Inc. (Syndic de)*, [1997] R.J.Q. 2433 (C.A.).

[96] Justice Fish held that the omission of the words “whether or not the amount has in fact been held separately from the patrimony of that person or from his own funds” was fatal to the deemed trust. Those words are present in Section 49 SPPA.

[97] However, Justice Chamberland (for the majority in the Court of Appeal overturned by the Supreme Court) analyzed the pre-1993 provision as follows:

Le premier paragraphe est identique; le législateur y prévoit expressément, en utilisant les mots «est réputée», qu'une personne qui a déduit, retenu ou perçu un montant en vertu d'une loi fiscale détient ce montant en fiducie et que Sa Majesté aux droits du Québec est la bénéficiaire de cette fiducie. Le début du deuxième paragraphe est également identique; le législateur y crée l'obligation pour la personne visée de tenir le montant ainsi déduit, retenu ou perçu «distinctement et séparément de ses propres fonds». Si tel est le cas, il y a fiducie réelle et, advenant faillite, ces montants constituent des «biens détenus par le failli en fiducie pour toute autre personne», au sens de l'alinéa 67(1)(a) de la Loi FI, et ils ne sont pas compris dans les biens du failli.

La seconde partie du deuxième paragraphe a été modifiée par l'ajout des mots «un montant égal au montant ainsi déduit, retenu ou perçu [...]». L'ajout de ces mots ne s'explique, à mon avis, que par la volonté du législateur de créer une fiducie réputée et de la distinguer de la fiducie réelle en éliminant expressément la nécessité de respecter la troisième des conditions essentielles à l'existence d'une fiducie, soit le fait pour le fiduciaire de conserver les biens affectés à la fiducie séparément et distinctement de son patrimoine. En effet, les mots «un montant égal au montant ainsi déduit, retenu ou perçu» sont inutiles dans le contexte où le failli tient un compte distinct et séparé de ses propres fonds pour les montants déduits, retenus ou perçus; les mots n'ont de sens que si le failli ne tient pas un tel compte distinct et séparé. Dans le contexte, ces mots suffisaient pour conclure à la création d'une fiducie réputée; le premier paragraphe de l'article 20 et le début du second visaient la fiducie réelle alors que le premier paragraphe et la fin du second visaient la fiducie réputée.

D'où, à mon avis, la conclusion que le législateur a ainsi créé une fiducie réputée même s'il n'a pas repris tous les mots du législateur fédéral au paragraphe 5 de l'article 227. L'utilisation des mots «un montant égal au montant ainsi déduit, retenu ou perçu» rendait, à mon avis, inutile l'utilisation des mots «que ce montant ait été ou non, en fait, tenu séparé des propres fonds de la personne».⁵²

[Emphasis added]

[98] The Supreme Court's reversal of the Court of Appeal does not mean that the language identifying the property covered on a triggering event is unnecessary. It means only that the words “whether or not the amount has in fact been held separately from the patrimony of that person or from his own funds” are necessary.

⁵² *Sécurité Saglac (C.A.)*, *supra* note 51, p.2458.

[99] The Court concludes that the language identifying the property covered on a triggering event is necessary, for the reasons given by the Supreme Court in *Sparrow Electric* and by Justice Schragar in *Aveos*.

[100] Section 49 SPPA does not include this language. The consequence is that the deemed trust under Section 49 SPPA is not effective. As stated by Justice Mayrand in *AbitibiBowater*.

[34] Avec égards, que ce soit en vertu de la LACC ou de l'article 49 de la *Loi sur les régimes complémentaires de retraite* (LRRCR), les créances en cause sont des créances ordinaires, que le législateur n'a pas choisi de protéger dans le contexte de la présente restructuration. Le libellé de l'article 49 LRRCR n'est pas suffisant en soi pour conclure à l'établissement d'une véritable fiducie devant avoir priorité sur les autres créanciers. D'ailleurs, la Cour d'appel de l'Ontario, dans l'affaire *Ivaco*, alors qu'elle décide de la portée de l'article 57(3) du *Pension Benefit Act* (dont les termes sont au même effet que ceux de l'article 49 LRRCR), mentionne ce qui suit à l'égard des fiducies présumées (*Deemed Trust*) :

*[...] This Legislative designation by itself does not create a true trust. If the province wants to require an employer to keep its unpaid contributions to a pension plan in a separate account, it must legislate that separation. It has not done so*⁵³

[Emphasis added; references omitted]

[101] Justice Mongeon came to the same conclusion in *White Birch*:

[188] Le second aspect est cependant problématique. Les sommes dues sont homogènes avec les autres argents de la compagnie. Il n'y pas de compte séparé ni de moyen de retracer précisément sur quel argent porte la fiducie réputée. L'employeur a toujours le « pouvoir » sur ces sommes. Le transfert vers un autre patrimoine n'est donc pas complet.

[189] En conséquence, la fiducie présumée de la LRRCR ne peut donc pas produire d'effet dans le présent contexte, les sommes dues demeurant dans le patrimoine de l'employeur. Comme le mentionnait d'ailleurs le professeur Beaulne, « pas de constitution de patrimoine, pas de fiducie [...] ! [63] ». Évidemment, s'il n'y pas de transfert, il ne pourrait y avoir constitution d'un patrimoine d'affectation en concomitance avec le transfert du bien.

[...]

[193] En conséquence des arguments mentionnés ci-dessus, la fiducie de l'article 49 LRRCR ne peut constituer une fiducie réelle au sens du droit québécois.⁵⁴

[Emphasis added]

[102] Justice Mongeon came to the opposite conclusion in *Timminco*. After citing the extract from the Court of Appeal in *Sécurité Sagalac* set out above, he concluded:

⁵³ *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 2028, par. 34.

⁵⁴ *White Birch Paper Holding Company (Arrangement relatif à)*, 2012 QCCS 1679, par. 188-189, 193,

[96] Cette longue citation indique la manière retenue alors par la Cour d'appel pour conclure à l'existence d'une fiducie réputée en se basant sur les mots retenus par le législateur. En appliquant ce genre d'analyse à l'article 49 LRCR, on doit d'abord se poser la question à savoir si le texte de cet article est suffisamment clair et complet pour conclure à l'existence d'une fiducie réputée. Un tel exercice convainc le Tribunal que l'on doit répondre affirmativement à cette question surtout lorsque l'on constate que l'article 49 LRCR reprend les mots alors présumés manquants à l'article 20 LMRQ et qui, plus tard, feront en sorte que l'article 20 LMRQ crée effectivement une fiducie réputée.⁵⁵

[Emphasis added]

[103] With respect, the key language according to that judgment in *Sécurité Saglac* is not "whether or not the amount has in fact been held separately from the patrimony of that person or from his own funds". That language was not part of Section 20 LMRQ at the relevant time. Rather, the key language was

[...] in the event of a winding-up, assignment or bankruptcy, an amount equal to the amount thus deducted, withheld or collected must be considered to form a separate fund not forming part of the property subject to the winding-up, assignment or bankruptcy.

[104] That language is missing from Section 49 SPPA and its absence is fatal to the deemed trust.

[105] Retraite Québec and other Pension Parties argued that Section 264 SPPA completes Section 49 SPPA by rendering these same amounts unassignable and unseizable:

264. Unless otherwise provided by law, the following amounts or contributions are unassignable and unseizable:

- (1) all contributions paid or payable into the pension fund or to the insurer, with accrued interest;
- (2) all amounts refunded or pension benefits paid under a pension plan or this Act;
- (3) all amounts awarded to the spouse of a member following partition or any other transfer of benefits effected pursuant to Chapter VIII, with accrued interest, and the benefits deriving from such amounts.

Except as far as they derive from additional voluntary contributions or represent a portion of the surplus assets allocated after termination of the plan, any of the above-mentioned amounts that have been transferred to a pension plan contemplated by section 98, with accrued interest, any refunds of and benefits resulting from such amounts, and any pension or payment having replaced a pension pursuant to section 92 are also unassignable and unseizable.

⁵⁵ *Timmiinco Itée (Arrangement relatif à)*, 2014 QCCS 174, par. 96.

[106] Justice Mongeon accepted this argument in *Timminco*:

[147] Le soussigné est d'avis qu'effectivement, les articles 49 et 264 LRCR doivent être lus et interprétés dans le même contexte.

[148] Si l'article 49 LRCR crée une fiducie réputée opposable à IQ, cela veut dire que les biens visés par la fiducie réputée sont non seulement facilement identifiables et que les montants qu'ils représentent sont disponibles mais qu'effectivement, ils se trouvent clairement « identifiés » par l'effet même de l'article 49. De même, l'article 264 LRCR peut s'appliquer aux montants auxquels l'article 49 LRCR s'applique.

[149] Il ne sera donc pas plus nécessaire dans ce contexte particulier de procéder à une séparation physique des cotisations d'équilibre à être versées du reste des actifs de SBI pour que le produit desdites cotisations jouisse du caractère d'incessibilité et d'insaisissabilité que leur procure l'article 264 LRCR, qu'il n'est nécessaire de le faire pour que la fiducie réputée de l'article 49 LRCR ne produise ses effets.

[150] En ce sens, l'article 264 LRCR vient compléter la logique de l'article 49 LRCR et, autrement, ces deux mêmes articles deviennent complètement dénudés de leur sens de leur portée et de leur effet.⁵⁶

[Emphasis added]

[107] The Court does not agree.

[108] First, Section 264 SPPA is found in the final chapter of the SPPA entitled "Miscellaneous and Transitional Provisions". It would be an odd place to put a provision that deals with the same amounts already covered by Section 49 SPPA.

[109] Further, the enumeration of amounts or contributions in Section 264 SPPA appears to be a list of amounts payable by or to the member of the pension fund and not amounts payable by the employer. It appears that Section 264 protects the members of the plan by providing that they cannot assign these amounts and their creditors cannot seize them. Section 49, on the other hand, is intended to protect pension plans from the creditors of the employer.⁵⁷

[110] Also, if Section 264 SPPA covers the same amounts as Section 49 SPPA, then the overlap between them is problematic. Why is it necessary to have both provisions protecting the same amounts? If the amounts are already covered by a deemed trust, then they are also unassignable and unseizable without the need for Section 264 SPPA. If they are unassignable under Section 264 SPPA, then how can they be transferred to the deemed trust?

[111] Finally and in any event, even if Section 264 SPPA applied to the amounts held by the employer to be paid into the pension plan, it is not clear how that would fix the

⁵⁶ *Id.*, par. 147-150.

⁵⁷ Alain PRÉVOST, « Que reste-t-il de la fiducie réputée en matière de régimes de retraite » (2016), 75 R. du B. 23, p. 44-45.

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deemed trust under Section 49 SPPA. Simply declaring amounts to be unassignable and unseizable does not make them any more identifiable. There is still no triggering event. Justice Mongeon suggests that the sums are identifiable under Section 49 SPPA, but the Court has already rejected that argument as a result of *Sparrow Electric*.

[112] The Court therefore concludes that the deemed trust under Section 49 SPPA and the unseizability under Section 264 SPPA are not effective and do not create a property or security interest.

iii. NLPBA

[113] The NLPBA includes in Section 32(1) and (2) language very similar to Section 8(1) and (2) of the PBSA:

32. (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

[...]

are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.

[Emphasis added]

[114] The Court will assume for the purposes of the present judgment that Section 32(1) and (2) NLPBA create a valid deemed trust under the laws of Newfoundland and Labrador that operates in the same way as its counterpart in Section 8(1) and (2) PBSA.

[115] The NLPBA also includes in Section 32(3) a further trust in the event of termination of the plan.

(3) Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.

[Emphasis added]

[116] However, this is simply an obligation to hold an amount of money in trust and not a deemed trust. Under *Sparrow Electric*, if the amounts are not actually held in trust, and in the present matter they are not, this provision does not create a trust. In any event, the Court is assuming that Section 32(1) and (2) NLPBA create a valid deemed

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trust and, as set out below, the Court gives that deemed trust a broad interpretation. In those circumstances, Section 32(3) NLPBA does not add anything.

[117] Finally, in addition to the deemed trust, Section 32(4) NLPBA creates a lien and charge:

(4) An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).

[118] The Court will also assume that Section 32(4) NLPBA creates a valid lien and charge under the laws of Newfoundland and Labrador.

b. Priority

[119] In *First Vancouver*, the Supreme Court characterized the deemed trust as a floating charge over all of the assets of the debtor.⁵⁸

[120] With respect to the priority between the deemed trust and the claims of secured creditors, the Supreme Court concluded as follows in *Sparrow Electric*:

34 It is to be observed that in addition to attaching Her Majesty's interest to the debtor's property upon the triggering of any of the events mentioned in s. 227(5), the deemed trust operates to the benefit of Her Majesty in a secondary manner. Namely, s. 227(5) permits Her Majesty's interest to attach to collateral which is subject to a fixed charge if the deductions giving rise to Her Majesty's claim arose before that charge attached to that collateral.

...

Thus, s. 227(5) alternatively permits Her Majesty's interest to attach retroactively to the disputed collateral if the competing security interest has attached after the deductions giving rise to Her Majesty's claim in fact occurred. Conceptually, the s. 227(5) deemed trust allows Her Majesty's claim to go back in time and attach its outstanding s. 227(4) interest to the collateral before that collateral became subject to a fixed charge.⁵⁹

[121] In *Aveos*, Justice Schragger came to a similar conclusion under Québec law:

[66] In the present case, when the deemed trust for the special payments arose, the property of Aveos was encumbered by fixed charges in favour of the Secured Lenders. Those fixed charges were created in 2010, except for the security in the Northwest Territories which was perfected in 2011. The deemed trust arose either upon the liquidation of Aveos (which would not have been before the C.C.A.A. filing on March 19, 2012) or at the earliest when a special payment became due following the actuarial valuation report filed in June 2011. Even if the obligation to make the special payments was somehow retroactive to December 31, 2010 (which was not argued by the Superintendent), the fixed charges in favour of the Secured Lenders were already perfected at such date.

⁵⁸ *First Vancouver Finance v. M.N.R.*, 2002 SCC 49, par. 40.

⁵⁹ *Sparrow Electric*, *supra* note 48, par. 34.

Moreover, Aveos made the special payments up to and including January 2012 so it is difficult to deem the trust prior to any payments being in default.

[67] Consequently, this Court agrees with the Secured Lenders first position that their security was created before any deemed trust for the \$2.8 million could have existed. Since the assets were already charged, any deemed trust under Section (8)(2) P.B.S.A. is at best subordinate to the security of the Secured Lenders.⁶⁰

[Emphasis added]

[122] As a result, when one of the triggering events in Section 8(2) PBSA occurs, the deemed trust attaches to the debtor's current property, with effect retroactive to the date that the contributions became due. However, it attaches subject to other security which attached to the assets before the contributions were due.⁶¹

[123] Finally, the Supreme Court in *Sparrow Electric* emphasized that it was open to Parliament to give absolute priority to the deemed trust through appropriate language:

112 Finally, I wish to emphasize that it is open to Parliament to step in and assign absolute priority to the deemed trust. A clear illustration of how this might be done is afforded by s. 224(1.2) ITA, which vests certain moneys in the Crown "notwithstanding any security interest in those moneys" and provides that they "shall be paid to the Receiver General in priority to any such security interest". All that is needed to effect the desired result is clear language of that kind. In the absence of such clear language, judicial innovation is undesirable, both because the issue is policy charged and because a legislative mandate is apt to be clearer than a rule whose precise bounds will become fixed only as a result of expensive and lengthy litigation.

[124] The so-called *Sparrow Electric* language was not added to Section 8 PBSA, with the result that it does not have priority over pre-existing secured creditors with a fixed charge.⁶²

[125] The Court assumes that these priority rules also apply to the deemed trust under Section 32(2) NLPBA.

[126] As for the lien and charge under Section 32(4) NLPBA, the Court assumes that it is a valid fixed charge under the law of Newfoundland and Labrador. Its priority relative to other secured claims is not clear because it is not registered and because nothing in the NLPBA or the Newfoundland and Labrador *Personal Property Security Act*⁶³ provides for its priority.

[127] The Ville de Sept-Îles argues that its claim for property and water taxes predates the liquidation of the Wabush CCAA Parties and any default in payment of the contributions, and therefore takes priority even if the deemed trust is valid.

⁶⁰ *Aveos*, *supra* note 50, par. 66-67.

⁶¹ *First Vancouver*, *supra* note 58, par. 46.

⁶² See also *Aveos*, *supra* note 50, par. 64-66.

⁶³ S.N.L. 1998, c. P-7.1.

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[128] However, for the reasons set out below, it is not necessary for the Court to decide those priority issues.

c. Liabilities covered

i. SPPA⁶⁴

[129] The liabilities covered by Section 49 SPPA are limited:

49. Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.

[Emphasis added]

[130] It covers only “contributions” and “accrued interest”. In the ordinary course, “contributions” would include regular and special contributions, but not the wind-up deficit. The wind-up deficit is dealt with in Sections 228-229 SPPA, where it is a debt of the employer. There is no deemed trust language in Sections 228-229 SPPA.

[131] The Court therefore concludes that the Québec deemed trust, if it is effective, covers only the regular payments, special payments and catch-up special payments, to the extent that they relate to non-railway employees who reported for work in Québec.

ii. PBSA

[132] There is not much dispute as to the scope of the protection afforded by the PBSA.

[133] Subsection 8(1) PBSA provides that the employer is deemed to hold the following amounts in trust:

- (a) the moneys in the pension fund,
- (b) an amount equal to the aggregate of the following payments that have accrued to date:
 - (i) the prescribed payments, and
 - (ii) the payments that are required to be made under a workout agreement; and
- (c) all of the following amounts that have not been remitted to the pension fund:
 - (i) amounts deducted by the employer from members' remuneration, and
 - (ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

⁶⁴ The Court has already concluded that Section 49 SPPA does not create a valid deemed trust and therefore this analysis is not necessary. It is included for the benefit of the parties in the event of an appeal.

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[134] Section 9.14(2) PBSA deals with the situation where the employer has given a letter of credit to guarantee certain pension related obligations and is not relevant here.

[135] Subsection 29(6) PBSA deals with the obligations of the employer on termination of a pension plan:

29 (6) If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the pension fund

(a) an amount equal to the normal cost that has accrued to the date of the termination;

(b) the amounts of any prescribed special payments that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(c) the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(d) all of the following amounts that have not been remitted to the pension fund at the date of the termination:

(i) the amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer; and

(e) the amounts of all of the payments that are required to be made under subsection 9.14(2).

[136] The language of Section 29(6.4) and (6.5) PBSA expressly provides that the deemed trust does not extend to the solvency deficit on termination of the plan:

(6.4) On the winding-up of the pension plan or the liquidation, assignment or bankruptcy of the employer, the amount required to permit the plan to satisfy any obligations with respect to pension benefits as they are determined on the date of termination is payable immediately.

(6.5) Subsection 8(1) does not apply in respect of the amount that the employer is required to pay into the pension fund under subsection (6.4). However, it applies in respect of any payments that have accrued before the date of the winding-up, liquidation, assignment or bankruptcy and that have not been remitted to the fund in accordance with the regulations made for the purposes of subsection (6.1).

[Emphasis added]

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[137] The combined effect of these provisions is that the deemed trust under the PBSA covers the following amounts:

- The moneys in the pension fund;
- The normal cost that has accrued to the date of termination;
- The prescribed special payments that are due on termination or before the end of the plan year;
- The payments under a workout agreement that are due on termination or before the end of the plan year; and
- The unremitted deductions at source.

[138] There is no issue in the present matter with respect to the pension fund itself. It is clear that it is held separate and apart from the assets of the Wabush CCAA Parties.

[139] Further, there do not appear to be any accrued normal costs or unremitted deductions.

[140] There are special payments and catch-up special payments owing, some pre-filing but mostly post-filing because the Court suspended the Wabush CCAA Parties' obligation to make the special payments on June 26, 2015. To the extent that the special payments and catch-up special payments relate to federal employees or retirees, they are in principle protected by the federal deemed trust.

iii. NLPBA

[141] Essentially, Section 32(1) and (2) NLPBA are very similar to Section 8(1) and (2) PBSA. However, there is no equivalent in the PBSA to Section 32(4) NLPBA, and Section 61 NLPBA does not include the equivalent to Section 29(6.5) PBSA.

[142] The NL Superintendent pleads that the deemed trust and the lien and charge under the NLPBA cover the wind-up deficit.

[143] For the reasons described above, the Court will assume for the purposes of the present decision that the deemed trust and the lien and charge under the NLPBA cover the wind-up deficit.

d. Property covered

[144] The issue is whether the deemed trust and the lien and charge under the NLPBA extend to assets beyond the province. More specifically, there are significant proceeds held by the Monitor resulting from the sale of assets in Québec which the Pension Parties argue should be subject to the deemed trust and lien and charge under the NLPBA.

[145] The Court will assume that the NLPBA, as a matter of Newfoundland and Labrador law, extends to assets outside the province. The issue is whether Québec law recognizes the deemed trust and the lien and charge created by Newfoundland and Labrador law as applying to assets in Québec.

[146] The Pension Parties argue that the deemed trust created under the NLPBA is a trust established by law, and that as a result it is a valid trust in Québec under Article 1262 C.C.Q. This is not a proper analysis under principles of private international law. It assumes that “created by law” in Article 1262 C.C.Q. includes foreign laws. Followed to its logical conclusion, it would mean that any trust created by law anywhere in the world can validly charge assets in Québec and that the Québec courts must recognize any such trust. The Court does not agree. Rather, the Court reads Article 1262 C.C.Q. as being limited to trusts created under Québec law.⁶⁵ A trust created under a foreign law will only be recognized in Québec under the relevant rules of private international law.

[147] There are several ways to characterize the issue under the rules of private international law in Québec.

[148] If it is viewed as a property issue, the rules of private international law in Québec provide that matters of real rights and their publication are governed by the law of the place where the property concerned is situated (Article 3097 C.C.Q.). This suggests that, if the province of Newfoundland and Labrador seeks to create a deemed trust over property in Québec, Québec will not recognize that the deemed trust extends to property in Québec.

[149] Similarly, the rules on movable securities provide that the validity of a movable security is governed by the law of the state in which the property charged with it is situated at the time of creation of the security (Article 3102 C.C.Q.).

[150] Finally, if it is viewed as a matter of employment law, Article 3118 C.C.Q. provides that the law of the state where the worker habitually carries out his work applies to the contract of employment.

[151] The Pension Parties invoke Article 3079 C.C.Q.:

3079. Where legitimate and manifestly preponderant interests so require, effect may be given to a mandatory provision of the law of another State with which the situation is closely connected.

In deciding whether to do so, consideration is given to the purpose of the provision and the consequences of its application.

[152] They argue that the NLPBA is such a mandatory law, and that the Québec courts should therefore give effect to it.

⁶⁵ Similarly, Article 1262 C.C.Q. provides that a trust may be established by judgment, but in *Gareau (Faillite de)*, REJB 1997-03315 (C.S.), par. 33-35, Justice Dalphond held that a constructive trust created under an Ontario judgment did not create a valid interest against an immovable in Québec.

[153] However, the NLPBA only applies to the workers who report to work in the province of Newfoundland and Labrador, while the SPPA applies to workers who report for work in the province of Québec. If the NLPBA extended to property in Québec, this would be to the prejudice of the Québec workers who would see a deemed trust for the benefit of their co-workers applied to the assets to which the Québec workers report for work. The Court cannot conclude in these circumstances that the interests of the foreign workers are “manifestly preponderant” over the interests of the Québec workers.

[154] As a result, the Court concludes that the deemed trust under the NLPBA does not apply to assets within the province of Québec.

4. Has there been a “liquidation” to trigger the deemed trusts under the PBSA and the NLPBA ?

[155] The deemed trust under Section 8(2) of the PBSA becomes effective only “[i]n the event of any liquidation, assignment or bankruptcy” of the employer. The exact same language is found in Section 32(2) NLPBA and the Court assumes that the words are to be interpreted in the same way.

[156] The key issue here is whether the CCAA proceedings themselves, or some event within the CCAA proceedings, constitute a “liquidation, assignment or bankruptcy” of the employer.

[157] The term “bankruptcy” is the clearest. It must mean a formal bankruptcy under the *Bankruptcy and Insolvency Act*,⁶⁶ following an assignment in bankruptcy by the debtor or a bankruptcy order issued by the court following a petition in bankruptcy by a creditor. There are also deemed assignments in bankruptcy on the failure to file a proposal within the delays or the refusal of a proposal. It is clear in the present matter that there has not been a bankruptcy in any of these senses.

[158] The term “assignment” likely refers to an assignment in bankruptcy, even though that creates an overlap between “bankruptcy” and “assignment”. The alternative is to read “assignment” more broadly to refer to any assignment of property by the employer. However, Sections 8(2) PBSA and 32(2) NLPBA go on to refer to “the estate in liquidation, assignment or bankruptcy”, which suggests that all of the employer’s property has been assigned to a third party and is being administered by the third party. This brings us back to the notion of an assignment in bankruptcy as opposed to contractual assignments of property by the employer. Further, how could the deemed trust attach each time the employer assigns any property? Or if the deemed trust attaches only once, which assignment of property causes it to attach?

[159] That leaves the third term, “liquidation”. The Monitor, the Wabush CCAA Parties and the Ville de Sept-Îles argue that the term “liquidation” should be limited to formal liquidation proceedings under a statute such Part XVIII of the *Canada Business Corporations Act*.⁶⁷ The Pension Parties invite the Court not to give the term

⁶⁶ R.S.C. 1985, c. B-3.

⁶⁷ R.S.C. 1985, c. C-44.

“liquidation” the narrow technical sense of a formal liquidation. Rather, they suggest that in the present matter, the Wabush CCAA Parties used the CCAA process in order to liquidate their assets and that this should be sufficient to trigger the deemed trust provisions. They argue that this liberal interpretation is in accordance with the presumed intention of the legislator to protect pension plans and in accordance with a functional analysis since there has clearly been a liquidation in the present matter.

[160] It is clear in the present matter that the Wabush CCAA parties have liquidated their assets. With the sale of the Wabush mine in June, the Wabush CCAA parties have now sold all or substantially all of their assets. However, they did not institute formal liquidation proceedings. They proceeded instead under the CCAA with what has come to be known as a “liquidating CCAA”:

Liquidating CCAA: As discussed above, this is a relatively new type of proceeding in which the debtor’s assets are sold either piecemeal or on a going concern basis under the CCAA court’s supervision. The sales may occur pursuant to a plan that has been approved by the creditors, or they may occur in the absence of a plan. Notably, many recent CCAA proceedings have been liquidating CCAAs from the outset. That is, the debtor never intended to present a reorganization plan to its creditors, and merely applied for CCAA protection so that it could begin a marketing process to sell substantially all of its assets. In such cases, the debtor might present a post-sale plan to its creditors that is essentially a plan of distribution of the sale proceeds, or the debtor may simply enter bankruptcy proceedings. For reasons that will be discussed further below, liquidating CCAAs are controversial and may not be consistent with the corporate rescue purpose of the CCAA.⁶⁸

[161] The Court agrees that it is not relevant that the liquidation was done outside the BIA and the CBCA.

[162] First, the Court notes that the liquidation regime under Part XVIII of the CBCA is only available to corporations that are solvent (Section 208 CBCA). As a result, liquidation under the CBCA was never an option for the Wabush CCAA Parties. Moreover, the deemed trusts under the PBSA and the NLPBA are of limited value in the case when the employer is solvent.

[163] Further, although the debtor in a CCAA proceeding remains in possession of his assets, there is a court-appointed monitor and the process is under the supervision of the court. This is sufficient to meet the requirement of “the estate in liquidation, assignment or bankruptcy”.

[164] Finally, the conclusion that the deemed trust is triggered by a liquidation under the BIA but not a liquidation under the CCAA seems to run counter to the idea that creditors should have analogous entitlements under the CCAA and the BIA.⁶⁹ It would

⁶⁸ Alfonso NOCILLA, « Is ‘Corporate Rescue’ Working in Canada? » (2012), 53 Can. Bus. L.J. 382, p. 385. See also *Re Puratone et al*, 2013 MBQB 171, par. 20.

⁶⁹ *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, par. 51.

also allow the employer to avoid the deemed trust by choosing to proceed under the CCAA rather than the BIA. The Supreme Court addressed a similar concern in different circumstances in *Indalex* in the following way:

[47] The Court of Appeal declined to decide whether a deemed trust arose in relation to the Executive Plan, stating that it was unnecessary to decide this issue. However, the court expressed concern that a reasoning that deprived the Executive Plan's members of the benefit of a deemed trust would mean that a company under CCAA protection could avoid the priority of the PBA deemed trust simply by not winding up an underfunded pension plan. The fear was that *Indalex* could have relied on its own inaction to avoid the consequences that flow from a wind up. I am not convinced that the Court of Appeal's concern has any impact on the question whether a deemed trust exists, and I doubt that an employer could avoid the consequences of such a security interest simply by refusing to wind up a pension plan. The Superintendent may take a number of steps, including ordering the wind up of a pension plan under s. 69(1) of the *PBA* in a variety of circumstances (see s. 69(1)(d) *PBA*). The Superintendent did not choose to order that the plan be wound up in this case.⁷⁰

[Emphasis added]

[165] Similarly, the employer should not be allowed to avoid the priority of the deemed trust by choosing to liquidate under the CCAA rather than the BIA.

[166] The Court therefore concludes that there has been a liquidation in the present matter triggering the application of the deemed trusts under the PBSA and the NLPBA.⁷¹

[167] The next question is when did it occur? Because the deemed trust attaches to the employer's assets at the time of the triggering event, it is important to know exactly when it occurred. It cannot be a vague date or a range of dates.

[168] In moving away from requiring a filing under the BIA or the CBCA to taking a more practical view, the Court recognizes that the date of the liquidation may prove to be a difficult determination and may inject some uncertainty into the process. However, the Court considers that some uncertainty is a small price to pay for greater protection of the rights of the pensioners.

[169] In the present matter, the date that the liquidation began is fairly clear.

[170] The Wabush CCAA Parties initiated proceedings under the CCAA on May 19, 2015. Prior to the filing of the CCAA motion, operations at the Wabush Mine had been permanently shut down. The employees had been terminated or laid off. The Wabush CCAA Parties had tried unsuccessfully to find buyers and/or investors for the Wabush mine operations and/or assets.

⁷⁰ *Id.*, par. 47.

⁷¹ See also *Dauphin Plains Credit Union Ltd. v. Xyloid Industries Ltd.*, [1980] 1 S.C.R. 1182.

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[171] Moreover, when the Wabush CCAA proceedings were initiated, the Bloom Lake parties were already subject to CCAA proceedings and they had obtained an order approving a sale and investor solicitation process ("SISP") for their assets. The SISP already covered the Wabush mine assets and included the possibility of soliciting "liquidation proposals".

[172] With the benefit of hindsight, the Court notes that the Wabush CCAA Parties did not receive any proposals for investments but only offers to purchase assets. Ultimately, the Wabush CCAA Parties sold off all or essentially all of their assets in piecemeal fashion. That was always the likely outcome of the CCAA process.

[173] In these circumstances, the Court concludes that this was a liquidating CCAA from the outset. The Court therefore concludes that the liquidation started on May 19, 2015 and that the deemed trusts under Section 8(2) PBSA and Section 32(2) NLPBA came into effect on that date.

[174] The Court notes that there is nothing in any way pejorative about qualifying the CCAA as a liquidating CCAA. That is a legitimate and increasingly frequent use of CCAA proceedings. However, a liquidating CCAA should be more analogous to a BIA proceeding. One of the consequences is that the deemed trusts should be triggered.

[175] Because the Court has concluded that the triggering event occurred when the CCAA motion was filed, the Court need not decide whether the triggering event must occur prior to the initial CCAA order, or whether it can occur after the initial CCAA order but prior to the sale of the assets.⁷²

5. Are the deemed trusts and other charges valid in the CCAA context?

[176] Given that the PBSA and the NLPBA operate in much the same manner, the analysis of whether they are applicable in the CCAA context is quite similar. However, there is one very important distinction: the PBSA is federal legislation and the NLPBA is provincial legislation. Because both the PBSA and the CCAA are federal legislation, the issue of how they operate together is a matter of determining Parliament's intent. With respect to a provincial deemed trust, the Supreme Court in *Indalex* stated that:

The provincial deemed trust under the PBA continues to apply in CCAA proceedings, subject to the doctrine of federal paramountcy.⁷³

a. the NLPBA and the doctrine of federal paramountcy

[177] The Court will consider first the operation of the NLPBA and the doctrine of federal paramountcy.

⁷² In *Indalex*, *supra* note 69, Justice Deschamps seems to suggest that the triggering event must occur before the sale (par. 46) while Justices Cromwell (par. 92 and 118) and LeBel (par. 265) state that the triggering event must occur prior to the CCAA filing. See also *Grant Forest Products Inc. (Re)*, 2013 ONSC 5933, par. 25 and 71, appeal dismissed 2015 ONCA 570, par. 130.

⁷³ *Indalex*, *supra* note 69, par. 52.

[178] The Supreme Court recently summarized the doctrine of federal paramountcy in *Lemare Lake*.⁷⁴

- A provincial law will be deemed to be inoperative to the extent that it conflicts with or is inconsistent with a federal law;
- The first step in the analysis is to determine whether the federal and provincial laws are validly enacted;
- The second step requires consideration of whether any overlap between the two laws constitutes a conflict sufficient to render the provincial law inoperative;
- Two kinds of conflict are at play: (1) an *operational conflict*, where compliance with both the federal and provincial law is impossible; and (2) *frustration of purpose*, where the provincial law thwarts the purpose of the federal law;
- Operational conflict arises where one enactment says “yes” and the other says “no”, such that compliance with one is defiance of the other;
- To prove that provincial legislation frustrates the purpose of a federal enactment, the party relying on the doctrine must first establish the purpose of the relevant federal statute, and then prove that the provincial legislation is incompatible with this purpose;
- Paramountcy must be narrowly construed: when a federal statute can be properly interpreted so as not to interfere with a provincial statute, such an interpretation is to be applied in preference to another applicable construction which would bring about a conflict between the two statutes.

[179] In *Indalex*, the Supreme Court held that the charge in favour of the interim lender superseded the provincial deemed trust because of the doctrine of federal paramountcy. The Supreme Court used the language of operational conflict:

[60] In this case, compliance with the provincial law necessarily entails defiance of the order made under federal law. On the one hand, s. 30(7) of the *PPSA* required a part of the proceeds from the sale related to assets described in the provincial statute to be paid to the plan's administrator before other secured creditors were paid. On the other hand, the Amended Initial Order provided that the DIP charge ranked in priority to “all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise” (para. 45). Granting priority to the DIP lenders subordinates the claims of other stakeholders, including the Plan Members. This court-ordered priority based on the *CCAA* has the same effect as a statutory priority. The federal and provincial laws are inconsistent, as they give rise to different, and conflicting, orders of

⁷⁴ *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 419, par. 15-27.

priority. As a result of the application of the doctrine of federal paramountcy, the DIP charge supersedes the deemed trust.⁷⁵

[180] The Court followed *Indalex* when it granted priority to the Interim Lender Charge over the deemed trust under the NLPBA in June 2015.⁷⁶

[181] The issue now is a broader one, whether the deemed trusts under the NLPBA have any effect in the context of CCAA proceedings.

[182] No one argues that the CCAA and the NLPBA are not validly enacted.

[183] Nothing in the CCAA expressly invalidates deemed trusts under pension legislation. Section 37(1) CCAA, which was added to the CCAA in 2007, invalidates in the CCAA context most deemed trusts in favour of the Crown. However, it does not invalidate deemed trusts in favour of other persons, such as the deemed trust under the NLPBA. The Court emphasized in its June 2015 decision that certain statements in *Century Services*⁷⁷ and *Aveos*⁷⁸ about deemed trusts should be limited to deemed trusts in favour of the Crown and should not be applied to all deemed trusts.⁷⁹

[184] The CCAA provides specific protection for certain pension-related liabilities. Section 6(6) and (7) CCAA require that the employer provide for certain pension payments before the court can sanction the compromise or arrangement:

6 (6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of

⁷⁵ *Indalex*, *supra* note 69, par. 60.

⁷⁶ Suspension Order, *supra* note 9.

⁷⁷ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, par. 45 and 95.

⁷⁸ *Aveos*, *supra* note 50, par. 74-75.

⁷⁹ Suspension Order, *supra* note 9, par. 72.

subsection 2(1) of the Pension Benefits Standards Act, 1985,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the Pooled Registered Pension Plans Act; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

(7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

[185] Section 36(7) CCAA provides a similar limitation on the court's power to authorize a sale of assets:

36 (7) The court may grant the authorization [to sell or otherwise dispose of assets outside the ordinary course of business] only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

[186] These provisions are limited in scope. They protect the employee contributions deducted at source by the employer and not yet remitted to the pension fund as well as the normal cost payments due by the employer. They do not protect the special payments due or the wind-up deficiency.

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[187] There is no operational conflict between these provisions and the deemed trust under the NLPBA in the sense that the deemed trust under the NLPBA protects additional amounts that are not protected by the CCAA.

[188] The question is whether the NLPBA frustrates Parliament's purpose by protecting additional amounts. Did Parliament intend that only the employee contributions and the normal cost payments be protected or did Parliament provide a minimum level of protection, leaving it to the provincial legislatures to extend the protection to additional amounts if they thought it appropriate to do so?

[189] This is not a matter of, as the NL Superintendent puts it in his outline of argument, "relying on the largely discredited and marginalized doctrine of 'negative implication' or 'covering the field'."⁸⁰ The Court will not assume that Parliament intended to occupy the field. There is a substantial body of written evidence as to Parliament's intent in adopting Sections 6(6) and 36(7) CCAA. There are the submissions made to Parliament in relation to the protection of pension plans in insolvency, the deliberations of the committees and of Parliament, and the final decision reached by Parliament. Justice Deschamps cited the report of the Standing Senate Committee on Banking, Trade and Commerce in her judgment in *Indalex*:

[81] There are good reasons for giving special protection to members of pension plans in insolvency proceedings. Parliament considered doing so before enacting the most recent amendments to the CCAA, but chose not to (An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act, the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada, 2005, S.C. 2007, c. 36, in force September 18, 2009, SI/2009-68; see also Bill C-501, An Act to amend the Bankruptcy and Insolvency Act and other Acts (pension protection), 3rd Sess., 40th Parl., March 24, 2010 (subsequently amended by the Standing Committee on Industry, Science and Technology, March 1, 2011)). A report of the Standing Senate Committee on Banking, Trade and Commerce gave the following reasons for this choice:

Although the Committee recognizes the vulnerability of current pensioners, we do not believe that changes to the BIA regarding pension claims should be made at this time. Current pensioners can also access retirement benefits from the Canada/Quebec Pension Plan, and the Old Age Security and Guaranteed Income Supplement programs, and may have private savings and Registered Retirement Savings Plans that can provide income for them in retirement. The desire expressed by some of our witnesses for greater protection for pensioners and for employees currently participating in an occupational pension plan must be balanced against the interests of others. As we noted earlier, insolvency – at its essence – is characterized by insufficient assets to satisfy everyone, and choices must be made.

The Committee believes that granting the pension protection sought by some of the witnesses would be sufficiently unfair to other stakeholders that we cannot recommend the changes requested. For example, we feel that super priority status could unnecessarily reduce the moneys available for distribution to

⁸⁰ *Supra* note 39, par. 68.

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creditors. In turn, credit availability and the cost of credit could be negatively affected, and all those seeking credit in Canada would be disadvantaged.

(*Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (2003), at p. 98; see also p. 88.)

[82] In an insolvency process, a CCAA court must consider the employer's fiduciary obligations to plan members as their plan administrator. It must grant a remedy where appropriate. However, courts should not use equity to do what they wish Parliament had done through legislation.⁸¹

[Emphasis added]

[190] The Monitor cites a number of other reports, summaries and bills in his outline of arguments.

[191] The Pension Parties argue that extrinsic evidence is inadmissible to establish Parliament's purpose in a paramountcy analysis. They argue that Parliament's intention must be stated in the statute which is said to be paramount. However, in *Lemare Lake*, Justice Gascon, speaking for the majority, considered extrinsic evidence of Parliament's intention but found it to be insufficient:

[45] This is, in our respectful view, insufficient evidence for casting s. 243's purpose so widely. As the Court explained in *COPA*, at para. 68, "clear proof of purpose" is required to successfully invoke federal paramountcy on the basis of frustration of federal purpose. The totality of the evidence presented by *amicus* does not meet this high burden. While cases and secondary sources can obviously be helpful in identifying a provision's purpose, the sources cited by *amicus* merely establish promptness and timeliness as general considerations in bankruptcy and receivership processes. The absence of sufficient evidence supporting *amicus*'s claim about the broad purpose of s. 243 is fatal to his claim. What the evidence shows instead is a simple and narrow purpose: the establishment of a regime allowing for the appointment of a national receiver, thereby eliminating the need to apply for the appointment of a receiver in multiple jurisdictions.⁸²

[Emphasis added]

[192] In the present matter, the evidence is clear and the conclusion is inescapable. Parliament was not setting minimum requirements or a floor that must be respected, while leaving it to the provinces to decide whether in their jurisdictions to protect additional amounts owing to pension funds. It is clear that Parliament had weighed the competing interests and decided that this was the protection that all pension plan members across Canada would receive. It left no room for the provinces.

[193] It is also important to consider the BIA.

⁸¹ *Indalex*, *supra* note 69, par. 81-82.

⁸² *Lemare Lake*, *supra* note 74, par. 45.

[194] The BIA provides a scheme for distribution of the bankrupt's assets: it excludes property that the debtor holds in trust for any other person (Section 67(1)(a)), it recognizes the rights of secured creditors (Sections 127-134), it provides for the priority of certain claims (Section 136), it postpones the claims of non-arm's length parties (Section 137) and it pays all other claims rateably (Section 141).

[195] There is a substantial body of Supreme Court jurisprudence standing for the proposition that provinces cannot change this scheme of distribution. The principles were summarized by Justice Gonthier in *Husky Oil*:

(1) provinces cannot create priorities between creditors or change the scheme of distribution on bankruptcy under s. 136(1) of the Bankruptcy Act;

(2) while provincial legislation may validly affect priorities in a non-bankruptcy situation, once bankruptcy has occurred section 136(1) of the Bankruptcy Act determines the status and priority of the claims specifically dealt with in that section;

(3) if the provinces could create their own priorities or affect priorities under the Bankruptcy Act this would invite a different scheme of distribution on bankruptcy from province to province, an unacceptable situation; and

(4) the definition of terms such as "secured creditor", if defined under the Bankruptcy Act, must be interpreted in bankruptcy cases as defined by the federal Parliament, not the provincial legislatures. Provinces cannot affect how such terms are defined for purposes of the Bankruptcy Act.

[...]

(5) in determining the relationship between provincial legislation and the Bankruptcy Act, the form of the provincial interest created must not be allowed to triumph over its substance. The provinces are not entitled to do indirectly what they are prohibited from doing directly;

(6) there need not be any provincial intention to intrude into the exclusive federal sphere of bankruptcy and to conflict with the order of priorities of the Bankruptcy Act in order to render the provincial law inapplicable. It is sufficient that the effect of provincial legislation is to do so.⁸³

[196] These principles have been applied by the Supreme Court to invalidate a number of attempts by the provinces to give the Crown priority for certain claims.⁸⁴ The argument was that the predecessors of the current Section 136(1)(j) BIA gave the federal and provincial Crown a limited priority, and that any attempt by the province to improve that ranking was inoperative. The argument extended not only to deemed trusts

⁸³ *Husky Oil Operations Ltd. v. Minister of National Revenue*, [1995] 3 SCR 453, par. 32 and 39.

⁸⁴ See *Deputy Minister of Revenue v. Rainville*, [1980] 1 S.C.R. 35; *Deloitte Haskins and Sells Ltd. v. Workers' Compensation Board*, [1985] 1 S.C.R. 785; *Federal Business Development Bank v. Quebec (Commission de la santé et de la sécurité du travail)*, [1988] 1 S.C.R. 1061; *British Columbia v. Samson Bélair Ltd.*, [1989] 2 S.C.R. 24.

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but also to other priorities established by the provinces in favour of the Crown which were not published and were not available generally to other creditors.

[197] The Monitor argues that this same argument applies in the present matter to invalidate the deemed trust and the lien and charge under the NLPBA as provincial attempts to change the scheme of distribution in the CCAA.

[198] For the argument to apply in the present matter, there must be two extensions:

- (1) the argument must be extended from Crown claims to pension claims, and
- (2) the argument must be extended from the BIA to the CCAA.

[199] As for extending the argument from Crown claims to pension claims, there are two important differences between a Crown claim and a pension claim: (1) the priority of Crown claims is expressly provided by Section 136(1)(j) BIA, whereas there is a pension charge created by Sections 81.5 and 81.6 BIA, and (2) the BIA was amended in 1992 to expressly provide that deemed trusts (Section 67(2)) and security (Section 86(1)) in favour of the Crown (whether federal or provincial) are generally not effective in bankruptcy, subject to a number of exceptions which are not relevant in this matter.

[200] Neither difference is fatal to the extension of the argument. Pension claims are not mentioned in Section 136 BIA because they are not preferred claims: some pension claims are secured claims under Sections 81.5 and 81.6 BIA and in principle the rest are ordinary unsecured claims in a bankruptcy. It is not necessary that they be mentioned specifically in Section 136 BIA.

[201] The provisions dealing expressly with Crown claims clearly have no application to pension claims. However, those provisions were not necessary to conclude that a provincial priority conflicts with the BIA scheme of distribution. Even though pension claims are treated differently from Crown claims, they are part of the scheme of distribution under the BIA and any attempt by the province to change that scheme of distribution is inoperative.

[202] The argument that the BIA scheme of distribution applies in CCAA proceedings is more difficult.

[203] There is no statutory scheme of distribution under the CCAA because the CCAA is not intended to be the vehicle for a liquidation of assets and distribution of the proceeds. The CCAA is intended as a vehicle for the restructuring of the debtor. In principle, a plan will be submitted to the creditors and they will have the right to vote on it. For that reason, there is no need to provide a scheme of distribution.

[204] However, as we have already discussed, the present matter involves a liquidating CCAA.

[205] In that context, it is clear that the scheme of distribution under the BIA is very relevant. If the creditors are offered a plan in the context of a liquidating CCAA, it will be limited to distributing the proceeds of the sale of the debtor's assets. The creditors will inevitably compare what they are getting under the plan to what they would get under

the BIA. If any creditor is offered less under the plan, he will likely vote against the plan or oppose its approval by the court, with a view to petitioning the debtor into bankruptcy. Justice Deschamps referred to this in *Indalex* as the creditors “bargain[ing] in the shadow of their bankruptcy entitlements”⁸⁵. As Justice Deschamps wrote in *Century Services*:

[47] Moreover, a strange asymmetry would arise if the interpretation giving the *ETA* priority over the *CCAA* urged by the Crown is adopted here: the Crown would retain priority over GST claims during *CCAA* proceedings but not in bankruptcy. As courts have reflected, this can only encourage statute shopping by secured creditors in cases such as this one where the debtor's assets cannot satisfy both the secured creditors' and the Crown's claims (*Gauntlet*, at para. 21). If creditors' claims were better protected by liquidation under the *BIA*, creditors' incentives would lie overwhelmingly with avoiding proceedings under the *CCAA* and not risking a failed reorganization. Giving a key player in any insolvency such skewed incentives against reorganizing under the *CCAA* can only undermine that statute's remedial objectives and risk inviting the very social ills that it was enacted to avert.⁸⁶

[206] In the same way, if the Court concludes that the NLPBA deemed trusts are valid in a liquidating *CCAA* but not in a *BIA* proceeding, then the creditors affected by the deemed trust will simply put the Wabush *CCAA* Parties into bankruptcy.

[207] Alternatively, it is frequently the outcome of a liquidating *CCAA* that no plan is submitted and the debtor slips into a bankruptcy under the *BIA* for the purpose of distributing its assets.

[208] The bottom line is that a liquidating *CCAA* requires a scheme of distribution and the only one which makes sense is the scheme of distribution under the *BIA*. As a result, and unless there is a contradiction between the *CCAA* and the *BIA*, the *BIA* scheme of distribution should apply in a liquidating *CCAA*.

[209] Under Section 81.6 *BIA*, the same amounts which are protected by Sections 6(6) and 36(7) *CCAA* are secured by security on all of the bankrupt's assets. There is no asymmetry. There is no security for the unpaid special payments and wind-up deficit and those are treated as unsecured claims.⁸⁷

[210] In light of all of these circumstances, the Court concludes that it would frustrate the purpose of Parliament if the deemed trust under the NLPBA operated in the context of a *CCAA* proceeding. The doctrine of federal paramountcy therefore renders the deemed trust under the NLPBA inoperable.

⁸⁵ *Indalex*, *supra* note 69, par. 51.

⁸⁶ *Century Services*, *supra* note 77, par. 47.

⁸⁷ Moreover, there is the argument that the pension administrator cannot be a « secured creditor » as a result of the lien and charge created by Section 32(4) NLPBA because the amounts owing by the employer are not due to the pension administrator. As a result, it cannot be a « secured creditor » as that term is defined in the *BIA*: *Harbert Distressed Investment Fund, L.P. v. General Chemical Canada Ltd.*, 2007 ONCA 600, par. 32, leave to appeal to Supreme Court refused, 2008 CanLII 6391.

b. the PBSA and Parliament's intent

[211] The same conflict exists between the CCAA and the PBSA: the PBSA creates a deemed trust for the special payments due to the pension fund whereas the special payments are not protected under the CCAA.

[212] Because the CCAA and the PBSA are both federal statutes enacted by the same legislator, it is not an issue of paramountcy but rather a question of the determination of the legislator's intention.

[213] As the Court wrote in its June 2015 judgment:

[74] It is difficult to reconcile Sections 6(6) and 36(7) CCAA with a broad interpretation of Section 8(2) PBSA. Why would the legislator give specific protection to the normal payments by amending the CCAA in 2009 if the deemed trust protecting not only the normal payments but also the special payments was effective in the CCAA context? Why would the legislator not protect the special payments under Sections 6(6) and 36(7) CCAA if they were already protected under a deemed trust? What happens to the deemed trust for the special payments if there is an arrangement or an asset sale? Because both statutes were adopted by the same legislator, we must try to determine the legislator's intent.⁸⁸

[214] In *Century Services*, the Supreme Court was faced with a similar conflict between the deemed trust for GST under the *Excise Tax Act* and the CCAA. The language of the *Excise Tax Act*⁸⁹ provided that the deemed trust was effective notwithstanding any law of Canada other than the BIA. Justice Deschamps adopted "a purposive and contextual analysis to determine Parliament's true intent" (par. 44) and examined the "internal logic of the CCAA" (par. 46), before concluding that the deemed trust for GST was not effective in a CCAA proceeding.

[215] The Court adopts the following reasoning to resolve the conflict:

Given that the pension provisions of the *BIA* and *CCAA* came into force much later than s. 8 of the *PBSA*, normal interpretation would require that the later legislation be deemed to be remedial in nature. Likewise, since those provisions of the *BIA* and *CCAA* are the more specific provisions, normal interpretation would take them to have precedence over the general. Finally, the limited scope of the protection given to pension claims in the *BIA* and the *CCAA* would, by application of the doctrine of implied exclusion, suggest that Parliament did not intend there to be any additional protection. In enacting *BIA* subs. 60(1.5) and 65.13(8) and ss. 81.5 and 81.6 and *CCAA* subs. 6(6) and 37(6), while not amending subs. 8(2) of the *PBSA* (by adding explicit priority language or by removing the insolvency trigger), Parliament demonstrated the intent that

⁸⁸ Suspension Order, *supra* note 9, par. 74.

⁸⁹ R.S.C. 1985, c. E-15.

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pension claims would have protection in insolvency and restructurings only to the limited extent set out in the *BIA* and the *CCAA*.⁹⁰

[Emphasis added]

[216] The Court therefore concludes that the PBSA deemed trust is not effective in the context of the present *CCAA* proceedings.

6. Conclusions

[217] As a result of the foregoing, the Court comes to the following conclusions:

1. The trusts created under the *SPPA*, *PBSA* and *NLPBA* are not enforceable in *CCAA* proceedings;
2. However, the employee contributions and the normal cost payments are protected to the extent provided for by Sections 6(6) and 37(6) of the *CCAA*.

[218] To provide greater clarity, the Court responds as follows to the questions raised by the Monitor in paragraph 76 of his Motion for Directions:

- a) "Liquidation" under Sections 8(2) *PBSA* and 32(2) *NLPBA* includes a liquidating plan under the *CCAA*;
- b) A "liquidation" within the meaning of Sections 8(2) *PBSA* and 32(2) *NLPBA* commenced when the Wabush *CCAA* Parties made a motion seeking *CCAA* protection on May 20, 2015;
- c) Not answered.
- d) The wind-up deficit is not covered by the *PBSA* deemed trust. The Court has assumed that it is covered by the deemed trust under the *NLPBA*, but has not come to any conclusion on the question;
- e) Not answered.
- f) Nothing in the *NLPBA* limits the assets covered by the deemed trust to assets located in the province of Newfoundland and Labrador;
- g) The Court would not recognize or enforce the deemed trust under the *NLPBA* against assets located in the province of Québec.

[219] Finally, with respect to the orders sought by the Representative Employees in their Argumentation Outline, the Court adds that the Plans are governed by the *PBSA* for the railway employees, by the *SPPA* for the non-railway employees who reported for work in Québec, and by the *NLPBA* for the non-railway employees who reported for work in NL.

⁹⁰ Sam Babe, "What About Federal Pension Claims? The Status of *Pension Benefits Standards Act, 1985* and *Pooled Registered Pension Plans Act* Deemed Trust Claims in Insolvency" (2013), 28 *N.C.D.Rev.* 25, p. 30. See also *Aveos*, *supra* note 50, par. 76-77, 84.

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[220] At the outset, the Court said it would reserve the rights of the parties to ask the Court to revise the conclusions of the present judgment if: (1) the NLCA decides that the interpretation of the NLPBA is different from the interpretation that the Court assumed, and (2) that difference is material to the Court's conclusions.

[221] However, based on its analysis and conclusions in the present judgment, the Court can now remove that reserve, because the interpretation of the NLPBA was not material to the Court's conclusions.

[222] If the NLCA disagrees with the Court on any issue other than the interpretation of the NLPBA, that will be a matter that the parties can raise on appeal.

FOR THESE REASONS, THE COURT:

[223] **GRANTS** the Motion by the Monitor for Directions with respect to Pension Claims;

[224] **DECLARES** that the trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings;

[225] **DECLARES** that the employee contributions and the normal cost payments are protected to the extent provided for by Sections 6(6) and 37(6) of the CCAA;

[226] **THE WHOLE WITHOUT COSTS.**

Stephen W. Hamilton, J.S.C.

Mtre Bernard Boucher
Mtre Emily Hazlett
BLAKE, CASSELS & GRAYDON
For the Debtors

Mtre Sylvain Rigaud
Mtre Chrystal Ashby
NORTON ROSE FULBRIGHT CANADA
For the Monitor

Mtre Andrew J. Hatnay
Mtre Demetrios Yiokaris
Mtre Jules Monteyne
KOSKIE MINSKY LLP
For Michael Keeper, Terence Watt, Damien Lebel, and Neil Johnson

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Mtre Daniel Boudreault
PHILION, LEBLANC, BEAUDRY
For the Syndicat des métallos, sections locales 6254 et 6285

Mtre Ronald A. Pink
PINK LARKIN
For Morneau Shepell Ltd, in its capacity as replacement pension plan administrator

Mtre Doug Mitchell
Mtre Edward Béchar-Torres
IRVING MITCHELL KALICHMAN
For Her Majesty in Right of Newfoundland and Labrador, as represented by the
Superintendent of Pensions

Mtre Pierre Lecavalier
Mtre Michelle Kellam
MINISTÈRE DE LA JUSTICE CANADA
For the Attorney General of Canada, acting on behalf of the Office of the
Superintendent of Financial Institutions

Mtre Louis Robillard
VAILLANCOURT & CLOCCHIATTI
For Retraite Québec

Mtre Martin Roy
STEIN MONAST
For Ville de Sept-Îles

Dates of hearing: June 28 and 29, 2017

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SCHEDULE II

PROCEEDINGS AND STATUTORY PROVISIONS

Québec Court of Appeal File Nos. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171

CHART OF APPELLANTS' ISSUES FOR DETERMINATION BY THE QUÉBEC COURT OF APPEAL

Hearing Date: June 11-12, 2018

Rule Reference: Article 42 of Civil Practice Regulation¹

MAIN APPEALS

1. Did the CCAA Judge err in holding that the deemed trusts in Newfoundland and Labrador *Pension Benefits Act*, 1997, S.N.L. 1996, c. P-4.01 ("NLPBA") and the Québec *Supplemental Pension Plans Act*, chapter R-15.1 ("SPPA") * are inoperative in the Wabush Mines CCAA proceedings based on the doctrine of paramountcy?

Appellants				
Parties	Salaried employees and retirees	United Steelworkers	Attorney General of Canada for Office of Superintendent of Financial Institutions	Newfoundland Superintendent of Pensions
Position	Yes	Yes	Yes	Yes
QCA File Number	500-09-027077-171 at para. 24	500-09-027075-175 at paras. 11-23	500-09-027076-173	500-09-027082-171 at paras. 12-18
Standard of review	Correctness	Correctness	Correctness	Correctness

* If it is determined that the SPPA creates deemed trusts – see issue #2 below

2. **Did the CCAA Judge err in holding that sections 49 and 264 of the SPPA are not sufficient to create deemed trusts in respect of the unpaid going concern payments and special payments owing by the employer to a pension plan in the context of the Wabush Mines CCAA proceedings?**

Appellants				
Parties	Salaried employees and retirees	United Steelworkers	Attorney General of Canada for Office of Superintendent of Financial Institutions	Newfoundland Superintendent of Pensions
Position	Yes	Yes	No position	No representations
QCA File Number	500-09-027077-171 at para. 21	500-09-027075-175 at paras. 29-33		
Standard of review	Correctness	Correctness		

3. **Did the CCAA Judge err in holding that the deemed trusts in *Pension Benefits Standards Act, 1985, R.S.C., 1985, c. 32* ("PBSA") are inoperative in the Wabush Mines CCAA proceedings because they conflict with Parliament's intent?**

Appellants				
Parties	Salaried employees and retirees	United Steelworkers	Attorney General of Canada for Office of Superintendent of Financial Institutions	Newfoundland Superintendent of Pensions
Position	Yes	Yes	Yes	No representations
QCA File Number	500-09-027077-171 at para. 25	500-09-027075-175 at paras. 11-23	500-09-027076-173 at para. 20	
Standard of review	Correctness	Correctness	Correctness	Correctness

4. a) **Did the CCAA Judge err in holding that the PBSA applies exclusively to those Wabush Mines Salaried Plan Members and USW Plan Members who as employees worked on the Wabush Mines railway?**

Appellants				
Parties	Salaried employees and retirees	United Steelworkers	Attorney General of Canada for Office of Superintendent of Financial Institutions	Newfoundland Superintendent of Pensions
Position	Yes*	Yes*	No*	No*
QCA File Number	500-09-027077-171 at para. 20	500-09-027075-175 at paras. 24-28		
Standard of review	Correctness	Correctness		

* The Salaried employees and retirees and USW disagree with OSFI on an aspect of this issue. The Salaried employees and retirees and USW say that the NLPBA (with its more advantageous deemed trusts for pension plan members) applies to all the Wabush Mines Salaried Plan and Union Plan members concurrently and overlapping with the PBSA. OSFI says that the PBSA applies exclusively to the pension plan members who as employees used to work on the Wabush Mines railway (railways being a federal undertaking), to the exclusion of the NLPBA.

b) **Did the CCAA Judge err in holding that the SPPA applies exclusively to those Wabush Mines Salaried Plan Members (and USW Plan Members) who as employees were non-railway employees and who reported for work in Quebec?**

Appellants				
Parties	Salaried employees and retirees	United Steelworkers	Attorney General of Canada for Office of Superintendent of Financial Institutions	Newfoundland Superintendent of Pensions
Position	Yes*	Yes*	No*	No*
QCA File Number	500-09-027077-171 at para. 20	500-09-027075-175 at paras. 24-28		
Standard of review	Correctness	Correctness		

* The Salaried employees and retirees and USW assert that the NLPBA (with its more advantageous deemed trusts for pension plan members) applies to **all** the pension plan members, concurrently and overlapping with the SPPA, not just to those members who as employees used to reported for work in Québec. In the absence of Retraite Québec in the appeal, OSFI and the Superintendent say that the SPPA applies exclusively to the non-railway pension plan members who as employees used to report for work in Québec, to the exclusion of the NLPBA.

c) Did the CCAA Judge err in holding that the NLPBA applied exclusively to those Wabush Mines Salaried Plan Members (and USW Plan Members) who as employees were non-railway employees and reported for work in Newfoundland?

Appellants				
Parties	Salaried employees and retirees	United Steelworkers	Attorney General of Canada for Office of Superintendent of Financial Institutions	Newfoundland Superintendent of Pensions
Positon	Yes*	Yes*	No*	No*
QCA File Number	500-09-027077-171 at para. 20	500-09-027075-175 at paras. 24-28		
Standard of review	Correctness	Correctness	Correctness	Correctness

* The Salaried employees and retirees and USW disagree with the Newfoundland Superintendent on an aspect of this issue. The Salaried employees and retirees and USW assert that the NLPBA (and its more advantageous deemed trusts for pension plan members) applies to **all** the Wabush Mines Salaried Plan and Union Plan members concurrently and overlapping with the SPPA and PBSA. The Superintendent says that the NLPBA applies exclusively to the pension plan members who as employees reported for work in Newfoundland only.

5. Did the CCAA Judge err in holding that the deemed trusts in section 32 of the NLPBA do not apply to the Wabush Mines' assets located in the Province of Quebec and the sales proceeds therefrom?

Appellants				
Parties	Salaried employees and retirees	United Steelworkers	Attorney General of Canada for Office of Superintendent of Financial Institutions	Newfoundland Superintendent of Pensions
Positon	Yes	Yes	No position	Yes
QCA File Number	500-09-027077-171 at para. 22	500-09-027075-175 at paras. 41-45	500-09-027076-173	500-09-027082-171 at paras 23-24
Standard of review	Correctness	Correctness		Correctness

6. **Did the CCAA Judge err in holding that the scheme of distribution to creditors of the *Bankruptcy and Insolvency Act* applies in the Wabush Mines CCAA proceedings?**

Appellants				
Parties	Salaried employees and retirees	United Steelworkers	Attorney General of Canada for Office of Superintendent of Financial Institutions	Newfoundland Superintendent of Pensions
Positon	Yes	Yes	Yes	Yes
QCA File Number	500-09-027077-171 at para. 23	500-09-027075-175 at paras. 15-16	500-09-027076-173	500-09-027082-171 at paras 19-22
Standard of review	Correctness	Correctness	Correctness	Correctness

7. **Did the CCAA Judge err in holding that the priority of the NLPBA, SPPA, and/or PBSA deemed trusts for amounts owing by the employer to the Wabush Mines pension plans as against a secured claim is dependent on the deemed trusts coming into effect before the secured claim?**

Appellants				
Parties	Salaried employees and retirees	United Steelworkers	Attorney General of Canada for Office of Superintendent of Financial Institutions	Newfoundland Superintendent of Pensions
Positon	Yes	Yes	Yes	Yes
QCA File Number		500-09-027075-175 at paras. 34-40	500-09-027076-173	
Standard of review	Correctness	Correctness	Correctness	Correctness

8. **Should the CCAA judge have determined if the going concern payments were required to have been made by the employer to the Wabush Mines Union Plan for the period from December 17 to 31, 2015 (i.e., the balance owing to the pension plan for the month of December 2015, following the wind up of the pension plan as of December 16, 2015)?**

Appellants				
Parties	Salaried employees and retirees	United Steelworkers	Attorney General of Canada for Office of Superintendent of Financial Institutions	Newfoundland Superintendent of Pensions
Positon	Yes	Yes	Yes	Yes
QCA File Number			500-09-027076-173	
Standard of review	Correctness	Correctness	Correctness	Correctness

¹ Article 42. *Argument*. Each Argument shall be divided into 5 parts:

Part I (*Facts*): the appellant shall succinctly recite the facts. The respondent may comment and relate additional facts;

Part II (*Issues in Dispute*): the appellant shall concisely enumerate the issues in dispute. The respondent may answer and state any other relevant issue;

Part III (*Submissions*): each party shall develop its submissions, with specific reference to the content of the schedules;

Part IV (*Conclusions*): each party shall state the precise conclusions it seeks;

Part V (*Authorities*): each party shall prepare a list of authorities in the order in which they appear in the Argument, with a specific reference to the paragraph(s) at which they are cited.

Preliminary Questions (see reasons by Bich J.C.A., 2017 QCCA 1828)

A. Was an incidental appeal required for the Monitor, as respondent, and the City of Sept-Îles, as mise-en-cause, to make the arguments and raise the additional questions outlined in their respective Notices of Appeal filed on a *de bene esse* basis?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position					No	No
File / Reference					Notice of Appeal, paras. 10-15	Notice of Appeal, paras. 7-9

B. If an incidental appeal was required, was it necessary for the Monitor and the City of Sept-Îles to seek leave to bring their respective incidental appeals?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position					No	No
File / Reference					Application for Leave paras. 6-7	Application for Leave para. 6

C. If leave to appeal was necessary, should leave be granted to the Monitor and to City of Sept-Îles to bring their respective incidental appeals?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position					Yes	Yes
File / Reference					Application for Leave paras. 8-10	Application for Leave paras. 8-14

Main Appeals

1. Did the CCAA Judge err in holding that the deemed trusts in Newfoundland and Labrador *Pension Benefits Act*, 1997, S.N.L. 1996, c. P-4.01 ("NLPBA") and the Québec *Supplemental Pension Plans Act*, chapter R-15.1 ("SPPA") are inoperative in the Wabush Mines CCAA proceedings based on the doctrine of paramourcy?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position	Yes	Yes	Yes	Yes	No	No
File / Reference	500-09-027077-171 at para. 24	500-09-027075-175 at paras. 11-23	500-09-027076-173	500-09-027082-171 at paras. 12-18	Notice of Appeal, paras. 10 and 14	
Standard of Review	Correctness	Correctness	Correctness	Correctness	Correctness	Correctness

2. Did the CCAA Judge err in holding that sections 49 and 264 of the SPPA are not sufficient to create deemed trusts in respect of the unpaid going concern payments and special payments owing by the employer to a pension plan in the context of the Wabush Mines CCAA proceedings?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position	Yes	Yes	No position	No representations	No	No
File / Reference	500-09-027077-171 at para. 21	500-09-027075-175 at paras. 29-33			Notice of Appeal Conclusion [C]	
Standard of Review	Correctness	Correctness			Correctness	Correctness

3. Did the CCAA Judge err in holding that the deemed trusts in *Pension Benefits Standards Act*, 1985, R.S.C., 1985, c. 32 ("PBSA") are inoperative in the Wabush Mines CCAA proceedings because they conflict with Parliament's intent?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position	Yes	Yes	Yes	No representations	No	No
File / Reference	500-09-027077-171 at para. 25	500-09-027075-175 at paras. 11-23	500-09-027076-173 at para. 20		Notice of Appeal, paras. 10 and 14	
Standard of Review	Correctness	Correctness	Correctness		Correctness	Correctness

4. a) Did the CCAA Judge err in holding that the PBSA applies exclusively to those Wabush Mines Salaried Plan Members and USW Plan Members who as employees worked on the Wabush Mines railway?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position	Yes	Yes	No	No	No	No
File / Reference	500-09-027077-171 at para. 20	500-09-027075-175 at paras. 24-28			Notice of Appeal Conclusion [E]	
Standard of Review	Correctness	Correctness			Correctness	Correctness

4. b) Did the CCAA Judge err in holding that the SPPA applies exclusively to those Wabush Mines Salaried Plan Members (and USW Plan Members) who as employees were non-railway employees and who reported for work in Quebec?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position	Yes	Yes	No	No	No	No
File / Reference	500-09-027077-171 at para. 20	500-09-027075-175 at paras. 24-28			Notice of Appeal Conclusion [F]	
Standard of Review	Correctness	Correctness			Correctness	Correctness

4. c) Did the CCAA Judge err in holding that the NLPBA applied exclusively to those Wabush Mines Salaried Plan Members (and USW Plan Members) who as employees were non-railway employees and reported for work in Newfoundland?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position	Yes	Yes	No position	No representations	No	No
File / Reference	500-09-027077-171 at para. 20	500-09-027075-175 at paras. 24-28			Notice of Appeal Conclusion [D]	
Standard of Review	Correctness	Correctness			Correctness	Correctness

5. Did the CCAA Judge err in holding that the deemed trusts in section 32 of the NLPBA do not apply to the Wabush Mines' assets located in the Province of Quebec and the sales proceeds therefrom?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position	Yes	Yes	No position	Yes	No	No
File / Reference	500-09-027077-171 at para. 22	500-09-027075-175 at paras. 41-45		500-09-027082-171 at paras. 23-24	Notice of Appeal Conclusion [I]	
Standard of Review	Correctness	Correctness		Correctness	Correctness	Correctness

6. Did the CCAA Judge err in holding that the scheme of distribution to creditors of the *Bankruptcy and Insolvency Act* applies in the Wabush Mines CCAA proceedings?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position	Yes	Yes	Yes	Yes	No, and in any event not determinative	No
File / Reference	500-09-027077-171 at para. 23	500-09-027075-175 at paras. 15-16	500-09-027076-173	500-09-027082-171 at paras. 19-22	n/a	
Standard of Review	Correctness	Correctness	Correctness	Correctness	Manifest and Dominant Error	Manifest and Dominant Error

7. Did the CCAA Judge err in holding that the priority of the NLPBA, SPPA, and/or PBSA deemed trusts for amounts owing by the employer to the Wabush Mines pension plans as against a secured claim is dependent on the deemed trusts coming into effect before the secured claim?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position	Yes	Yes	Yes	Yes	No	No in general, but yes specifically for municipal tax prior claims, which always rank ahead irrespective of timing
File / Reference		500-09-027075-175 at paras. 34-40	500-09-027076-173		n/a	
Standard of Review	Correctness	Correctness	Correctness	Correctness	Correctness	Correctness

8. Should the CCAA Judge have determined if the going concern payments were required to have been made by the employer to the Wabush Mines Union Plan for the period from December 17 to 31, 2015 (i.e., the balance owing to the pension plan for the month of December 2015, following the wind up of the pension plan as of December 16, 2015)?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position	Yes	Yes	Yes	Yes	No	No representations
File / Reference			500-09-027076-173		n/a	
Standard of Review	Correctness	Correctness	Correctness	Correctness	n/a	

Incidental Appeals

Subsidiary question arising out of question 1. above:

9. If the deemed trust of Section 32 NLPBA is operative and enforceable in CCAA proceedings, did the CCAA Judge err in assuming that such deemed trust covers the wind-up deficit of pension plans?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position					Yes (should have ruled on the issue and found that it does not cover it)	Yes
File / Reference					Notice of Appeal, paras. 24-31 Conclusions [G] [H]	
Standard of Review					Correctness	Correctness

Subsidiary questions arising out of questions 1. and 3. above:

10. If deemed trusts under either NLPBA or PBSA are operative and enforceable in CCAA proceedings, did the CCAA Judge err in holding that a liquidation within the meaning of Section 32 NLPBA and Section 8 PBSA occurred in the present Wabush CCAA Proceedings?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position					Yes	Yes
File / Reference					Notice of Appeal, paras. 17-19, 23 Conclusion [C]	
Standard of Review					Correctness	Correctness

11. If deemed trusts under either NLPBA or PBSA are operative and enforceable in CCAA proceedings and a liquidation did occur, did the CCAA Judge err in finding that such liquidation triggering the deemed trusts had taken place on the date of the initial CCAA filing, i.e. May 19, 2015?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position					Yes	Yes
File / Reference					Notice of Appeal, para. 18 Conclusion [C]	
Standard of Review					Correctness	Correctness

12. If deemed trusts under either NLPBA or PBSA are operative and enforceable in CCAA proceedings and a liquidation is found to have occurred, but only after the initial CCAA filing, should the Court of Appeal answer the question left open by the CCAA Judge as to whether the triggering event giving rise to deemed trusts must occur prior to the CCAA Initial Order to be effective? (see para. 175 of the judgment *a quo*)

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position					Yes (must occur before filing)	Yes
File / Reference					Notice of Appeal, paras. 20-23	

Subsidiary questions arising out of questions 1., 2. and 3. above (akin to question 5. with respect to NLPBA):

13. If a deemed trust pursuant to the SPPA exists, and is enforceable and operative in CCAA Proceedings, should the Court of Appeal determine to which assets (or proceeds thereof) can such deemed trust attach?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position					Yes (should only attach to Québec assets)	Yes (should only attach to Québec assets)
File / Reference					Notice of Appeal, paras. 11, 13 and 15 Conclusions [B] [J]	

14. If the deemed trust arising under the PBSA is enforceable and operative in CCAA proceedings, should the Court of Appeal determine to which assets (or proceeds thereof) can such deemed trust attach?

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position					Yes (should only attach to railway assets)	Yes (should only attach to railway assets)
File / Reference					Notice of Appeal, paras. 11, 13 and 15 Conclusions [B] [K]	

Subsidiary question arising out of questions 1., 2., 3. and 5. above (further to question 7. above):

15. If a deemed trust (or lien and charge) arising under either the SPPA, the PBSA or the NLPBA is enforceable and operative in CCAA proceedings and attaches to assets located in Québec, should the Court of Appeal answer the question left open by the CCAA Judge as to whether the prior claim of the City of Sept-Îles takes priority over any such deemed trust (or lien and charge), whether pre-existing or not? (see paras. 127-128 of the judgment *a quo*)

	Appellants				Incidental Appellants	
Parties	Salaried Employees and Retirees	United Steelworkers	Attorney General of Canada (OSFI)	Newfoundland Superintendent of Pensions	Monitor	City of Sept-Îles
Position					Yes	Yes (prior claim primes deemed trust and lien and charge)
File / Reference					Notice of Appeal, para. 32 Conclusions [B] [L]	Notice of Appeal, para. 17

COUR D'APPEL

No. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171
(500-11-048114-157)

PROCÈS-VERBAL – CONFÉRENCE DE GESTION

DATE : 13 décembre 2017

<u>En appel d'un jugement rendu le</u> 11 septembre 2017 <u>par l'honorable juge</u> Stephen W. Hamilton <u>de la Cour</u> Supérieure <u>district de</u> Montréal
PRÉSIDENTE : L'honorable Manon Savard, J.C.A.
GREFFIÈRE : Me Julie Devroede

Dans l'affaire de la Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, Ch. C-36, telle qu'amendée.

Présents par conférence téléphonique:

No : 500-09-027075-175	
APPELANTS	AVOCAT
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285	Me DANIEL BOUDREAUULT <i>(Philion, Leblanc, Beaudry, avocats, S.A.)</i>
INTIMÉE	AVOCATS
FTI CONSULTING CANADA INC.	Me CRYSTAL ASHBY Me SYLVAIN RIGAUD <i>(Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.)</i>

MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MICHAEL KEEPER</p> <p>TERENCE WATT</p> <p>DAMIEN LABEL</p> <p>NEIL JOHNSON, en leur qualité de représentants désignés</p>	<p>Me ANDREW J. HATNAY <i>(Koskie Minsky LLP)</i></p> <p>Me NICOLAS BROCHU <i>Fishman Flanz Meland Paquin</i></p>
<p>PROCUREURE GÉNÉRALE DU CANADA</p>	<p>Me PIERRE LECAVALIER</p> <p>Me JOSHUA WILNER <i>(Ministère de la Justice Canada)</i></p>
<p>THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR</p>	<p>Me EDWARD BÉCHARD-TORRES <i>(IMK S.E.N.C.R./IMK L.L.P.)</i></p> <p>ABSENT</p>
<p>VILLE DE SEPT-ÎLES</p>	<p>Me MARTIN ROY <i>(Stein Monast S.E.N.C.R.L. Avocats)</i></p>

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RETRAITE QUÉBEC	<i>ABSENTE ET NON REPRÉSENTÉE</i>

No : 500-09-027076-173	
APPELANTE	AVOCAT
PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER Me JOSHUA WILNER <i>(Ministère de la Justice Canada)</i>
INTIMÉE	AVOCATE
FTI CONSULTING CANADA INC.	Me CHRYSTAL ASHBY Me SYLVAIN RIGAUD <i>(Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.)</i>

MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION 8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC WABUSH IRON CO. LIMITED WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MICHAEL KEEPER TERENCE WATT DAMIEN LABEL NEIL JOHNSON, en leur qualité de représentants désignés</p>	<p>Me ANDREW J. HATNAY <i>(Koskie Minsky LLP)</i></p> <p>Me NICOLAS BROCHU <i>Fishman Flanz Meland Paquin</i></p>
<p>THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR</p>	<p>Me EDWARD BÉCHARD-TORRES <i>(IMK S.E.N.C.R./IMK L.L.P.)</i></p> <p>ABSENT</p>
<p>VILLE DE SEPT-ÎLES</p>	<p>Me MARTIN ROY <i>(Stein Monast S.E.N.C.R.L. Avocats)</i></p>

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285	Me DANIEL BOUDREAU <i>(Philon, Leblanc, Beaudry, avocats, S.A.)</i>
MORNEAU SHEPELL LTD.	<i>ABSENTE ET NON REPRÉSENTÉE</i>
RETRAITE QUÉBEC	<i>ABSENTE ET NON REPRÉSENTÉE</i>

No : 500-09-027077-171	
APPELANTS	AVOCATS
MICHAEL KEEPER TERENCE WATT DAMIEN LEBEL NEIL JOHNSON, en leur qualité de représentants désignés	Me ANDREW J. HATNAY <i>(Koskie Minsky LLP)</i> Me NICOLAS BROCHU <i>Fishman Flanz Meland Paquin</i>
INTIMÉE	AVOCATE
FTI CONSULTING CANADA INC.	Me CHRYSTAL ASHBY Me SYLVAIN RIGAUD <i>(Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.)</i>

MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MORNEAU SHEPELL LTD.</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>RETRAITE QUÉBEC</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR</p>	<p>Me EDWARD BÉCHARD-TORRES <i>(IMK S.E.N.C.R.L./IMK L.L.P.)</i></p> <p>ABSENT</p>
<p>VILLE DE SEPT-ÎLES</p>	<p>Me MARTIN ROY <i>(Stein Monast S.E.N.C.R.L. Avocats)</i></p>
<p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285</p>	<p>Me DANIEL BOUDREAU <i>(Philion, Leblanc, Beaudry, avocats, S.A.)</i></p>

PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER Me JOSHUA WILNER <i>(Ministère de la Justice Canada)</i>
No : 500-09-027082-171	
APPELANTE	AVOCAT
THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR	Me EDWARD BÉCHARD-TORRES <i>(IMK S.E.N.C.R.L./IMK L.L.P.)</i> ABSENT
INTIMÉE	AVOCATE
FTI CONSULTING CANADA INC.	Me CRYSTAL ASHBY Me SYLVAIN RIGAUD <i>(Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.)</i>

MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MICHAEL KEEPER</p> <p>TERENCE WATT</p> <p>DAMIEN LABEL</p> <p>NEIL JOHNSON, en leur qualité de représentants désignés</p>	<p>Me ANDREW J. HATNAY <i>(Koskie Minsky LLP)</i></p> <p>Me NICOLAS BROCHU <i>Fishman Flanz Meland Paquin</i></p>
<p>MORNEAU SHEPELL LTD.</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>RETRAITE QUÉBEC</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>VILLE DE SEPT-ÎLES</p>	<p>Me MARTIN ROY <i>(Stein Monast S.E.N.C.R.L. Avocats)</i></p>
<p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254</p> <p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285</p>	<p>Me DANIEL BOUDREAU <i>(Philion, Leblanc, Beaudry, avocats, S.A.)</i></p>

PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER Me JOSHUA WILNER <i>(Ministère de la Justice Canada)</i>
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PROCÈS-VERBAL D'UNE CONFÉRENCE TÉLÉPHONIQUE DE GESTION TENUE LE 13 DÉCEMBRE 2017**1- Introduction**

[1] La présente fait suite aux lettres de Me Ashby du 1^{er} décembre 2017 et à celles de Me Hatnay des 1^{er} et 11 décembre 2017 concernant le tableau synthèse des questions en litige dont il est question aux paragraphes 2 et suivants du procès-verbal de la conférence de gestion du 21 novembre 2017, sur lequel les parties ont à ce jour été incapables de s'entendre.

[2] Me Béchard-Torres est absent bien qu'ayant été dûment avisé et dans ces circonstances, il est décidé de procéder en son absence.

[3] La juge Savard encourage les parties à poursuivre les discussions afin de déposer un tableau conjoint des questions en litige, ce qui faciliterait grandement le travail de la Cour dans l'étude des dossiers.

[4] En l'absence d'entente, un premier tableau sera préparé conjointement par les appelants pour faire état de l'ensemble des questions en litige soulevées dans le cadre des appels principaux, en fonction des déclarations d'appel déjà déposées.

[5] Pour chaque question, tous les dossiers dans lesquels elle est soulevée seront clairement identifiés par leurs numéros. Le tableau comportera également, pour chaque question, l'identification des appelants qui entendent faire des représentations à la Cour pour chacune des questions.

[6] **Il est entendu que le tableau ne devra comprendre aucune argumentation ou représentation écrite et être limité à un exposé concis des questions en litige.**

[7] Dans la rédaction de leurs argumentations les appelants devront respecter l'ordre et le libellé des questions en litige telles qu'énoncées dans ce tableau et à l'égard desquelles ils entendent s'adresser à la Cour.

[8] Les avocats des appelants qui sont présents s'engagent à communiquer avec Me Béchard-Torres afin de l'informer de cette manière de procéder.

[9] Ce tableau sera transmis à la Cour, par l'entremise de Me Julie Devroede, ainsi qu'aux

avocats de l'intimée – appelante incidente et de la mise en cause – appelante incidente, au plus tard le 18 décembre 2017. Il sera également reproduit à l'annexe II conjointe.

[10] Un second tableau sera préparé de manière conjointe par l'intimée – appelante incidente et la mise en cause – appelante incidente, faisant état de l'ensemble des questions en litige soulevées par leurs appels incidents, incluant les questions de procédure concernant la nécessité des appels incidents à la suite du jugement de la juge Bich du 17 novembre 2017.

[11] **Ce second tableau sera confectionné en conformité avec les modalités énoncées aux paragraphes 4 à 7 ci-dessus.**

[12] De plus, les appelantes incidentes inséreront à leur tableau les questions en litige soulevées par les appels principaux qu'ils souhaitent ajouter à celles identifiées par les appelants. Dans la mesure du possible, la structure et le libellé des moyens identifiés par les appelants seront respectés, en y ajoutant des sous-questions pour apporter les compléments jugés nécessaires par les appelantes incidentes.

[13] Ce second tableau sera transmis à la Cour, par l'entremise de Me Julie Devroede, ainsi qu'aux avocats des appelants, au plus tard le 4 janvier 2018. Il sera également reproduit à l'annexe II conjointe.

[14] En conclusion, la juge Savard rappelle aux parties que les conclusions contenues à leurs mémoires doivent être les mêmes déjà énoncées dans leurs déclarations d'appel respectives. Si une partie souhaite modifier le libellé de ses conclusions, elle devra notifier et déposer une déclaration d'appel modifiée, en conformité avec les règles usuelles telles qu'édictées par le *Code de procédure civile* et le *Règlement de procédure civile* de la Cour d'appel.



Me Julie Devroede
Greffière adjointe

COUR D'APPEL

No. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171
(500-11-048114-157)

PROCÈS-VERBAL – CONFÉRENCE DE GESTION

DATE : 21 novembre 2017

<u>En appel d'un jugement rendu le</u> 11 septembre 2017 <u>par l'honorable juge</u> Stephen W. Hamilton <u>de la Cour</u> Supérieure <u>district de</u> Montréal	
PRÉSIDENTE :	L'honorable Manon Savard, J.C.A.
GREFFIÈRE :	Me Julie Devroede

Dans l'affaire de la Loi sur les arrangements avec les créanciers des compagnies, L.R.C. 1985, Ch. C-36, telle qu'amendée.

No : 500-09-027075-175	
APPELANTS	AVOCAT
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285	Me JEAN-FRANÇOIS BEAUDRY <i>(Philion, Leblanc, Beaudry, avocats, S.A.)</i>
INTIMÉE	AVOCATS
FTI CONSULTING CANADA INC.	Me CRYSTAL ASHBY <i>(Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.)</i>

MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MICHAEL KEEPER</p> <p>TERENCE WATT</p> <p>DAMIEN LABEL</p> <p>NEIL JOHNSON, en leur qualité de représentants désignés</p>	<p>Me ANDREW J. HATNAY</p> <p>Me ANTHONY GANDON <i>(Koskie Minsky LLP)</i></p>
<p>PROCUREURE GÉNÉRALE DU CANADA</p>	<p>Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i></p>
<p>THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR</p>	<p>Me EDWARD BÉCHARD-TORRES <i>(IMK S.E.N.C.R.L/IMK L.L.P.)</i></p>
<p>VILLE DE SEPT-ÎLES</p>	<p>Me MARTIN ROY <i>(Stein Monast S.E.N.C.R.L. Avocats)</i></p>
<p>MORNEAU SHEPELL LTD.</p>	<p>ABSENTE ET NON REPRÉSENTÉE</p>

RETRAITE QUÉBEC	ABSENTE ET NON REPRÉSENTÉE
No : 500-09-027076-173	
APPELANTE	AVOCAT
PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i>
INTIMÉE	AVOCATE
FTI CONSULTING CANADA INC.	Me CRYSTAL ASHBY <i>(Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.)</i>
MIS EN CAUSE	AVOCATS
BLOOM LAKE GENERAL PARTNER LIMITED QUINTO MINING CORPORATION 8568391 CANADA LIMITED CLIFFS QUÉBEC IRON MINING ULC WABUSH IRON CO. LIMITED WABUSH RESOURCES INC. THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP BLOOM LAKE RAILWAY COMPANY LIMITED WABUSH MINES ARNAUD RAILWAY COMPANY WABUSH LAKE RAILWAY COMPANY LIMITED	Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i>
MICHAEL KEEPER TERENCE WATT DAMIEN LABEL	Me ANDREW J. HATNAY Me ANTHONY GANDON <i>(Koskie Minsky LLP)</i>

NEIL JOHNSON, en leur qualité de représentants désignés	
THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR	Me EDWARD BÉCHARD-TORRES (<i>IMK S.E.N.C.R.L/IMK L.L.P.</i>)
VILLE DE SEPT-ÎLES	Me MARTIN ROY (<i>Stein Monast S.E.N.C.R.L. Avocats</i>)
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285	Me JEAN-FRANÇOIS BEAUDRY (<i>Philion, Leblanc, Beaudry, avocats, S.A.</i>)
MORNEAU SHEPELL LTD.	<i>ABSENTE ET NON REPRÉSENTÉE</i>
RETRAITE QUÉBEC	<i>ABSENTE ET NON REPRÉSENTÉE</i>

No : 500-09-027077-171	
APPELANTS	AVOCATS
MICHAEL KEEPER TERENCE WATT DAMIEN LABEL NEIL JOHNSON, en leur qualité de représentants désignés	Me ANDREW J. HATNAY Me ANTHONY GANDON (<i>Koskie Minsky LLP</i>)
INTIMÉE	AVOCATE
FTI CONSULTING CANADA INC.	Me CHRYSTAL ASHBY (<i>Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.</i>)

MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me BERNARD BOUCHER (Blake, Cassels & Graydon s.e.n.c.r.l.)</p>
<p>MORNEAU SHEPELL LTD.</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>RETRAITE QUÉBEC</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR</p>	<p>Me EDWARD BÉCHARD-TORRES (IMK S.E.N.C.R.L./IMK L.L.P.)</p>
<p>VILLE DE SEPT-ÎLES</p>	<p>Me MARTIN ROY (Stein Monast S.E.N.C.R.L. Avocats)</p>
<p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285</p>	<p>Me JEAN-FRANÇOIS BEAUDRY (Phillon, Leblanc, Beaudry, avocats, S.A.)</p>

PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i>
No : 500-09-027082-171	
APPELANTE	AVOCAT
THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR	Me EDWARD BÉCHARD-TORRES <i>(IMK S.E.N.C.R.L./IMK L.L.P.)</i>
INTIMÉE	AVOCATE
FTI CONSULTING CANADA INC.	Me CRYSTAL ASHBY <i>(Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.)</i>
MIS EN CAUSE	AVOCATS
BLOOM LAKE GENERAL PARTNER LIMITED QUINTO MINING CORPORATION 8568391 CANADA LIMITED CLIFFS QUÉBEC IRON MINING ULC WABUSH IRON CO. LIMITED WABUSH RESOURCES INC. THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP BLOOM LAKE RAILWAY COMPANY LIMITED WABUSH MINES ARNAUD RAILWAY COMPANY WABUSH LAKE RAILWAY COMPANY LIMITED	Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i>

MICHAEL KEEPER TERENCE WATT DAMIEN LEBEL NEIL JOHNSON, en leur qualité de représentants désignés	Me ANDREW J. HATNAY Me ANTHONY GANDON (Koskie Minsky LLP)
MORNEAU SHEPELL LTD.	<i>ABSENTE ET NON REPRÉSENTÉE</i>
RETRAITE QUÉBEC	<i>ABSENTE ET NON REPRÉSENTÉE</i>
VILLE DE SEPT-ÎLES	Me MARTIN ROY (Stein Monast S.E.N.C.R.L. Avocats)
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285	Me JEAN-FRANÇOIS BEAUDRY (Philion, Leblanc, Beaudry, avocats, S.A.)
PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER (Ministère de la Justice Canada)

PROCÈS-VERBAL D'UNE CONFÉRENCE DE GESTION TENUE LE 21 NOVEMBRE 2017**1- Introduction**

[1] La juge Savard explique l'objectif de la rencontre. Après discussions, les parties procéderont selon les modalités suivantes.

2- Les questions en litige

[2] Dans le contexte où il y a ici 4 appels principaux et 2 appels incidents concernant le même jugement de première instance, afin d'éviter les recoupements et de mieux structurer l'argumentation en vue de la rédaction des mémoires, la juge Savard requiert que les avocats de toutes les parties communiquent entre eux afin d'identifier l'ensemble des questions en litige dont la Cour est saisie.

[3] Le tout sera présenté sous forme de tableau synthèse, faisant état de l'ensemble des questions en litige et de la position de chacune des parties, ou, le cas échéant, de son intention de ne pas faire de représentations, quant à chacune des questions. Il est convenu que les parties travailleront à partir du document déjà élaboré par Me Hatney, auquel ils apporteront les modifications nécessaires, notamment pour y ajouter les questions en litige soulevées dans les appels incidents, la question de la nécessité des appels incidents (à la suite du jugement de la juge Bich du 17 novembre 2017), ainsi que celle de la (ou les) norme(s) d'intervention applicable. De plus, les conclusions recherchées dans chacun des dossiers d'appel (appels principaux et appels incidents) devront être formulées distinctement, dans un document joint audit tableau synthèse.

[4] Tant dans le tableau que dans les mémoires, les questions en litige seront énumérées en fonction de l'ordre logique dans lequel elles devraient être abordées et sans égard au fait qu'elles soient soulevées dans le cadre d'un appel principal ou incident. Chaque partie devra suivre la numérotation et le libellé des questions en litige identifiées dans le tableau synthèse lors de la rédaction de leur mémoire respectif, étant entendu que leurs argumentations respectives ne porteront que sur les seules questions en litige qui les concernent.

[5] Il demeure par ailleurs que les conclusions de chaque mémoire devront être clairement divisées pour chaque dossier, et ce, tant pour les appels principaux qu'incidents.

[6] La version finale de ce tableau devra être transmise à la Cour, par l'entremise de Me Julie Devroede, au plus tard le 24 novembre 2017. Il sera également reproduit à l'annexe II conjointe. De plus, les parties conviennent que ce tableau sera mis à jour une fois tous les mémoires déposés afin d'y ajouter, pour chacune des questions en litige, la référence aux paragraphes pertinents de leurs mémoires respectifs.

3- Les mémoires

[7] Les mémoires seront déposés en versions papier et technologique, dans le second cas sur clé USB, en conformité avec le *Règlement de procédure civile (Cour d'appel)* (articles 41 à 52) (ci-après : « *Règlement* »), tout en tenant compte des modalités de ce procès-verbal.

3.1 Nombre de pages

[8] Après discussions, il est convenu que les parties disposeront du nombre de pages suivant pour leurs argumentations. Contrairement à la règle usuelle édictée à l'article 44 du *Règlement*, la partie IV des argumentations (les conclusions) sera exclue du décompte des pages.

- Pour les appelants Michael Keeper, Terence Watt, Damien Lebel, Neil Johnson, en leur qualité de représentants désignés : une argumentation n'excédant pas 30 pages;
- Pour les autres appelants : des argumentations n'excédant pas 25 pages chacune;
- Pour l'intimée – appelante incidente FTI Consulting Canada Inc. : Une seule argumentation n'excédant pas 65 pages, à diviser à sa convenance entre les appels principaux et son appel incident;
- Pour les mis en cause Bloom Lake General Partner Limited et als. : une argumentation n'excédant pas 25 pages;
- Pour la mise en cause – appelante incidente la Ville de Sept-Îles : Une seule argumentation n'excédant pas 30 pages, à diviser à sa convenance entre les appels principaux et son appel incident;
- Pour les intimés incidents : des argumentations n'excédant pas 15 pages chacune.

[9] Les appelants s'engagent à communiquer ensemble avant le dépôt de leurs argumentations respectives afin d'éviter toutes répétitions.

[10] Il en sera de même du côté des mis en cause au regard de l'argumentation du contrôleur. Un délai leur est d'ailleurs accordé afin de s'assurer du respect de cet engagement (voir ci-dessous la section relative aux délais).

4- Les mémoires : annexes

[11] Il est convenu que les parties déposeront des annexes conjointes.

4.1 Modalités de dépôt des annexes I et II

[12] À l'annexe I sera reproduit le jugement dont appel du 11 septembre 2017.

[13] À l'annexe II seront reproduits les éléments suivants :

- Le tableau synthèse des questions en litige en appel et des conclusions recherchées par dossier d'appel;
- La dernière version (amendée) de la demande pour directives déposée par le contrôleur en première instance;
- Les autres jugements rendus dans le cadre des procédures en première instance, dans la seule mesure où ils sont pertinents aux questions en litige en appel;
- Les décisions déjà rendues par les juges de la Cour d'appel dans les présents dossiers.

[14] Conformément à l'article 45 du *Règlement*, seront également reproduits à l'annexe II les procès-verbaux de l'audition au fond en première instance, de même que les dispositions légales invoquées, autres que celles du *C.c.Q.* et du *C.p.c.*

4.2 Modalités de dépôt de l'annexe III – La reproduction de la preuve

[15] La juge Savard rappelle aux parties qu'elles doivent déterminer les éléments de preuve pertinents à reproduire en annexe des mémoires, conformément aux articles 370 *C.p.c.* et 45 du *Règlement*. Après discussion, les parties conviennent de déposer une annexe III conjointe pour les 4 dossiers valant tant pour les appels principaux qu'incidents. Les volumes porteront donc l'ensemble des numéros de dossiers et comporteront l'information pertinente aux 4 dossiers.

[16] À cette annexe III conjointe sera reproduite l'ensemble de la preuve pertinente, notamment les éléments suivants :

- Les pièces jointes à la demande pour directives du contrôleur en première instance;
- Toutes les autres pièces déposées en première instance aux fins de ladite demande;
- La déclaration assermentée de M. Terry Watt;
- Les rapports du contrôleur déposés en première instance, dans la seule mesure où ils sont pertinents aux questions en litige en appel.

[17] Les annexes conjointes seront déposées en versions papier et technologique (clé USB)

en 7 exemplaires (1 original + 6 copies).

[18] Il est entendu que les plans de plaidoirie, notes et autorités ou toute argumentation écrite déposés en première instance, de même que les transcriptions des plaidoiries en première instance, ne constituent pas des éléments de preuve et ainsi, ne doivent pas être reproduits en annexe des mémoires.

5- Index et hyperliens

[19] Chaque partie pourra insérer des hyperliens entre la table des matières de la version technologique de son mémoire et les procédures et pièces reproduites à l'annexe III, comme prévu à l'article 11 du *Règlement*.

[20] Également, la version technologique des argumentations pourra contenir des hyperliens permettant d'accéder rapidement aux procédures et pièces invoquées. L'utilisation d'hyperliens est facultative. Afin de faciliter la réalisation de ce travail, les parties bénéficieront d'un délai supplémentaire après le dépôt de leurs mémoires pour le dépôt d'une nouvelle version technologique des mémoires, avec hyperliens.

[21] Si les parties souhaitent substituer à nouveau la version technologique de leur mémoire après cette seconde échéance, elles devront obtenir l'autorisation préalable de la juge gestionnaire, en suivant la procédure prévue à la section 11- du présent procès-verbal.

[22] Si une partie est autorisée à déposer une nouvelle version technologique de son mémoire, il devra être clairement indiqué que celle-ci remplace la version déjà déposée au dossier de la Cour. Dans un tel cas, le personnel de la Cour procédera à la destruction de la première version technologique du mémoire pour éviter toute confusion.

6- Délais

[23] Après discussions, il est convenu de l'échéancier suivant :

- Notification et dépôt des mémoires des appelants : au plus tard le 19 janvier 2018;
- Notification et dépôt du mémoire de l'intimée – appelante incidente : au plus tard le 16 mars 2018;
- Notification et dépôt des mémoires des mis en cause et de la mise en cause – appelante incidente : au plus tard le 29 mars 2018;
- Notification et dépôt des mémoires des intimés incidents : au plus tard le 11 avril 2018.

7- Recueils condensés

[24] Afin de faciliter le travail de la Cour, et à la demande de la juge Savard, les parties produiront des recueils condensés dans lesquels seront reproduits les extraits précis de la preuve et des sources auxquels chaque partie entend référer lors de son argumentation orale (art. 78 du *Règlement*). Les recueils condensés seront remis à la partie adverse et déposés à la Cour en 5 exemplaires (1 original + 4 copies) sur support papier, au plus tard en début d'audience, et pourront être accompagnés de plans de plaidoirie d'au plus deux pages (article 78 du *Règlement*).

[25] Le recueil condensé comporte une table des matières et des onglets numérotés sous lesquels sont reproduits les seuls extraits précis d'éléments de preuve et des sources auxquels les parties référeront dans leurs plaidoiries. Il n'est pas nécessaire de reproduire dans les recueils condensés les extraits du jugement dont appel auxquels les parties référeront dans leurs plaidoiries. Les recueils condensés devront faire référence à la pagination de l'annexe III conjointe.

8- Cahiers de sources

[26] La juge Savard rappelle aux parties l'existence la directive G-8, quant à la liste des arrêts réputés faire partie du cahier de sources et que les parties ne doivent pas y reproduire (article 57 du *Règlement*).

[27] Les parties communiqueront entre elles afin de produire, dans la mesure du possible, un cahier de sources conjoint, ce qui facilitera le travail de la Cour en regroupant l'ensemble des sources pertinentes à un seul endroit et en évitant les doublons. Chaque partie pourra y signaler les passages qu'elle juge pertinents par une ligne simple ou double en marge ou un autre système clairement identifié par une légende.

[28] Les cahiers de sources seront déposés, sur support papier et en version technologique, au plus tard le 18 avril 2018 et en conformité avec les règles habituelles concernant la confection et le nombre d'exemplaires, à l'exception du délai de production (articles 56 et 58 du *Règlement*).

9- Date et durée d'audience

[29] Les parties sont avisées que les 11 et 12 juin 2017 sont réservés pour l'audition des dossiers.

[30] Quant à la durée d'audience, conformément à l'article 47 du *Règlement*, chaque partie indiquera dans l'attestation finale de son mémoire le temps souhaité pour sa plaidoirie

[31] Par ailleurs, la juge Savard encourage les parties à communiquer entre elles afin de soumettre à la Cour une proposition conjointe quant à la répartition du temps d'audience, étant par ailleurs entendu que la Cour ne sera pas liée par une telle proposition et qu'elle informera les parties, en temps opportun, du temps qui leur sera respectivement alloué.

10-Résumé

[32] Documents à être déposés par les parties et échéances :

Pour toutes les parties:

Échéance #1 (au plus tard le 24 novembre 2017) :

- Transmission à la Cour du tableau synthèse des questions en litige et des conclusions recherchées par dossier d'appel.

Pour les parties appelantes :

Date de dépôt #1 (au plus tard le 19 janvier 2018) :

- Sur support papier ET en version technologique (Clé USB)
 - Mémoires conformes au *Règlement* de la Cour et aux exigences du présent procès-verbal (7 exemplaires, soit 1 original et 6 copies), incluant :
 - Argumentation n'excédant pas 30 pages pour les appelants Michael Keeper, Terence Watt, Damien Lebel, Neil Johnson, en leur qualité de représentants désignés;
 - Argumentations n'excédant pas 25 pages pour chacun des autres appelants;
 - Annexes conjointes :
 - Annexe I;
 - Annexe II, incluant le tableau synthèse des questions en litige et des conclusions recherchées par dossier d'appel;
 - Annexe III.

Pour la partie intimée – appelante incidente:

Date de dépôt #2 (au plus tard le 16 mars 2018) :

- Sur support papier ET en version technologique (clé USB)
 - Mémoire conforme au *Règlement* de la Cour et aux exigences du présent procès-verbal (7 exemplaires, soit 1 original et 6 copies), incluant :
 - Argumentation n'excédant pas 65 pages.

Pour les parties mises en cause et mise en cause – appelante incidente:

Date de dépôt #3 (au plus tard le 29 mars 2018) :

- Sur support papier ET en version technologique (clé USB)
 - Mémoires conformes au *Règlement* de la Cour et aux exigences du présent procès-verbal (7 exemplaires, soit 1 original et 6 copies), incluant :
 - Argumentation n'excédant pas 30 pages pour la mise en cause – appelante incidente la Ville de Sept-Îles;
 - Argumentation n'excédant pas 25 pages pour les mis en cause Bloom Lake General Partner Limited et als.

Pour les parties intimées incidentes:

Date de dépôt #4 (au plus tard le 11 avril 2018) :

- Sur support papier ET en version technologique (clé USB)
 - Mémoires conforme au *Règlement* de la Cour et aux exigences du présent procès-verbal (7 exemplaires, soit 1 original et 6 copies), incluant :
 - Argumentation n'excédant pas 15 pages.

Pour toutes les parties:

Date de dépôt #5 (dans un délai d'un mois suivant la date de dépôt #4) :

- Sur support papier
 - Tableau à jour des questions en litige, incluant la référence aux paragraphes pertinents des mémoires.
- En version technologique (clé USB)
 - Mémoires, incluant les argumentations de toutes les parties, avec hyperliens (7 exemplaires – facultatif).

Date de dépôt #6 (au plus tard le 18 avril 2018) :

- Sur support papier et en version technologique (clé USB)
 - Cahiers de sources (conjointes dans la mesure du possible) (5 exemplaires, soit 1 original et 4 copies).

Date de dépôt #7 (au plus tard en début d'audience) :

- Sur support papier
 - Recueils condensés, pouvant inclure un plan de plaidoirie n'excédant pas 2

pages (5 exemplaires, soit 1 original et 4 copies).

11-Demande ou requête

[33] Si les parties le souhaitent, toute demande incidente pourra être présentée à la juge gestionnaire jusqu'à ce qu'une date d'audience soit déterminée. Une telle demande devra être formulée sous forme de lettre dans laquelle seront mentionnés les motifs, les conclusions recherchées et la position de la partie adverse. La lettre devra être adressée à la juge gestionnaire et expédiée à Me Julie Devroede avec copie aux avocats des autres parties. À la réception d'une demande, la juge assumant la gestion pourra informer les parties que la demande devra plutôt être formulée sous forme de requête présentable devant le jugé unique ou devant la Cour, selon le cas. Les parties devront alors se conformer aux règles de procédure de la Cour.

[34] Les parties peuvent s'adresser à Me Julie Devroede (514-393-2022, poste 51259 / julie.devroede@judex.qc.ca) pour toute demande ou question relative au processus de gestion de l'instance.



Me Julie Devroede
Greffière adjointe

COUR D'APPEL

CANADA
PROVINCE DE QUÉBEC
GREFFE DE MONTRÉAL

N°: 500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171
(500-11-048114-157)

PROCÈS-VERBAL D'AUDIENCE

DATE : Le 17 novembre 2017

L'HONORABLE MARIE-FRANCE BICH, J.C.A.

**Dans l'affaire de la *Loi sur les arrangements avec les créanciers des compagnies*,
L.R.C. (1985), ch. C-36.**

No : 500-09-027075-175	
APPELANTS	AVOCAT
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285	Me DANIEL BOUDREAU <i>(Phillon, Leblanc, Beaudry, avocats, S.A.)</i>
INTIMÉE – REQUÉRANTE	AVOCATS
FTI CONSULTING CANADA INC.	Me SYLVAIN RIGAUD Me CRYSTAL ASHBY <i>(Norton Rose Fulbright Canada S.E.N.C.R.L.,s.r.l.)</i>
MISE EN CAUSE – REQUÉRANTE	AVOCAT
VILLE DE SEPT-ÎLES	Me MARTIN ROY <i>(Stein Monast S.E.N.C.R.L. Avocats)</i>

500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
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MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me ILIA KRAVTSOV <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MICHAEL KEEPER</p> <p>TERENCE WATT</p> <p>DAMIEN LEBEL</p> <p>NEIL JOHNSON, en leur qualité de représentants désignés</p>	<p>Me NICOLAS BROCHU <i>(Fishman Flanz Meland Paquin s.e.n.c.r.l.)</i></p>
<p>PROCUREURE GÉNÉRALE DU CANADA</p>	<p>Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i></p>
<p>THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR</p>	<p>Me JOHANNA MORTREUX <i>(IMK S.E.N.C.R./IMK L.L.P.)</i></p>
<p>MORNEAU SHEPELL LTD.</p>	<p>ABSENTE ET NON REPRÉSENTÉE</p>
<p>RETRAITE QUÉBEC</p>	<p>ABSENTE ET NON REPRÉSENTÉE</p>

500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171

3

No : 500-09-027076-173	
APPELANTE	AVOCAT
PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i>
INTIMÉE - REQUÉRANTE	AVOCATS
FTI CONSULTING CANADA INC.	Me SYLVAIN RIGAUD Me CHRYSTAL ASHBY <i>(Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l.)</i>
MISE EN CAUSE - REQUÉRANTE	AVOCAT
VILLE DE SEPT-ÎLES	Me MARTIN ROY <i>(Stein Monast S.E.N.C.R.L. Avocats)</i>

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MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me ILIA KRAVTSOV <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MICHAEL KEEPER</p> <p>TERENCE WATT</p> <p>DAMIEN LEBEL</p> <p>NEIL JOHNSON, en leur qualité de représentants désignés</p>	<p>Me NICOLAS BROCHU <i>(Fishman Flanz Meland Paquin s.e.n.c.r.l.)</i></p>
<p>THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR</p>	<p>Me JOHANNA MORTREUX <i>(IMK S.E.N.C.R./IMK L.L.P.)</i></p>
<p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254</p> <p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285</p>	<p>Me DANIEL BOUDREAU <i>(Philion, Leblanc, Beaudry, avocats, S.A.)</i></p>
<p>MORNEAU SHEPELL LTD.</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>

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500-09-027082-171

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RETRAITE QUÉBEC	ABSENTE ET NON REPRÉSENTÉE
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No : 500-09-027077-171	
APPELANTS	AVOCAT
MICHAEL KEEPER TERENCE WATT DAMIEN LABEL NEIL JOHNSON, en leur qualité de représentants désignés	Me NICOLAS BROCHU (Fishman Flanz Meland Paquin s.e.n.c.r.l.)
INTIMÉE - REQUÉRANTE	AVOCATS
FTI CONSULTING CANADA INC.	Me SYLVAIN RIGAUD Me CHRYSTAL ASHBY (Norton Rose Fulbright Canada S.E.N.C.R.L.,s.r.l.)
MISE EN CAUSE - REQUÉRANTE	AVOCAT
VILLE DE SEPT-ÎLES	Me MARTIN ROY (Stein Monast S.E.N.C.R.L. Avocats)

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500-09-027082-171

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MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me ILIA KRAVTSOV <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MORNEAU SHEPELL LTD.</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>RETRAITE QUÉBEC</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR</p>	<p>Me JOHANNA MORTREUX <i>(IMK S.E.N.C.R./IMK L.L.P.)</i></p>
<p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285</p>	<p>Me DANIEL BOUDREAU <i>(Phillon, Leblanc, Beaudry, avocats, S.A.)</i></p>
<p>PROCUREURE GÉNÉRALE DU CANADA</p>	<p>Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i></p>

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500-09-027082-171

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No : 500-09-027082-171	
APPELANTE	AVOCATE
THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR	Me JOHANNA MORTREUX (<i>IMK S.E.N.C.R.L./IMK L.L.P.</i>)
INTIMÉE - REQUÉRANTE	AVOCATS
FTI CONSULTING CANADA INC.	Me SYLVAIN RIGAUD Me CHRYSTAL ASHBY (<i>Norton Rose Fulbright Canada S.E.N.C.R.L.,s.r.l.</i>)
MISE EN CAUSE - REQUÉRANTE	AVOCAT
VILLE DE SEPT-ÎLES	Me MARTIN ROY (<i>Stein Monast S.E.N.C.R.L. Avocats</i>)

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500-09-027082-171

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MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me ILIA KRAVTSOV <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MICHAEL KEEPER</p> <p>TERENCE WATT</p> <p>DAMIEN LABEL</p> <p>NEIL JOHNSON, en leur qualité de représentants désignés</p>	<p>Me NICOLAS BROCHU <i>(Fishman Flanz Meland Paquin s.e.n.c.r.l.)</i></p>
<p>MORNEAU SHEPELL LTD.</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>RETRAITE QUÉBEC</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254</p> <p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285</p>	<p>Me DANIEL BOUDREAU <i>(Philon, Leblanc, Beaudry, avocats, S.A.)</i></p>

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500-09-027082-171

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PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i>
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DESCRIPTION : **Requêtes de bene esse de FTI Consulting Canada Inc. et de la Ville de Sept-Îles pour permission d'appeler d'un jugement rendu le 11 septembre 2017 par l'honorable Steven H. Hamilton de la Cour supérieure, district de Montréal.**
(Art. 13 et 14 de la Loi sur les arrangements avec les créanciers des compagnies et 351-353, 359 et 360 C.p.c)

Greffier d'audience : Mihary Andrianaivo	SALLE : RC.18
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AUDITION

- 11 h 03 Début de l'audience.
Les dossiers 500-09-027075-175, 500-09-027076-173, 500-09-027077-171 et 500-09-027082-171 sont entendus conjointement.
Les requêtes ne sont pas contestées.
Commentaires introductifs de la juge.
- 11 h 05 Argumentation de Me Sylvain Rigaud.
- 11 h 15 Intervention de Me Daniel Boudreault.
- 11 h 16 Interventions respectives de Me Nicolas Brochu, Me Pierre Lecavalier et de Me Ilia Kravtsov.
- 11 h 17 **PAR LA JUGE :** Jugement relatif aux requêtes de FTI Consulting Canada Inc. – voir page 11.
- 11 h 20 Argumentation de Me Martin Roy.
- 11 h 22 Il n'y a pas de commentaires de la part des autres parties.
- 11 h 23 **PAR LA JUGE :** Jugement relatif aux requêtes de la Ville de Sept-Îles – voir page 11.
- 11 h 26 Fin de l'audience.

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Mihary Andrianaivo

Greffier d'audience

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PAR LA JUGE

JUGEMENT

Requêtes de bene esse pour permission de former un appel incident présentées par la requérante FTI Consulting Canada inc.

[1] La requérante FTI Consulting Canada Inc. présente dans chacun des dossiers 500-09-027075-175, 500-09-027076-173, 500-09-027077-171 et 500-09-027082-171 une requête *de bene esse* pour permission de former un appel incident à l'encontre du jugement prononcé le 11 septembre 2017 par la Cour supérieure, district de Montréal (l'honorable Stephen W. Hamilton), dans le dossier 500-11-048114-157. Le 31 octobre 2017, le juge Healy a autorisé les appelants à se pourvoir contre ce jugement, conformément aux art. 13 et 14 de la *Loi sur les arrangements avec les créanciers des compagnies*¹ et l'art. 357 *C.p.c.*

[2] Considérant l'arrêt de la Cour dans *Daigle c. Mathieu*², il paraît à première vue que la requérante FTI Consulting Canada inc. n'a pas besoin d'interjeter un appel incident pour faire valoir les moyens qu'elle avance aux paragr. 5-14 et 7 de ses requêtes *de bene esse* pour permission d'appeler. Dans cet arrêt, la Cour écrit en effet ce qui suit, sous la plume du juge Morissette :

[20] Il peut sembler inhabituel que l'intimée attaque une conclusion de la juge de première instance dans un mémoire où elle se porte par ailleurs à la défense du dispositif du jugement *a quo* et où elle demande à la Cour, par ses propres conclusions, de « rejeter l'appel principal ». En effet, le juge Adjudor Rivard a déjà écrit ce qui suit dans un ouvrage sur l'appel [renvoi omis] :

Ne peut donc former un appel recevable que celui qui est lésé par le jugement de première instance; la cause du préjudice doit se trouver dans le dispositif du jugement, non seulement dans les motifs.

Certes, l'intimée, en l'occurrence, a bel et bien formé un appel incident, mais celui-ci porte exclusivement sur le quantum de la réclamation et sa déclaration d'appel incident ne dit mot de ce qui est plaidé dans son mémoire sur l'appel principal. S'insurgeant contre ce procédé, les intimés incidents ont soutenu dans leur mémoire que « la Cour d'appel devrait purement et simplement ignorer ces représentations » sur la responsabilité professionnelle de Daigle dans la conduite du recours contre Clair. Si cependant la Cour acceptait d'entendre l'appelante incidente sur le bien-fondé du paragraphe [141] des motifs de première instance, ils demandaient la permission de plaider par écrit sur ce point – et à cette fin ils reproduisaient comme Annexe II à leur mémoire d'intimés incidents de larges

¹ L.R.C. (1985), ch. C-36 (« *L.a.c.c.* »).

² 2010 QCCA 1612 (demande de permission d'appeler à la Cour suprême du Canada rejetée, 31 mars 1011, 33934).

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500-09-027082-171

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extraits de l'argumentation écrite [renvoi omis] qu'ils avaient versée au dossier de la Cour supérieure.

[21] En réalité, cette situation n'a rien d'irrégulier, malgré ce que prétendent les intimés incidents. Les auteurs d'une monographie sur l'appel précisent à ce sujet [renvoi omis] :

L'intimé, dans le cadre de l'appel principal, peut demander à la Cour de réexaminer les aspects du jugement qui lui sont défavorables, en réponse à l'appel principal. Il n'y a donc pas lieu de former un appel incident pour attaquer des motifs de la décision auxquels l'intimé ne souscrit pas.

L'énoncé s'appuie sur deux arrêts récents de la Cour [renvoi : *Citoyens pour une qualité de vie/Citizens for a Quality of Life c. Aéroports de Montréal*, [2007] R.J.Q. 2362, 2007 QCCA 1274; *Meunerie BL inc. (Syndic de)*, J.E. 2007-2253, 2007 QCCA 1601]. Ainsi donc, l'intimée pouvait plaider comme elle l'a fait dans son mémoire le caractère erroné de la conclusion formulée au paragraphe [141] des motifs de première instance; ce faisant, d'ailleurs, elle ne remettait aucunement en question le dispositif du jugement, elle offrait plutôt une raison additionnelle d'en confirmer le bien-fondé. Lorsque survient une telle situation, il arrive que la partie appelante demande la permission de produire un mémoire ampliatif pour répondre aux prétentions de la partie intimée. En l'espèce, c'est ce que les appelants ont fait dans l'Annexe à leur mémoire d'intimés incidents. Chaque partie aura donc été en mesure de faire valoir l'ensemble de ses prétentions sur les moyens soulevés de part et d'autre et il convient pour vider le litige de toutes les considérer. Cela clôt la question.

[3] Cet enseignement a été repris récemment dans *Harvey c. Gouvernement régional d'Eeyou Istchee Baie-James*³. On retrouve le même point de vue dans : *Del Guidice c. Honda Canada inc.*⁴, *Industrielle-Alliance, compagnie d'assurances générales c. Crédit Ford du Canada ltée*⁵; *Société canadienne des postes c. Blouin*⁶; *Campisi c. Procureur général du Québec*⁷.

[4] Toutes ces affaires ont cependant été décidées en vertu de l'ancien *Code de procédure civile*⁸, encore que rien dans le nouveau *Code* ne me semble *a priori* de nature à modifier l'état du droit sur le sujet.

[5] Cela dit, la Cour elle-même, siégeant en formation, n'a apparemment pas encore eu l'occasion de se prononcer sur la question en vertu du nouveau *Code de procédure civile*⁹, de sorte qu'il paraît prudent, pour éviter la perte de tout droit, de renvoyer les présentes requêtes *de bene esse* pour permission d'appeler à la formation qui sera

³ 2017 QCCA 1098, paragr. 43 *in fine*.

⁴ 2007 QCCA 922, paragr. 22.

⁵ J.E. 97-633 (C.A.), p. 5 des motifs du j. Beaugregard.

⁶ [1996] R.D.J. 88 (C.A., demande d'autorisation d'appeler à la Cour suprême rejetée, 19 septembre 1996, 25151), p. 94.

⁷ [1978] C.A. 520, p. 525 (motifs du juge Montgomery, auxquels souscrit sur ce point le juge Monet, p. 524).

⁸ RLRQ, c. C-25.

⁹ RLRQ, c. C-25.01.

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chargée d'entendre l'appel principal dans chacun des dossiers 500-09-027075-175, 500-09-027076-173, 500-09-027077-171 et 500-09-027082-171. Advenant que la Cour estime qu'un appel incident est nécessaire, elle pourra dès lors statuer en même temps sur la question de savoir si une permission est requise ou pas au vu de l'art. 359 C.p.c.¹⁰ (disposition dont il est question plus abondamment dans le jugement se rapportant aux requêtes de la mise en cause Ville de Sept-Îles, *infra*, paragr. [9] et s.). Le cas échéant, elle statuera aussi sur la question de savoir s'il y a lieu d'accorder la permission sollicitée.

[6] Les requêtes *de bene esse* seront donc déferées à la Cour, pour y être plaidées en même temps sur la question procédurale et sur le fond des moyens qu'elles soulèvent. Les autres parties aux pourvois ne s'opposent en effet pas à ce que les moyens de fond énoncés dans ces requêtes soient considérés dans le cadre du débat, moyens dont ils reconnaissent qu'ils répondent aux exigences de l'art. 13 L.a.c.c. et de la jurisprudence y afférente.

[7] Cela dit, quant à la façon pratique de procéder, les dossiers devant faire l'objet d'une gestion particulière le 21 novembre prochain, les parties pourront en discuter, à ce moment, avec la juge gestionnaire.

POUR CES MOTIFS, les requêtes *de bene esse* pour permission d'appeler sont **DÉFÉRÉES** à la formation qui sera chargée d'entendre les appels principaux dans les dossiers 500-09-027075-175, 500-09-027076-173, 500-09-027077-171 et 500-09-027082-171, et ce, pour y être plaidées tant sur la question procédurale que sur le fond, la gestion de l'affaire étant laissée entre les mains de la juge qui présidera la conférence de gestion du 21 novembre prochain, ou toute autre conférence.

Requêtes de bene esse pour permission de former un appel incident présentées par la requérante Ville de Sept-Îles

[8] La requérante Ville de Sept-Îles présente dans chacun des dossiers 500-09-027075-175, 500-09-027076-173, 500-09-027077-171 et 500-09-027082-171 une requête *de bene esse* pour permission de former un appel incident à l'encontre du jugement prononcé le 11 septembre 2017 par la Cour supérieure, district de Montréal (l'honorable Stephen W. Hamilton), dans le dossier 500-11-048114-157. Le 31 octobre 2017, le juge Healy a autorisé les appelants à se pourvoir contre ce jugement, conformément aux art. 13 et 14 de la *Loi sur les arrangements avec les créanciers des compagnies*¹¹ et l'art. 357 C.p.c.

[9] Selon la requérante, vu le libellé de l'art. 359 C.p.c., elle peut interjeter cet appel par le seul dépôt d'une déclaration d'appel incident, ainsi que le confirmeraient les

¹⁰ Voir à ce sujet : Luc Chamberland (dir.), *Le grand collectif : Code de procédure civile*, 2^e éd., Cowansville, Éditions Yvon Blais, 2017, p. 1739-1740 (comm. d'André Rochon et de Juliette Vani). Voir également : *Carrillo Garcia c. Succession de Leroux*, 2017 QCCA 1631, qui défère à la Cour la question de savoir si l'appel incident requiert une permission lorsque l'appel principal a lui-même fait l'objet d'une autorisation préalable en vertu de l'art. 357 C.p.c. (art. 30, 2^e al., ou art. 31 C.p.c.).

¹¹ L.R.C. (1985), ch. C-36 (« L.a.c.c. »).

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commentaires de la ministre de la Justice¹². Autrement dit, dans les cas où l'appel principal est assujéti à une permission préalable et, lorsque celle-ci est accordée, toute autre partie à l'appel ainsi autorisé pourrait former un appel incident par le dépôt au greffe d'une déclaration d'appel incident, et ce, sans autre formalité.

[10] Ce point de vue ne fait toutefois pas l'unanimité et certains estiment plutôt que, à l'instar de la situation qui existait sous l'empire de l'ancien *Code de procédure civile*¹³, mais avant 2002, l'appel incident requiert en pareil cas une autorisation préalable, tout comme l'appel principal. Ce serait là le sens à donner aux nouvelles dispositions du *Code de procédure civile*¹⁴. À ce propos, les auteurs André Rochon et Juliette Vani s'expriment comme suit :

La ministre écrit dans ses commentaires sur l'article 359 que dès qu'un appel est logé « [t]oute autre partie peut interjeter son propre appel, incident à l'appel principal par une simple déclaration sans qu'il soit alors besoin d'obtenir une permission, le dossier étant ouvert ». Néanmoins, force est de conclure que ce n'est pas ce qui a été sanctionné dans la loi.

Contrairement à ce que laissent entendre les commentaires de la ministre, l'article 359 tel que rédigé ne reprend aucunement l'article 26.0.1 a.C.p.c. qui prévoyait que lors d'un appel, toute autre partie pouvait interjeter un appel de plein droit. C'est cet article qui dispensait les parties d'obtenir une permission pour former un appel incident qui en aurait autrement nécessité une. L'article 359 ne fait pas cette nuance. Il se borne à réitérer le contenu de l'article 500 a.C.p.c.

L'état du droit qui existait avant l'entrée en vigueur de l'art. 26.0.1 a.C.p.c., en 2002, sera donc de nouveau applicable. Avant cette date, seul l'article 500 a.C.p.c., repris à l'article 359, régissait le processus d'appel incident.

L'article 500 a.C.p.c. prévoyait que l'intimé pouvait former un « appel incident sans autre formalité qu'une déclaration, signifiée [...] et produite [...] ». Les termes « sans autre formalité » pouvaient laisser croire que lorsqu'une permission d'appeler était requise, l'article 500 a.C.p.c. en dispensait l'appelant incident. La Cour d'appel en a décidé autrement. Elle a statué que cet article consacrait seulement une procédure alternative et plus simple d'exercer un droit d'appel qui devrait être conféré par d'autres dispositions de la loi (*Villeneuve (Ville de) c. Émile Drapeau inc.* [1975] C.A. 874). Ainsi, lorsque la permission d'appeler était nécessaire pour conférer ce droit d'appel, l'art. 500 a.C.p.c. n'en dispensait pas l'appelant incident. C'est d'ailleurs pour contrer cet état de choses et dispenser l'appelant incident de demander une permission pour en appeler que l'article 26.0.1 a.C.p.c. a été promulgué en 2002.

L'article 359 ne reprend même pas les termes « sans autre formalité » qui apparaissaient à l'article 500 a.C.p.c. Contrairement à ce dernier, l'article 359

¹² *Commentaires de la ministre de la justice, Code de procédure civile*, Montréal, SOQUIJ/Wilson & Lafleur ltée, 2015, p. 286.

¹³ RLRQ, c. C-25.

¹⁴ RLRQ, c. C-25.01.

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laisse encore moins penser qu'une permission d'appeler autrement nécessaire ne le serait pas en cas d'appel incident.

En l'absence de l'article 26.0.1 a.C.p.c., les parties ne sont donc plus dispensées d'obtenir une permission d'appeler lorsqu'elle est requise par l'article 30 ou 31 pour accorder la compétence à la Cour de trancher leur appel incident (*Élomari c. Agence spatiale canadienne*, 2005 QCCA 1229, EYB 2005-98905, J.E. 2006-120; *Hoppenheim c. Feldman*, 2005 QCCA 323, EYB 2005-88359, J.E. 2005-706 (j. unique); *Compagnie d'assurance Jevco c. Compagnie d'assurance ING du Canada*, 2005 QCCA 1263, EYB 2005-99278, J.E. 2006-176 (j. unique)).

Cette décision législative est non seulement cohérente avec l'esprit d'économie des ressources du Code, mais aussi avec le reste des modifications législatives relatives à l'appel incident.

[...] ¹⁵

[11] Comme le note la requérante au paragr. 7b) de ses requêtes, la Cour n'a pas encore eu l'occasion de se prononcer sur la portée de l'art. 359 C.p.c. et sur la manière dont l'appel incident doit être formé lorsque l'appel principal requiert lui-même une autorisation. C'est la raison pour laquelle, par prudence, elle a choisi de présenter en même temps que ses déclarations d'appel incident autant de requêtes *de bene esse* pour permission de former un appel incident.

[12] C'est pour cette raison aussi que, dans *Carrillo Garcia c. Succession de Leroux*¹⁶, le juge Kasirer a choisi de déférer à la Cour, siégeant en formation, la question de savoir si l'appel incident requiert une permission lorsque l'appel principal a lui-même fait l'objet d'une autorisation préalable en vertu de l'art. 357 C.p.c. (art. 30, 2^e al., ou art. 31 C.p.c.).

[13] C'est l'exemple à suivre en l'espèce, afin d'éviter toute perte de droit, voie qu'il me paraît opportun d'emprunter dans la mesure où les moyens d'appel soulevés par la requérante répondent *prima facie* aux exigences de l'art. 13 L.a.c.c., tel qu'interprété par la jurisprudence, ainsi que les reconnaissent les autres parties aux différents pourvois.

[14] J'ajoute que, en cours d'audience, il m'a paru que les moyens soulevés par les requêtes pourraient être sujettes aux commentaires faits précédemment dans le jugement concernant la requérante FTI Consulting Canada Inc. (voir *supra*, paragr. [2] et s.).

[15] Tout cela étant, et pour éviter la perte d'un droit, les requêtes *de bene esse* de la mise en cause seront déférées à la Cour, pour y être plaidées en même temps sur la question procédurale et sur le fond des moyens qu'elles soulèvent.

[16] Quant à la façon pratique de procéder, les dossiers devant faire l'objet d'une gestion particulière le 21 novembre prochain, les parties pourront en discuter, à ce moment, avec la juge gestionnaire.

POUR CES MOTIFS, les requêtes *de bene esse* pour permission d'appeler sont **DÉFÉRÉES** à la formation qui sera chargée d'entendre les appels principaux dans les

¹⁵ Luc Chamberland (dir.), *Le grand collectif : Code de procédure civile*, 2^e éd., Cowansville, Éditions Yvon Blais, 2017, p. 1739-1740.

¹⁶ 2017 QCCA 1631.

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dossiers 500-09-027075-175, 500-09-027076-173, 500-09-027077-171 et 500-09-027082-171, et ce, pour y être plaidées tant sur la question procédurale que sur le fond, la gestion pratique de l'affaire étant laissée entre les mains de la juge qui présidera la conférence de gestion du 21 novembre prochain, ou toute autre conférence.



MARIE-FRANCE BICH, J.C.A.

COUR D'APPEL

CANADA
 PROVINCE DE QUÉBEC
 GREFFE DE MONTRÉAL

N°: 500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
 500-09-027082-171
 (500-11-048114-157)

PROCÈS-VERBAL D'AUDIENCE

DATE : Le 31 octobre 2017

L'HONORABLE PATRICK HEALY, J.C.A.

**Dans l'affaire de la *Loi sur les arrangements avec les créanciers des compagnies*,
 L.R.C. 1985, Ch. C-36, telle qu'amendée.**

No : 500-09-027075-175	
REQUÉRANTS	AVOCAT
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285	Me DANIEL BOUDREAU <i>(Phillion, Leblanc, Beaudry, avocats, S.A.)</i>
INTIMÉE	AVOCATE
FTI CONSULTING CANADA INC.	Me CHRYSTAL ASHBY <i>(Norton Rose Fulbright Canada S.E.N.C.R.L.,s.r.l.)</i>

500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171

2

MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MICHAEL KEEPER</p> <p>TERENCE WATT</p> <p>DAMIEN LABEL</p> <p>NEIL JOHNSON, en leur qualité de représentants désignés</p>	<p>Me ANDREW J. HATNAY <i>(Koskie Minsky LLP)</i></p> <p>Me MARK E. MELAND</p> <p>Me NICOLAS BROCHU <i>(Fishman Flanz Meland Paquin s.e.n.c.r.l.)</i></p>
<p>PROCUREURE GÉNÉRALE DU CANADA</p>	<p>Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i></p>
<p>THE SUPERINTENDANT OF PENSIONS <i>représentant HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR</i></p>	<p>Me EDWARD BÉCHARD-TORRES <i>(IMK S.E.N.C.R.L./IMK L.L.P.)</i></p>
<p>VILLE DE SEPT-ÎLES</p>	<p>Me FÉLIX ANTOINE PINARD-BEAUDOIN <i>(Stein Monast S.E.N.C.R.L. Avocats)</i></p>
<p>MORNEAU SHEPELL LTD.</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>

500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171

3

RETRAITE QUÉBEC	<i>ABSENTE ET NON REPRÉSENTÉE</i>
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No : 500-09-027076-173	
REQUÉRANTE	AVOCAT
PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i>
INTIMÉE	AVOCATE
FTI CONSULTING CANADA INC.	Me CRYSTAL ASHBY <i>(Norton Rose Fulbright Canada S.E.N.C.R.L.,s.r.l.)</i>
MIS EN CAUSE	AVOCATS
BLOOM LAKE GENERAL PARTNER LIMITED QUINTO MINING CORPORATION 8568391 CANADA LIMITED CLIFFS QUÉBEC IRON MINING ULC WABUSH IRON CO. LIMITED WABUSH RESOURCES INC. THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP BLOOM LAKE RAILWAY COMPANY LIMITED WABUSH MINES ARNAUD RAILWAY COMPANY WABUSH LAKE RAILWAY COMPANY LIMITED	Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i>

500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171

4

MICHAEL KEEPER TERENCE WATT DAMIEN LABEL NEIL JOHNSON, en leur qualité de représentants désignés	Me ANDREW J. HATNAY <i>(Koskie Minsky LLP)</i> Me MARK E. MELAND Me NICOLAS BROCHU <i>(Fishman Flanz Meland Paquin s.e.n.c.r.l.)</i>
THE SUPERINTENDANT OF PENSIONS représentant HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR	Me EDWARD BÉCHARD-TORRES <i>(IMK S.E.N.C.R.L./IMK L.L.P.)</i>
VILLE DE SEPT-ÎLES	Me FÉLIX ANTOINE PINARD-BEAUDOIN <i>(Stein Monast S.E.N.C.R.L. Avocats)</i>
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285	Me DANIEL BOUDREAU <i>(Philion, Leblanc, Beaudry, avocats, S.A.)</i>
MORNEAU SHEPELL LTD.	ABSENTE ET NON REPRÉSENTÉE
RETRAITE QUÉBEC	ABSENTE ET NON REPRÉSENTÉE

No : 500-09-027077-171

REQUÉRANTS	AVOCATS
MICHAEL KEEPER TERENCE WATT DAMIEN LABEL NEIL JOHNSON, en leur qualité de représentants désignés	Me ANDREW J. HATNAY <i>(Koskie Minsky LLP)</i> Me MARK E. MELAND Me NICOLAS BROCHU <i>(Fishman Flanz Meland Paquin s.e.n.c.r.l.)</i>

500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171

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INTIMÉE	AVOCATE
FTI CONSULTING CANADA INC.	Me CHRYSTAL ASHBY <i>(Norton Rose Fulbright Canada S.E.N.C.R.L.,s.r.l.)</i>
MIS EN CAUSE	AVOCATS
BLOOM LAKE GENERAL PARTNER LIMITED QUINTO MINING CORPORATION 8568391 CANADA LIMITED CLIFFS QUÉBEC IRON MINING ULC WABUSH IRON CO. LIMITED WABUSH RESOURCES INC. THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP BLOOM LAKE RAILWAY COMPANY LIMITED WABUSH MINES ARNAUD RAILWAY COMPANY WABUSH LAKE RAILWAY COMPANY LIMITED	Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i>
MORNEAU SHEPELL LTD.	<i>ABSENTE ET NON REPRÉSENTÉE</i>
RETRAITE QUÉBEC	<i>ABSENTE ET NON REPRÉSENTÉE</i>
THE SUPERINTENDANT OF PENSIONS <i>représentant</i> HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR	Me EDWARD BÉCHARD-TORRES <i>(IMK S.E.N.C.R.L/IMK L.L.P.)</i>
VILLE DE SEPT-ÎLES	Me FÉLIX ANTOINE PINARD-BEAUDOIN <i>(Stein Monast S.E.N.C.R.L. Avocats)</i>

500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171

6

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285	Me DANIEL BOUDREULT <i>(Philon, Leblanc, Beaudry, avocats, S.A.)</i>
PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i>

No : 500-09-027082-171	
REQUÉRANTE	AVOCAT
THE SUPERINTENDANT OF PENSIONS <i>représentant HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR</i>	Me EDWARD BÉCHARD-TORRES <i>(IMK S.E.N.C.R.L./IMK L.L.P.)</i>
INTIMÉE	AVOCATE
FTI CONSULTING CANADA INC.	Me CRYSTAL ASHBY <i>(Norton Rose Fulbright Canada S.E.N.C.R.L.,s.r.l.)</i>

500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171

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MIS EN CAUSE	AVOCATS
<p>BLOOM LAKE GENERAL PARTNER LIMITED</p> <p>QUINTO MINING CORPORATION</p> <p>8568391 CANADA LIMITED</p> <p>CLIFFS QUÉBEC IRON MINING ULC</p> <p>WABUSH IRON CO. LIMITED</p> <p>WABUSH RESOURCES INC.</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP</p> <p>BLOOM LAKE RAILWAY COMPANY LIMITED</p> <p>WABUSH MINES</p> <p>ARNAUD RAILWAY COMPANY</p> <p>WABUSH LAKE RAILWAY COMPANY LIMITED</p>	<p>Me BERNARD BOUCHER <i>(Blake, Cassels & Graydon s.e.n.c.r.l.)</i></p>
<p>MICHAEL KEEPER</p> <p>TERENCE WATT</p> <p>DAMIEN LABEL</p> <p>NEIL JOHNSON, en leur qualité de représentants désignés</p>	<p>Me ANDREW J. HATNAY <i>(Koskie Minsky LLP)</i></p> <p>Me MARK E. MELAND</p> <p>Me NICOLAS BROCHU <i>(Fishman Flanz Meland Paquin s.e.n.c.r.l.)</i></p>
<p>MORNEAU SHEPELL LTD.</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>RETRAITE QUÉBEC</p>	<p><i>ABSENTE ET NON REPRÉSENTÉE</i></p>
<p>VILLE DE SEPT-ÎLES</p>	<p>Me MARTIN ROY <i>(Stein Monast S.E.N.C.R.L. Avocats)</i></p>
<p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254</p> <p>SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285</p>	<p>Me DANIEL BOUDREAU <i>(Philion, Leblanc, Beaudry, avocats, S.A.)</i></p>

500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171

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PROCUREURE GÉNÉRALE DU CANADA	Me PIERRE LECAVALIER <i>(Ministère de la Justice Canada)</i>
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DESCRIPTION : **Requêtes pour permission d'appeler d'un jugement rendu le 11 septembre 2017 par l'honorable Stephen W. Hamilton de la Cour supérieure, district de Montréal.**
(Art. 13 et 14 de la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. 1985, ch. C-36, 357 C.p.c)

Greffier d'audience : Mihary Andrianaivo	SALLE : RC.18
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AUDITION

- 10 h 32 Début de l'audience.
Les dossiers 500-09-027075-175, 500-09-027076-173, 500-09-027077-171 et 500-09-027082-171 sont entendus conjointement.
Les requêtes ne sont pas contestées.
- 10 h 34 Échanges entre le Juge et Me Hatnay.
- 10 h 38 Intervention de Me Ashby.
- 10 h 39 Échanges entre le juge et les parties.
- 10 h 42 **PAR LE JUGE :** Jugement – voir page 9.
Fin de l'audience.

Mihary Andrianaivo

Greffier d'audience

500-09-027075-175, 500-09-027076-173, 500-09-027077-171,
500-09-027082-171

9

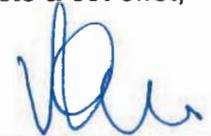
PAR LE JUGE

JUGEMENT

- [1] Vu que les requêtes ne sont pas contestées, et ce à bon droit;
- [2] Considérant que les parties demandent au soussigné de fixer l'audition du pourvoi pour une durée de 12 heures 30 minutes;
- [3] Considérant que les appelants demandent la permission de produire des exposés d'au plus 40 pages, l'intimé un seul exposé n'excédant pas 60 pages pour les quatre dossiers, et les mises en cause des exposés d'au plus 40 pages;

POUR CES MOTIFS, LE SOUSSIGNÉ :

- [4] **ACCUEILLE** les requêtes pour permission d'appeler dans les dossiers 500- 09- 027075-175, 500-09-027076-173, 500-09-027077-171 et 500-09-027082-171.
- [5] **DÉFÈRE** la gestion de l'appel à un juge de la Cour affecté à cet effet;
- [6] Le tout, frais à suivre le sort du pourvoi.



PATRICK HEALY, J.C.A.

Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171),
November 9, 2017

C A N A D A

COURT OF APPEAL

**PROVINCE OF QUEBEC
DISTRICT DE MONTREAL**

N° : 500-09-027082-171

N° : 500-09-027075-175

N° : 500-09-027077-171

N° : 500-09-027076-173

N° : 500-11-048114-157

N° : 500-09-027082-171

FTI CONSULTING CANADA INC.

**RESPONDENT /
DE BENE ESSE INCIDENTAL APPELLANT
Monitor – Petitioner**

v.

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR,
AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**APPELLANT /
DE BENE ESSE INCIDENTAL RESPONDENT
Mise-en-cause**

-and-

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING CORPORATION,
8568391 CANADA LIMITED, CLIFFS QUEBEC
IRON MINING ULC, WABUSH IRON CO.
LIMITED AND WABUSH RESOURCES INC.**

**RESPONDENTS
Debtors**

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES,
ARNAUD RAILWAY COMPANY AND
WABUSH LAKE RAILWAY COMPANY
LIMITED**

Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON**

**THE ATTORNEY GENERAL OF CANADA,
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDENT OF FINANCIAL
INSTITUTIONS**

**UNITED STEEL WORKERS,
LOCALS 6254 AND 6285**

VILLE DE SEPT-ÎLES

RETRAITE QUÉBEC

**MORNEAU SHEPELL LTD.,
IN ITS CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

MISES-EN-CAUSE
Mises-en-cause

N° : 500-09-027075-175

FTI CONSULTING CANADA INC.

**RESPONDENT /
DE BENE ESSE INCIDENTAL APPELLANT**
Monitor – Petitioner

v.

**SYNDICAT DES MÉTALLOS,
SECTION LOCALE 6254**

**SYNDICAT DES MÉTALLOS,
SECTION LOCALE 6285**

**APPELLANTS /
DE BENE ESSE INCIDENTAL RESPONDENTS**
Mises-en-cause

-and-

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC,
WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

MISES-EN-CAUSE
Debtors

Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171),
November 9, 2017

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES,
ARNAUD RAILWAY COMPANY AND
WABUSH LAKE RAILWAY COMPANY
LIMITED**

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON**

ATTORNEY GENERAL OF CANADA

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR, AS
REPRESENTED BY THE SUPERINTENDENT
OF PENSIONS**

VILLE DE SEPT-ÎLES

**MORNEAU SHEPELL LTD.,
IN ITS CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

RETRAITE QUÉBEC

**MISES-EN-CAUSE
Mises-en-cause**

N° : 500-09-027077-171

FTI CONSULTING CANADA INC.

**RESPONDENT /
DE BENE ESSE INCIDENTAL APPELLANT
Monitor – Petitioner**

v.

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON**

**APPELLANTS /
DE BENE ESSE INCIDENTAL RESPONDENTS
Representatives of the Salaried and
Non-Union Employees and Retirees**

-and-

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC,
WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

MISES-EN-CAUSE
Debtors

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES,
ARNAUD RAILWAY COMPANY AND
WABUSH LAKE RAILWAY COMPANY
LIMITED**

**SYNDICAT DES MÉTALLOS,
SECTIONS LOCALES 6254 ET 6285**

**ATTORNEY GENERAL OF CANADA
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDENT OF FINANCIAL
INSTITUTIONS**

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR,
AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

VILLE DE SEPT-ÎLES

**MORNEAU SHEPELL LTD.,
IN ITS CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

RETRAITE QUÉBEC

MISES-EN-CAUSE
Mises-en-cause

N° : 500-09-027076-173

FTI CONSULTING CANADA INC.

RESPONDENT /
DE BENE ESSE INCIDENTAL APPELLANT
Monitor – Petitioner

v.

**THE ATTORNEY GENERAL OF CANADA
ACTING ON BEHALF OF THE
OFFICE OF THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS**

APPELLANT /
DE BENE ESSE INCIDENTAL RESPONDENT
Mise-en-cause

-and-

Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171),
November 9, 2017

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC,
WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

**MISES-EN-CAUSE
Debtors**

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES,
ARNAUD RAILWAY COMPANY AND
WABUSH LAKE RAILWAY COMPANY
LIMITED**

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR,
AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON**

**UNITED STEEL WORKERS,
LOCALS 6254 AND 6285**

VILLE DE SEPT-ÎLES

RETRAITE QUÉBEC

**MORNEAU SHEPELL LTD.,
IN ITS CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

**MISES-EN-CAUSE
Mises-en-cause**

**APPLICATION FOR LEAVE TO FILE AN INCIDENTAL APPEAL *DE BENE ESSE*
BY THE MONITOR**

**(Sections 13 and 14 of the *Companies' Creditors Arrangement Act*
and Articles 351-353 and 359-360 of the *Code of Civil Procedure*)**

Respondent / Incidental Appellant

Dated November 9, 2017

**TO ONE OF THE HONORABLE JUSTICES OF THE COURT OF APPEAL SITTING IN
AND FOR THE REGISTRY OF MONTREAL, FTI CONSULTING CANADA INC.,
ACTING AS COURT-APPOINTED MONITOR TO THE WABUSH CCAA PARTIES,
BEING RESPONDENT AND INCIDENTAL APPELLANT BEFORE THIS COURT,
RESPECTFULLY SUBMITS IN SUPPORT OF THE PRESENT APPLICATION:**

Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

1. On September 11, 2017, Mr. Justice Stephen W. Hamilton (the "**Supervisory Judge**") of the Quebec Superior Court sitting in Commercial Division for the judicial district of Montreal (the "**CCAA Court**") granted the Amended Motion for Directions with respect to Pension Claims (the "**Pension Priority Motion**") presented by FTI Consulting Canada Inc., acting as court-appointed monitor (the "**Monitor**") to Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Inc., Cliffs Quebec Iron Mining ULC, the Bloom Lake Iron Ore Mine Limited Partnership, Bloom Lake Railway Company and Bloom Lake Railway Company Limited (collectively, the "**Bloom Lake CCAA Parties**"¹) and Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**"²), in Superior Court file bearing number 500-11-048114-157 (the "**CCAA Proceedings**"), which decision (the "**Pension Priority Decision**"³) has already been the object of Notices of Appeal and Applications for Leave to Appeal by:
 - (a) Her Majesty in Right of Newfoundland & Labrador, as represented by the Superintendent of Pensions (the "**NL Superintendent of Pensions**") in Court file bearing number 500-09-027082-171;
 - (b) United Steel Workers, Local Sections 6254 and 6285 (the "**Union**"), in Court file bearing number 500-09-027075-175;
 - (c) Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, as representatives of the Salaried and Non-Union Employees and Retirees (the "**Representatives**"), in Court file bearing number 500-09-027077-171;

¹ The initial order under the *Companies' Creditor Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") with respect to the Bloom Lake CCAA Parties was rendered on January 27, 2015.

² The initial order pursuant to the CCAA with respect to the Wabush CCAA Parties was rendered on May 20, 2015 (the "**Wabush Filing Date**").

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Pension Priority Decision or in the Monitor's Notices of Incidental Appeal, as the case may be.

- (d) the Attorney General of Canada, acting on behalf of the Office of the Superintendent of Financial Institutions ("OSFI"), in Court file bearing number 500-09-027076-173;
2. The above-noted Applications for Leave to Appeal were granted on October 31, 2017 by Mr. Justice Patrick Healy of the Court of Appeal. It bears noting that the Monitor did not contest any of them;
3. The hearing of the Pension Priority Motion before the Supervisory Judge lasted two full days on June 28 and June 29, 2017. The parties did not proceed with any examinations out of Court and thus no transcripts were filed, nor did the Supervisory Judge hear any testimonial evidence. The two-day hearing was entirely dedicated to oral arguments from the parties, who had also exchanged detailed argumentation outlines and books of authorities ahead of the hearing;
4. The Pension Priority Decision granted the Monitor's Pension Priority Motion, which had been brought with a view to settle the issues arising out of underfunded defined-benefit Pension Plans set up and funded by the Wabush CCAA Parties, and the fact that relating Pension Claims have been asserted as secured claims, the whole as more fully outlined in the Pension Priority Decision;
5. The Monitor filed Notices of Incidental Appeal on or about November 9, 2017. It did so on a *de bene esse* basis for the reasons set out at paragraphs 10 to 15 of said Notices of Incidental Appeal, which read as follows:
 10. To successfully overturn the Pension Priority Decision, the Appellants will first need to convince the Court of Appeal that the Supervisory Judge erred in finding that pension deemed trusts could not be enforceable in CCAA proceedings;
 11. Furthermore, in order to obtain that the Pension Claims to be paid in priority to the extent sought in their respective Notices of Appeal, the Appellants will also need, to varying degrees, to address the other issues raised by the Pension Priority Motion;

Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

12. In doing so, the Appellants will no doubt rely on findings by the Supervisory Judge (in some case adverse to the Monitor's position), including the question as to whether and when a "liquidation" within the meaning of Sections 8(2) PBSA and 32(2) NLPBA occurred in the CCAA Proceedings, and the impact of such triggering event occurring after the Wabush Filing Date, as the case may be;
 13. Other issues raised by the Pension Priority Motion, which were not settled in the Pension Priority Decision, will also arise, including whether the NLPBA deemed trust or lien and charge extend to and protect the wind-up deficit;
 14. Seeing as the Monitor is satisfied with the Pension Priority Decision and intends to argue first and foremost that the Court of Appeal should refrain from intervening in any way, and considering that the Monitor would not pursue an incidental appeal should the Appellants discontinue their own appeals (see Section 359 C.C.P. *a contrario*), it is submitted that no incidental appeal would be required for the Monitor, as Respondent, to raise the following arguments:
 - (a) the deemed trusts under the PBSA and NLPBA were not triggered because there was no "liquidation" of the Wabush CCAA Parties, contrary to what the Supervisory Judge found;
 - (b) in any event, the deemed trusts under the PBSA and NLPBA were not triggered as at the Wabush Filing Date, as no "liquidation" had occurred on or before that date, such that they cannot be enforced in CCAA proceedings;
 - (c) the NLPBA deemed trust and lien and charge do not extend to the wind-up deficit component of the Pension Claims;
 15. However, with a view of ensuring that all issues are brought before the Court of Appeal, to allow each party to fully present its arguments with respect to same, to avoid unnecessary procedural arguments, possible undue delays and to promote a fair, efficient and diligent hearing of the four appeals and ultimately a full resolution of the issues raised by the Pension Priority Motion, the Monitor hereby files this Notice of Incidental Appeal on a *de bene esse* basis;
6. Whether or not an incidental appeal was required in the circumstances, the Monitor submits that it has an automatic right to file same without the need to seek and obtain leave to do so from this Court by virtue of Article 359 of the *Code of Civil Procedure* and Section 14(2) of the CCAA;

7. That said, by abundance of caution given the lack of clear authorities on the specific procedural issue of whether leave is required to file an incidental appeal in CCAA matters, and seeing the importance of the issues in dispute for the parties and the practice in general, the Monitor also brings the present Application of Leave to File an Incidental Appeal, on *de bene esse* basis, with a view to raise before the Court of Appeal as incidental appellant the same arguments outlined in the Notices of Incidental Appeal:
 - (a) the deemed trust under the PBSA and NLPBA were not triggered because there was no "liquidation" of the Wabush CCAA Parties, contrary to what the Supervisory Judge found;
 - (b) in any event, the deemed trusts under the PBSA and NLPBA were not triggered as of the Wabush Filing Date, as no "liquidation" had occurred on or before that date, such that they cannot be enforced in CCAA proceedings;
 - (c) the NLPBA deemed trust and lien and charge do not extend to the wind-up deficit component of the Pension Claims;
8. The Monitor respectfully submits that all four branches of the test to obtain leave to appeal in CCAA matters, outlined by Justice Allan R. Hilton J.A. in *Statoil Canada Ltd. (Arrangement relative à)*, 2012 QCCA 665, are met;
9. Specifically, the Monitor submits that the additional issues raised on a subsidiary and *de bene esse* basis in its Notices of Incidental Appeal are *prima facie* meritorious and important both for the present matter, inasmuch as they aim at achieving a full and final resolution of the issues raised in the Pension Priority Motion, as well as for the insolvency practice generally;
10. The Monitor further submits that granting leave on a *de bene esse* basis, assuming such is required, will not unduly hinder the restructuring, inasmuch as the Court of Appeal has already granted leave to appeal from the Pension Priority Decision in the four above-mentioned matters, and that hearing dates on

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- the merits have already been tentatively scheduled for June 11 and June 12, 2018, and that a case management hearing to be presided by Madam Justice Manon Savard, J.A., is set to take place on November 21, 2017;
11. With respect to the issues raised on a subsidiary and *de bene esse* basis in its incidental appeal, the Monitor intends to argue:
 - a) **The deemed trusts under the PBSA and NLPBA were not triggered because there was no "liquidation" of the Wabush CCAA Parties.**⁴
 12. This issue was discussed at length in the Pension Priority Decision (at paragraphs 155 to 175);
 13. The Monitor respectfully submits that the conclusions of the Supervisory Judge (at paragraphs 218(a) and (b)) are ill-founded for the following reasons:
 - a) these conclusions do not take into account the policy considerations highlighted by the Supreme Court of Canada in *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411 at paragraphs 21 and 22 and in *British Columbia v. Samson Bélair Ltd.*, [1989] 2 S.C.R. 24 at paragraph 33;
 - b) the Supervisory Judge came to the conclusion that a "liquidation" had occurred as of the Wabush Filing Date with hindsight and on the basis of subsequent events (at paragraph 172), which creates undue uncertainty, disrupts the *status quo* amongst creditors and is intrinsically unfair;
 - c) considered as a triggering event, "liquidation" simply cannot be construed as a vague or subjective notion, the occurrence of which is only confirmed in light of subsequent events and the passage of time, on an accretive basis, one that could be possibly revoked by the eventual filing of a plan

⁴ Paragraphs 12 to 14 of the present Motion are equivalent to paragraphs 17 to 19 of the Monitor's Notice of Incidental Appeal.

arrangement that would somehow retroactively eliminate the occurrence of the "liquidation" trigger;

- d) the Supervisory Judge had previously concluded that no "liquidation" had occurred and that the PBSA and NLPBA deemed trusts had not been triggered (see paragraphs 67 to 70 and 79 of the **Suspension Order** issued on June 26, 2015, leave to appeal denied, **Appendix A** hereto);
 - e) the plain wording of sections 8(2) PBSA and 32(2) NLBPA evidences a clear intent on the legislator's part to impose deemed trust in the event of a bankruptcy, which is in stark contrast with the conspicuous absence of any reference to CCAA proceedings;
 - f) conflating the notions of "liquidating CCAA" and "liquidation of the employer" clearly runs against the guiding principle that an initial order issued pursuant to the CCAA is meant to preserve the *status quo* amongst creditors *vis-à-vis* the debtors and their assets;
14. As such, the Monitor intends to argue once again before the Court of Appeal that no "liquidation" occurred in the present CCAA Proceedings;
- b) **In any event, the deemed trusts under the PBSA and NLPBA were not triggered as of the Wabush Filing Date, as no "liquidation" had occurred on or before that date, such that they cannot be enforced in CCAA proceedings.**⁵

15. The Supervisory Judge explained as follows at paragraph 175 of the Pension Priority Decision why he did not deal with this issue:

[175] Because the Court has concluded that the triggering event occurred when the CCAA motion was filed, the Court need not decide whether the triggering event must occur prior to the initial

⁵ Paragraphs 15 to 18 of the present Motion are identical to paragraphs 20 to 23 of the Monitor's Notice of Incidental Appeal.

CCAA order, or whether it can occur after the initial CCAA order but prior to the sale of the assets.

16. The Monitor submits that allowing deemed trusts to arise post-filing, rather than having been crystallized by the date of the CCAA filing or occurring prior thereto, is radically incompatible with the fundamental *status quo* principle underpinning all CCAA proceedings, and intends to present once again before the Court of Appeal the following arguments which had been presented to the Supervisory Judge;
17. While the CCAA does not incorporate the scheme of distribution provided for in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, it nevertheless seeks to preserve the *status quo* amongst creditors as against the insolvent debtors and their assets, such that the purported crystallization of statutory deemed trust post-filing, and the ensuing assertion of "secured creditor" status with respect to claims that undeniably remained unsecured as of the date of the Wabush Filing Date, run contrary to the very foundation of insolvency legislation;
18. As a subsidiary argument, even if the Court of Appeal were to rule that a "liquidation" within the meaning of Sections 8(2) PBSA or 32(2) NLPBA can occur under the umbrella of the CCAA, including by way of a so-called "liquidating CCAA" proceeding, the Monitor will argue that these CCAA Proceedings ought not to be considered as such;

c) The NLPBA deemed trust and lien and charge do not extend to the wind-up deficit component of the Pension Claims.⁶

19. The Supervisory Judge declined to settle this issue, having concluded that the deemed trust created under the SPPA, PBSA and NLPBA were in any event not enforceable in CCAA proceedings (at paragraph 224);

⁶ Paragraphs 19 to 26 of the present Motion are identical to paragraphs 24 to 31 of the Monitor's Notice of Incidental Appeal.

20. Should the Court of Appeal overturn this conclusion, and, despite the foregoing arguments, further find that a "liquidation" triggering a deemed trust has occurred in the present CCAA Proceedings, the Monitor will subsidiarily argue that the wind-up deficit component of the Pension Claims is not covered by the deemed trust nor lien and charge provided at Section 32 NLPBA, for the following reasons;
21. While the wording of Sections 61(1) of the NLPBA and 32(1) of the NLPBA defining the amounts secured by the deemed trust are identical, Section 61(2), which provides for the obligation to pay the wind-up deficit, and Section 61(1) are mutually exclusive;
22. The obligation to pay the wind-up deficit upon termination is based on Section 61(2) NLPBA. Based on the fact that the wording of Sections 32(1) and 61(1) NLPBA are identical and that the amounts payable under Sections 61(1) and 61(2) NLPBA are mutually exclusive, it follows that the wind-up deficit is not subject to either the deemed trust pursuant to Section 32(1) NLPBA nor to the lien and charge pursuant to Section 32(4) NLPBA;
23. Section 25.1 of the *Pension Benefits Act Regulations*, NLR 114/96, which pertains to the wind-up deficit, when read in conjunction with Section 60(2) NLPBA, clearly provides that the first payment to be made on account of the wind-up deficit is to be made no later than two weeks following the date of the wind-up report, itself to be filed within six months of the effective date of termination, such that any payments due on account of the wind-up deficit cannot be considered as "... amounts due to the pension from the employer that have not been remitted to the pension fund at the date of termination", within the meaning of Sections 32(1)(c) or 61(1)(c) NLPBA;
24. Section 61 NLPBA was amended in 2008 by the addition of paragraph 2. Section 32 NLPBA was not amended at that time to reflect the changes made to Section 61(2) NLPBA. It follows that the amounts to be held in trust under the NLPBA are limited to certain amounts detailed in Sections 32(1), (2) and (3).

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Clearly, it does not provide for the wind-up deficit to be held in trust, seeing as Sections 61(2) and 61(1) are mutually exclusive;

25. The combined wording of Sections 32 and 61 NLPBA is very different from and can easily be contrasted with Section 57(4) of the Ontario *Pension Benefits Act*, which was analysed by the Supreme Court of Canada in the matter of *Sun Indalex Finance, LLC v. United Steel Workers*, [2013] 1 S.C.R. 271, as the NLPBA does not contain a specific deemed trust triggered upon the termination or wind-up of a plan, nor clear wording extending the deemed trust to all contribution owing "even if not yet due", nor a specific priority rule similar to the one contained in Section 30(7) of the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P.10;
26. For all of the foregoing reasons, and with a view to achieving a full and final resolution of the issues raised in the Pension Priority Motion, the Monitor, should leave be found to be required in the circumstances and should it be granted, will ask the Court of Appeal to:

[A] DISMISS the appeals of: (i) Her Majesty in Right of Newfoundland & Labrador, as represented by the Superintendent of Pensions, in Court file bearing number 500-09-027082-171; (ii) United Steel Workers, Local Sections 6254 and 6285, in Court file number 500-09-027075-175; (iii) Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, as representatives of the Salaried and Non-Union Employees and Retirees, in Court file bearing number 500-09-027077-171; and (iv) the Attorney General of Canada, acting on behalf of the Office of the Superintendent of Financial Institutions, in Court file bearing number 500-09-027076-173;

OR, SUBSIDIARILY, SHOULD THE COURT OF APPEAL GRANT THE APPEALS, IN WHOLE OR IN PART, AND FIND THAT THE SUPERVISORY JUDGE ERRED IN THAT NO DEEMED TRUST ARISING UNDER EITHER THE SPPA, PBSA OR NLPBA CAN BE ENFORCEABLE IN CCAA PROCEEDINGS:

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- [B] **GRANT** the present Incidental Appeal on a *de bene esse* basis and deliver the following declaratory conclusions, as may be required for a full resolution of the issues in dispute:
- [C] **DECLARE** that, notwithstanding the issue of their enforceability in CCAA proceedings, no deemed trust or lien and charge protecting the Pension Claims arose in the present matter pursuant to either Section 32 NLPBA, Section 8 PBSA, or Section 49 SPPA;

OR, SUBSIDIARILY, SHOULD THE COURT OF APPEAL FIND THAT ONE OR MORE DEEMED TRUST OR LIEN AND CHARGE DID ARISE IN THE PRESENT MATTER:

WITH RESPECT TO SCOPE OF APPLICATION:

- [D] **DECLARE** that any deemed trust or lien and charge arising under Section 32 NLPBA only covers those portions of the Pension Claims accrued and due in respect of employees and retirees who are or were persons employed in the province of Newfoundland and Labrador within the meaning of Section 5 NLPBA, as well as their surviving spouses and other eligible related beneficiaries;
- [E] **DECLARE** that any deemed trust arising under Section 8 PBSA only covers those portions of the Pension Claims accrued and due in respect of employees and retirees who are or were employed in "included employment" within the meaning of Section 4 PBSA, as well as their surviving spouses and other eligible related beneficiaries;
- [F] **DECLARE** that any deemed trust arising under Section 49 SPPA only covers those portions of the Pension Claims accrued and due in respect of employees and retirees who are or were reporting for work in Quebec or otherwise qualify under Section 1 SPPA, as well as their surviving spouses and other eligible related beneficiaries;

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WITH RESPECT TO AMOUNTS PROTECTED:

- [G] DECLARE** that any deemed trust or lien and charge arising under Section 32 NLPBA does not cover the wind-up deficit component of either Pension Claims;
- [H] DECLARE** that any deemed trust or lien and charge arising under either Section 32 NLPBA, Section 8 PBSA, or Section 49 SPPA only covers outstanding payments or contributions that had accrued at the time of the Initial Order;

WITH RESPECT TO ASSETS CHARGED:

- [I] DECLARE** that any deemed trust arising under Section 32 NLPBA only attaches to assets located in Newfoundland and Labrador and the proceeds thereof, and cannot be enforceable as against assets located in Quebec or the proceeds thereof;
- [J] DECLARE** that any deemed trust arising under Section 49 SPPA only attaches to assets located in Quebec and the proceeds thereof;
- [K] DECLARE** that any deemed trust arising under Section 8 PBSA only attaches to railway assets and the proceeds thereof;

WITH RESPECT TO RANK:

- [L] DECLARE** that any deemed trust or lien and charge arising under either Section 32 NLPBA, Section 8 PBSA, or Section 49 SPPA, ranks after the prior claim of the *Mise-en-cause*, City of Sept-Îles, for outstanding property taxes pursuant to Sections 2651(5) and 2654.1 of the *Civil Code of Québec* with respect to the taxable immovables to which said prior claim pertain and the proceeds thereof;

THE WHOLE, WITHOUT COSTS.

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27. The present Application for Leave to File an Incidental Appeal *de bene esse* is well founded;

FOR THESE REASONS, MAY AND PLEASE THE COURT:

GRANT the present Application;

AUTHORIZE the Monitor to file an Incidental Appeal of the judgment rendered on September 11, 2017 by the Honorable Steven W. Hamilton of the Superior Court, Commercial Division with respect to each of the appeals brought by: (i) Her Majesty in Right of Newfoundland & Labrador, as represented by the Superintendent of Pensions, in Court file bearing number 500-09-027082-171; (ii) United Steel Workers, Local Sections 6254 and 6285, in Court file bearing number 500-09-027075-175; (iii) Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, as representatives of the Salaried and Non-Union Employees and Retirees, in Court file bearing number 500-09-027077-171; and (iv) the Attorney General of Canada, acting on behalf of the Office of the Superintendent of Financial Institutions, in Court file bearing number 500-09-027076-173;

THE WHOLE without costs, save in case of contestation.

Montreal, November 9, 2017



NORTON ROSE FULBRIGHT CANADA LLP
(Mes Sylvain Rigaud and Chrystal Ashby)
Attorneys of the Applicant Monitor
Respondent / *De Bene Esse* Incidental Appellant
FTI Consulting Canada Inc.
1 Place Ville Marie, Suite 2500
Montréal (Quebec) H3B 1R1
Telephone: (514) 847-4747
Fax: (514) 286-5474
sylvain.rigaud@nortonrosefulbright.com
chrystal.ashby@nortonrosefulbright.com
notifications-mtl@nortonrosefulbright.com
Our reference: 10007517-1000155731

Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

AFFIDAVIT OF CHRYSTAL ASHBY

I, CHRYSTAL ASHBY, attorney, practicing law at Norton Rose Fulbright Canada LLP, suite 2500, 1 Place Ville Marie, Montreal, Quebec, H3B 1R1, affirm as follows:

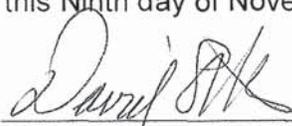
- 1 I am an associate at the firm Norton Rose Fulbright Canada LLP. Our firm has represented FTI Consulting Canada Inc. acting as court-appointed Monitor since the outset of the Wabush CCAA proceedings in Superior Court file bearing number 500-11-048114-157.
- 2 Me Sylvain Rigaud and myself represented the Monitor before Mr. Justice Stephen W. Hamilton during the hearing held on June 28 and 29, 2017 on the Monitor's Amended Motion for Directions with respect to Pension Claims.
- 3 All the facts alleged in the within Application for Leave to file an Incidental Appeal *De Bene Esse* by the Monitor are true and correct to the best of my knowledge.

AND I HAVE SIGNED THIS NINTH DAY OF NOVEMBER 2017, IN MONTREAL, QUÉBEC:



CHRYSTAL ASHBY

Solemnly affirmed before me in Montreal, this Ninth day of November 2017.



Commissioner of Oaths for Quebec



Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

NOTICE OF PRESENTATION

NOTICE IS HEREBY GIVEN TO THE FOLLOWING PARTIES:

Me Bernard Boucher and Mr. Steven Weisz
Blake Cassels & Graydon LLP
 Suite 2200
 600 de Maisonneuve West Blvd.
 Montreal, Quebec H3A 3J2T

Attorneys for the Wabush CCAA Parties

Mes Pierre Lecavalier and Michelle Kellam
Department of Justice – Canada
 East Tower – 9th floor
 200 René-Lévesque Boulevard West
 Montreal, Quebec H2Z 1X4

Attorneys for the Attorney General of
 Canada, acting on behalf of the Office of the
 Superintendent of Financial Institutions

Mes Mark E. Meland and Nicolas Brochu
Fishmen Flanz Meland Paquin LLP
 Suite 4100
 1250, René-Lévesque Ouest Boulevard
 Montreal, Quebec H3B 4W8

Proposed Co-Attorneys for the
 Representatives of the Salaried and
 Non-Union Employees and Retirees

Mes Doug Mitchell and
 Edward Béchar-Torres
Irving Mitchell Kalichman LLP
 Suite 1400
 3500, de Maisonneuve Boulevard West
 Montreal, Quebec H3Z 3C1

Attorneys for Her Majesty in Right of
 Newfoundland and Labrador, as
 represented by the Superintendent of
 Pensions

Mr. Andrew J. Hatnay, Mr. Demetrios
 Yiokaris, Ms. Amy Tang and
 Mr. Jules Monteyne
Koskie Minsky LLP
 Suite 900
 20 Queen Street West
 Toronto, Ontario M5H 3R3

Attorneys for the Representatives
 of the Salaried and Non-Union
 Employees and Retirees

Mr. Ronald Pink, Q.C. and
 Ms. Bettina Quistgaard
Pink Larkin LLP
 Suite 201
 1463 South Park Street
 Halifax, Nova Scotia B3J 3S9

Attorneys for the Replacement Plan
 Administrator, Morneau Shepell Ltd.

Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

Me Daniel Boudreault
Philion Leblanc Beaudry Avocats S.A.
Suite 280
5000 des Gradins Boulevard
Quebec, Quebec G2J 1N3

Attorney for the United Steel Workers,
Local Sections 6254 and 6285

Mes Louis Robillard and Roberto Clocchiatti
**Vaillancourt et Clocchiatti,
Contentieux de Retraite Québec**
1055 René-Lévesque Boulevard East
Montreal, Quebec H2L 4S5

Attorneys for Retraite Quebec

Me Martin Roy
Stein Monast LLP
Suite 300
70 Dalhousie Street
Quebec, Quebec G1K 4B2

Attorney for Ville de Sept-Îles

Take notice that the present Application for Leave to Appeal *de bene esse* will be presented for adjudication before one the honorable judges of the Court of Appeal, sitting in and for the district of Montreal, in the Ernest Cormier building, located at 100, Notre-Dame Street East, Montreal, Quebec, on **November 17, 2017**, at 9:30 a.m., in room RC-18.

DO GOVERN YOURSELF ACCORDINGLY.

Montreal, November 9, 2017



NORTON ROSE FULBRIGHT CANADA LLP
(Mes Sylvain Rigaud and Chrystal Ashby)
Attorneys of the Applicant Monitor
Respondent / *De Bene Esse* Incidental Appellant
FTI Consulting Canada Inc.
1 Place Ville Marie, Suite 2500
Montréal (Quebec) H3B 1R1
Telephone: (514) 847-4747
Fax: (514) 286-5474
sylvain.rigaud@nortonrosefulbright.com
chrystal.ashby@nortonrosefulbright.com
notifications-mtl@nortonrosefulbright.com
Our reference: 10007517-1000155731

Monitor's Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171),
November 9, 2017

NO:	500-09-027077-171 500-09-027082-171 500-09-027075-175 500-09-027076-173
COURT OF APPEAL DISTRICT OF MONTREAL	
FTI CONSULTING CANADA INC. RESPONDENT / <i>DE BENE ESSE</i> INCIDENTAL APPELLANT v. MICHAEL KEEPER ET AL APPELLANTS / <i>DE BENE ESSE</i> INCIDENTAL RESPONDENTS -and- BLOOM LAKE GENERAL PARTNER LIMITED ET AL MISES-EN-CAUSE	
APPLICATION FOR LEAVE TO FILE AN INCIDENTAL APPEAL <i>DE BENE ESSE</i> (Articles 352 and 359 C.C.P.)	
O R I G I N A L	
BO-0042	#10007517-10000155731
Mtres Sylvain Rigaud and Chrystal Ashby NORTON ROSE FULBRIGHT CANADA LLP ATTORNEYS 1 Place Ville Marie, suite 2500 Montreal, Quebec H3B 1R1 CANADA Telephone: +1 514.847.4702 Telephone: +1 514.847.6076 Telecopieur : +1 514.286.5474 notifications-mtl@nortonrosefulbright.com	

Monitor's Notice of Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

C A N A D A

COURT OF APPEAL

**PROVINCE OF QUEBEC
DISTRICT DE MONTREAL**

N° : 500-09-027082-171

N° : 500-09-027075-175

N° : 500-09-027077-171

N° : 500-09-027076-173

N° : 500-11-048114-157

N° : 500-09-027082-171

FTI CONSULTING CANADA INC.

RESPONDENT /
DE BENE ESSE INCIDENTAL APPELLANT
Monitor – Petitioner

v.

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR,
AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

APPELLANT /
DE BENE ESSE INCIDENTAL RESPONDENT
Mise-en-cause

-and-

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING CORPORATION,
8568391 CANADA LIMITED, CLIFFS QUEBEC
IRON MINING ULC, WABUSH IRON CO.
LIMITED AND WABUSH RESOURCES INC.**

RESPONDENTS
Debtors

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES,
ARNAUD RAILWAY COMPANY AND
WABUSH LAKE RAILWAY COMPANY
LIMITED**

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON**

Monitor's Notice of Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

**THE ATTORNEY GENERAL OF CANADA,
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDENT OF FINANCIAL
INSTITUTIONS**

**UNITED STEEL WORKERS,
LOCALS 6254 AND 6285**

VILLE DE SEPT-ÎLES

RETRAITE QUÉBEC

**MORNEAU SHEPELL LTD.,
IN ITS CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

MISES-EN-CAUSE
Mises-en-cause

N° : 500-09-027075-175

FTI CONSULTING CANADA INC.

RESPONDENT /
DE BENE ESSE INCIDENTAL APPELLANT
Monitor – Petitioner

v.

**SYNDICAT DES MÉTALLOS,
SECTION LOCALE 6254**

**SYNDICAT DES MÉTALLOS,
SECTION LOCALE 6285**

APPELLANTS /
DE BENE ESSE INCIDENTAL RESPONDENTS
Mises-en-cause

-and-

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC,
WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

MISES-EN-CAUSE
Debtors

-and-

Monitor's Notice of Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES,
ARNAUD RAILWAY COMPANY AND
WABUSH LAKE RAILWAY COMPANY
LIMITED**

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON**

ATTORNEY GENERAL OF CANADA

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR, AS
REPRESENTED BY THE SUPERINTENDENT
OF PENSIONS**

VILLE DE SEPT-ÎLES

**MORNEAU SHEPELL LTD.,
IN ITS CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

RETRAITE QUÉBEC

**MISES-EN-CAUSE
Mises-en-cause**

N° : 500-09-027077-171

FTI CONSULTING CANADA INC.

**RESPONDENT /
DE BENE ESSE INCIDENTAL APPELLANT
Monitor – Petitioner**

v.

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON**

**APPELLANTS /
DE BENE ESSE INCIDENTAL RESPONDENTS
Representatives of the Salaried and
Non-Union Employees and Retirees**

-and-

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC,
WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

**MISES-EN-CAUSE
Debtors**

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES,
ARNAUD RAILWAY COMPANY AND
WABUSH LAKE RAILWAY COMPANY
LIMITED**

**SYNDICAT DES MÉTALLOS,
SECTIONS LOCALES 6254 ET 6285**

**ATTORNEY GENERAL OF CANADA
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDENT OF FINANCIAL
INSTITUTIONS**

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR,
AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

VILLE DE SEPT-ÎLES

**MORNEAU SHEPELL LTD.,
IN ITS CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

RETRAITE QUÉBEC

MISES-EN-CAUSE

Mises-en-cause

N° : 500-09-027076-173

FTI CONSULTING CANADA INC.

**RESPONDENT /
DE BENE ESSE INCIDENTAL APPELLANT
Monitor – Petitioner**

v.

**THE ATTORNEY GENERAL OF CANADA
ACTING ON BEHALF OF THE
OFFICE OF THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS**

**APPELLANT /
DE BENE ESSE INCIDENTAL RESPONDENT
Mise-en-cause**

-and-

Monitor's Notice of Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC,
WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

MISES-EN-CAUSE
Debtors

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES,
ARNAUD RAILWAY COMPANY AND
WABUSH LAKE RAILWAY COMPANY
LIMITED**

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR,
AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON**

**UNITED STEEL WORKERS,
LOCALS 6254 AND 6285**

VILLE DE SEPT-ÎLES

RETRAITE QUÉBEC

**MORNEAU SHEPELL LTD.,
IN ITS CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

MISES-EN-CAUSE
Mises-en-cause

NOTICE OF INCIDENTAL APPEAL *DE BENE ESSE* BY THE MONITOR
(Articles 352 and 359 of the *Code of Civil Procedure*)

Respondent / Incidental Appellant

Dated November 9, 2017

-
1. On September 11, 2017, Mr. Justice Stephen W. Hamilton (the "**Supervisory Judge**") of the Quebec Superior Court sitting in Commercial Division for the judicial district of Montreal (the "**CCAA Court**") granted the Amended Motion for Directions with respect to Pension Claims (the "**Pension Priority Motion**") presented by FTI Consulting Canada Inc., acting as court-appointed monitor (the "**Monitor**") to

Monitor's Notice of Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Inc., Cliffs Quebec Iron Mining ULC, the Bloom Lake Iron Ore Mine Limited Partnership, Bloom Lake Railway Company and Bloom Lake Railway Company Limited (collectively, the "**Bloom Lake CCAA Parties**"¹) as well as to Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**"²) in Superior Court file bearing number 500-11-048114-157 (the "**CCAA Proceedings**"), which decision (the "**Pension Priority Decision**"³) has been the object of Notices of Appeal and Applications for Leave to Appeal by:

- (a) Her Majesty in Right of Newfoundland & Labrador, as represented by the Superintendent of Pensions (the "**NL Superintendent of Pensions**"), in Court of Appeal file bearing number 500-09-027082-171;
- (b) United Steel Workers, Local Sections 6254 and 6285 (the "**Union**"), in Court of Appeal file bearing number 500-09-027075-175;
- (c) Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, as representatives of the Salaried and Non-Union Employees and Retirees (the "**Representatives**"), in Court of Appeal file bearing number 500-09-027077-171; and
- (d) the Attorney General of Canada, acting on behalf of the Office of the Superintendent of Financial Institutions ("**OSFI**"), in Court of Appeal file bearing number 500-09-027076-173;

¹ The initial order pursuant to the *Companies' Creditor Arrangement Act*, R.S.C. 1985 c. C-36 ("**CCAA**") with respect to the Bloom Lake CCAA Parties was rendered on January 27, 2015.

² The initial order pursuant to the CCAA with respect to the Wabush CCAA Parties was rendered on May 20, 2015 (the "**Wabush Filing Date**").

³ Capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Pension Priority Decision.

2. The above-noted Applications for Leave to Appeal were not contested and were granted on October 31, 2017 by Mr. Justice Patrick Healy of the Court of Appeal;
3. The hearing of the Pension Priority Motion before the Supervisory Judge lasted two full days on June 28 and June 29, 2017. The parties did not proceed with any examinations out of Court and thus no transcripts were filed, nor did the Supervisory Judge hear any testimonial evidence. The two-day hearing was entirely dedicated to oral arguments from the parties, who had also exchanged detailed argumentation outlines and books of authorities ahead of the hearing;
4. The factual background leading to the Pension Priority Motion is fully described by the Supervisory Judge as follows in the Pension Priority Decision:
 - (a) the Wabush CCAA Parties conducted their operations in two provinces, Newfoundland & Labrador and Quebec, and also owned and operated railways, which are federally regulated, in both (at paragraph 3);
 - (b) the Wabush CCAA Parties created and funded two defined-benefit pension plans (the "**Pension Plans**"), being the Union Plan and the Salaried Plan (at paragraph 4), both of which were underfunded (at paragraphs 18 to 22);
 - (c) by way of the **Suspension Order** rendered on June 26, 2015 (leave to appeal denied), a copy of which is attached hereto as **Appendix A**, the CCAA Court suspended the payment of the monthly amortization payments and the annual lump sum (catch-up) payments owing to the Pension Plans (at paragraphs 8 and 14);
 - (d) both Pension Plans were terminated on December 16, 2015 (at paragraph 9), and Mise-en-cause Morneau Shepell Ltd. was appointed as replacement plan administrator (the "**Replacement Plan Administrator**") on March 30, 2016 (at paragraph 12);
 - (e) proofs of claims asserting secured claims were filed in respect of amounts owing to both Pension Plans (the "**Pension Claims**"), including in each case a wind-up deficit component of over \$20 million (at paragraphs 22 and 23);

- (f) substantially all the assets of the Wabush CCAA Parties have been sold over the course of the CCAA Proceedings, the proceeds of which are held in trust by the Monitor, including from immovable properties located in Sept-Îles subject to unpaid taxes, over which the City of Sept-Îles claims priority (at paragraph 26);
5. On January 30, 2017, the Supervisory Judge had ruled that the CCAA Court had jurisdiction to hear and deal with all the issues raised by the Pension Priority Motion. There was no appeal from that decision (the "**Jurisdiction Order**"), a copy of which is attached hereto as **Appendix B**;
 6. Despite this, a concurrent reference has been brought before the Newfoundland & Labrador Court of Appeal to deal with certain issues and questions forming part of the Pension Priority Motion, as explained at paragraphs 48 to 60 of the Pension Priority Decision;
 7. The issues raised by the Pension Priority Motion are articulated by the Supervisory Judge at paragraph 47 of the Pension Priority Decision. The position of each party is adequately summarized in paragraphs 27 to 44;
 8. By way of the Pension Priority Decision, the Supervisory Judge:
 - (a) granted the Pension Priority Motion (at paragraph 223);
 - (b) declared that the trusts created under the Quebec *Supplemental Pension Plans Act*, R.S.Q. c. R-15.1 ("**SPPA**"), the federal *Pension Benefits Standards Act*, 1985, R.S.C. 1985, c. 32 ("**PBSA**"), and the Newfoundland & Labrador *Pension Benefits Act*, 1997, S.N.L. 1996, c. T-4.01 ("**NLBPA**") are not enforceable in CCAA proceedings (at paragraph 224);
 - (c) declared that the employee contributions and normal cost payments relating to pension plans are protected to the extent provided for by Sections 6(6) and 36(7) CCAA (at paragraph 225, which mistakenly refers to Section 37(6) instead of 36(7) of the CCAA);

9. The Supervisory Judge also found that:
- (a) a "liquidation" under Sections 8(2) PBSA and 32(2) NLPBA includes a liquidating plan under the CCAA (at paragraph 218a));
 - (b) a "liquidation" within the meaning of Sections 8(2) PBSA and 32(2) NLPBA had commenced as at the Wabush Filing Date (at paragraph 218b));
 - (c) the deemed trust under the NLPBA should not be recognized or enforced against assets located in the Province of Quebec (at paragraph 218g));
 - (d) the wind-up deficit is not protected by the deemed trusts under either the PBSA (at paragraphs 136 and 218d)) or the SPPA (at paragraphs 130 and 218d)). The Supervisory Judge did not reach a conclusion as to whether the deemed trust under Section 32 NLPBA extended to the wind-up deficit (at paragraphs 58, 114, 143, and 218d));
 - (e) the Pension Plans are governed by the PBSA for the railway employees, by the SPPA for the non-railway employees who reported for work in Quebec and by the NLPBA for the non-railway employees who reported for work in Newfoundland & Labrador (at paragraph 219);
 - (f) the protection afforded by Sections 6(6) and 36(7) CCAA only extends to employee contributions and normal cost payments, to the exclusion of special or amortization payments and wind-up deficits (at paragraphs 184 to 186);
 - (g) additional protection afforded in pension legislation to special or amortization payments or wind-up deficits cannot apply once the CCAA is triggered, as a matter of federal paramountcy with respect to the SPPA and the NLPBA (at paragraphs 187 to 210), and as matter of interpretation of Parliament's intent with respect to the PBSA (at paragraphs 211 to 216);

10. To successfully overturn the Pension Priority Decision, the Appellants will first need to convince the Court of Appeal that the Supervisory Judge erred in finding that pension deemed trusts could not be enforceable in CCAA proceedings;
11. Furthermore, in order to obtain that the Pension Claims be paid in priority to the extent sought in their respective Notices of Appeal, the Appellants will also need, to varying degrees, to address the other issues raised by the Pension Priority Motion;
12. In doing so, the Appellants will no doubt rely on findings by the Supervisory Judge (in some case adverse to the Monitor's position), including the question as to whether and when a "liquidation" within the meaning of Sections 8(2) PBSA and 32(2) NLPBA occurred in the CCAA Proceedings, and the impact of such triggering event occurring after the Wabush Filing Date, as the case may be;
13. Other issues raised by the Pension Priority Motion, which were not settled in the Pension Priority Decision, will also arise, including whether the NLPBA deemed trust or lien and charge extend to and protect the wind-up deficit;
14. Seeing as the Monitor is satisfied with the Pension Priority Decision and intends to argue first and foremost that the Court of Appeal should refrain from intervening in any way, and considering that the Monitor would not pursue an incidental appeal should the Appellants discontinue their own appeals (see Section 359 C.C.P. *a contrario*), it is submitted that no incidental appeal would be required for the Monitor, as Respondent, to raise the following arguments:
 - (a) the deemed trusts under the PBSA and NLPBA were not triggered because there was no "liquidation" of the Wabush CCAA Parties, contrary to what the Supervisory Judge found;
 - (b) in any event, the deemed trusts under the PBSA and NLPBA were not triggered as of the Wabush Filing Date, as no "liquidation" had occurred on or before that date, such that they cannot be enforced in CCAA proceedings;
 - (c) the NLPBA deemed trust and lien and charge do not extend to the wind-up deficit component of the Pension Claims;

15. However, with a view of ensuring that all issues are brought before the Court of Appeal, to allow each party to fully present its arguments with respect to same, to avoid unnecessary procedural arguments, possible undue delays and to promote a fair, efficient and diligent hearing of the four appeals and ultimately a full resolution of the issues raised by the Pension Priority Motion, the Monitor hereby files this Notice of Incidental Appeal on a *de bene esse* basis;
16. With respect to each of the issues above, the Monitor intends to argue as follows:
 - a) **The deemed trusts under the PBSA and NLPBA were not triggered because there was no “liquidation” of the Wabush CCAA Parties.**
17. This issue was discussed at length in the Pension Priority Decision (at paragraphs 155 to 175);
18. The Monitor respectfully submits that the conclusions of the Supervisory Judge (at paragraphs 218(a) and (b)) are ill-founded for the following reasons:
 - a) these conclusions do not take into account the policy considerations highlighted by the Supreme Court of Canada in *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411 at paragraphs 21 and 22 and in *British Columbia v. Samson Bélair Ltd.*, [1989] 2 S.C.R. 24 at paragraph 33;
 - b) the Supervisory Judge came to the conclusion that a “liquidation” had occurred as of the Wabush Filing Date with hindsight and on the basis of subsequent events (at paragraph 172), which creates undue uncertainty, disrupts the *status quo* amongst creditors and is intrinsically unfair;
 - c) considered as a triggering event, “liquidation” simply cannot be construed as a vague or subjective notion, the occurrence of which is only confirmed in light of subsequent events and the passage of time, on an accretive basis, one that could be possibly revoked by the eventual filing of a plan arrangement that would somehow retroactively eliminate the occurrence of the “liquidation” trigger;

- d) in June 2015, the Supervisory Judge had previously concluded in the context of the Suspension Order that no "liquidation" had occurred and that the PBSA and NLPBA deemed trusts had not been triggered (at paragraphs 67 to 70 and 79 of the Suspension Order, Appendix A hereto);
 - e) the plain wording of sections 8(2) PBSA and 32(2) NLBPA evidences a clear intent on the legislator's part to impose deemed trust in the event of a bankruptcy, which is in stark contrast with the conspicuous absence of any reference to CCAA proceedings;
 - f) conflating the notions of "liquidating CCAA" and "liquidation of the employer" clearly runs against the guiding principle that an initial order issued pursuant to the CCAA is meant to preserve the *status quo* amongst creditors *vis-à-vis* the debtors and their assets;
19. As such, the Monitor intends to argue once again before the Court of Appeal that no "liquidation" occurred in the present CCAA Proceedings;
- b) In any event, the deemed trusts under the PBSA and NLPBA were not triggered as at the Wabush Filing Date, as no "liquidation" had occurred on or before that date, such that they cannot be enforced in CCAA proceedings.**
20. The Supervisory Judge explained as follows at paragraph 175 of the Pension Priority Decision why he did not deal with this issue:
- [175] Because the Court has concluded that the triggering event occurred when the CCAA motion was filed, the Court need not decide whether the triggering event must occur prior to the initial CCAA order, or whether it can occur after the initial CCAA order but prior to the sale of the assets.
21. The Monitor submits that allowing deemed trusts to arise post-filing, rather than having been crystalized by the date of the CCAA filing or occurring prior thereto, is radically incompatible with the fundamental *status quo* principle underpinning all

CCAA proceedings, and intends to present once again before the Court of Appeal the following arguments which had been presented to the Supervisory Judge;

22. While the CCAA does not incorporate the scheme of distribution provided for in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, it nevertheless seeks to preserve the *status quo* amongst creditors as against the insolvent debtors and their assets, such that the purported crystallization of statutory deemed trust post-filing, and the ensuing assertion of "secured creditor" status with respect to claims that undeniably remained unsecured as of the date of the Wabush Filing Date, run contrary to the very foundation of insolvency legislation;

23. As a subsidiary argument, even if the Court of Appeal were to rule that a "liquidation" within the meaning of Sections 8(2) PBSA or 32(2) NLPBA can occur under the umbrella of the CCAA, including by way of a so-called "liquidating CCAA" proceeding, the Monitor will argue that these CCAA Proceedings ought not to be considered as such;

c) The NLPBA deemed trust and lien and charge do not extend to the wind-up deficit component of the Pension Claims.

24. The Supervisory Judge declined to settle this issue, having concluded that the deemed trust created under the SPPA, PBSA and NLPBA were in any event not enforceable in CCAA proceedings (at paragraph 224);

25. Should the Court of Appeal overturn this conclusion, and, despite the foregoing arguments, further find that a "liquidation" triggering a deemed trust has occurred in the present CCAA Proceedings, the Monitor will subsidiarily argue that the wind-up deficit component of the Pension Claims is not covered by the deemed trust nor lien and charge provided at Section 32 NLPBA, for the following reasons;

26. While the wording of Sections 61(1) of the NLPBA and 32(1) of the NLPBA defining the amounts secured by the deemed trust are identical, Section 61(2), which provides for the obligation to pay the wind-up deficit, and Section 61(1) are mutually exclusive;

27. The obligation to pay the wind-up deficit upon termination is based on Section 61(2) NLPBA. Based on the fact that the wording of Sections 32(1) and 61(1) NLPBA are identical and that the amounts payable under Sections 61(1) and 61(2) NLPBA are mutually exclusive, it follows that the wind-up deficit is not subject to either the deemed trust pursuant to Section 32(1) NLPBA nor to the lien and charge pursuant to Section 32(4) NLPBA;
28. Section 25.1 of the *Pension Benefits Act Regulations*, NLR 114/96, which pertains to the wind-up deficit, when read in conjunction with Section 60(2) NLPBA, clearly provides that the first payment to be made on account of the wind-up deficit is to be made no later than two weeks following the date of the wind-up report, itself to be filed within six months of the effective date of termination, such that any payments due on account of the wind-up deficit cannot be considered as "... amounts due to the pension from the employer that have not been remitted to the pension fund at the date of termination", within the meaning of Sections 32(1)(c) or 61(1)(c) NLPBA;
29. Section 61 NLPBA was amended in 2008 by the addition of paragraph 2. Section 32 NLPBA was not amended at that time to reflect the changes made to Section 61(2) NLPBA. It follows that the amounts to be held in trust under the NLPBA are limited to certain amounts detailed in Sections 32(1), (2) and (3). Clearly, it does not provide for the wind-up deficit to be held in trust, seeing as Sections 61(2) and 61(1) are mutually exclusive;
30. The combined wording of Sections 32 and 61 NLPBA is very different from and can easily be contrasted with Section 57(4) of the Ontario *Pension Benefits Act*, which was analysed by the Supreme Court of Canada in the matter of *Sun Indalex Finance, LLC v. United Steel Workers*, [2013] 1 S.C.R. 271, as the NLPBA does not contain a specific deemed trust triggered upon the termination or wind-up of a plan, nor clear wording extending the deemed trust to all contribution owing "*even if not yet due*", nor a specific priority rule similar to the one contained in Section 30(7) of the Ontario *Personal Property Security Act*, R.S.O. 1990, c. P.10;

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31. Based on the foregoing reasons, the Monitor submits that the NLPBA does not afford priority status or otherwise protect the wind-up deficit component of the Pension Claims, and intends to argue same before the Court of Appeal;
32. Also in the spirit of reaching a full and final resolution of the issues raised by the Pension Priority Motion, the Monitor takes note of the Incidental Appeal brought by the City of Sept-Îles and will ask the Court of Appeal, as a subsidiary conclusion, to determine the respective ranking of the Pension Claims and the prior claim of the City of Sept-Îles;
33. For all of the foregoing reasons, the Monitor will ask the Court of Appeal to:
 - [A] DISMISS** the appeals of: (i) Her Majesty in Right of Newfoundland & Labrador, as represented by the Superintendent of Pensions, in Court file bearing number 500-09-027082-171; (ii) United Steel Workers, Local Sections 6254 and 6285, in Court file bearing number 500-09-027075-175; (iii) Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, as representatives of the Salaried and Non-Union Employees and Retirees, in Court file bearing number 500-09-027077-171; and (iv) the Attorney General of Canada, acting on behalf of the Office of the Superintendent of Financial Institutions, in Court file bearing number 500-09-027076-173;

OR, SUBSIDIARILY, SHOULD THE COURT OF APPEAL GRANT THE APPEALS, IN WHOLE OR IN PART, AND FIND THAT THE SUPERVISORY JUDGE ERRED IN THAT NO DEEMED TRUST ARISING UNDER EITHER THE SPPA, PBSA OR NLPBA CAN BE ENFORCEABLE IN CCAA PROCEEDINGS:

- [B] GRANT** the present Incidental Appeal on a *de bene esse* basis and deliver the following declaratory conclusions, as may be required for a full resolution of the issues in dispute:
- [C] DECLARE** that, notwithstanding the issue of their enforceability in CCAA Proceedings, no deemed trust or lien and charge protecting the Pension Claims arose in the present matter pursuant to either Section 32 NLPBA, Section 8 PBSA, or Section 49 SPPA;

OR, SUBSIDIARILY, SHOULD THE COURT OF APPEAL FIND THAT ONE OR MORE DEEMED TRUST OR LIEN AND CHARGE DID ARISE IN THE PRESENT MATTER:

WITH RESPECT TO SCOPE OF APPLICATION:

- [D] **DECLARE** that any deemed trust or lien and charge arising under Section 32 NLPBA only covers those portions of the Pension Claims accrued and due in respect of employees and retirees who are or were persons employed in the province of Newfoundland and Labrador within the meaning of Section 5 NLPBA, as well as their surviving spouses and other eligible related beneficiaries;
- [E] **DECLARE** that any deemed trust arising under Section 8 PBSA only covers those portions of the Pension Claims accrued and due in respect of employees and retirees who are or were employed in "included employment" within the meaning of Section 4 PBSA, as well as their surviving spouses and other eligible related beneficiaries;
- [F] **DECLARE** that any deemed trust arising under Section 49 SPPA only covers those portions of the Pension Claims accrued and due in respect of employees and retirees who are or were reporting for work in Quebec or otherwise qualify under Section 1 SPPA, as well as their surviving spouses and other eligible related beneficiaries;

WITH RESPECT TO AMOUNTS PROTECTED:

- [G] **DECLARE** that any deemed trust or lien and charge arising under Section 32 NLPBA does not cover the wind-up deficit component of either Pension Claims;
- [H] **DECLARE** that any deemed trust or lien and charge arising under either Section 32 NLPBA, Section 8 PBSA, or Section 49 SPPA only covers outstanding payments or contributions that had accrued at the time of the Initial Order;

WITH RESPECT TO ASSETS CHARGED:

- [I] **DECLARE** that any deemed trust arising under Section 32 NLPBA only attaches to assets located in Newfoundland and Labrador and the proceeds thereof, and cannot be enforceable as against assets located in Quebec or the proceeds thereof;
- [J] **DECLARE** that any deemed trust arising under Section 49 SPPA only attaches to assets located in Quebec and the proceeds thereof;
- [K] **DECLARE** that any deemed trust arising under Section 8 PBSA only attaches to railway assets and the proceeds thereof;

WITH RESPECT TO RANK:

- [L] **DECLARE** that any deemed trust or lien and charge arising under either Section 32 NLPBA, Section 8 PBSA, or Section 49 SPPA, ranks after the prior claim of the *Mise-en-cause*, City of Sept-Îles, for outstanding property taxes pursuant to Sections 2651(5) and 2654.1 of the *Civil Code of Québec* with respect to the taxable immovables to which said prior claim pertain and the proceeds thereof;

THE WHOLE, WITHOUT COSTS.

Montreal, November 9, 2017



NORTON ROSE FULBRIGHT CANADA LLP

(Mes Sylvain Rigaud and Chrystal Ashby)

Attorneys of the Monitor

Respondent / *De Bene Esse* Incidental Appellant

FTI Consulting Canada Inc.

1 Place Ville Marie, Suite 2500

Montréal (Quebec) H3B 1R1

Telephone: (514) 847-4747

Fax: (514) 286-5474

sylvain.rigaud@nortonrosefulbright.com

chrystal.ashby@nortonrosefulbright.com

notifications-mtl@nortonrosefulbright.com

Our reference: 10007517-1000155731

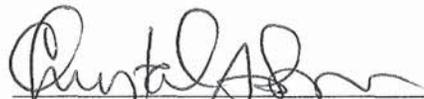
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AFFIDAVIT OF CHRYSTAL ASHBY

I, CHRYSTAL ASHBY, attorney, practicing law at Norton Rose Fulbright Canada LLP, suite 2500, 1 Place Ville Marie, Montreal, Quebec, H3B 1R1, affirm as follows:

1. I am an associate at the firm Norton Rose Fulbright Canada LLP. Our firm has represented FTI Consulting Canada Inc. acting as court-appointed Monitor since the outset of the Wabush CCAA Proceedings in Superior Court file bearing number 500-11-048114-157.
2. Me Sylvain Rigaud and myself represented the Monitor before Mr. Justice Stephen W. Hamilton during the hearing held on June 28 and 29, 2017 on the Monitor's Amended Motion for Directions with respect to Pension Claims.
3. All the facts alleged in the within Notice of Incidental Appeal *De Bene Esse* of the Monitor are true and correct to the best of my knowledge.

AND I HAVE SIGNED THIS NINTH DAY OF
NOVEMBER 2017, IN MONTREAL, QUEBEC:

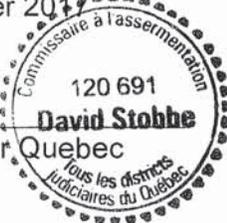


CHRYSTAL ASHBY

Solemnly affirmed before me in Montreal,
this Ninth day of November 2017



Commissioner of Oaths for Quebec



Monitor's Notice of Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

NOTICE OF INCIDENTAL APPEAL *DE BENE ESSE*

NOTICE IS HEREBY GIVEN OF THIS INCIDENTAL APPEAL to the following parties:

Me Bernard Boucher and Mr. Steven Weisz
Blake Cassels & Graydon LLP
 Suite 2200
 600 de Maisonneuve West Blvd.
 Montreal, Quebec H3A 3J2T

Attorneys for the Wabush CCAA Parties

Mes Pierre Lecavalier and Michelle Kellam
Department of Justice – Canada
 East Tower – 9th floor
 200 René-Lévesque Boulevard West
 Montreal, Quebec H2Z 1X4

Attorneys for the Attorney General of
 Canada, acting on behalf of the Office of
 the Superintendent of Financial Institutions

Mes Mark E. Meland and Nicolas Brochu
Fishman Flanz Meland Paquin LLP
 Suite 4100
 1250, René-Lévesque Ouest Boulevard
 Montreal, Quebec H3B 4W8

Proposed Co-Attorneys for the
 Representatives of the Salaried and
 Non-Union Employees and Retirees

Mes Doug Mitchell and
 Edward Béchar-Torres
Irving Mitchell Kalichman LLP
 Suite 1400
 3500, de Maisonneuve Boulevard West
 Montreal, Quebec H3Z 3C1

Attorneys for Her Majesty in Right of
 Newfoundland and Labrador, as
 represented by the Superintendent of
 Pensions

Mr. Andrew J. Hatnay, Mr. Demetrios
 Yiokaris, Ms. Amy Tang and
 Mr. Jules Monteyne
Koskie Minsky LLP
 Suite 900
 20 Queen Street West
 Toronto, Ontario M5H 3R3

Attorneys for the Representatives
 of the Salaried and Non-Union
 Employees and Retirees

Mr. Ronald Pink, Q.C. and
 Ms. Bettina Quistgaard
Pink Larkin LLP
 Suite 201
 1463 South Park Street
 Halifax, Nova Scotia B3J 3S9

Attorneys for the Replacement Plan
 Administrator, Morneau Shepell Ltd.

Monitor's Notice of Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

Me Daniel Boudreault
Philion Leblanc Beaudry Avocats S.A.
Suite 280
5000 des Gradins Boulevard
Quebec, Quebec G2J 1N3

Attorney for the United Steel Workers,
Local Sections 6254 and 6285

Mes Louis Robillard and Roberto Clocchiatti
**Vaillancourt et Clocchiatti,
Contentieux de Retraite Québec**
1055 René-Lévesque Boulevard East
Montreal, Quebec H2L 4S5

Attorneys for Retraite Québec

Me Martin Roy
Stein Monast LLP
Suite 300
70 Dalhousie Street
Quebec, Quebec G1K 4B2

Attorney for Ville de Sept-Îles

PLEASE ACT ACCORDINGLY.

Montreal, November 9, 2017



NORTON ROSE FULBRIGHT CANADA LLP
(Mes Sylvain Rigaud and Chrystal Ashby)
Attorneys of the Monitor
Respondent / *De Bene Esse* Incidental Appellant
FTI Consulting Canada Inc.
1 Place Ville Marie, Suite 2500
Montréal (Quebec) H3B 1R1
Telephone: (514) 847-4747
Fax: (514) 286-5474
sylvain.rigaud@nortonrosefulbright.com
chrystal.ashby@nortonrosefulbright.com
notifications-mtl@nortonrosefulbright.com
Our reference: 10007517-1000155731

Monitor's Notice of Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 9, 2017

**LIST OF APPENDICES
TO THE NOTICE OF INCIDENTAL APPEAL *DE BENE ESSE***

APPENDIX	DESCRIPTION
A	Suspension Order, June 26, 2015, 2015 QCCS 3064 (leave to appeal denied, 2015 QCCA 1351);
B	Jurisdiction Order, January 30, 2017, 2017 QCCA 284.

Montreal, November 9, 2017

Norton Rose Fulbright Canada

NORTON ROSE FULBRIGHT CANADA LLP

(Mes Sylvain Rigaud and Chrystal Ashby)

Attorneys of the Monitor

Respondent / *De Bene Esse* Incidental Appellant

FTI Consulting Canada Inc.

1 Place Ville Marie, Suite 2500

Montréal (Quebec) H3B 1R1

Telephone: (514) 847-4747

Fax: (514) 286-5474

sylvain.rigaud@nortonrosefulbright.com

chrystal.ashby@nortonrosefulbright.com

notifications-mtl@nortonrosefulbright.com

Our reference: 10007517-1000155731

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COURT OF APPEAL DISTRICT OF MONTREAL	
FTI CONSULTING CANADA INC. RESPONDENT / <i>DE BENE ESSE</i> INCIDENTAL APPELLANT v. MICHAEL KEEPER <i>ET AL</i> APPELLANTS / <i>DE BENE ESSE</i> INCIDENTAL RESPONDENTS -and- BLOOM LAKE GENERAL PARTNER LIMITED <i>ET AL</i> MISES-EN-CAUSE	
NOTICE OF INCIDENTAL APPEAL <i>DE BENE ESSE</i> (Articles 352 and 359 C.C.P.)	
O R I G I N A L	
BO-0042	#10007517-10000155731
Mtres Sylvain Rigaud and Chrystal Ashby NORTON ROSE FULBRIGHT CANADA LLP ATTORNEYS 1 Place Ville Marie, suite 2500 Montreal, Quebec H3B 1R1 CANADA Telephone: +1 514.847.4702 Telephone: +1 514.847.6076 Telecopieur : +1 514.286.5474 notifications-mtl@nortonrosefulbright.com	

City of Sept-Iles' Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 8, 2017

CANADA

COUR D'APPEL

PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

C.A.°: 500-09-027075-175
500-09-027076-173
500-09-027077-171
500-09-027082-171

CS : 500-11-048114-157

C.A. : 500-09-027075-175

SYNDICAT DES MÉTALLOS, SECTION
LOCALE 6254

-et-

SYNDICAT DES MÉTALLOS, SECTION
LOCALE 6285

APPELANTES – INTIMÉES INCIDENTES,
(Mises en cause)

c.

FTI CONSULTING CANADA INC.

INTIMÉE- INTIMÉE INCIDENTE, (Contrôleur
Requérant)

et

BLOOM LAKE GENERAL PARTNER
LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

MISES EN CAUSE- MISES EN CAUSE
INCIDENTES (Débitrices)



**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP**

**BLOOM LAKE RAILWAY COMPANY
LIMITED**

WABUSH MINES

ARNAUD RAILWAY COMPANY

**WABUSH LAKE RAILWAY COMPANY
LIMITED**

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL et NEIL JOHNSON**, à titre de
représentants désignés pour représenter
l'ensemble des salariés non-syndiqués dans le
cadre des procédures

MORNEAU SHEPELL LTD

RETRAITE QUEBEC

PROCUREUR GÉNÉRAL DU CANADA,
agissant au nom du Bureau du Surintendant
des Institutions Financières

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR**, as
represented by **THE SUPERINTENDANT OF
PENSIONS**

**MISES EN CAUSE – MISES EN CAUSE
INCIDENTE (Mises en cause)**

et

VILLE DE SEPT-ÎLES

**MISES EN CAUSE – APPELANTE
INCIDENTE (Mise en cause)**

City of Sept-Iles' Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 8, 2017

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No: 500-09-027076-173

**THE ATTORNEY GENERAL OF CANADA,
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDANT OF FINANCIAL
INSTITUTIONS**

APPELANT – INTIMÉ INCIDENT
(Mis en cause)

c.

FTI CONSULTING CANADA INC.

INTIMÉE - MISE EN CAUSE INCIDENTE,
(Monitor)

et

**BLOOM LAKE GENERAL PARTNER
LIMITED**

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP**

**BLOOM LAKE RAILWAY COMPANY
LIMITED**

WABUSH MINES

ARNAUD RAILWAY COMPANY

**WABUSH LAKE RAILWAY COMPANY
LIMITED**

MISES EN CAUSE – MISES EN CAUSE
INCIDENTES (Mises en cause)

et

HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR, as
represented by THE SUPERINTENDANT OF
PENSIONS

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL et NEIL JOHNSON

UNITED STEEL WORKERS, LOCALS 6254
and 6285

RETRAITE QUÉBEC

MORNEAU SHEPELL LTD., in its capacity
as replacement pension administrator

MIS EN CAUSE – MISES EN CAUSES
INCIDENTES (Mis en cause)

et

VILLE DE SEPT-ÎLES

MISE EN CAUSE – APPELANTE INCIDENTE,
(Mise en cause)

No: 500-09-027077-171

MICHAL KEEPER, TERENCE WATT,
DAMIEN LEBEL, NEIL JOHNSON, as
Representatives of the Salaried/Non-Union
Employees and Retirees

APPELANTS – INTIMÉS INCIDENTS,
(Mis en cause)

c.

FTI CONSULTING CANADA INC.

INTIMÉE – MISES EN CAUSE INCIDENTE,
(Monitor- Petitioner)

et



**BLOOM LAKE GENERAL PARTNER
LIMITED**

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

**MISES-EN-CAUSE – MISES EN CAUSE
INCIDENTES (Debtors)**

et

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP**

**BLOOM LAKE RAILWAY COMPANY
LIMITED**

WABUSH MINES

ARNAUD RAILWAY COMPANY

**WABUSH LAKE RAILWAY COMPANY
LIMITED**

**MISES-EN-CAUSE – MISES EN CAUSE
INCIDENTES (Mises-en-cause)**

et

**SYNDICAT DES MÉTALLOS, SECTIONS
LOCALES 6254 et 6285**

**MORNEAU SHEPELL LTD, in its capacity as
Replacement Pension Plan Administrator**

RETRAITE QUÉBEC

**THE ATTORNEY GENERAL OF CANADA,
acting on behalf of the OFFICE OF
FINANCIAL INSTITUTIONS**



City of Sept-Iles' Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 8, 2017

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HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR, as
represented by the SUPERINTENDANT OF
PENSIONS

MISES-EN-CAUSE – MISES EN CAUSE
INCIDENTES (Mises-en-cause)

et

VILLE DE SEPT-ÎLES

MISE EN CAUSE – APPELANTE INCIDENTE,
(Mise en cause)

No: 500-09-027082-171

HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR, as
represented by THE SUPERINTENDANT OF
PENSIONS

APPELANT- INTIMÉ INCIDENT
(Mise en cause)

c.

FTI CONSULTING CANADA INC.

INTIMÉE – MISE EN CAUSE INCIDENTE,
(Monitor-Petitioner)

et

BLOOM LAKE GENERAL PARTNER
LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED



WABUSH RESOURCES INC.

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP**

**BLOOM LAKE RAILWAY COMPANY
LIMITED**

WABUSH MINES

ARNAUD RAILWAY COMPANY

**WABUSH LAKE RAILWAY COMPANY,
LIMITED**

**THE ATTORNEY GENERAL OF CANADA,
acting on behalf of the OFFICE OF THE
SUPERINTENDANT OF FINANCIAL
INSTITUTIONS**

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL et NEIL JOHNSON**

**UNITED STEEL WORKERS' LOCALS 6254
and 6285**

RETRAITE QUÉBEC

**MORNEAU SHEPELL LTD, in its capacity as
Replacement Pension Plan Administrator**

**MISES-EN-CAUSE – MISES EN CAUSE
INCIDENTE (Mises en cause)**

et

VILLE DE SEPT-ÎLES

**MISE-EN-CAUSE – APPELANTE INCIDENTE,
Mise en cause**



REQUÊTE DE BENE ESSE POUR PERMISSION D'APPELER DE LA MISE-EN-CAUSE – APPELANTE INCIDENTE VILLE DE SEPT-ÎLES D'UN JUGEMENT RENDU SUR UNE REQUÊTE POUR DIRECTIVES DU CONTRÔLEUR EN MATIÈRE D'ARRANGEMENT AVEC LES CRÉANCIERS DES COMPAGNIES

(Articles 13 et 14 *Loi sur les arrangements avec les créanciers des compagnies*, et articles 352, 357, 359 et 360 *C.p.c.*)

8 novembre 2017

À L'UN DES HONORABLES JUGES DE LA COUR D'APPEL, LA MISE-EN-CAUSE – APPELANTE INCIDENTE VILLE DE SEPT-ÎLES EXPOSE :

INTRODUCTION

1. Le 11 septembre 2017, le juge Stephen W. Hamilton de la Cour supérieure du district de Montréal, s'exprimant en chambre commerciale, a rendu un jugement par lequel il a accueilli la requête pour directives du Contrôleur (« Requête pour directives »), **annexe 1**;
2. Les conclusions de ce jugement sont les suivantes :

« [223] **GRANTS** the Motion by the Monitor for Directions with respect to Pension Claims;

[224] **DECLARES** that trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings;

[225] **DECLARES** that the employee contributions and the normal cost payments are protected to the extent provided for by Sections 6 (6) and 37 (6) of the CCAA;

[225] THE WHOLE WITHOUT COSTS.»

3. L'audition en première instance a duré deux (2) jours;
4. Ce jugement a été rendu en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. 1985, Ch. 36 (« LACC ») et concerne notamment la question de la priorité de la réclamation d'une municipalité pour taxes impayées par rapport à celles relatives aux régimes de retraite dans le contexte d'un plan d'arrangement;



DEMANDE DE PERMISSION D'APPELER DE BENE ESSE

5. Ce jugement serait en principe appelable sur permission en vertu des articles 13 et 14 de la LACC. qui se lisent comme suit :

« 13. Sauf au Yukon, toute personne mécontente d'une ordonnance ou décision rendue en application de la présente loi peut en appeler après avoir obtenu la permission du juge dont la décision fait l'objet d'un appel ou après avoir obtenu la permission du tribunal ou d'un juge du tribunal auquel l'appel est porté et aux conditions que prescrit ce juge ou tribunal concernant le cautionnement et à d'autres égards.

14 (1) Cet appel doit être porté au tribunal de dernier ressort de la province où la procédure a pris naissance. (...)»

[Notre emphase]

6. Cependant, la Ville de Sept-Îles est d'avis qu'il n'est pas nécessaire de demander la permission d'appeler pour former un appel incident et qu'une déclaration d'appel incident *de bene esse* est suffisante, pour les motifs suivants:

- a) Le jugement a fait l'objet de quatre (4) demandes pour permission d'appeler respectivement dans les dossiers suivants, lesquelles ont été accueillies par l'honorable Patrick Healy, j.c.a., le 31 octobre 2017 :

- 1) **500-09-027075-175** : Appel des Appelants Syndicats des métaux, section local 6254 et Syndicat des Métaux, section Locale 6285;
- 2) **500-09-027076-173** : Appel du Procureur général du Canada;
- 3) **500-09-027077-171** : Appel de Michael Keeper, Terrence Watt, Damien Lebel et Neil Johnson à titre de représentants désignés pour représenter l'ensemble des salariés non-syndiqués dans le cadre des procédures;
- 4) **500-09-027082-171** : Appel de Sa Majesté aux droits de Terre-Neuve et du Labrador représentée par le Superintendant des pensions;

tel qu'il appert du procès-verbal d'audience du 31 octobre 2017, **annexe 2** ;

- b) Selon l'article 359 C.p.c., *« Lorsqu'une déclaration d'appel a déjà été déposée dans une affaire, une autre partie peut former un appel incident par le dépôt au greffe d'une déclaration d'appel incident. L'appel incident subsiste malgré l'abandon ou le rejet de l'appel principal »*; [Notre emphase]



- c) Dans ses commentaires concernant cet article rapportés à la page 286 de l'ouvrage intitulé *Commentaires de la Ministre de la Justice*, publié par Wilson & Lafleur, la ministre de la Justice affirme ce qui suit:

« Cet article reprend essentiellement le droit antérieur, mais y ajoute que l'appel incident subsiste malgré l'abandon ou le rejet de l'appel principal. Cette règle permet d'éviter que deux parties n'introduisent un appel principal pour éviter que celui qui, autrement, aurait été incident ne vaille plus en cas d'abandon ou de rejet de l'appel principal.

La déclaration d'appel, qu'elle soit de plein droit ou sur permission, saisit la Cour d'appel et ouvre le dossier d'appel. Dès lors, toute partie peut interjeter son propre appel, incident à l'appel principal, par une simple déclaration sans qu'il soit alors besoin d'obtenir une permission, le dossier étant ouvert.

Sources : CPC 1965 : art. 26.0.1, 500 » [Notre emphase]

7. Malgré ce qui précède, la Ville de Sept-Îles, par prudence, demande à la Cour *de bene esse* la permission de former un appel incident du jugement, **annexe 1**, pour les motifs suivants:
- a) Le 31 octobre 2017, à l'occasion de l'audience sur les requêtes pour permission d'appeler, les avocats de certaines parties appelantes ont indiqué qu'ils estimaient que les parties intimées ou mises en cause devaient former un appel incident si elles voulaient remettre en cause certains motifs ou raisonnements du juge de première instance;
- b) À notre connaissance, la Cour d'appel n'a encore pas eu l'occasion d'interpréter l'article 359 C.p.c.;

QUESTION EN LITIGE ET MOYENS D'APPEL

8. Le jugement, **annexe 1**, met notamment en jeu la question subsidiaire suivante: La créance de la MISE-EN-CAUSE – APPELANTE INCIDENTE Ville de Sept-Îles pour taxes foncières impayées est-elle prioritaire à celles des régimes de retraite ?
9. Selon une jurisprudence constante, et tel que le rappelait la Cour d'appel¹, une partie qui désire en appeler d'un jugement rendu dans le cadre de l'application de la LACC, doit répondre aux critères suivants :

¹ *Aviva compagnie d'assurance du Canada c. Béton Brunet Inc.*, 2016 QCCA 1837 (CanLII), par. 2.



- i. *Whether the point on appeal is of significance to the practice;*
- ii. *Whether the point raised is of significance to the action or proceedings;*
- iii. *Whether the appeal is prima facie meritorious or frivolous;*
- iv. *Whether the appeal will unduly hinder the progress of the action or proceedings;*

Application des critères aux présents dossiers :

a) Critères i) et ii) : L'importance pour la pratique et l'importance pour le dossier :

10. La présente demande de permission d'appeler soulève une question subsidiaire, qui est nouvelle et d'importance pour la pratique, n'ayant jamais été tranchée à notre connaissance par les tribunaux canadiens dans le cadre d'un processus de restructuration entrepris en vertu de la LACC;
11. Dans l'éventualité où la Cour d'appel concluait que les réclamations des régimes de retraite bénéficient d'une fiducie réputée ou d'un « *lien and charge* » applicables au Québec, il est nécessaire que la question de la priorité d'une réclamation d'une municipalité pour taxes foncières impayées sur celles de régimes de retraite soit tranchée pour l'avenir, cette question étant sujette à être soulevée à maintes reprises dans le futur dans le cadre de plans de restructuration entrepris en vertu de la LACC;
12. L'impact économique de la question soulevée par le présent appel incident est de l'ordre de plusieurs millions pour la Ville de Sept-Îles, et pourrait également être considérable pour d'autres municipalités en général, considérant que, selon le *Code civil du Québec* (art. 2654.1 C.c.Q.) et selon la LACC, leurs créances font l'objet d'une protection et d'un traitement prioritaire;

b) Critère iii) : *Prima Facie*, la question est sérieuse et mérite d'être soumise à la Cour d'appel

13. Cette question est sérieuse et mérite d'être soumise à la Cour d'appel pour les motifs suivants :



- a) Quatre (4) appels principaux ont déjà été autorisés dans les présents dossiers;
- b) Aux paragraphes 119 à 128 du jugement, le juge expose d'une façon favorable à la Ville de Sept-Îles les principes de droits applicables à la question subsidiaire de la priorité des créances de la Ville de Sept-Îles pour taxes impayées par rapport à celles des régimes de retraite. Cependant, il n'a pas jugé nécessaire de trancher complètement cette question, concluant que les fiducies réputées en matière de régime de retraite ne sont pas valables dans le cadre de l'application de la LACC :

«[127] The Ville de Sept-Îles argues that its claim for property and water taxes predates the liquidation of the Wabush CCAA Parties and any default in payment of the contributions, and therefore takes priority even if the deemed trust is valid.

[128] However, for the reasons set out below, it is not necessary for the Court to decide those priority issues.

(...)

[217]. As result of the foregoing, the Court comes to the following conclusions:

1. The trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings;

(...)

*[224] **DECLARES** that trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings »*

- c) Cette omission du juge de première instance est déterminante car, dans l'éventualité où la Cour d'appel accueillait les appels principaux dans les présents dossiers et déclarait que les créances des régimes de retraite bénéficient de fiducies réputées ou de « *lien and charge* » applicables au Québec, pour une solution complète du litige, elle devra se prononcer sur la question subsidiaire de la priorité des créances de la Ville de Sept-Îles pour taxes impayées par rapport à celle des régimes de retraite;



c) Critère iv) : L'appel incident projeté n'a pas pour effet de retarder le processus de restructuration entrepris

14. Considérant que quatre (4) appels principaux ont déjà été autorisés dans les présents dossiers, l'appel incident de la Ville de Sept-Îles n'aura certes pas pour effet de retarder le processus de restructuration entrepris;

AUTRES MOYENS

15. La Ville de Sept-Îles se réserve le droit de soulever des moyens d'appel additionnels à l'effet qu'il n'y a pas eu de liquidation au sens de l'article 8 de *Loi de 1985 sur les normes de prestation de pension*, L.R.C. (1985) ch. 32 (« *PBSA* ») et de l'article 32 de la *Pension Benefits Act*, 1997, SNL, 1996, c. P-4.01 (« *NLPBA* »), contrairement à ce que le juge Hamilton a conclu dans le jugement, **annexe 1**, et, subsidiairement, qu'une telle liquidation n'existait pas en date de l'ordonnance initiale

16. La Ville de Sept-Îles se réserve également le droit de soulever des moyens à l'effet que l'article 32 de la *NLPBA* ne protège pas les déficits de terminaison

CONCLUSIONS RECHERCHÉES

17. Compte tenu des moyens d'appel énoncés à sa déclaration d'appel incident *de bene esse*, jointe en **annexe 3**, la Ville de Sept-Îles demandera à la Cour d'appel ce qui suit :

Dans l'éventualité où la Cour d'appel accueillait les appels principaux dans les dossiers 500-09-027075-175, 500-09-027076-173, 500-09-027077-171 et 500-09-027082-171 et infirmait la conclusion énoncée au paragraphe 224 du jugement, et où elle concluait que les réclamations des régimes de retraite bénéficient d'une fiducie réputée ou d'un « *lien and charge* » applicable au Québec:

ACCUEILLIR l'appel incident de la Ville de Sept-Îles;

DÉCLARER que la créance de la Ville de Sept-Îles pour taxes foncières impayées a priorité sur celles des régimes de retraite en ce qui concerne le produit de la vente des immeubles des débitrices situés sur le territoire de la Ville de Sept-Îles;



LE TOUT, avec frais de justice;

POUR CES MOTIFS, VOUS PLAISE :

ACCUEILLIR la présente requête;

AUTORISER la Ville de Sept-Îles à introduire l'appel incident du jugement rendu le 11 septembre 2017 par l'honorable juge Stephen W. Hamilton de la Cour supérieure, siégeant en chambre commerciale, dans le district de Montréal, dans le dossier portant le numéro 500-11-048114-157;

Toutefois, si la Cour concluait que la permission d'appeler n'était pas requise et que l'appel incident pouvait être formé par le seul dépôt d'une déclaration d'appel incident, **PRENDRE ACTE** du dépôt de la déclaration d'appel incident de la MISE EN CAUSE- APPELANTE INCIDENTE Ville de Sept-Îles;

LE TOUT, frais à suivre selon le sort de l'appel.

Québec, le 8 novembre
2017



STEIN MONAST S.E.N.C.R.L.

Me Martin Roy

70, Dalhousie, bureau 300

Québec (Québec) G1K 4B2

Téléphone : (418) 640-4426

Télécopieur : (418) 523-5391

Courriel : martin.roy@steinmonast.ca

Notification : notification@steinmonast.ca

Avocats de la MISE EN CAUSE – APPELANTE
INCIDENTE Ville de Sept-Îles

City of Sept-Îles' Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 8, 2017

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DÉCLARATION SOUS SERMENT DE MAÎTRE MARTIN ROY

Je, soussigné, Martin Roy, avocat, exerçant ma profession au 70, Dalhousie, bureau 300, à Québec, G1K 4B2, déclare solennellement ce qui suit:

1. Je suis l'un des avocats de l'étude Stein Monast qui représente la Ville de Sept-Îles en la présente instance;
2. Tous les faits allégués au soutien de la requête pour permission d'appeler *de bene esse* sont vrais.

ET J'AI SIGNÉ :



MARTIN ROY

Déclaré solennellement devant moi à Québec,
ce 8^{ième} jour de novembre 2017


Commissaire à l'assermentation



City of Sept-Iles' Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 8, 2017

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AVIS DE PRÉSENTATION

À :

<p>INTIMÉE – INTIMÉE INCIDENTE (Contrôleur Requérent)</p> <p>FTI Consulting Canada Inc. 79, rue Wellington Ouest Bureau 2100 Toronto (Ontario) M5K 1G8</p>	<p>Norton RoseFulbright LLP Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1 Attention : Me Sylvain Rigaud (Montréal) et Me Chrystal Ashby (Montréal) Courriel : sylvain.rigaud@nortonrosefulbright.com chrystal.ashby@nortonrosefulbright.com Téléphone : (514) 847-4702 Télécopieur : 514-286-5474</p> <p>Avocats de FTI Consulting Canada Inc. (Monitor)</p>
<p>MISES-EN CAUSE- MISE EN CAUSE INCIDENTE (débitrices) :</p> <p>Bloom Lake General Partner Limited 1155 boul. Robert-Bourassa Bureau 508 Montréal QC H3B 3A7</p> <p>Quinto Mining Corporation 1155 boul. Robert-Bourassa Bureau 508 Montréal QC H3B 3A7</p> <p>8568391 Canada Limited 1155 boul. Robert-Bourassa Bureau 508 Montréal QC H3B 3A7</p> <p>Cliffs Québec Iron Mining ULC 1155 boul. Robert-Bourassa Bureau 508 Montréal QC H3B 3A7</p> <p>Wabush Iron Co Limited 200, Public Square Bureau 3300 Cleveland Ohio USA 44114</p> <p>Wabush Resources Inc 199 rue Bay Bureau 4000 Toronto ON M5L 1A9</p>	<p>Blake, Cassels & Graydon LLP 1 Place Ville Marie, Suite 3000 Montréal, Québec H3B 4N8 Attention: Me Bernard Boucher (Montréal) Courriel: bernard.boucher@blakes.com Téléphone : (514) 982-4000 Télécopieur : 514-982-4099 ou 416-982-4099</p> <p>Avocats de Bloom Lake General Partner Limited, Quinto Mining Corporation, 856891 Canada Limited, Cliffs Québec Iron Mining ULC, Wabush Iron Co Limited, Wbush Resources Inc., The Bloom Lake Iron Ore Mine Limited Partnership, Bloom Lake Railway Company Limited, Wbush Mines, Arnaud Railway Company, Wabush Lake Railway Company Limited</p>



City of Sept-Îles' Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 8, 2017

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<p>MISES EN CAUSE- MISES EN CAUSE INCIDENTE (mises en cause):</p> <p>The Bloom Lake Iron Ore Mine Limited Partnership 1155 boul. Robert-Bourassa Bureau 508 Montréal (Québec) H3B 3A7</p> <p>Bloom Lake Railway Company Limited 1155 boul. Robert-Bourassa Bureau 508 Montréal (Québec) H3B 3A7</p> <p>Wabush Mines 1505, Chemin de la Pointe noire Sept-Îles, (Québec) G4R 4K3</p> <p>Arnaud Railway Company 1Place Ville-Marie, bureau 3000 Montréal (Québec), H3B 4N8</p> <p>Wabush Lake Railway Company Limited 1155 boul. Robert-Bourassa Bureau 508 Montréal Québec) H3B 3A7</p>	
<p>APPELANTE – INTIMÉ INCIDENT– (mise en cause)</p> <p>Superintendent of Pensions (Newfoundland and Labrador) Government of Newfoundland and Labrador 2nd Floor, West Block, Confederation Bldg 100, Prince Philip Drive St. John's (Terre-Neuve) A1B 4J6</p>	<p>Irving Mitchell Kalichman 2, Place-Alexis Nihon 3500 boulevard de Maisonneuve Ouest Bur. 1400 Westmount QC H3Z 3C1 Attention : Me Doug Mitchell Courriel : dmitchell@imk.ca Téléphone : 514-935-2725 Télécopieur : 514-935-2999</p> <p>Avocats de Superintendent of Pensions (Newfoundland and Labrador)</p>
<p>APPELANTES-INTIMÉES INCIDENTES (Mises en cause)</p> <p>Syndicat des Métallos Section Locale 6254 737, boul. Laure, bureau 201 Sept-Îles (Québec) G4R 1Y2</p>	<p>Philion Leblanc Beaudry Avocats s.a. 5000, boul. des Gradins, bureau 280 Québec (Québec) G2J 1N3 Attention : Me Daniel Boudreault; Courriel : dboudreault@plba.ca jfbaudry@plba.ca Télécopieur : 418-627-7386</p>



City of Sept-Iles' Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 8, 2017

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<p>Syndicat des Métallos Section Locale 6285: Union Drive Wabush, (Terre-Neuve et Labrador) A0R 1B0</p>	<p>Avocats de Syndicat des Métallos, Section Locale 6254 et de Syndicat des Métallos, Section Locale 6285</p>
<p>MISE EN CAUSE – MISE EN CAUSE INCIDENTE (mise en cause)</p> <p>Morneau Shepell Ltd En sa qualité de remplacement pour les régimes de retraite</p> <p>7071, route Bayers Bureau 3007 Halifax (Nouvelle-Écosse) B3L 2C2</p>	<p>Pink Larkin Suite 201, 1463 South Park Street P.O Box 36036, Halifax (Nova Scotia) B3J 3S9 Attention: Me Ron Pink Courriel: rpink@pinklarkin.com Télécopieur : 902-423-9588</p> <p>Avocats de Morneau Shepell (Wabush Mines Replacement Plan's Administrator)</p>
<p>APPELANTS – INTIMÉS INCIDENTS (mis en cause)</p> <p>Michael Keeper 1049, Fitzsimmons Drive Brockville (Ontario), K6V 0A2</p> <p>Terence Watt 6 Willow Street, suite 101 Waterloo (Ontario), N2J 4S3</p> <p>Damien Lebel 14, rue Pégase Bonsecours (Québec) J0E 1H0</p> <p>Neil Johnson 72 Whiteway Drive Wabush (Terreneuve et Labrador) A0R 1B0</p> <p>à titre de représentants désignés pour représenter les Non-Union Employees and Retirees</p>	<p>Scheib Legal / Étude Légale 600, de Maisonneuve West, Suite 1700 Montréal QC H3A 3J2 Attention : Me Nicholas Scheib Courriel : nick@scheib.ca Téléphone : 514-297-2631 Télécopieur : 514-360-2790</p> <p>et</p> <p>Koskie Minsky LLP 20 Queen Street West, Suite 900 Toronto, Ontario M5H 3R3 Attention : Me Andrew J. Hatnay Courriel: ahatnay@kmlaw.ca Téléphone : (416) 977-8353 Télécopieur : 416-977-3316</p> <p>Avocats de Michael Keeper and Terence Watt, Damien Lebel et Neil Johnson à titre de représentants désignés pour représenter les Non-Union Employees and Retirees</p>



City of Sept-Îles' Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 8, 2017

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<p>MISE EN CAUSE – MISE EN CAUSE INCIDENTE (Mise en cause)</p> <p>Retraite Québec 2600 boul. Laurier Bureau 548 Québec QC G1V 4T3</p>	<p>Vaillancourt & Clocchiatti 2600, boul. Laurier, Suite 501 Québec QC G1V 4T3 Attention : Me Louis Robillard Courriel : louis.robillard@retraitequebec.gouv.qc.ca Téléphone : 418-657-8702 poste 3038 Télécopieur : 418-643-9590</p> <p>Avocats de Retraite Québec</p>
<p>APPELANT - INTIMÉ INCIDENT (Mis en cause)</p> <p>Procureur général du Canada (Bureau du Surintendant des institutions financières)</p> <p>200 boul. René-Lévesque Ouest Tour Est, 9^e étage Montréal QC H2Z 1X4</p>	<p>Ministère de la Justice Canada Complexe Guy-Favreau 200 boul. René-Lévesque Ouest, 9 étage Montréal QC H2Z 1X4 Attention: Me Pierre Lecavalier Courriel : pierre.lecavalier@justice.gc.ca Téléphone : 514-283-4042 Téléphone : 438-826-4420 Télécopieur : 514-283-3856</p> <p><u>Avocats du Procureur général du Canada</u></p>
<p>Greffe de la Cour supérieure du Palais de Justice de Montréal</p>	

PRENEZ AVIS que la requête pour permission d'appeler *de bene esse* sera présentée devant un juge de la Cour d'appel siégeant à l'Édifce Ernest-Cormier, situé au 100 rue Notre-Dame Est, à Montréal, le **17 novembre 2017, à 9h30**, en salle RC-18.

VEUILLEZ AGIR EN CONSÉQUENCE.

Québec, le 8 novembre 2017

STEIN MONAST S.E.N.C.R.L.

Me Martin Roy

70, Dalhousie, bureau 300

Québec (Québec) G1K 4B2

Téléphone : (418) 640-4426

Télécopieur : (418) 523-5391

Courriel : martin.roy@steinmonast.ca

Notification : notification@steinmonast.ca

Avocats de Avocats de la MISE EN CAUSE –
APPELANTE INCIDENTE Ville de Sept-Îles



City of Sept-Iles' Application for Leave to File an Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 8, 2017

Cour D'APPEL
Province de Québec
District de Montréal
C.S. 500-11-048114-157

C.A. : 500-09-027075-175
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 et al.
APPELANTES – INTIMÉES INCIDENTES, Mises en cause

C.A. : 500-09-027076-173
**THE ATTORNEY GENERAL OF CANADA, ACTING ON BEHALF OF
THE OFFICE OF THE SUPERINTENDANT OF FINANCIAL
INSTITUTIONS**
APPELANT – INTIMÉ INCIDENT, Mis en cause

C.A. : 500-09-027077-171
**MICHAEL KEEPER, TERENCE WATT, DAMIEL LEBEL, NEIL
JOHNSON**, as Representatives of the Salaried/Non-Union Employees
and Retirees
APPELANTS – INTIMÉS INCIDENTS, Mis en cause

C.A. : 500-09-027082-171
**HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR,
as represented by THE SUPERINTENDANT OF PENSIONS**
APPELANT- INTIMÉ INCIDENT, Mise en cause

REQUÊTE *DE BENE ESSE* POUR PERMISSION D'APPELER DE LA
MISE-EN-CAUSE – APPELANTE INCIDENTE VILLE DE SEPT-ÎLES
D'UN JUGEMENT - **RENDU SUR UNE REQUÊTE POUR DIRECTIVES
DU CONTRÔLEUR EN MATIÈRE D'ARRANGEMENT AVEC LES
CRÉANCIERS DES COMPAGNIES** (Articles 13 et 14 *Loi sur les
arrangements avec les créanciers des compagnies*, et articles 352, 357,
359 et 360 C.p.c.)

BS 2307

n/d: 1052732
casier no 14

Me Martin Roy – 418-640-4426
Notification : notification@steinmonast.ca



Stein Monast

S.E.N.C.R.L. **AVOCATS**

Édifice Stein Monast
70, rue Dalhousie
Bureau 300
Québec (Québec) G1K 4B2
CANADA

Téléphone : 418.529.6531
Télécopieur : 418.523.5391
notification@steinmonast.ca

CANADA

COUR D'APPEL

**PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL**

C.A.°: 500-09-027075-175
500-09-027076-173
500-09-027077-171
500-09-027082-171

CS : 500-11-048114-157

C.A. : 500-09-027075-175

**SYNDICAT DES MÉTALLOS, SECTION
LOCALE 6254**

et

**SYNDICAT DES MÉTALLOS, SECTION
LOCALE 6285**

**APPELANTES – INTIMÉES INCIDENTES
(Mises en cause)**

c.

FTI CONSULTING CANADA INC.

**INTIMÉE- INTIMÉE INCIDENTE, (Contrôleur
Requérant)**

et

**BLOOM LAKE GENERAL PARTNER
LIMITED**

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED



WABUSH RESOURCES INC.

MISES EN CAUSE- MISE EN CAUSE
INCIDENTES (Débitrices)

et

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP**

**BLOOM LAKE RAILWAY COMPANY
LIMITED**

WABUSH MINES

ARNAUD RAILWAY COMPANY

**WABUSH LAKE RAILWAY COMPANY
LIMITED**

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL et NEIL JOHNSON**, à titre de
représentants désignés pour représenter
l'ensemble des salariés non-syndiqués dans le
cadre des procédures

MORNEAU SHEPELL LTD

RETRAITE QUEBEC

PROCUREUR GÉNÉRAL DU CANADA,
agissant au nom du Bureau du Surintendant
des Institutions Financières

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR**, as
represented by **THE SUPERINTENDANT OF
PENSIONS**

MISES EN CAUSE – MISES EN CAUSE
INCIDENTE (Mises en cause)

et

VILLE DE SEPT-ÎLES

MISES EN CAUSE – APPELANTE
INCIDENTE (Mise en cause)



No: 500-09-027076-173

**THE ATTORNEY GENERAL OF CANADA,
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDANT OF FINANCIAL
INSTITUTIONS**

APPELANT – INTIMÉ INCIDENT
(Mis en cause)

c.

FTI CONSULTING CANADA INC.

INTIMÉE - MISE EN CAUSE INCIDENTE,
(Monitor)

et

**BLOOM LAKE GENERAL PARTNER
LIMITED**

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.



THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY
LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY
LIMITED

MISES EN CAUSE – MISES EN CAUSE
INCIDENTES (Mises en cause)

et

HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR, as
represented by THE SUPERINTENDANT OF
PENSIONS

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL et NEIL JOHNSON

UNITED STEEL WORKERS, LOCALS 6254
and 6285

RETRAITE QUÉBEC

MORNEAU SHEPELL LTD., in its capacity
as replacement pension administrator

MIS EN CAUSE – MISES EN CAUSES
INCIDENTES (Mis en cause)

et

VILLE DE SEPT-ÎLES

MISE EN CAUSE – APPELANTE INCIDENTE,
(Mise en cause)



No: 500-09-027077-171

**MICHAL KEEPER, TERENCE WATT,
DAMIEL LEBEL, NEIL JOHNSON,** as
Representatives of the Salaried/Non-Union
Employees and Retirees

APPELANTS – INTIMÉS INCIDENTS,
(Mis en cause)

c.

FTI CONSULTING CANADA INC.

INTIMÉE – MISES EN CAUSE INCIDENTE,
(Monitor- Petitioner)

et

**BLOOM LAKE GENERAL PARTNER
LIMITED**

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

MISES-EN-CAUSE – MISES EN CAUSE
INCIDENTES (Debtors)

et

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP**

**BLOOM LAKE RAILWAY COMPANY
LIMITED**

WABUSH MINES

ARNAUD RAILWAY COMPANY



**WABUSH LAKE RAILWAY COMPANY
LIMITED**

MISES-EN-CAUSE – MISES EN CAUSE
INCIDENTES (Mises-en-cause)

et

**SYNDICAT DES MÉTALLOS, SECTIONS
LOCALES 6254 et 6285**

MORNEAU SHEPELL LTD, in its capacity as
Replacement Pension Plan Administrator

RETRAITE QUÉBEC

THE ATTORNEY GENERAL OF CANADA,
acting on behalf of the **OFFICE OF
FINANCIAL INSTITUTIONS**

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR, as
represented by the SUPERINTENDANT OF
PENSIONS**

MISES-EN-CAUSE – MISES EN CAUSE
INCIDENTES (Mises-en-cause)

et

VILLE DE SEPT-ÎLES

MISE EN CAUSE – APPELANTE INCIDENTE,
(Mise en cause)



No: 500-09-027082-171

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR, as
represented by THE SUPERINTENDANT OF
PENSIONS**

**APPELANT- INTIMÉ INCIDENT
(Mise en cause)**

c.

FTI CONSULTING CANADA INC.

**INTIMÉE – MISE EN CAUSE INCIDENTE,
(Monitor-Petitioner)**

et

**BLOOM LAKE GENERAL PARTNER
LIMITED**

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP**

**BLOOM LAKE RAILWAY COMPANY
LIMITED**

WABUSH MINES

ARNAUD RAILWAY COMPANY

**WABUSH LAKE RAILWAY COMPANY,
LIMITED**

**THE ATTORNEY GENERAL OF CANADA,
acting on behalf of the OFFICE OF THE
SUPERINTENDANT OF FINANCIAL
INSTITUTIONS**



MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL et NEIL JOHNSON

UNITED STEEL WORKERS' LOCALS 6254
and 6285

RETRAITE QUÉBEC

MORNEAU SHEPELL LTD, in its capacity as
Replacement Pension Plan Administrator

MISES-EN-CAUSE –MISES EN CAUSE
INCIDENTE (Mises en cause)

et

VILLE DE SEPT-ÎLES

MISE-EN-CAUSE – APPELANTE INCIDENTE,
(Mise en cause)

**DÉCLARATION D'APPEL INCIDENT *DE BENE ESSE* de la MISE-EN-CAUSE –
APPELANTE INCIDENTE VILLE DE SEPT-ÎLES**

(Articles 13 et 14 *Loi sur les arrangements avec les créanciers des compagnies*; Article
359 *C.p.c.* et art. 31 *R.P.C.C.A.*)
8 Novembre 2017

A - INTRODUCTION

1. La Ville de Sept-Îles se porte appelante incidente *de bene esse* contre le jugement de la Cour supérieure rendu le 11 septembre 2017 par l'honorable juge Stephen W. Hamilton, siégeant en chambre commerciale dans le district de Montréal, qui a accueilli la requête pour directives du Contrôleur (« Requête pour directives ») ;
2. Les conclusions de ce jugement sont les suivantes :

« [223] **GRANTS** the Motion by the Monitor for Directions with respect to Pension Claims;

[224] **DECLARES** that trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings;



[225] DECLARES that the employee contributions and the normal cost payments are protected to the extent provided for by Sections 6 (6) and 37 (6) of the CCAA;

[225] The WHOLE WITHOUT COSTS.»

3. Ce jugement a été rendu en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. 1985, Ch. 36 (« LACC ») et concerne notamment la question subsidiaire de la priorité de la réclamation d'une municipalité pour taxes impayées par rapport à celles relatives aux régimes de retraite;
4. Ce jugement a fait l'objet de quatre (4) demandes de permission d'appeler en vertu des articles 13 et 14 de la *LACC* respectivement dans les dossiers suivants, lesquelles ont été accueillies par l'honorable Patrick Healy, j.c.a., le 31 octobre 2017 :
 - 1) **500-09-027075-175** : Appel des Appelants Syndicats des métaux, section local 6254 et Syndicat des Métaux, section Locale 6285;
 - 2) **500-09-027076-173** : Appel du Procureur général du Canada;
 - 3) **500-09-027077-171** : Appel de Michael Keeper, Terrence Watt, Damien Lebel et Neil Johnson à titre de représentants désignés pour représenter l'ensemble des salariés non-syndiqués dans le cadre des procédures;
 - 4) **500-09-027082-171** : Appel de Sa Majesté aux droits de Terre-Neuve et du Labrador représentée par le Superintendant des pensions;
 tel qu'il appert du procès-verbal d'audience du 31 octobre 2017;
5. L'audition en première instance a duré deux (2) jours;

B - DÉCLARATION D'APPEL DE BENE ESSE

6. Le 31 octobre 2017, à l'occasion de l'audience sur les requêtes pour permission d'appeler, les avocats de certaines parties appelantes ont indiqué qu'ils estimaient que les parties intimées ou mises en cause devaient former un appel incident si elles voulaient remettre en cause certains motifs ou raisonnements du juge de première instance;
7. Selon la jurisprudence constante de la Cour d'appel, un appel ne porte que sur le dispositif du jugement et il n'y a pas lieu de former un appel incident pour



remettre en cause certains motifs d'une décision ou pour défendre un jugement en plaidant des arguments que le juge de première instance a écartés ou laissés sans réponse, puisque dans de tels cas, une partie peut énoncer ces arguments dans son mémoire d'intimée à l'encontre d'un appel principal¹;

8. La Cour d'appel se prononçait comme suit dans l'arrêt *Daigle c. Mathieu*, 2010 QCCA 1312 (CanLII), aux paragraphes 20 et 21 :

« [20] Il peut sembler inhabituel que l'intimée attaque une conclusion de la juge de première instance dans un mémoire où elle se porte par ailleurs à la défense du dispositif du jugement a quo et où elle demande à la Cour, par ses propres conclusions, de « rejeter l'appel principal ». En effet, le juge Adjuditor Rivard a déjà écrit ce qui suit dans un ouvrage sur l'appel :

Ne peut donc former un appel recevable que celui qui est lésé par le jugement de première instance; la cause du préjudice doit se trouver dans le dispositif du jugement, non seulement dans les motifs.

(...)

[21] En réalité, cette situation n'a rien d'irrégulier, malgré ce que prétendent les intimés incidents. Les auteures d'une monographie sur l'appel précisent à ce sujet :

L'intimé, dans le cadre de l'appel principal, peut demander à la Cour de réexaminer les aspects du jugement qui lui sont défavorables, en réponse à l'appel principal. Il n'y a donc pas lieu de former un appel incident pour attaquer des motifs de la décision auxquels l'intimé ne souscrit pas.

L'énoncé s'appuie sur deux arrêts récents de la Cour. Ainsi donc, l'intimée pouvait plaider comme elle l'a fait dans son mémoire le caractère erroné de la conclusion formulée au paragraphe [141] des motifs de première instance; ce faisant, d'ailleurs, elle ne remettait aucunement en question le dispositif du jugement, elle offrait plutôt une raison additionnelle d'en confirmer le bien-fondé. (...) »

¹ *Droit de la famille - 092582*, 2009 QCCA 2006, par. 3; *Société canadienne des postes c. Blouin*, [1996] R.D.J., p. 94; *Therriault c. Le Barreau du Québec*, 2003 CanLII 45871 (QCCA), par.13 et 14; *Meunerie B.L. inc. (Syndic de)*, 2007 QCCA 1601, par. 7; *Del Guidice c. Honda Canada inc.*, 2007 QCCA 922, par. 22 à 23; *Cloutier c. Société Canada Trust*, 2008 QCCA 544, para. 19; *Daigle c. Mathieu*, 2010 QCCA 1312, par. 20 et 21; *S.M. c. R.K.*, 2015 QCCA 1401, paragraphes 6, 7; *Procureur général du Québec c. Fiset*, 2017 QCCA 512, paragraphes. 10-12; *Succession de Ashegh*, 2017 QCCA 927, par. 1 et 2; *Harvey c. Gouvernement régional d'Eeyou Istachee Baie-James*, 2017 QCCA 1098, par. 42 et 43.



9. Considérant l'état du droit, la Ville de Sept-Îles est d'avis qu'elle n'a pas à formuler d'appel incident compte tenu qu'elle ne remet pas en question le dispositif du jugement;
10. Cependant, considérant les commentaires des avocats de certaines parties appelantes, considérant qu'une autre partie a jugé approprié de le faire, et par prudence, elle soumet à la Cour la présente déclaration d'appel incident *de bene esse*;

C - ÉNONCÉ DES MOYENS D'APPEL

11. Le juge de première instance a erré dans son jugement en omettant de trancher complètement une question subsidiaire en litige et ce, pour les motifs suivants;
12. Aux paragraphes 119 à 128 du jugement, le juge expose d'une façon favorable à la Ville de Sept-Îles les principes de droits applicables à la question subsidiaire de la priorité de la créance de la Ville de Sept-Îles pour taxes impayées par rapport à celles des régimes de retraite. Cependant, il n'a pas jugé nécessaire de trancher complètement cette question, concluant que les fiducies réputées en matière de régimes de retraite ne sont pas valables dans le cadre de l'application de la LACC :

«[127] The Ville de Sept-Îles argues that its claim for property and water taxes predates the liquidation of the Wabush CCAA Parties and any default in payment of the contributions, and therefore takes priority even if the deemed trust is valid.

[128] However, for the reasons set out below, it is not necessary for the Court to decide those priority issues.

(...)

[217]. As result of the foregoing, the Court comes to the following conclusions:

1. The trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings;

(...)

*[224] **DECLARES** that trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings »*



13. Cette omission est déterminante car, dans l'éventualité où la Cour d'appel accueillait les appels principaux dans les présents dossiers et déclarait que les créances des régimes de retraite bénéficient de fiducies réputées ou de « *lien and charge* » applicables au Québec, pour une solution complète du litige, elle devra se prononcer sur la question subsidiaire de la préséance de la créance prioritaire de la Ville de Sept-Îles pour taxes impayées par rapport à celles des régimes de retraite;
14. En effet, le produit de la vente des immeubles des débitrices situés à Sept-Îles, immeubles à l'égard desquels des arrérages importants de taxes municipales demeurent impayés, représente une part considérable des sommes disponibles pour distribution aux créanciers des débitrices dans le cadre des procédures sous la *LACC*, et il faudra déterminer qui de la Ville de Sept-Îles ou des régimes de retraite a le premier rang à l'égard de ces sommes;

D - AUTRES MOYENS

15. La Ville de Sept-Îles se réserve le droit de soulever des moyens d'appel additionnels à l'effet qu'il n'y a pas eu de liquidation au sens de l'article 8 de *Loi de 1985 sur les normes de prestation de pension*, L.R.C. (1985) ch. 32 (« *PBSA* ») et de l'article 32 de la *Pension Benefits Act*, 1997, SNL, 1996, c. P-4.01 (« *NLPBA* »), contrairement à ce que le juge Hamilton a conclu dans le jugement, **annexe 1**, et, subsidiairement, qu'une telle liquidation n'existait pas en date de l'ordonnance initiale;
16. La Ville de Sept-Îles se réserve également le droit de soulever des moyens à l'effet que l'article 32 de la *NLPBA* ne protège pas les déficits de terminaison;

E - CONCLUSIONS RECHERCHÉES

17. Pour ces motifs, la partie appelante demandera à la Cour de :

Dans l'éventualité où la Cour d'appel accueillait les appels principaux dans les dossiers 500-09-027075-175, 500-09-027076-173, 500-09-027077-171 et 500-09-027082-171, infirmait la conclusion énoncée au paragraphe 224 du jugement, et où elle concluait que les réclamations des régimes de retraite



bénéficient de fiducies réputées ou d'un « *lien and charge* » applicables au Québec :

ACCUEILLIR l'appel incident de la Ville de Sept-Îles;

DÉCLARER que la créance de la Ville de Sept-Îles pour taxes foncières impayées a priorité sur celles des régimes de retraite en ce qui concerne le produit de la vente des immeubles des débitrices situés sur le territoire de la Ville de Sept-Îles;

LE TOUT, avec frais de justice ;

18. Avis de la présente déclaration d'appel incident est donné aux parties et à leurs avocats impliqués dans les présents dossiers;

Québec, le 8 novembre 2017



STEIN MONAST S.E.N.C.R.L.

Me Martin Roy

70, Dalhousie, bureau 300

Québec (Québec) G1K 4B2

Téléphone : (418) 640-4426

Télécopieur : (418) 523-5391

Courriel : martin.roy@steinmonast.ca

Notification : notification@steinmonast.ca

Avocats de la MISE EN CAUSE - APPELANTE
INCIDENTE Ville de Sept-Îles



City of Sept-Iles' Notice of Incidental Appeal *de bene esse* (C.A.M. 500-09-027075-175, 500-09-027076-173, 500-09-027077-171, 500-09-027082-171), November 8, 2017

Cour D'APPEL
Province de Québec
District de Montréal
C.S. 500-11-048114-157

C.A. : 500-09-027075-175
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254 et al.
APPELANTES – INTIMÉES INCIDENTES, Mises en cause

C.A. : 500-09-027076-173
**THE ATTORNEY GENERAL OF CANADA, ACTING ON BEHALF OF
THE OFFICE OF THE SUPERINTENDANT OF FINANCIAL
INSTITUTIONS**
APPELANT – INTIMÉ INCIDENT, Mis en cause

C.A. : 500-09-027077-171
**MICHAEL KEEPER, TERENCE WATT, DAMIEL LEBEL, NEIL
JOHNSON**, as Representatives of the Salaried/Non-Union Employees
and Retirees
APPELANTS – INTIMÉS INCIDENTS, Mis en cause

C.A. : 500-09-027082-171
HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR,
as represented by THE SUPERINTENDANT OF PENSIONS
APPELANT- INTIMÉ INCIDENT, Mise en cause

DÉCLARATION D'APPEL INCIDENT *DE BENE ESSE* de la MISE-EN-
CAUSE – APPELANTE INCIDENTE VILLE DE SEPT-ÎLES (Articles 13
et 14 *Loi sur les arrangements avec les créanciers des compagnies*,
Article 359 *C.p.c.* et art. 31 *R.P.C.C.A.*)

BS 2307

n/d: 1052732
casier no 14

Me Martin Roy – 418-640-4426
Notification : notification@steinmonast.ca



Stein Monast

S.E.N.C.R.L. **AVOCATS**

Édifice Stein Monast
70, rue Dalhousie
Bureau 300
Québec (Québec) G1K 4B2
CANADA

Téléphone : 418.529.6531
Télécopieur : 418.523.5391
notification@steinmonast.ca

CANADA

PROVINCE DE QUÉBEC

District de Montréal

C.S. N° : 500-11-048114-157

C.A. N° : 500-09-027075-175

C O U R D ' A P P E L

**DANS L'AFFAIRE DE LA LOI SUR LES
ARRANGEMENTS AVEC LES
CRÉANCIERS DES COMPAGNIES,
L.R.C. 1985, CH. C-36, TELLE
QU'AMENDÉE**

**SYNDICAT DES MÉTALLOS, SECTION
LOCALE 6254**, syndicat professionnel
ayant une place d'affaires au 737 boulevard
Laure, bureau 201, Ville de Sept-Îles,
province de Québec, district de Mingan,
G4R 1Y2;

**SYNDICAT DES MÉTALLOS, SECTION
LOCALE 6285**, syndicat professionnel
ayant une place d'affaires au Union Drive,
Ville de Wabush, province de Terre-Neuve-
et-Labrador, A0R 1B0;

PARTIES APPELANTES – Mises en cause

c.

FTI CONSULTING CANADA INC, en sa
qualité de Contrôleur, ayant son siège au
79, rue Wellington Ouest, bureau 2100,
Ville de Toronto, province de l'Ontario, M5K
1G8

PARTIE INTIMÉE – Contrôleur Requéran

Et

**BLOOM LAKE GENERAL PARTNER
LIMITED**, personne morale ayant une place
d'affaires au 1155, boulevard Robert-
Bourassa, bureau 508, Ville de Montréal,
province de Québec, district de Montréal,
H3B 3A7;

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d'arrangement

QUINTO MINING CORPORATION,
personne morale ayant une place d'affaires
au 1155, boulevard Robert-Bourassa,
bureau 508, Ville de Montréal, province de
Québec, district de Montréal, H3B 3A7;

8568391 CANADA LIMITED, personne
morale ayant une place d'affaires au 1155,
boulevard Robert-Bourassa, bureau 508,
Ville de Montréal, province de Québec,
district de Montréal, H3B 3A7;

CLIFFS QUÉBEC IRON MINING ULC,
personne morale ayant une place d'affaires
au 1155, boulevard Robert-Bourassa,
bureau 508, Ville de Montréal, province de
Québec, district de Montréal, H3B 3A7;

WABUSH IRON CO. LIMITED, personne
morale ayant son siège au 200, Public
Square, bureau 3300, Ville de Cleveland,
État de l'Ohio, États-Unis, 44114;

WABUSH RESOURCES INC., personne
morale ayant son siège au 199, rue Bay,
bureau 4000, Ville de Toronto, province de
l'Ontario, M5L 1A9 ;

PARTIES MISE EN CAUSES – Débitrices

Et

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP**, personne
morale ayant une place d'affaires au 1155,
boulevard Robert-Bourassa, bureau 508,
Ville de Montréal, province de Québec,
district de Montréal, H3B 3A7;

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BLOOM LAKE RAILWAY COMPANY LIMITED, personne morale ayant une place d'affaires au 1155, boulevard Robert-Bourassa, bureau 508, Ville de Montréal, province de Québec, district de Montréal, H3B 3A7;

WABUSH MINES, co-entreprise ayant une place d'affaires au C.P. 878, Ville de Sept-Îles, province de Québec, district de Mingan, G4R 4L4;

ARNAUD RAILWAY COMPANY, personne morale ayant son siège au 1, place Ville-Marie, bureau 3000, Ville de Montréal, province de Québec, district de Montréal, H3B 4N8;

WABUSH LAKE RAILWAY COMPANY, LIMITED, personne morale ayant une place d'affaires au 1155, boulevard Robert-Bourassa, bureau 508, Ville de Montréal, province de Québec, district de Montréal, H3B 3A7;

MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL AND NEIL JOHNSON, à titre de représentants désignés par la Cour pour représenter l'ensemble des salariés non-syndiqués dans le cadre des procédures;

MORNEAU SHEPELL LTD, en sa qualité d'administrateur de remplacement pour les régimes de retraite, ayant une place d'affaires au 7071, route Bayers, bureau 3007, Ville de Halifax, province de Nouvelle-Écosse, B3L 2C2;

RETRAITE QUÉBEC, personne morale ayant une place d'affaires au 2600, boulevard Laurier, bureau 548, Ville de Québec, province de Québec, district de Québec, G1V 4T3;

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PROCUREUR GÉNÉRAL DU CANADA,
agissant au nom du Bureau du Surintendant
des Institutions Financières, ayant une
place d'affaires au 200, boulevard René-
Lévesque Ouest, Tour Est, 9^e étage, Ville
de Montréal, province de Québec, district
de Montréal, H2Z 1X4;

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND AND LABRADOR, AS
REPRESENTED BY THE
SUPERINTENDANT OF PENSIONS**, ayant
une place d'affaires au 100, Prince Phillip
Drive, 2^e étage, Bloc Ouest, Ville de St-
John's, province de Terre-Neuve-et-
Labrador, A1B 4J6;

VILLE DE SEPT-ÎLES, corps municipal
ayant une place d'affaires au 546, avenue
De Quen, Ville de Sept-Îles, province de
Québec, district de Mingan, G4R 2R4;

PARTIES MISE EN CAUSES – Mises en
cause

**DEMANDE MODIFIÉE POUR PERMISSION D'APPELER D'UN JUGEMENT
RENDU EN MATIÈRE D'ARRANGEMENT**

**(Articles 13 et 14 de la *Loi sur les arrangements avec les créanciers des
compagnies*, L.R.C. (1985), ch. C-36, Article 357 C.p.c.)**

Parties appelantes - Datée du 6 octobre

**À L'UN DES HONORABLES JUGES DE LA COUR D'APPEL, SIÉGEANT
DANS LE DISTRICT DE MONTRÉAL, LES PARTIES APPELANTES
EXPOSENT CE QUI SUIT :**

I INTRODUCTION

1. En date du 11 septembre 2017, le juge Stephen W. Hamilton, de la Cour Supérieure, chambre commerciale, du district de Montréal, a accueilli la requête pour directives du Contrôleur intitulée *Motion by the Monitor for Directions with respect to Pension Claims* (ci-après la « **Requête** »);

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2. Il s'agit d'un jugement rendu en matière d'arrangement avec les créanciers des compagnies qui concerne plus précisément la priorité associée aux réclamations pour les déficits de régimes de retraite;
3. Le jugement de première instance reprend la majorité des arguments soumis par le Contrôleur, en ce que l'honorable Stephen W. Hamilton décide notamment que :
 - a) Les effets de la *Loi sur les régimes complémentaires de retraite*, RLRQ c. R-15.1 (ci-après la « **LRCR** ») bénéficient uniquement aux cotisations associées aux participants québécois qui ne travaillaient pas sur un ouvrage de compétence fédéral, les effets de la *Loi sur les régimes de retraite*, SNL 1996, c. P-4.01 (ci-après la « **NLPBA** ») bénéficient uniquement aux cotisations associées aux participants terre-neuviens qui ne travaillaient pas sur un ouvrage de compétence fédéral et les effets de la *Loi de 1985 sur les normes de prestation de pension*, L.R.C. (1985), ch. 32 (2e suppl.) (ci-après la « **LNPP** ») bénéficient aux cotisations associées au groupe résiduel qui travaillait sur un ouvrage de compétence fédéral (paragraphe 61 à 81);
 - b) La LRCR ne crée aucune fiducie réputée valide (paragraphe 89 à 112);
 - c) Les fiducies réputées prennent rang en concurrence avec les autres formes de garanties selon la date à laquelle les contributions sont venues à échéance (paragraphe 119 à 128);
 - d) La fiducie réputée constituée par la NLPBA n'affecte pas les biens des débitrices situés au Québec (paragraphe 144 à 154);
 - e) La fiducie réputée constituée par la NLPBA ne trouve pas application dans un contexte d'arrangement avec les créanciers des compagnies en raison de la doctrine de la prépondérance fédérale (paragraphe 177 à 210);
 - f) La fiducie réputée constituée par la LNPP ne trouve pas application dans un contexte d'arrangement avec les créanciers des compagnies selon l'intention du législateur dégagée en application de la doctrine de la prépondérance fédérale (paragraphe 211 à 216);
4. Les parties appelantes joignent à la présente le jugement de première instance à l'**Annexe 1**, une copie des pièces et des éléments de preuve présentés en première instance et nécessaires à son appel à l'**Annexe**

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2, ainsi qu'une copie des actes de procédures relatifs à l'audition de la
requête en première instance à l'**Annexe 3**;

5. Le juge de première instance a erré en droit dans son jugement pour les
motifs qui suivent;

II MOYENS D'APPEL

i) **L'intention du législateur fédéral entourant la protection des régimes de retraite et la doctrine de la prépondérance fédérale**

6. Le juge de première instance a erré en droit lorsqu'il a décidé que la
doctrine de la prépondérance fédérale et que l'intention du législateur
fédéral entraînaient l'inapplicabilité des fiducies réputées constituées
par la NLPBA et la LNPP dans un contexte d'arrangement avec les
créanciers des compagnies;
7. Ces conclusions sous-tendent que le législateur a déterminé un niveau
maximal de protection offert aux créances associées aux régimes de
retraite en promulguant les articles 6(6), 6(7) et 36(7) LACC, ce qui n'est,
en tout respect, pas le cas;
8. Le jugement de première instance conclut également de manière
erronée à une équivalence entre les régimes de faillite et d'arrangement
quant à l'applicabilité des fiducies présumées, alors que les lois elles-
mêmes diffèrent quant aux articles pertinents;
9. Les parties appelantes entendent démontrer que le niveau de protection
offert par les articles 6(6), 6(7) et 36(7) LACC est en fait un niveau
minimal de protection, qui laisse toute la place à l'application des lois
provinciales en matière de régimes de retraites, tel que la NLPBA, et à
la LNPP;
10. Les parties appelantes entendent également démontrer qu'il convient
de distinguer le régime de faillite du régime d'arrangement sur cet
aspect en raison de la différence entre ces deux lois;

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11. Effectivement, le régime de la faillite comporte un ordre de priorité défini exhaustivement, ce qui n'est pas le cas du régime prévu par la LACC;
12. Par conséquent, la conclusion à laquelle le juge de première instance aurait dû parvenir est que la doctrine de la prépondérance fédérale ne peut trouver application en l'espèce, puisqu'on ne retrouve aucun conflit d'application, mais surtout aucune incompatibilité d'objet permettant l'application de cette doctrine qui doit recevoir une interprétation restrictive dans le contexte du fédéralisme canadien;
13. Par ailleurs, l'interprétation proposée par les parties appelantes à l'effet que la doctrine de la prépondérance fédérale n'est pas déclenchée par les fiducies réputées appliquées dans un contexte de distribution est cohérente avec les motifs de la Cour Suprême dans l'affaire *Sun Indalex Finance, LLC c. Syndicat des Métallos*, 2013 CSC 6 :

« [52] La fiducie réputée créée par la LRR continue de s'appliquer dans les instances relevant de la LACC, sous réserve de la doctrine de la prépondérance fédérale (*Crystalline Investments Ltd. c. Domgroup Ltd.*, 2004 CSC 3 (CanLII), [2004] 1 R.C.S. 60, par. 43) »
14. Par ces propos, la Cour Suprême nous indiquait que les fiducies réputées pouvaient trouver application dans d'autres situations que lors du financement intérimaire qui était sous-étude, des cas où la prépondérance fédérale ne serait pas déclenchée;
15. Les parties appelantes soumettent que le jugement de première instance vide cette affirmation de tout son sens, puisqu'il n'y aurait alors aucune situation où les fiducies réputées trouveraient application dans un contexte LACC si elles sont ineffectives pour une éventuelle distribution;
16. Cette erreur de droit est déterminante puisque l'ensemble des conclusions du jugement de première instance sur l'applicabilité de la doctrine de la prépondérance fédérale ou encore sur le fait de faire

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primer les protections minimales prévues à la LACC sur les protections prévues à la LNPP se fondent sur l'intention du législateur ainsi déterminée;

17. En arrivant à une conclusion différente sur la portée et le sens de la protection accordée aux régimes de retraites dans la LACC, le juge de première instance aurait nécessairement conclu à l'inapplicabilité de la doctrine de la prépondérance fédérale en l'espèce, n'y retrouvant aucune assise valable pour prétendre à une incompatibilité d'objet;
18. Dans le même sens, le juge de première instance aurait maintenu les effets de la LNPP malgré l'existence d'une protection minimale prévue sous la LACC;

ii) Les effets des différentes lois en matière de régimes complémentaires de retraite et de fiducies réputées

19. Le juge de première instance a erré en droit lorsqu'il a décidé que l'application compartimentée des différentes lois en matière de régimes complémentaires de retraite;
20. En effet, tel que mentionné précédemment, le juge de première instance a décidé que chaque loi produisait des effets uniquement quant aux cotisations associées aux travailleurs sous sa juridiction;
21. Les parties appelantes entendent démontrer que la NLPBA et sa fiducie réputée produit des effets s'étendant à tout le déficit du régime de retraite des salariés syndiqués et que la LRRCR et la LNPP s'appliquent tout simplement de manière concurrente sans qu'aucune de ces lois ne produise un effet exclusif envers une catégorie de participants;
22. Comme la LRRCR et la LNPP produisent des effets qui ne s'étendent pas au déficit de terminaison mais fixent uniquement des normes minimales (Articles 5 LRRCR et 3 LNPP), rien n'empêche la NLPBA de continuer à produire ses effets de fiducie réputée en lien avec le déficit de

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terminaison à l'avantage de l'ensemble des participants au régime de retraite. Il n'y a ici aucun conflit entre les différentes lois;

23. Cette erreur de droit est déterminante puisque l'application compartimentée que fait le juge de première instance a pour effet de neutraliser une partie importante des effets rémédiateurs de la NLPBA, puisque près de la moitié des participants au régime sont assujettis uniquement à la LNPP ou la LRCR et leur protection moindre par l'effet du jugement de première instance;

iii) La fiducie réputée créée par la LRCR

24. Le juge de première instance a erré en droit lorsqu'il a décidé que la LRCR ne contient aucune fiducie réputée valide en droit, en raison d'un manque au niveau de l'identification de la propriété visée;
25. En effet, le juge de première instance estime que l'article 49 LRCR aurait nécessairement dû comprendre une mention à l'effet que les sommes visées par cette fiducie réputée sont retirées du patrimoine des débitrices pour que les tribunaux puissent conclure à l'existence d'une fiducie réputée valablement constituée;
26. Les parties appelantes entendent démontrer que les articles 49 et 264 de la LRCR comportent les éléments essentiels qui permettent de conclure à l'existence d'une fiducie réputée valablement constituée dans la LRCR;
27. La position des parties appelantes est d'ailleurs soutenue par les conclusions auxquelles la Cour Supérieure était arrivée lorsqu'elle avait été saisie d'une question similaire dans l'affaire *Timminco Itée (Arrangement relatif à)*, 2014 QCCS 174;
28. Cette erreur de droit est déterminante puisqu'elle a pour effet de retirer toute protection aux créances des participants québécois advenant que les conclusions du jugement de première instance sur la prépondérance

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fédérale soient infirmées, mais que ses conclusions sur l'application des trois lois en matière de régimes complémentaires de retraite soient maintenues;

iv) La priorité d'une fiducie réputée créée législativement sur les créanciers garantis

29. Le juge de première instance a erré en droit lorsqu'il a décidé que les fiducies réputées créées législativement prenaient rang en concurrence avec les créanciers garantie en fonction de leur date;
30. Selon le juge de première instance, les dates d'échéances des contributions seraient les éléments permettant de déterminer le rang des créances associées aux fiducies réputées vis-à-vis les droits des créanciers garantis;
31. Les parties appelantes entendent démontrer que l'effet des fiducies réputées ne saurait s'exercer en concurrence avec les droits des créanciers garantis des débitrices;
32. En effet, les fiducies réputées ont pour conséquence directe de déplacer les biens visés du patrimoine des débitrices vers un patrimoine d'affectation distinct;
33. Ainsi, la garantie ne peut plus être exercée par les créanciers garantis puisque les biens visés n'appartiennent tout simplement plus au patrimoine de leur débiteur;
34. Cela est sans compter les dispositions prohibant les saisies à l'encontre des sommes associées aux régimes de retraite dans les différentes lois (Articles 264 LRCR, 36 LNPP, 33 NLPBA);
35. Cette erreur de droit est déterminante puisque l'effet pratique des fiducies réputées est grandement affecté s'il doit entrer en concurrence avec les droits des créanciers garantis;

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v) Les biens visés par la fiducie réputée de la NLPBA

36. Le juge de première instance a erré en droit lorsqu'il a décidé que la fiducie réputée constituée par la NLPBA ne pouvait valablement produire des effets vis-à-vis les biens situés au Québec;
37. Les parties appelantes entendent démontrer que l'article 1262 du *Code civil du Québec*, RLRQ c. CCQ-1991 permet la reconnaissance d'une fiducie constituée par la loi d'une autre province, pour autant qu'elle respecte les conditions applicables en droit québécois;
38. Les parties appelantes estiment que la fiducie réputée constituée par la NLPBA respecte l'ensemble des conditions applicables et que, par conséquent, le juge de première instance aurait dû reconnaître son plein effet, même pour les biens situés au Québec;
39. Cette erreur de droit est déterminante puisque la majorité en valeur des biens qui ont été vendus dans le cadre des procédures d'arrangement se situe au Québec;
40. En faisant une telle distinction, le juge de première instance prive la fiducie réputée de la NLPBA d'une part appréciable de ses effets en annulant ses principales possibilités de permettre le recouvrement de sommes dans le cadre d'une éventuelle distribution;

III L'APPLICATION DES CRITÈRES POUR L'OBTENTION DE LA PERMISSION

41. Les questions en jeu sont des questions de nature à être soumises à la Cour d'appel :
 - a) La question concernant l'effectivité des fiducies réputées dans un contexte de distribution effectuée sous la LACC est certainement une question d'intérêt pour la Cour d'appel, en raison des nombreuses incidences qu'aurait un éventuel arrêt de cette Cour en cette matière;
 - b) Tel que l'honorable juge Kasirer, j.c.a., le mentionnait dans son jugement du 18 août 2015 (*Bloom Lake, g.p.l. (Arrangement*

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- relatif à*), 2015 QCCA 1351), le droit concernant l'applicabilité des fiducies réputées en contexte d'insolvabilité est loin d'être une question résolue en jurisprudence;
- c) La question soulevée par la présente demande de permission concernant l'applicabilité de la fiducie réputée constituée par la NLPBA aux biens situés au Québec est une question nouvelle qui n'a jamais été abordée en jurisprudence;
 - d) La question portant sur la validité de la fiducie réputée constituée par la LRRCR fait l'objet d'une jurisprudence contradictoire, étant directement contraire au jugement rendu dans l'affaire *Timminco ltée (Arrangement relatif à)*, 2014 QCCS 174;
42. Tel que prévu par une jurisprudence constante¹, la partie qui souhaite en appeler d'un jugement rendu dans le cadre de procédure en vertu de la LACC doit montrer qu'elle rencontre les critères suivants :
- a) *whether the point on appeal is of significance to the practice;*
 - b) *whether the point raised is of significance to the action itself;*
 - c) *whether the appeal is prima facie meritorious or, on the other hand, whether it is frivolous; and*
 - d) *whether the appeal will unduly hinder the progress of the action;*
43. Les parties appelantes soumettent que la présente demande de permission rencontre l'ensemble de ces critères;
- i) L'importance pour la pratique en général**
44. Tel que mentionné précédemment, l'applicabilité des fiducies réputées en contexte d'insolvabilité est une question qui n'est pas résolue en jurisprudence mais qui se pose à chaque fois qu'un régime de retraite à prestation déterminée déficitaire fait partie du dossier;
45. La pratique en général pourrait largement bénéficier des questions de principes qui sont soulevées par la présente demande de permission, notamment sur une détermination par la Cour d'appel du caractère

¹ (...)

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effectif des fiducies réputées dans un contexte de distribution entreprise sur la LACC;

ii) L'importance pour le sort de l'action

46. L'importance des questions soulevées en l'espèce est également valable pour le sort de l'action elle-même;
47. Les créances associées aux régimes de retraite dans le présent dossier constituent une part importante de l'ensemble des réclamations formulées à l'encontre des débitrices;
48. Les conséquences du jugement de première instance sont très importantes sur les possibilités des salariés syndiqués de recouvrer les sommes importantes qui sont dues à leur régime de retraite;

iii) Les chances de succès *prima facie*

49. En première instance, les parties ont débattu de l'ensemble des questions en litige pendant deux jours qui ont été constitués uniquement de plaidoiries;
50. De plus, de nombreux arguments avaient déjà été soumis par écrit, tel qu'il appert des nombreuses argumentations écrites soumises en première instance;
51. Par conséquent, les parties appelantes soumettent qu'il existe de nombreux appuis jurisprudentiels ou doctrinaux soutenant des interprétations contraires à ce qui a été déterminé par le juge de première instance;
52. Ces éléments devraient suffire, au stade *prima facie*, à établir des chances raisonnables de succès;

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iv) L'absence d'entrave pour la suite du dossier

53. À ce stade-ci, les procédures en vertu de la LACC sont relativement avancées et rien n'indique qu'une opportunité d'en appeler de la décision de première instance aurait pour effet de paralyser le dossier;
54. Les principaux actifs des débitrices ont été liquidés et la partie intimée travaille toujours au traitement des réclamations qui ont été déposées, pour lesquelles un nombre important d'entre elles sont encore en attente de détermination;
55. Comme la suite du dossier se limite essentiellement en une éventuelle distribution, la partie appelante soumet à cette honorable Cour que l'importance de ce critère est largement diminuée en l'espèce;
56. Même si la partie intimée venait à compléter le traitement des réclamations, il serait possible pour elle de procéder à une distribution partielle pour les entités qui ne sont pas concernées par le présent débat;

IV CONCLUSIONS

57. La partie appelante demandera à la Cour d'appel de :
 - a) **ACCUEILLIR** l'appel;
 - b) **INFIRMER** le jugement de première instance;
 - c) **REJETER** la requête pour directives du Contrôleur intitulée *Motion by the Monitor for Directions with respect to Pension Claims*;
 - d) **DÉCLARER** que les fiducies réputées créées par la *Loi sur les régimes complémentaires de retraite*, RLRQ c. R-15.1, par la *Loi de 1985 sur les normes de prestation de pension*, L.R.C. (1985), ch. 32 (2e suppl.) et par la *Loi sur les régimes de retraite*, SNL 1996, c. P-4.01 s'appliquent nonobstant les procédures en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. (1985), ch. C-36;
 - e) **DÉCLARER** que l'entière du déficit de terminaison du régime de retraite *Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud*

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d'arrangement

Railway Company and Wabush Lake Railway Company
bénéficie de la priorité conférée par la fiducie réputée de la Loi
sur les régimes de retraite, SNL 1996, c. P-4.01;

- f) **DÉCLARER** que la priorité de cette fiducie réputée passe avant toutes créances garanties pouvant grever les biens des débitrices Mises en cause Wabush Mines, Arnaud Railway Company et Wabush Lake Railway Company;
- g) **DÉCLARER** que cette fiducie réputée s'attache à l'ensemble des biens des débitrices Mises en cause Wabush Mines, Arnaud Railway Company et Wabush Lake Railway Company, sans égard à la province dans laquelle ces biens sont situés;
- h) **LE TOUT**, vu la nature du dossier, sans frais.

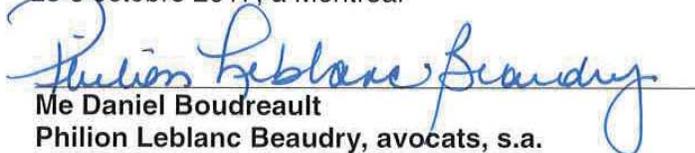
PAR CES MOTIFS, VOUS PLAISE :

ACCUEILLIR la présente requête;

AUTORISER la partie appelante à introduire l'appel du jugement rendu le 11 septembre 2017, par l'honorable Stephen W. Hamilton, de la Cour Supérieure, chambre commerciale, du district de Montréal, dans le dossier portant le numéro 500-11-048114-157;

LE TOUT, frais à suivre selon le sort de l'appel.

Le 6 octobre 2017, à Montréal



Me Daniel Boudreault

Philion Leblanc Beaudry, avocats, s.a.

Avocats des Parties Appelantes

565, boul. Crémazie Est

Bureau 5400

Montréal (Québec) H2M 2V6

Code BM-2719

Téléphone : (514) 387-3538

Télécopieur : (514) 387-7386

dboudreault@plba.ca

DÉCLARATION SOUS SERMENT

Je, soussigné, Daniel Boudreault, avocat, exerçant ma profession au sein de l'étude Philion Leblanc Beaudry, située au 565, boul. Crémazie Est, bureau 5400, Montréal, Québec, H2M 2V6, affirme solennellement ce qui suit :

1. Je suis l'un des procureurs des parties appelantes dans la présente cause;
2. J'atteste que les faits allégués dans la présente demande modifiée de permission d'appeler sont vrais.

et j'ai signé



DANIEL BOUDREULT

Déclaré solennellement devant moi
Montréal, le 6 octobre 2017



Commissaire à l'assermentation pour
tous les districts de la province de
Québec



AVIS DE PRÉSENTATION

Destinataires : **FTI CONSULTING CANADA INC**
79, rue Wellington Ouest, bureau 2100
Toronto (Ontario) M5K 1G8

Partie intimée

Me Sylvain Rigaud
Norton Rose Fulbright SENCRL
1 Place Ville-Marie, bureau 2500
Montréal (Québec) H3B 1R1

Procureur de la partie intimée

Me Bernard Boucher
Blake, Cassels & Graydon SENCRL
1 Place Ville-Marie, bureau 3000
Montréal (Québec) H3B 4N8

Procureur des mises en cause Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Québec Iron Mining ULC, Wabush Iron Co. Limited, Wabush Resources Inc., The Bloom Lake Iron Ore Mine Limited Partnership, Bloom Lake Railway Company Limited, Wabush Mines, Arnaud Railway Company, Wabush Lake Railway Company Limited

Mes Andrew J. Hatnay, Amy Tang et Demetrios Yiokaris
Koskie Minsky LLP
20 Queen Street West, bureau 900
Toronto (Ontario) M5H 3R3

Procureur des mises en cause Michael Keeper, Terence Watt, Damien Lebel et Neil Johnson

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Demande modifiée pour permission d'appeler d'un jugement rendu en matière
d'arrangement

Me Ronald A. Pink

Pink Larkin
1463 rue South Park, bureau 201
Halifax (Nouvelle-Écosse) B3J 3S9

Procureur de la mise en cause Morneau Shepell Ltd.

Me Louis Robillard

Vaillancourt et Clocchiatti, avocats
2600, boul. Laurier, bureau 501
Québec (Québec) G1V 4T3

Procureur de la mise en cause Retraite Québec

Mes Pierre Lecavalier et Michelle Kellam

Justice Canada
200, boulevard René-Lévesque, 9^e étage
Montréal (Québec) H2Z 1X4

Procureur de la mise en cause Procureur général du Canada

Mes Doug Mitchell et Edward Béchard-Torres

Irving, Mitchell, Kalichman SENCRL
3500 boulevard de Maisonneuve Ouest, bureau 1400
Montréal (Québec) H3Z 3C1

Procureur de la mise en cause Superintendent of Pensions

Me Martin Roy

Stein Monast SENCRL
70 rue Dalhousie, bureau 300
Montréal (Québec) G1K 4B2

Procureur de la mise en cause Ville de Sept-Îles

PRENEZ AVIS que la Demande modifiée pour permission d'appeler d'un jugement rendu en matière d'arrangement sera présentée devant un juge de la Cour d'appel siégeant à l'Édifice Ernest-Cormier, situé au 100 rue Notre-Dame Est, à Montréal, le 31 octobre 2017, à 9h30, en salle RC-18.

Syndicat des métallos' Amended Motion for Leave to Appeal (C.A.M. 500-09-027075-175),
October 6, 2017

CS : 500-11-048114-157

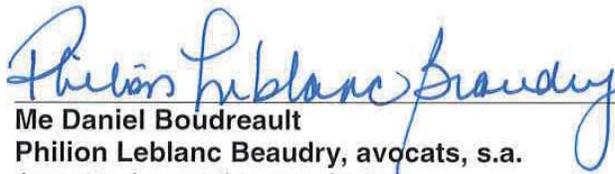
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Demande modifiée pour permission d'appeler d'un jugement rendu en matière
d'arrangement

VEUILLEZ AGIR EN CONSÉQUENCE.

le 6 octobre 2017, à Montréal



Me Daniel Boudreault

Philion Leblanc Beaudry, avocats, s.a.

Avocats des parties appelantes

565, boul. Crémazie Est

Bureau 5400

Montréal (Québec) H2M 2V6

Code BM-2719

Téléphone : (514) 387-3538

Télécopieur : (514) 387-7386

dboudreault@plba.ca

CANADA

PROVINCE DE QUÉBEC

District de Montréal

C.S. N° : 500-11-048114-157

C.A. N° : 500-09-027075-175

COUR D'APPEL

**DANS L'AFFAIRE DE LA LOI SUR LES
ARRANGEMENTS AVEC LES
CRÉANCIERS DES COMPAGNIES,
L.R.C. 1985, CH. C-36, TELLE
QU'AMENDÉE :**

**SYNDICAT DES MÉTALLOS, SECTION
LOCALE 6254, SYNDICAT DES
MÉTALLOS, SECTION LOCALE 6285**

PARTIE APPELANTE – Mises en cause

c.

FTI CONSULTING CANADA INC.

PARTIE INTIMÉE – Contrôleur Requérent

et

**BLOOM LAKE GENERAL PARTNER
LIMITED ET AL.**

PARTIE MISES EN CAUSE

LISTE DES ANNEXES

ANNEXE 1 Jugement de première instance;

ANNEXE 2 Copie des pièces et des éléments de preuve présentés en première instance;

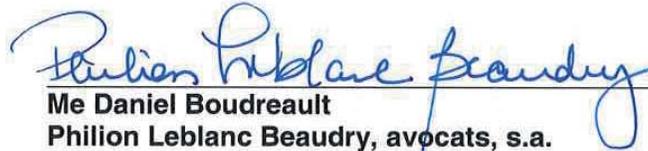
ANNEXE 3 Copie des actes de procédures relatifs à l'audition de la requête en première instance.

Syndicat des métallos' Amended Motion for Leave to Appeal (C.A.M. 500-09-027075-175),
October 6, 2017

CS : 500-11-048114-157
CA : 500-09-027075-175

Liste des annexes

Le 6 octobre 2017, à Montréal



Me Daniel Boudreault
Philion Leblanc Beaudry, avocats, s.a.
Avocats de la Partie Appelante

565, boul. Crémazie Est
Bureau 5400
Montréal (Québec) H2M 2V6
Code BM-2719
Téléphone : (514) 387-3538
Télécopieur : (514) 387-7386
dboudreault@plba.ca

Syndicat des métallos' Amended Motion for Leave to Appeal (C.A.M. 500-09-027075-175),
October 6, 2017

C.S. MTL N° : 500-11-048114-157
C.A. MTL N° : 500-09-027075-175

COUR D'APPEL DU QUÉBEC
DISTRICT DE MONTRÉAL

**DANS L'AFFAIRE DE LA LOI SUR LES ARRANGEMENTS AVEC
LES CRÉANCIERS DES COMPAGNIES, L.R.C. 1985, CH. C-36,
TELLE QU'AMENDÉE :**

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285
PARTIE APPELANTE – Mises en cause

c.
FTI CONSULTING CANADA INC.
PARTIE INTIMÉE – Contrôleur Requérent

et
BLOOM LAKE GENERAL PARTNER LIMITED ET ALS
PARTIE MISE EN CAUSE – Débitrices

et
**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP ET
ALS**
PARTIE MISE EN CAUSE – Mises en cause

**DEMANDE MODIFIÉE POUR PERMISSION D'APPELER D'UN
JUGEMENT RENDU EN MATIÈRE D'ARRANGEMENT**
**(Articles 13 et 14 de la Loi sur les arrangements avec les
créanciers des compagnies, L.R.C. (1985), ch. C-36, Article 357
C.p.c.) ET LISTE DES ANNEXES**
Partie appelante, Datée du 6 octobre 2017

ORIGINAL

N/d : 0026-8157/NC Me Daniel Boudreault
dboudreault@plba.ca


PHILION LEBLANC BEAUDRY
AVOCATS s.a.

565, boul. Crémazie est
Bureau 5400
Montréal (Québec) H2M 2V6
Téléphone.: (514) 387-3538 Télécopieur.: (514) 387-7386
Code juridique : BM-2719

CANADA

PROVINCE DE QUÉBEC

District de Montréal

C.S. N° : 500-11-048114-157

C.A. N° : 500-09-

C O U R D ' A P P E L

DANS L'AFFAIRE DE LA LOI SUR LES ARRANGEMENTS AVEC LES CRÉANCIERS DES COMPAGNIES, L.R.C. 1985, CH. C-36, TELLE QU'AMENDÉE :

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254, syndicat professionnel ayant une place d'affaires au 737 boulevard Laure, bureau 201, Ville de Sept-Îles, province de Québec, district de Mingan, G4R 1Y2;

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285, syndicat professionnel ayant une place d'affaires au Union Drive, Ville de Wabush, province de Terre-Neuve-et-Labrador, A0R 1B0;

PARTIES APPELANTES – Mises en cause

c.

FTI CONSULTING CANADA INC., en sa qualité de Contrôleur, ayant son siège au 79, rue Wellington Ouest, bureau 2100, Ville de Toronto, province de l'Ontario, M5K 1G8

PARTIE INTIMÉE – Contrôleur Requérant

et

BLOOM LAKE GENERAL PARTNER LIMITED, personne morale ayant une place d'affaires au 1155, boulevard Robert-Bourassa, bureau 508, Ville de Montréal, province de Québec, district de Montréal, H3B 3A7;

QUINTO MINING CORPORATION, personne morale ayant une place d'affaires au 1155, boulevard Robert-Bourassa, bureau 508, Ville de Montréal, province de Québec, district de Montréal, H3B 3A7;

8568391 CANADA LIMITED, personne morale ayant une place d'affaires au 1155, boulevard Robert-Bourassa, bureau 508, Ville de Montréal, province de Québec, district de Montréal, H3B 3A7;

CLIFFS QUÉBEC IRON MINING ULC, personne morale ayant une place d'affaires au 1155, boulevard Robert-Bourassa, bureau 508, Ville de Montréal, province de Québec, district de Montréal, H3B 3A7;

WABUSH IRON CO. LIMITED, personne morale ayant son siège au 200, Public Square, bureau 3300, Ville de Cleveland, État de l'Ohio, États-Unis, 44114;

WABUSH RESOURCES INC., personne morale ayant son siège au 199, rue Bay, bureau 4000, Ville de Toronto, province de l'Ontario, M5L 1A9 ;

PARTIES MISES EN CAUSE – Débitrices

et

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, personne morale ayant une place d'affaires au 1155, boulevard Robert-Bourassa, bureau 508, Ville de Montréal, province de Québec, district de Montréal, H3B 3A7;

BLOOM LAKE RAILWAY COMPANY LIMITED, personne morale ayant une place d'affaires au 1155, boulevard Robert-Bourassa, bureau 508, Ville de Montréal, province de Québec, district de Montréal, H3B 3A7;

WABUSH MINES, co-entreprise ayant une place d'affaires au C.P. 878, Ville de Sept-Îles, province de Québec, district de Mingan, G4R 4L4;

ARNAUD RAILWAY COMPANY, personne morale ayant son siège au 1, place Ville-Marie, bureau 3000, Ville de Montréal, province de Québec, district de Montréal, H3B 4N8;

WABUSH LAKE RAILWAY COMPANY, LIMITED, personne morale ayant une place d'affaires au 1155, boulevard Robert-Bourassa, bureau 508, Ville de Montréal, province de Québec, district de Montréal, H3B 3A7;

MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL AND NEIL JOHNSON, à titre de représentants désignés par la Cour pour représenter l'ensemble des salariés non-syndiqués dans le cadre des procédures;

MORNEAU SHEPELL LTD, en sa qualité d'administrateur de remplacement pour les régimes de retraite, ayant une place d'affaires au 7071, route Bayers, bureau 3007, Ville de Halifax, province de Nouvelle-Écosse, B3L 2C2;

RETRAITE QUÉBEC, personne morale ayant une place d'affaires au 2600, boulevard Laurier, bureau 548, Ville de Québec, province de Québec, district de Québec, G1V 4T3;

PROCUREUR GÉNÉRAL DU CANADA, agissant au nom du Bureau du Surintendant des Institutions Financières, ayant une place d'affaires au 200, boulevard René-Lévesque Ouest, Tour Est, 9^e étage, Ville de Montréal, province de Québec, district de Montréal, H2Z 1X4;

HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR, AS REPRESENTED BY THE SUPERINTENDANT OF PENSIONS, ayant une place d'affaires au 100, Prince Phillip Drive, 2^e étage, Bloc Ouest, Ville de St-John's, province de Terre-Neuve-et-Labrador, A1B 4J6;

VILLE DE SEPT-ÎLES, corps municipal ayant une place d'affaires au 546, avenue De Quen, Ville de Sept-Îles, province de Québec, district de Mingan, G4R 2R4;

PARTIES MISES EN CAUSE – Mises en cause

DÉCLARATION D'APPEL

(Articles 13 et 14 de la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. (1985), ch. C-36, Article 352 *C.p.c.*)

Parties appelantes

Datée du 2 octobre 2017

I INTRODUCTION

1. Les parties appelantes se pourvoient contre un jugement de la Cour Supérieure, chambre commerciale, rendu le 11 septembre 2017, par l'honorable Stephen W. Hamilton, siégeant dans le district de Montréal (ci-après le « **Jugement** ») et qui a accueilli la requête pour directives du Contrôleur intitulée *Motion by the Monitor for Directions with respect to Pension Claims* (ci-après la « **Requête** »);

Déclaration d'appel

2. La Requête visait à faire déterminer par la Cour Supérieure quelle devait être la priorité accordée aux différentes composantes des réclamations formulées en faveur des régimes de retraite en cause et une détermination quant à l'applicabilité et l'étendue des fiducies réputées créées par les différentes lois régissant les régimes complémentaires de retraite;
3. En effet, la Requête recherchait des conclusions à l'effet qu'aucune fiducie réputée n'était applicable en l'espèce et que, par conséquent, la seule priorité dont bénéficierait les régimes de retraite serait la priorité pour les contributions des employés et les coûts de service courant prévue aux articles 6(6) et 37(6) de la *Loi sur les arrangements avec les créanciers des compagnies* (ci-après la « **LACC** »);
4. Les parties appelantes se sont opposées à cette Requête, étant plutôt d'opinion que l'ensemble du déficit de terminaison du régime de retraite des salariés syndiqués est visé par une fiducie réputée devant continuer de trouver application dans le contexte des procédures LACC;
5. Le jugement de première instance reprend la majorité des arguments soumis par le Contrôleur, en ce que l'honorable Stephen W. Hamilton décide notamment que :
 - a) Les effets de la *Loi sur les régimes complémentaires de retraite*, RLRQ c. R-15.1 (ci-après la « **LRCR** ») bénéficient uniquement aux cotisations associées aux participants québécois qui ne travaillaient pas sur un ouvrage de compétence fédéral, les effets de la *Loi sur les régimes de retraite*, SNL 1996, c. P-4.01 (ci-après la « **NLPBA** ») bénéficient uniquement aux cotisations associées aux participants terre-neuviens qui ne travaillaient pas sur un ouvrage de compétence fédéral et les effets de la *Loi de 1985 sur les normes de prestation de pension*, L.R.C. (1985), ch. 32 (2e suppl.) (ci-après la « **LNPP** ») bénéficient aux cotisations associées au groupe résiduel qui travaillait sur un ouvrage de compétence fédéral (paragraphe 61 à 81);

Déclaration d'appel

- b) La LRRC ne crée aucune fiducie réputée valide (paragraphe 89 à 112);
 - c) Les fiducies réputées prennent rang en concurrence avec les autres formes de garanties selon la date à laquelle les contributions sont venues à échéance (paragraphe 119 à 128);
 - d) La fiducie réputée constituée par la NLPBA n'affecte pas les biens des débitrices situés au Québec (paragraphe 144 à 154);
 - e) La fiducie réputée constituée par la NLPBA ne trouve pas application dans un contexte d'arrangement avec les créanciers des compagnies en raison de la doctrine de la prépondérance fédérale (paragraphe 177 à 210);
 - f) La fiducie réputée constituée par la LNPP ne trouve pas application dans un contexte d'arrangement avec les créanciers des compagnies selon l'intention du législateur dégagée en application de la doctrine de la prépondérance fédérale (paragraphe 211 à 216);
6. La date de l'avis du jugement est le 15 septembre 2017;
 7. La durée de l'instruction en première instance a été de deux jours;
 8. Les parties appelantes joignent à la présente le jugement de première instance à l'**Annexe 1**;
 9. La valeur de l'objet du litige est de 27,5M\$, représentant la créance due au régime de retraite des salariés syndiqués qui est visée par la fiducie réputée dont bénéficient l'ensemble des membres du Syndicat;
 10. Les parties appelantes soumettent en tout respect que le juge de première instance a erré en droit dans son jugement pour les motifs qui suivent;

II LES MOYENS D'APPEL

i) **L'intention du législateur fédéral entourant la protection des régimes de retraite et la doctrine de la prépondérance fédérale**

11. Le juge de première instance a erré en droit lorsqu'il a décidé que la doctrine de la prépondérance fédérale et que l'intention du législateur fédéral entraînaient l'inapplicabilité des fiducies réputées constituées par la NLPBA et la LNPP dans un contexte d'arrangement avec les créanciers des compagnies;
12. Ces conclusions sous-tendent que le législateur a déterminé un niveau maximal de protection offert aux créances associées aux régimes de retraite en promulguant les articles 6(6), 6(7) et 36(7) LACC, ce qui n'est, en tout respect, pas le cas;
13. Le jugement de première instance conclut également de manière erronée à une équivalence entre les régimes de faillite et d'arrangement quant à l'applicabilité des fiducies présumées, alors que les lois elles-mêmes diffèrent quant aux articles pertinents;
14. Les parties appelantes entendent démontrer que le niveau de protection offert par les articles 6(6), 6(7) et 36(7) LACC est en fait un niveau minimal de protection, qui laisse toute la place à l'application des lois provinciales en matière de régimes de retraites, tel que la NLPBA, et à la LNPP;
15. Les parties appelantes entendent également démontrer qu'il convient de distinguer le régime de faillite du régime d'arrangement sur cet aspect en raison de la différence entre ces deux lois;
16. Effectivement, le régime de la faillite comporte un ordre de priorité défini exhaustivement, ce qui n'est pas le cas du régime prévu par la LACC;

Déclaration d'appel

17. Par conséquent, la conclusion à laquelle le juge de première instance aurait dû parvenir est que la doctrine de la prépondérance fédérale ne peut trouver application en l'espèce, puisqu'on ne retrouve aucun conflit d'application, mais surtout aucune incompatibilité d'objet permettant l'application de cette doctrine qui doit recevoir une interprétation restrictive dans le contexte du fédéralisme canadien;
18. Par ailleurs, l'interprétation proposée par les parties appelantes à l'effet que la doctrine de la prépondérance fédérale n'est pas déclenchée par les fiducies réputées appliquées dans un contexte de distribution est cohérente avec les motifs de la Cour Suprême dans l'affaire *Sun Indalex Finance, LLC c. Syndicat des Métallos*, 2013 CSC 6 :

« [52] La fiducie réputée créée par la LRR continue de s'appliquer dans les instances relevant de la LACC, sous réserve de la doctrine de la prépondérance fédérale (*Crystalline Investments Ltd. c. Domgroup Ltd.*, 2004 CSC 3 (CanLII), [2004] 1 R.C.S. 60, par. 43) »
19. Par ces propos, la Cour Suprême nous indiquait que les fiducies réputées pouvaient trouver application dans d'autres situations que lors du financement intérimaire qui était sous-étude, des cas où la prépondérance fédérale ne serait pas déclenchée;
20. Les parties appelantes soumettent que le jugement de première instance vide cette affirmation de tout son sens, puisqu'il n'y aurait alors aucune situation où les fiducies réputées trouveraient application dans un contexte LACC si elles sont ineffectives pour une éventuelle distribution;
21. Cette erreur de droit est déterminante puisque l'ensemble des conclusions du jugement de première instance sur l'applicabilité de la doctrine de la prépondérance fédérale ou encore sur le fait de faire

Déclaration d'appel

primer les protections minimales prévues à la LACC sur les protections prévues à la LNPP se fondent sur l'intention du législateur ainsi déterminée;

22. En arrivant à une conclusion différente sur la portée et le sens de la protection accordée aux régimes de retraites dans la LACC, le juge de première instance aurait nécessairement conclu à l'inapplicabilité de la doctrine de la prépondérance fédérale en l'espèce, n'y retrouvant aucune assise valable pour prétendre à une incompatibilité d'objet;
23. Dans le même sens, le juge de première instance aurait maintenu les effets de la LNPP malgré l'existence d'une protection minimale prévue sous la LACC;

ii) Les effets des différentes lois en matière de régimes complémentaires de retraite et de fiducies réputées

24. Le juge de première instance a erré en droit lorsqu'il a décidé que l'application compartimentée des différentes lois en matière de régimes complémentaires de retraite;
25. En effet, tel que mentionné précédemment, le juge de première instance a décidé que chaque loi produisait des effets uniquement quant aux cotisations associées aux travailleurs sous sa juridiction;
26. Les parties appelantes entendent démontrer que la NLPBA et sa fiducie réputée produit des effets s'étendant à tout le déficit du régime de retraite des salariés syndiqués et que la LRRCR et la LNPP s'appliquent tout simplement de manière concurrente sans qu'aucune de ces lois ne produise un effet exclusif envers une catégorie de participants;
27. Comme la LRRCR et la LNPP produisent des effets qui ne s'étendent pas au déficit de terminaison mais fixent uniquement des normes minimales (Articles 5 LRRCR et 3 LNPP), rien n'empêche la NLPBA de continuer à

produire ses effets de fiducie réputée en lien avec le déficit de terminaison à l'avantage de l'ensemble des participants au régime de retraite. Il n'y a ici aucun conflit entre les différentes lois;

28. Cette erreur de droit est déterminante puisque l'application compartimentée que fait le juge de première instance a pour effet de neutraliser une partie importante des effets réparateurs de la NLPBA, puisque près de la moitié des participants au régime sont assujettis uniquement à la LNPP ou la LRRCR et leur protection moindre par l'effet du jugement de première instance;

iii) La fiducie réputée créée par la LRRCR

29. Le juge de première instance a erré en droit lorsqu'il a décidé que la LRRCR ne contient aucune fiducie réputée valide en droit, en raison d'un manque au niveau de l'identification de la propriété visée;
30. En effet, le juge de première instance estime que l'article 49 LRRCR aurait nécessairement dû comprendre une mention à l'effet que les sommes visées par cette fiducie réputée sont retirées du patrimoine des débitrices pour que les tribunaux puissent conclure à l'existence d'une fiducie réputée valablement constituée;
31. Les parties appelantes entendent démontrer que les articles 49 et 264 de la LRRCR comportent les éléments essentiels qui permettent de conclure à l'existence d'une fiducie réputée valablement constituée dans la LRRCR;
32. La position des parties appelantes est d'ailleurs soutenue par les conclusions auxquelles la Cour Supérieure était arrivée lorsqu'elle avait été saisie d'une question similaire dans l'affaire *Timminco Itée (Arrangement relatif à)*, 2014 QCCS 174;

33. Cette erreur de droit est déterminante puisqu'elle a pour effet de retirer toute protection aux créances des participants québécois advenant que les conclusions du jugement de première instance sur la prépondérance fédérale soient infirmées, mais que ses conclusions sur l'application des trois lois en matière de régimes complémentaires de retraite soient maintenues;

iv) La priorité d'une fiducie réputée créée législativement sur les créanciers garantis

34. Le juge de première instance a erré en droit lorsqu'il a décidé que les fiducies réputées créées législativement prenaient rang en concurrence avec les créanciers garantie en fonction de leur date;

35. Selon le juge de première instance, les dates d'échéances des contributions seraient les éléments permettant de déterminer le rang des créances associées aux fiducies réputées vis-à-vis les droits des créanciers garantis;

36. Les parties appelantes entendent démontrer que l'effet des fiducies réputées ne saurait s'exercer en concurrence avec les droits des créanciers garantis des débitrices;

37. En effet, les fiducies réputées ont pour conséquence directe de déplacer les biens visés du patrimoine des débitrices vers un patrimoine d'affectation distinct;

38. Ainsi, la garantie ne peut plus être exercée par les créanciers garantis puisque les biens visés n'appartiennent tout simplement plus au patrimoine de leur débiteur;

39. Cela est sans compter les dispositions prohibant les saisies à l'encontre des sommes associées aux régimes de retraite dans les différentes lois (Articles 264 LRCR, 36 LNPP, 33 NLPBA);

40. Cette erreur de droit est déterminante puisque l'effet pratique des fiducies réputées est grandement affecté s'il doit entrer en concurrence avec les droits des créanciers garantis;

v) Les biens visés par la fiducie réputée de la NLPBA

41. Le juge de première instance a erré en droit lorsqu'il a décidé que la fiducie réputée constituée par la NLPBA ne pouvait valablement produire des effets vis-à-vis les biens situés au Québec;
42. Les parties appelantes entendent démontrer que l'article 1262 du *Code civil du Québec*, RLRQ c. CCQ-1991 permet la reconnaissance d'une fiducie constituée par la loi d'une autre province, pour autant qu'elle respecte les conditions applicables en droit québécois;
43. Les parties appelantes estiment que la fiducie réputée constituée par la NLPBA respecte l'ensemble des conditions applicables et que, par conséquent, le juge de première instance aurait dû reconnaître son plein effet, même pour les biens situés au Québec;
44. Cette erreur de droit est déterminante puisque la majorité en valeur des biens qui ont été vendus dans le cadre des procédures d'arrangement se situe au Québec;
45. En faisant une telle distinction, le juge de première instance prive la fiducie réputée de la NLPBA d'une part appréciable de ses effets en annulant ses principales possibilités de permettre le recouvrement de sommes dans le cadre d'une éventuelle distribution;

III CONCLUSIONS

46. Pour les raisons mentionnées précédemment, la partie appelante demandera à la Cour d'appel de :

Déclaration d'appel

- a) **ACCUEILLIR** l'appel;
- b) **INFIRMER** le jugement de première instance;
- c) **REJETER** la requête pour directives du Contrôleur intitulée *Motion by the Monitor for Directions with respect to Pension Claims*;
- d) **DÉCLARER** que les fiducies réputées créées par la *Loi sur les régimes complémentaires de retraite*, RLRQ c. R-15.1, par la *Loi de 1985 sur les normes de prestation de pension*, L.R.C. (1985), ch. 32 (2e suppl.) et par la *Loi sur les régimes de retraite*, SNL 1996, c. P-4.01 s'appliquent nonobstant les procédures en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*, L.R.C. (1985), ch. C-36;
- e) **DÉCLARER** que l'entièreté du déficit de terminaison du régime de retraite *Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company* bénéficie de la priorité conférée par la fiducie réputée de la Loi sur les régimes de retraite, SNL 1996, c. P-4.01;
- f) **DÉCLARER** que la priorité de cette fiducie réputée passe avant toutes créances garanties pouvant grever les biens des débitrices Mises en cause Wabush Mines, Arnaud Railway Company et Wabush Lake Railway Company;
- g) **DÉCLARER** que cette fiducie réputée s'attache à l'ensemble des biens des débitrices Mises en cause Wabush Mines, Arnaud Railway Company et Wabush Lake Railway Company, sans égard à la province dans laquelle ces biens sont situés;
- h) **LE TOUT**, vu la nature du dossier, sans frais.

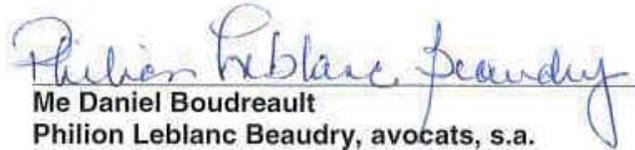
Avis de la présente déclaration d'appel est donné à FTI Consulting Canada Inc., à Me Sylvain Rigaud, aux procureurs des Mises en cause (Mes Bernard Boucher, Andrew J. Hatnay, Amy Tang, Demetrios Yiokaris, Ronald A. Pink, Louis Robillard, Pierre Lecavalier, Michelle Kellam, Doug Mitchell, Edward Bécharde-Torres et Martin Roy) et au greffe de la Cour Supérieure du district de Montréal.

CS : 500-11-048114-157

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Déclaration d'appel

Le 2 octobre 2017, à Montréal


Me Daniel Boudreault
Philion Leblanc Beaudry, avocats, s.a.
Avocats des Parties Appelantes

565, boul. Crémazie Est
Bureau 5400
Montréal (Québec) H2M 2V6
Code BM-2719
Téléphone : (514) 387-3538
Télécopieur : (514) 387-7386
dboudreault@plba.ca

CANADA

PROVINCE DE QUÉBEC

District de Montréal

C.S. N° : 500-11-048114-157

C.A. N° : 500-09-

COUR D'APPEL

**DANS L'AFFAIRE DE LA LOI SUR LES
ARRANGEMENTS AVEC LES
CRÉANCIERS DES COMPAGNIES,
L.R.C. 1985, CH. C-36, TELLE
QU'AMENDÉE :**

**SYNDICAT DES MÉTALLOS, SECTION
LOCALE 6254, SYNDICAT DES
MÉTALLOS, SECTION LOCALE 6285**

PARTIE APPELANTE – Mises en cause

c.

FTI CONSULTING CANADA INC.

PARTIE INTIMÉE – Contrôleur Requérant

et

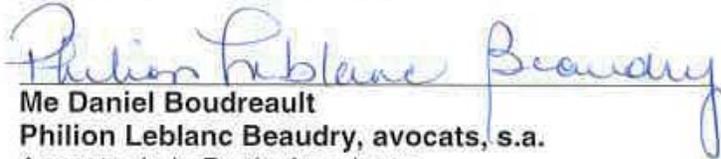
**BLOOM LAKE GENERAL PARTNER
LIMITED ET AL.**

PARTIE MISES EN CAUSE

LISTE DES ANNEXES

ANNEXE 1 Jugement de première instance.

Le 2 octobre 2017, à Montréal


Me Daniel Boudreault
Philion Leblanc Beaudry, avocats, s.a.
Avocats de la Partie Appelante

Newfoundland & Labrador Superintendent of Pensions' Motion for Leave to Appeal (C.A.M. 500-09-027082-171), October 2, 2017

C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

**N° 500-09-
C.S. 500-11-048114-157**

COURT OF APPEAL

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED:**

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR, AS
REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

APPLICANT (Mise-en-cause)

v.

FTI CONSULTING CANADA INC.

RESPONDENT (Monitor-Petitioner)

-and-

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUEBEC IRON MINING
ULC, WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

RESPONDENTS (Debtors)

-and-

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY AND WABUSH LAKE
RAILWAY COMPANY, LIMITED**

**THE ATTORNEY GENERAL OF
CANADA, ACTING ON BEHALF OF THE
OFFICE OF THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS**

-2-

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON**

**UNITED STEEL WORKERS, LOCALS
6254 AND 6285**

RETRAITE QUÉBEC

**MORNEAU SHEPELL LTD., IN ITS
CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

VILLE DE SEPT-ÎLES

Mises-en-cause

**MOTION FOR LEAVE TO APPEAL
OF THE JUDGMENT ON THE AMENDED MOTION BY THE MONITOR FOR
DIRECTIONS WITH RESPECT TO PENSION CLAIMS (#494)
(Section 13 and 14 CCAA and Articles 31, 353, 357, 360-363 CCP)**

Applicant
October 2, 2017

A. INTRODUCTION

1. The Superintendent of Pensions of Newfoundland & Labrador seeks leave to appeal the decision of Mr. Justice Stephen Hamilton (the "**Motion Judge**") of the Superior Court of Quebec on the Amended Motion by the Monitor for Directions with Respect to Pension Claims in *Arrangement relatif à Bloom Lake*, 2017 QCCS 4057 (Court File S.C. No. 500-11-048114-157) (the "**Motion Decision**") dated September 11, 2017, and attached hereto as Annex A. The hearing before the Motion Judge was held on June 28 and 29, 2017.
2. The Motion Judge granted the Amended Motion for Directions by the Monitor, FTI Consulting Canada Inc., and declared that the deemed trusts created by the *Pension Benefits Act, 1997*, SNL 1996, c. P-4.01 ("**NLPBA**"), the *Supplemental Pension Plans Act*, CQLR c. R-15.1 ("**SPPA**"), and the *Pension Benefits Standards*

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Act, 1985, R.S.C., 1985, c. 32 ("**PBSA**"), are not enforceable in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**"). The Motion Judge likewise concluded that the deemed trust created by the *NLPBA* could not in any event attach to the proceeds of property formerly located in the Province of Quebec. The Superintendent hereby seeks leave to appeal the Motion Judge's decision.

B. CONTEXT

3. Since 1965, the Wabush Mines JV (a joint venture of Wabush Iron Co. Limited and Wabush Resources Inc.) has operated an iron ore mine near the Town of Wabush, Newfoundland & Labrador, as well as a port facility and a pellet production facility in Pointe-Noire, Québec. The ore was transported from Wabush to Pointe-Noire by the Arnaud Railway Company and the Wabush Lake Railway Company, Limited (collectively, the "**Wabush CCAA Parties**").
4. The Wabush CCAA Parties, in addition to Cliffs Mining Company, Managing Agent, sponsor two pension plans with defined benefit provisions for their salaried and unionized employees and retirees (the "**Union DB Plan**" and the "**Salaried DB Plan**", respectively). Both plans originally included a majority of employees who reported for work in Newfoundland & Labrador, although many members reported for work in Québec and on the two federally-regulated railways.¹ The two DB Plans now include over two thousand members; their membership breakdown by jurisdiction is detailed at paragraph 6 of the Motion Decision.
5. On May 19, 2015, the Wabush CCAA Parties filed a motion for the issuance of an initial order under the CCAA. On June 26, 2015, the Superior Court ordered the suspension of payment by the Wabush CCAA Parties of their monthly amortization payments and their annual lump sum "catch-up" payments coming due under the two DB Plans. The Court also ordered the suspension of payment of other post-

¹ The two railways have been declared to be works for the general advantage of Canada: see *An Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company*, (1960) 8-9 Eliz. II, ch. 63, s. 3.

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retirement benefits, including life insurance, health care and a supplemental retirement arrangement plan.²

6. On December 16, 2015, the Superintendent and the Office of the Superintendent of Financial Institutions (“OSFI”) terminated both plans, effective immediately. As of March 2016, the monthly benefits being paid to the retirees of the Salaried DB Plan were reduced by 25%, and the benefits being paid to the retirees of the Union DB Plan were reduced by 21%.
7. During the course of the present CCAA proceedings, all or substantially all of the assets were sold, and the proceeds are now held by the Monitor. These assets were located in both the Provinces of Newfoundland & Labrador and Quebec.
8. There are significant amounts still owed to the Salaried and Union DB Plans. \$6,671,820 is still owed to the Union DB Plan as special payments and catch-up special payments, while \$2,185,756 is still owed in special payments to the Salaried DB Plan. The wind-up deficiencies of the Union and Salaried DB Plan are valued at \$27,486,548 and \$27,450,000, respectively.
9. On September 20, 2016, the Monitor filed a Motion for Directions – later amended on April 13, 2017, and attached as Annex B to the present Motion – seeking a determination of various issues relating to potential pension claims, including:
 - 1) What law applies to determine each DB Plan member’s pension rights;
 - 2) Whether a “liquidation” had occurred triggering the deemed trust outlined in section 32(2) of the *NLPBA* and section 8 of the *PBSA*;
 - 3) Whether the *NLPBA*’s liquidation deemed trust encompasses the full wind-up deficiency owed to the two DB Plans after termination, or whether it was limited to simply the normal costs and special payments which have accrued;

² 2015 QCCS 3064; motion for leave to appeal dismissed, 2015 QCCA 1351.

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- 4) Whether the trust outlined in section 49 of the *SPPA* constitutes a valid deemed trust;
- 5) Whether the deemed trusts in the *NLPBA* and the *SPPA* are rendered inoperative as a result of an alleged conflict with the federal *CCAA*;
- 6) Likewise, whether the deemed trust outlined in the federal *PBSA* was in conflict with the federal *CCAA* and, if so, how ought that conflict be resolved;
- 7) Whether the deemed trust created by the *NLPBA* could charge property located outside the Province of Newfoundland & Labrador, specifically in the Province of Quebec;
- 8) Whether the deemed trust under the *SPPA* could take priority over the Ville de Sept-Îles' claim for unpaid property taxes.

C. MOTION DECISION

10. On the issues put to him in the Monitor's Motion for Directions, the Motion Judge concluded as follows:
 - 1) The law that applies to any given plan member will depend on where that plan member reported for work (paras. 61-81).
 - 2) There was "liquidation" of the insolvent debtors in this case, thereby giving rise to the liquidation deemed trusts outlined in the *NLPBA* and the *PBSA* (paras. 155-175). This liquidation, in his view, would have begun at the very outset of the insolvency proceedings, on May 19, 2015 (para. 173).
 - 3) The Motions Judge also assumed that the deemed trust under the *NLPBA* applies to the full wind-up deficits owed to the two DB pension plans.
 - 4) As for the Quebec members, the Motions judge concluded that the Quebec *SPPA* does not create a valid deemed trust that is enforceable against third parties, since it lacks the "key language" that deems certain amounts "to be

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separate from and form no part of the estate in liquidation, assignment or bankruptcy" (paras. 90-91).

- 5) The Motion Judge concluded that the *NLPBA*'s deemed trusts and concurrent lien and charge conflict with the *CCAA*, and are therefore rendered inoperative by virtue of the doctrine of paramountcy (paras. 177-210).
- 6) Finally, the Motions Judge concluded that the *NLPBA*'s deemed trust of the *NLPBA* could not attach to property located in the Province of Quebec (paras. 144-154).

D. GROUND FOR APPEAL

11. The Superintendent seeks leave to appeal on the basis that the Motion Judge erred in concluding a) that the *NLPBA*'s deemed trusts conflict with the *CCAA* and are thereby rendered inoperative, and b) that the *NLPBA*'s deemed trusts could not attach to the proceeds of sales currently held by the Monitor.

a) *The NLPBA does not conflict with the CCAA*

12. Sections 6(6), 6(7) and 36(7) *CCAA* enshrine certain minimal protections for pension liabilities, specifically the normal costs and the unremitted employee contributions deducted at source. These guarantees must be satisfied before a *CCAA* court may authorize a sale of assets or approve a plan of arrangement.
13. Section 32 of the *NLPBA* does not expressly conflict with these – or any other – sections of the *CCAA*. Section 32 simply provides for a deemed trust and a lien and charge that confer additional protection for pensioners. This is constitutionally inoffensive: cooperative federalism indeed recognizes that provincial laws can supplement and add to the protections envisioned in federal law.³ This has

³ See e.g. *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, 2007 SCC 22, at para. 72; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536, at para. 66; and *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 26.

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occurred in areas such as highway safety⁴, the regulation of pesticides⁵, tobacco advertising⁶, and even in insolvency proceedings⁷. Respectfully, the Motion Judge discarded this settled jurisprudence when he concluded as follows:

It is clear that Parliament had weighed the competing interests and decided that this was the protection that all pension plan members across Canada would receive. It left no room for the provinces. (Para. 192, underlining added)

14. Respectfully, the Motion Judge's conclusion is inconsistent with the "guiding principle" of modern federalism jurisprudence, which stresses that courts should facilitate and encourage the overlap between both federal and provincial laws, so that both levels of government may pursue their own vision of the public good within their respective spheres of competence.⁸

15. Fundamentally, Parliament is presumed to be respectful of the Provinces' legislative authority.⁹ As the Supreme Court of Canada has repeatedly insisted, courts should only impute to Parliament an intention to "cover the field" on a given question if Parliament employs "very clear statutory language to that effect".¹⁰ Otherwise, the "fundamental rule of constitutional interpretation" requires that courts interpret federal legislation as if it welcomes the overlapping application of provincial law.¹¹

16. Parliament did not employ any of the "very clear statutory language" required to shut out any possible provincial action in sections 6(6) or 36(7) CCAA. These

⁴ *O'Grady v. Sparling*, [1960] SCR 804, 1960 CanLII 70 (SCC).

⁵ *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 (CanLII), [2001] 2 S.C.R. 241, at paras. 34-42 specifically.

⁶ *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005] 1 S.C.R. 188, 2005 SCC 13.

⁷ *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419

⁸ *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 21, see also *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, 2007 SCC 22, at paras. 22 and 37; *Alberta (Attorney General) v. Moloney*, 2015 SCC 51, [2015] 3 S.C.R. 327, at para. 15.

⁹ *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, 2007 SCC 22, at para. 74.

¹⁰ *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005] 1 S.C.R. 188, 2005 SCC 13, at para. 21; *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, 2007 SCC 22, at para. 74; *Bank of Montreal v. Marcotte*, [2014] 2 SCR 725, 2014 SCC 55, at para. 72; *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 27.

¹¹ *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 20-22.

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provisions are instead framed as minimum guarantees; section 6(6) even contemplates a situation in which an arrangement is concluded which provides for *more* protection than the minimum level envisioned in federal law. This absence of any legislative language ruling out provincial law is made all the more conspicuous by the fact that Parliament *actually did* rule out the continued application of provincial deemed trusts in favour of the Crown in section 37 of the CCAA.

17. What is more, the “extraneous evidence” the Motion Judge considered of Parliament’s intent only demonstrates that Parliament considered affording more protection to pensioners when it amended the CCAA in 2009, but chose not to. On its own, this is insufficient and cannot meet the “high standard” for invoking paramountcy on the basis of a frustration of federal purpose.¹² Parliament will often consider different policy alternatives – and different ways of balancing competing interests – before settling on its preferred choice. If these everyday legislative choices implied that Parliament “covered the field” and definitively decided a given question, the Provinces would be significantly handicapped from pursuing their own vision of the public good in their own areas of competence. Paramountcy must instead be applied with restraint.¹³
18. Moreover, while it is not determinative, paramountcy arguments rarely succeed without the express support of the federal government, speaking through its Attorney General.¹⁴ In this case, the AGC’s submissions dovetail with the Superintendent’s. Only the Monitor and the Wabush CCAA Parties seek to invoke paramountcy.
19. The Motion Judge’s alternative basis for invoking paramountcy is more tenuous still. The Motion Judge decided that the *Bankruptcy and Insolvency Act*’s comprehensive scheme of collocation applies, in its totality, to a CCAA liquidation

¹² *Marine Services International Ltd. v. Ryan Estate*, [2013] 3 SCR 52, 2013 SCC 44, at para. 84.

¹³ *Bank of Montreal v. Marcotte*, [2014] 2 SCR 725, 2014 SCC 55, at para. 74, *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 27.

¹⁴ *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005] 1 S.C.R. 188, 2005 SCC 13, at para. 26, citing *Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, [2002] 2 S.C.R. 146, 2002 SCC 31 (CanLII), at paras. 72-73.

(paras. 202-210). In his view, the “bottom line is that a liquidating CCAA requires a scheme of distribution and the only one which makes sense is the scheme of distribution under the BIA” (para. 208).

20. In this, the Motion Judge relies on *Century Services Inc. v. Canada*, [2010] 3 S.C.R. 379, 2010 SCC 60, where Deschamps J. noted that the rights conferred under the CCAA should be interpreted harmoniously with the rights provided under the BIA, so as to avoid giving secured creditors a strategic incentive to seek the debtor's bankruptcy.¹⁵
21. However, *Century Services* only directs courts on how they ought to *interpret* provisions of the CCAA and the BIA. It provides no legal basis to graft the BIA's entire scheme of collocation into a CCAA liquidation. This was confirmed in *Sun Indalex Finance LLC v. United Steelworkers*, [2013] 1 SCR 271, 2013 SCC 6, where this very argument was put before the Supreme Court of Canada, and rejected in these terms :

[51] [...] Provincial legislation defines the priorities to which creditors are entitled until that legislation is ousted by Parliament. Parliament did not expressly apply all bankruptcy priorities either to CCAA proceedings or to proposals under the BIA. Although the creditors of a corporation that is attempting to reorganize may bargain in the shadow of their bankruptcy entitlements, those entitlements remain only shadows until bankruptcy occurs. At the outset of the insolvency proceedings, Indalex opted for a process governed by the CCAA, leaving no doubt that although it wanted to protect its employees' jobs, it would not survive as their employer. This was not a case in which a failed arrangement forced a company into liquidation under the BIA. Indalex achieved the goal it was pursuing. It chose to sell its assets under the CCAA, not the BIA.

22. The Motions Judge's apparent repudiation of *Indalex* is an error of law in its own right. More fundamentally, it is unclear what authority *any court* would have to re-write the CCAA in this way. If there are indeed “gaps” in the CCAA, then provincial law

¹⁵ *Century Services Inc. v. Canada*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 47.

continues to apply unimpeded, since it “defines the priorities to which creditors are entitled until that legislation is ousted by Parliament”.¹⁶

b) The NLPBA's deemed trust and lien and charge may attach to the proceeds of assets formerly located in the Province of Quebec

23. Respectfully, the Motion Judge erred in not giving direct effect to the *NLBA's* deemed trust and lien and charge directly in Quebec through article 3079 of the *Civil Code of Québec*. Section 32 *NLPBA* is clearly a mandatory provision of another “State” which is closely connected to the insolvency of the Wabush CCAA Parties. Furthermore, there are “legitimate and manifestly preponderant interests” for doing so. The Wabush CCAA Parties’ business straddled the provincial border, and their multijurisdictional pension plan included members from both jurisdictions. In these circumstances, the “integrating character of our constitutional arrangement”¹⁷ required the Motion Judge to give full effect to the law of a sister province, especially in the context of national insolvency proceedings.

24. That the Quebec legislature did not see fit to confer similar protections on Quebec employees and retirees should not have compelled the Motion Judge to decline to apply Newfoundland & Labrador law to property in Quebec.

E. THESE ISSUES MERIT LEAVE TO APPEAL

25. Pursuant to sections 13 and 14(2) of the *CCAA*, leave to appeal must be sought from this Honourable Court. Leave is to be granted if the issue on appeal is of significance to the practice of insolvency law generally and to the action itself, if the grounds for appeal are *prima facie meritorious* or are at least not frivolous, and if the appeal will not unduly hinder the progress of the action.¹⁸

26. The question of federal paramountcy is of great significance to both insolvency law generally and to these particular proceedings. The Motion Judge’s conclusion

¹⁶ *Sun Indalex Finance LLC v. United Steelworkers*, [2013] 1 SCR 271, 2013 SCC 6, at para. 51.

¹⁷ See *Morguard Investments Ltd. V. De Savoye*, 1990 CanLII 29 (SCC), [1990] 3 S.C.R. 1077, at pp. 1100.

¹⁸ See e.g. *Re Stomp Pork Farm Ltd.*, 2008 SKCA 73, at para. 29; *Statoil Canada Ltd. (Arrangement relative à)*, 2013 QCCA 851; *Bloom Lake, g.p.l. (Arrangement relative à)*, 2015 QCCA 1351, para. 29.

implies that provincial pension legislation may *never* supplement the minimum protections outlined in sections 6(6) and 36(7) CCAA, contrary to what was expressed by the Supreme Court in *Indalex*. More fundamentally, the Motion Judge's reasoning raises an important issues relating to the doctrine of federal paramountcy, namely the conditions under which Parliament may "cover the field" on a given question.

27. The Motion Judge's conclusion that the *BIA*'s scheme of collocation applies to a liquidating CCAA is more important still. As a matter of law, it represents an important departure from the Supreme Court of Canada's precedents in *Century Services* and *Indalex*. It implies that *any provincial law* which subverts the *BIA*'s scheme of collocation will be rendered inoperative at the outset of every CCAA proceeding. This, as a matter of practice, will surely have important implications on negotiations under the CCAA.
28. The conflict of laws issue is also important. There is a dearth of jurisprudence – and virtually no appellate jurisprudence – on the issue of when a real right created by the legislation of one province may attach to the assets of a debtor subjected to nation-wide insolvency proceedings.
29. With respect to the implications for this particular case, if the two conclusions mentioned above were reversed, the *NLPBA*'s deemed trust would secure both the special payments and the full wind-up deficit owed to the Salaried and Union DB Plans. These issues are thus of great import to all of the pension plan members.
30. For the reasons detailed above, the grounds of appeal are likewise not frivolous.
31. Finally, this appeal will not unduly hinder the progress of the action. These insolvency proceedings are at their end. These are the last – and certainly most important – issues to be resolved before the Monitor can proceed to distribute the proceeds of its CCAA liquidation.
32. The Superintendent reserves its right to make submissions on any other issues for which leave may be granted in the present matter.

FOR THESE REASONS, MAY IT PLEASE THIS HONOURABLE COURT TO:

- I. **GRANT** the present Motion;
- II. **AUTHORIZE** the Superintendent to appeal from the Judgment issued by the Honourable Stephen Hamilton on September 11, 2017, granting the Monitor's Motion for Directions in part;
- III. **FIX** a date for the hearing of the Superintendent's appeal.

MONTREAL, this October 2, 2017

(s) IMK s.e.n.c.r.l. / LLP

M^e Doug Mitchell | dmitchell@imk.ca

M^e Edward Béchard-Torres | ebechardtorres@imk.ca

IMK s.e.n.c.r.l./LLP

3500 De Maisonneuve Boulevard West

Suite 1400

Montreal, Quebec H3Z 3C1

T : 514 935-2725 | F : 514 935-2999

Lawyer for the Mis-en-cause

SUPERINTENDENT OF PENSIONS OF NEWFOUNDLAND &

LABRADOR

Our file: 1606-4

BI0080

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IMK LLP

IMK LLP

Newfoundland & Labrador Superintendent of Pensions' Motion for Leave to Appeal (C.A.M. 500-09-027082-171), October 2, 2017

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AFFIDAVIT OF EDWARD BÉCHARD-TORRES
(October 2nd, 2017)

I, EDWARD BÉCHARD-TORRES, attorney, practicing law at IMK LLP, 3500 de Maisonneuve Boulevard West, Suite 1400, Montreal, Quebec, H3Z 3C1, solemnly affirm as follows:

1. I am an associate at the law firm IMK LLP. Our firm has represented the Superintendent of Pensions of Newfoundland & Labrador since the outset of the present Wabush CCAA proceedings.
2. Mr. Doug Mitchell and I represented the Superintendent before Mr. Justice Stephen Hamilton on the Monitor FTI Consulting Canada Inc.'s Motion for Directions, the hearing being held on June 28 and 29, 2017.
3. All of the facts alleged in the within *Motion for Leave to Appeal* are true and correct to the best of my knowledge. These facts give rise to important questions of law, notably with respect to the constitutional doctrine of federal paramountcy and Quebec conflicts of laws principles.

AND I HAVE SIGNED THIS 2nd DAY OF
OCTOBER, 2017 IN MONTRÉAL, QUÉBEC:



EDWARD BÉCHARD-TORRES

Solemnly affirmed before me at
Montréal, this 2nd day of October 2017


Commissioner of Oaths for Quebec



NOTICE OF PRESENTATION

TO:

**Me Bernard Boucher and
Mr. Steven Weisz**
BLAKE CASSELS & GRAYDON S.R.L.
600 de Maisonneuve West Blvd,
Suite 2200
Montreal, Quebec H3A 3J2
Fax: (514) 982-4099 and (416) 982-4099

Attorneys for the Wabush CCAA Parties

Me Martin Roy
STEIN MONAST LLP
70, Rue Dalhousie, Bureau 300
Québec, Québec G1K 4B2
Fax: (418) 523-5391

Attorney for Ville de Sept-Îles

Me Daniel Boudreault
PHILION LEBLANC BEAUDRY,
AVOCATS S.A.
5000, boul. des Gradins, Suite 280
Quebec, Quebec G2J 1N3
Fax: (418) 627-7386

Attorney for the United Steel Workers

**Me Sylvain Rigaud and
Me Chrystal Ashby**
NORTON ROSE FULBRIGHT CANADA
LLP
1 Place Ville Marie, Suite 2500
Montreal, Quebec H3B 1R1
Fax: (514) 286-5474

*Attorneys for FTI Consulting Canada Inc.,
Monitor*

**Mr. Andrew J. Hatnay, Mr. Demetrios
Yiokaris, Ms. Amy Tang and
Mr. Jules Monteyne**
KOSKIE MINSKY LLP
20 Queen Street West, Suite 900, Box 52
Toronto, Ontario M5H 3R3
Fax: (416) 977-3316

*Representative Counsel for the Salaried
Employees and Retirees*

**Mr. Ronald Pink, Q.C., and
Ms. Bettina Quistgaard**
PINK LARKIN LLP
1463 South Park Street, Suite 201
Halifax, Nova Scotia,
P.O. Box 36036 B3J 3S9
Fax: (902) 423-9588

*Attorneys for the Replacement Plan
Administrator, Morneau Shepell Ltd.*

Newfoundland & Labrador Superintendent of Pensions' Motion for Leave to Appeal (C.A.M. 500-09-027082-171), October 2, 2017

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Me Pierre Lecavalier
Me Michelle Kellam
DEPARTMENT OF JUSTICE – CANADA
200 René-Lévesque West Blvd.
East Tower, 9th Floor
Montreal, Quebec H2Z 1X4

Fax: (514) 496-4073

*Attorneys for the Attorney General of
Canada*

Me Louis Robillard and
Me Roberto Clocchiatti
VAILLANCOURT ET CLOCCHIATTI,
CONTENTIEUX DE RETRAITE QUEBEC
1055 Boulevard René-Lévesque East
Montréal, Quebec H2L 4S5

Fax: (418) 643-9590

Attorneys for Retraite Quebec

Superior Court of Quebec
(Commercial Division)
Palais de justice de Montréal
1, rue Notre-Dame Est
Montreal, Quebec H2Y 1B6

NOTICE IS HEREBY GIVEN that the Superintendent's *Motion for Leave to Appeal* will be presented before a judge of the Court of Appeal sitting at Édifice Ernest-Cormier, located at 100 Notre-Dame Street East, in Montreal, on October 31st in Courtroom RC-18.

PLEASE ACT ACCORDINGLY.

MONTREAL, this October 2, 2017

(s) IMK s.e.n.c.r.l. / LLP

M^e Doug Mitchell | dmitchell@imk.ca
M^e Edward Bécharde-Torres | ebecharde@imk.ca

IMK s.e.n.c.r.l./LLP
3500 De Maisonneuve Boulevard West
Suite 1400
Montreal, Quebec H3Z 3C1
T : 514 935-2725 | F : 514 935-2999

Lawyer for the Mis-en-cause
SUPERINTENDENT OF PENSIONS OF NEWFOUNDLAND &
LABRADOR
Our file: 1606-4
BI0080

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IMK LLP

IMK LLP

C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

**N° 500-09-
C.S. 500-11-048114-157**

COURT OF APPEAL

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED:**

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR, AS
REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

APPLICANT (Mise-en-cause)

v.

FTI CONSULTING CANADA INC.

RESPONDENT (Monitor-Petitioner)

-and-

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUEBEC IRON MINING
ULC, WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

RESPONDENTS (Debtors)

-and-

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY AND WABUSH LAKE
RAILWAY COMPANY, LIMITED**

**THE ATTORNEY GENERAL OF
CANADA, ACTING ON BEHALF OF THE
OFFICE OF THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS**

-17-

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON**

**UNITED STEEL WORKERS, LOCALS
6254 AND 6285**

RETRAITE QUÉBEC

**MORNEAU SHEPELL LTD., IN ITS
CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

VILLE DE SEPT-ÎLES

Mises-en-cause

LIST OF ANNEXES

October 2, 2017

Annexe A: Judgment of the Superior Court of Quebec on the Amended Motion by the Monitor for Directions with Respect to Pension Claims in *Arrangement relative à Bloom Lake*, 2017 QCCS 4057 (Court File S.C. No. 500-11-048114-157).

Annexe B: Monitor FTI Consulting Canada Inc.'s Amended Motion for Directions with Respect to Pension Claims.

Newfoundland & Labrador Superintendent of Pensions' Motion for Leave to Appeal (C.A.M. 500-09-027082-171), October 2, 2017

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MONTREAL, this October 2, 2017

(s) IMK s.e.n.c.r.l. / LLP

M^e Doug Mitchell | dmitchell@imk.ca

M^e Edward Béchard-Torres | ebechardtorres@imk.ca

IMK s.e.n.c.r.l./LLP

3500 De Maisonneuve Boulevard West

Suite 1400

Montreal, Quebec H3Z 3C1

T : 514 935-2725 | F : 514 935-2999

Lawyer for the Mis-en-cause

SUPERINTENDENT OF PENSIONS OF NEWFOUNDLAND &

LABRADOR

Our file: 1606-4

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IMK LLP

IMK LLP

N° 500-09-

COURT OF APPEAL
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED:

HER MAJESTY IN RIGHT OF NEWFOUNDLAND &
LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS

APPLICANT (Mise-en-cause)

v.

FTI CONSULTING CANADA INC.

RESPONDENT (Monitor-Petitioner)

-and-

BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO
MINING CORPORATION, 8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC, WABUSH IRON CO.
LIMITED AND WABUSH RESOURCES INC.

RESPONDENTS (Debtors)

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY COMPANY
LIMITED, WABUSH MINES, ARNAUD RAILWAY COMPANY
AND WABUSH LAKE RAILWAY COMPANY, LIMITED

ET AL.

Mises-en-cause

MOTION FOR LEAVE TO APPEAL
OF THE JUDGMENT ON THE AMENDED MOTION BY THE
MONITOR FOR DIRECTIONS WITH RESPECT
TO PENSION CLAIMS (#494)
(Section 13 and 14 CCAA and
Articles 31, 353, 357, 360-363 CCP)

Applicant
October 2, 2017

COPY

imk
avocats • advocates

M^e Doug Mitchell
M^e Edward Béchar-Torres
☎ 1606-4

IMK s.e.n.c.r.l./LLP
Place Alexis Nihon • Tour 2
3500, boulevard De Maisonneuve Ouest • bureau 1400
Montréal (Québec) H3Z 3C1
T : 514 935-4460 F : 514 935-2999
BI0080

C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

**N° 500-09-
C.S. 500-11-048114-157**

COURT OF APPEAL

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED:**

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR, AS
REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

APPLICANT (Mise-en-cause)

v.

FTI CONSULTING CANADA INC.

RESPONDENT (Monitor-Petitioner)

-and-

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUEBEC IRON MINING
ULC, WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

RESPONDENTS (Debtors)

-and-

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY AND WABUSH LAKE
RAILWAY COMPANY, LIMITED**

**THE ATTORNEY GENERAL OF
CANADA, ACTING ON BEHALF OF THE
OFFICE OF THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS**

-2-

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON**

**UNITED STEEL WORKERS, LOCALS
6254 AND 6285**

RETRAITE QUÉBEC

**MORNEAU SHEPELL LTD., IN ITS
CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

VILLE DE SEPT-ÎLES

Mises-en-cause

**NOTICE OF APPEAL
(Article 352 C.C.P.)**

Appellant
October 2, 2017

A. INTRODUCTION

1. The Superintendent of Pensions of Newfoundland & Labrador appeals the decision of Mr. Justice Stephen Hamilton (the "**Motion Judge**") of the Superior Court of Quebec on the Amended Motion by the Monitor for Directions with Respect to Pension Claims in *Arrangement relatif à Bloom Lake*, 2017 QCCS 4057 (Court File S.C. No. 500-11-048114-157) (the "**Motion Decision**") dated September 11, 2017, and attached hereto as Annex A. The hearing before the Motion Judge was held on June 28 and 29, 2017.
2. The Motion Judge granted the Amended Motion for Directions by the Monitor, FTI Consulting Canada Inc., and declared that the deemed trusts created by the *Pension Benefits Act, 1997*, SNL 1996, c. P-4.01 ("**NLPBA**"), the *Supplemental Pension Plans Act*, CQLR c. R-15.1 ("**SPPA**"), and the *Pension Benefits Standards Act, 1985*, R.S.C., 1985, c. 32 ("**PBSA**"), are not enforceable in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**"). The Motion Judge likewise concluded that the deemed trust created by the *NLPBA*

could not in any event attach to the proceeds of property formerly located in the Province of Quebec.

B. CONTEXT

3. The facts of the matter are uncontested and are detailed in the Motion Decision at paragraphs 3-31.
4. Since 1965, the Wabush Mines JV (a joint venture of Wabush Iron Co. Limited and Wabush Resources Inc.) operated an iron ore mine near the Town of Wabush, Newfoundland & Labrador, as well as a port facility and a pellet production facility in Pointe-Noire, Québec. The ore was transported from Wabush to Pointe-Noire by the Arnaud Railway Company and the Wabush Lake Railway Company, Limited (collectively, the “**Wabush CCAA Parties**”).
5. The Wabush CCAA Parties, in addition to Cliffs Mining Company, Managing Agent, sponsor two pension plans with defined benefit provisions for their salaried and unionized employees and retirees (the “**Union DB Plan**” and the “**Salaried DB Plan**”, respectively). Both plans originally included a majority of employees who reported for work in Newfoundland & Labrador, although many members reported for work in Québec, or on the two federally-regulated railways.¹ The two DB Plans include over two thousand members; their membership breakdown by jurisdiction is detailed at paragraph 6 of the Motion Decision.
6. On May 19, 2015, the Wabush CCAA Parties filed a motion for the issuance of an initial order under the CCAA. On June 26, 2015, the Superior Court ordered the suspension of payment by the Wabush CCAA Parties of their monthly amortization payments and their annual lump sum “catch-up” payments coming due under the two DB Plans. The Court also ordered the suspension of payment of other post-

¹ The two railways have been declared to be works for the general advantage of Canada: see *An Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company*, (1960) 8-9 Eliz. II, ch. 63, s. 3.

retirement benefits, including life insurance, health care and a supplemental retirement arrangement plan.²

7. On December 16, 2015, the Superintendent and the Office of the Superintendent of Financial Institutions (“OSFI”) terminated both plans, effective immediately. As of March 2016, the monthly benefits being paid to the retirees of the Salaried DB Plan were reduced by 25%, and the benefits being paid to the retirees of the Union DB Plan were reduced by 21%.
8. During the course of the present CCAA proceedings, all or substantially all of the assets were sold, and the proceeds are now held by the Monitor. These assets were located in both the Provinces of Newfoundland & Labrador and Quebec.
9. There are significant amounts still owed to the Salaried and Union DB Plans. \$6,671,820 is still owed to the Union DB Plan as special payments and catch-up special payments, while \$2,185,756 is still owed in special payments to the Salaried DB Plan. The wind-up deficiencies of the Union and Salaried DB Plan are valued at \$27,486,548 and \$27,450,000, respectively.
10. On September 20, 2016, the Monitor filed a Motion for Directions – later amended on April 13, 2017 – seeking a determination of various issues relating to potential pension claims, including:
 - 1) What law applies to determine each DB Plan member’s pension rights;
 - 2) Whether a “liquidation” had occurred triggering the deemed trusts outlined in section 32 of the *NLPBA* and section 8 of the *PBSA*;
 - 3) Whether the *NLPBA*’s liquidation deemed trust encompasses the full wind-up deficiency owed to the two DB Plans after termination, or whether it was limited to simply the normal costs and special payments which have accrued;

² 2015 QCCS 3064; motion for leave to appeal dismissed, 2015 QCCA 1351.

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- 4) Whether the trust outlined in section 49 of the *SPPA* constitutes a valid deemed trust;
 - 5) Whether the deemed trusts in the *NLPBA* and the *SPPA* are rendered inoperative as a result of an alleged conflict with the federal *CCAA*;
 - 6) Likewise, whether the deemed trust outlined in the federal *PBSA* was in conflict with the federal *CCAA* and, if so, how ought that conflict be resolved;
 - 7) Whether the deemed trust created by the *NLPBA* could charge property located outside the Province of Newfoundland & Labrador, specifically in the Province of Quebec;
 - 8) Whether the deemed trust under the *SPPA* could take priority over the Ville de Sept-Îles' claim for unpaid property taxes.
11. The Amended Motion for Directions is attached as Annex B to the present Notice.

C. MOTION DECISION

12. On the issues put to him in the Monitor's Motion for Directions, the Motion Judge concluded as follows:
- 1) The law that applies to any given plan member will depend on where that plan member reported for work (paras. 61-81).
 - 2) There was "liquidation" of the insolvent debtors in this case, thereby giving rise to the liquidation deemed trusts outlined in the *NLPBA* and the *PBSA* (paras. 155-175). This liquidation, in his view, would have begun at the very outset of the insolvency proceedings, on May 19, 2015 (para. 173).
 - 3) The Motions Judge also assumed that the deemed trust under the *NLPBA* applies to the full wind-up deficits owed to the two DB pension plans.
 - 4) As for the Quebec members, the Motions judge concluded that the Quebec *SPPA* does not create a valid deemed trust that is enforceable against third

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parties, since it lacks the “key language” that deems certain amounts “to be separate from and form no part of the estate in liquidation, assignment or bankruptcy” (paras. 90-91).

- 5) The Motion Judge concluded that the *NLPBA*'s deemed trusts and concurrent lien and charge conflict with the *CCAA*, and are therefore rendered inoperative by virtue of the doctrine of paramountcy (paras. 177-210).
- 6) Finally, the Motions Judge concluded that the *NLPBA*'s deemed trust of the *NLPBA* could not attach to property located in the Province of Quebec (paras. 144-154).

D. GROUNDS FOR APPEAL

13. The Superintendent seeks leave to appeal on the basis that the Motion Judge erred in concluding a) that the *NLPBA*'s deemed trusts conflict with the *CCAA* and are thereby rendered inoperative, and b) that the *NLPBA*'s deemed trusts could not attach to the proceeds of sales currently held by the Monitor.

a) The *NLPBA* does not conflict with the *CCAA*

14. Sections 6(6), 6(7) and 36(7) *CCAA* enshrine certain minimal protections for pension liabilities, specifically the normal costs and the unremitted employee contributions deducted at source. These guarantees must be satisfied before a *CCAA* court may authorize a sale of assets or approve a plan of arrangement.
15. Section 32 of the *NLPBA* does not expressly conflict with these – or any other – sections of the *CCAA*. Section 32 simply provides for a deemed trust and a lien and charge that confer additional protection for pensioners. This is constitutionally inoffensive: cooperative federalism indeed recognizes that provincial laws can supplement and add to the protections envisioned in federal law.³ This has

³ See e.g. *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, 2007 SCC 22, at para. 72; *Quebec (Attorney General) v. Canadian Owners and Pilots Association*, 2010 SCC 39, [2010] 2 S.C.R. 536, at

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occurred in areas such as highway safety⁴, the regulation of pesticides⁵, tobacco advertising⁶, and even in insolvency proceedings⁷. Respectfully, the Motion Judge discarded this settled jurisprudence when he concluded that section 32 *NLPBA* triggered the doctrine of paramountcy:

It is clear that Parliament had weighed the competing interests and decided that this was the protection that all pension plan members across Canada would receive. It left no room for the provinces. (Para. 192, underlining added)

16. Respectfully, the Motion Judge's conclusion is inconsistent with the "guiding principle" of modern federalism jurisprudence, which stresses that courts should facilitate and encourage the overlap between both federal and provincial laws, so that both levels of government may pursue their own vision of the public good within their respective spheres of competence.⁸
17. Fundamentally, Parliament is presumed to be respectful of the Provinces' legislative authority.⁹ As the Supreme Court of Canada has repeatedly insisted, courts should only impute to Parliament an intention to "cover the field" on a given question if Parliament employs "very clear statutory language to that effect".¹⁰ Otherwise, the "fundamental rule of constitutional interpretation" requires that courts interpret federal legislation as if it welcomes the overlapping application of provincial law.¹¹

para. 66; and *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 26.

⁴ *O'Grady v. Sparling*, [1960] SCR 804, 1960 CanLII 70 (SCC).

⁵ *114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town)*, 2001 SCC 40 (CanLII), [2001] 2 S.C.R. 241, at paras. 34-42 specifically.

⁶ *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005] 1 S.C.R. 188, 2005 SCC 13.

⁷ *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419

⁸ *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 21, see also *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, 2007 SCC 22, at paras. 22 and 37; *Alberta (Attorney General) v. Moloney*, 2015 SCC 51, [2015] 3 S.C.R. 327, at para. 15.

⁹ *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, 2007 SCC 22, at para. 74.

¹⁰ *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005] 1 S.C.R. 188, 2005 SCC 13, at para. 21; *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3, 2007 SCC 22, at para. 74; *Bank of Montreal v. Marcotte*, [2014] 2 SCR 725, 2014 SCC 55, at para. 72; *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 27.

¹¹ *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 20-22.

18. Parliament did not employ any of the “very clear statutory language” required to shut out any possible provincial action in sections 6(6) or 36(7) CCAA. These provisions are instead framed as minimum guarantees; section 6(6) even contemplates a situation in which an arrangement is concluded which provides for *more* protection than the minimum level envisioned in federal law. This absence of any legislative language ruling out provincial law is made all the more conspicuous by the fact that Parliament *actually did* rule out the continued application of provincial deemed trusts in favour of the Crown in section 37 of the CCAA.
19. What is more, the “extraneous evidence” the Motion Judge considered of Parliament’s intent only demonstrates that Parliament considered affording more protection to pensioners when it amended the CCAA in 2009, but chose not to. On its own, this is insufficient and cannot meet the “high standard” for invoking paramountcy on the basis of a frustration of federal purpose.¹² Parliament will often consider different policy alternatives – and different ways of balancing competing interests – before settling on its preferred choice. If these everyday legislative choices implied that Parliament “covered the field” and definitively decided a given question, the Provinces would be significantly handicapped from pursuing their own vision of the public good in their own areas of competence. Paramountcy must instead be applied with restraint.¹³
20. Moreover, while it is not determinative, paramountcy arguments rarely succeed without the express support of the federal government, speaking through its Attorney General.¹⁴ In this case, the AGC’s submissions dovetail with the Superintendent’s. Only the Monitor and the Wabush CCAA Parties seek to invoke paramountcy.

¹² *Marine Services International Ltd. V. Ryan Estate*, [2013] 3 SCR 52, 2013 SCC 44, at para. 84.

¹³ *Bank of Montreal v. Marcotte*, [2014] 2 SCR 725, 2014 SCC 55, at para. 74, *Saskatchewan (Attorney General) v. Lemare Lake Logging Ltd.*, 2015 SCC 53, [2015] 3 S.C.R. 419, at para. 27.

¹⁴ *Rothmans, Benson & Hedges Inc. v. Saskatchewan*, [2005] 1 S.C.R. 188, 2005 SCC 13, at para. 26, citing *Kitkatla Band v. British Columbia (Minister of Small Business, Tourism and Culture)*, [2002] 2 S.C.R. 146, 2002 SCC 31 (CanLII), at paras. 72-73.

21. The Motion Judge's alternative basis for invoking paramountcy is more tenuous still. The Motion Judge decided that the *Bankruptcy and Insolvency Act's* comprehensive scheme of collocation applies, in its totality, to a CCAA liquidation (paras. 202-210). In his view, the "bottom line is that a liquidating CCAA requires a scheme of distribution and the only one which makes sense is the scheme of distribution under the BIA" (para. 208).
22. In this, the Motion Judge relies on *Century Services Inc. v. Canada*, [2010] 3 S.C.R. 379, 2010 SCC 60, where Deschamps J. noted that the rights conferred under the CCAA should be interpreted harmoniously with the rights provided under the BIA, so as to avoid giving secured creditors a strategic incentive to seek the debtor's bankruptcy.¹⁵
23. However, *Century Services* only directs courts on how they ought to *interpret* provisions of the CCAA and the BIA: it provides no legal basis to graft the BIA's entire scheme of collocation into a CCAA liquidation. This was confirmed in *Sun Indalex Finance LLC v. United Steelworkers*, [2013] 1 SCR 271, 2013 SCC 6, where this very argument was put before the Supreme Court. Deschamps J. rejected it in clear and emphatic terms:

[51] [...] Provincial legislation defines the priorities to which creditors are entitled until that legislation is ousted by Parliament. Parliament did not expressly apply all bankruptcy priorities either to CCAA proceedings or to proposals under the BIA. Although the creditors of a corporation that is attempting to reorganize may bargain in the shadow of their bankruptcy entitlements, those entitlements remain only shadows until bankruptcy occurs. At the outset of the insolvency proceedings, Indalex opted for a process governed by the CCAA, leaving no doubt that although it wanted to protect its employees' jobs, it would not survive as their employer. This was not a case in which a failed arrangement forced a company into liquidation under the BIA. Indalex achieved the goal it was pursuing. It chose to sell its assets under the CCAA, not the BIA.

¹⁵ *Century Services Inc. v. Canada*, 2010 SCC 60, [2010] 3 S.C.R. 379, at para. 47.

24. The Motions Judge never addresses this portion of Deschamps J.'s reasons, although he was repeatedly made aware of it in oral and written submissions. This apparent repudiation of *Indalex* is an error of law in its own right. More fundamentally, it is unclear what authority *any court* would have to re-write the CCAA in this way. If there are indeed "gaps" in the CCAA, then provincial law continues to apply unimpeded, since it "defines the priorities to which creditors are entitled until that legislation is ousted by Parliament".¹⁶ The Motions Judge erred by concluding that provincial law was ousted simply because it "makes sense" to do so (para. 208).
25. It is worth adding that the Motion Judge's argument on this front sits poorly with his insistence on respecting Parliament's choices. Parliament did not choose to apply the *BIA*'s scheme of distribution to CCAA proceedings, even though CCAA liquidations were already common during the first decade of this century.¹⁷
- b) The NLPBA's deemed trust and lien and charge may attach to the proceeds of assets formerly located in the Province of Quebec**
26. Respectfully, the Motion Judge erred in not giving direct effect to the *NLBA*'s deemed trust and lien and charge directly in Quebec through article 3079 of the *Civil Code of Québec*. Section 32 *NLPBA* is clearly a mandatory provision of another "State" which is closely connected to the insolvency of the Wabush CCAA Parties. Furthermore, there are "legitimate and manifestly preponderant interests" for doing so. The Wabush CCAA Parties' business straddled the provincial border, and their multijurisdictional pension plan included members from both jurisdictions. In these circumstances, the "integrating character of our constitutional arrangement"¹⁸ required the Motion Judge to give full effect to the law of a sister province, especially in the context of national insolvency proceedings.

¹⁶ *Sun Indalex Finance LLC v. United Steelworkers*, [2013] 1 SCR 271, 2013 SCC 6, at para. 51.

¹⁷ Alfonso Nocilla, "The History of the Companies' Creditors Arrangement Act and the Future of Re-Structuring Law in Canada" (2014) 56 CBLJ 73, at p. 8.

¹⁸ See *Morguard Investments Ltd. V. De Savoye*, 1990 CanLII 29 (SCC), [1990] 3 S.C.R. 1077, at pp. 1100.

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27. That the Quebec legislature did not see fit to confer similar protections on Quebec employees and retirees should not have compelled the Motion Judge to decline to apply Newfoundland & Labrador law to property in Quebec.
28. The Superintendent reserves its right to make submissions on any other issues for which leave may be granted in the present matter.

MAY IT PLEASE THIS HONOURABLE COURT TO:

- I. **GRANT** the Superintendent's appeal with costs;
- II. **DISMISS** the Monitor's Motion for Directions;
- III. **DECLARE** that the deemed trust posited by the *NLPBA* is enforceable and operative during the course of *CCAA* proceedings;
- IV. **DECLARE** that the *NLPBA*'s deemed trust may attach to the proceeds held by the Monitor from the sale of assets formerly located in the Province of Québec.

THE WHOLE RESPECTFULLY SUBMITTED.

MONTREAL, this October 2, 2017

(s) IMK s.e.n.c.r.l. / LLP

M^e Doug Mitchell | dmitchell@imk.ca

M^e Edward Béchard-Torres | ebechardtorres@imk.ca

IMK s.e.n.c.r.l./LLP

3500 De Maisonneuve Boulevard West

Suite 1400

Montreal, Quebec H3Z 3C1

T : 514 935-2725 | F : 514 935-2999

Lawyer for the Mis-en-cause

SUPERINTENDENT OF PENSIONS OF NEWFOUNDLAND &

LABRADOR

Our file: 1606-4

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IMK LLP

IMK LLP

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AFFIDAVIT OF EDWARD BÉCHARD-TORRES
(October 2nd, 2017)

I, EDWARD BÉCHARD-TORRES, attorney, practicing law at IMK LLP, 3500 de Maisonneuve Boulevard West, Suite 1400, Montreal, Quebec, H3Z 3C1, solemnly affirm as follows:

1. I am an associate at the law firm IMK LLP. Our firm has represented the Superintendent of Pensions of Newfoundland & Labrador since the outset of the present Wabush CCAA proceedings.
2. Mr. Doug Mitchell and I represented the Superintendent before Mr. Justice Stephen Hamilton on the Monitor FTI Consulting Canada Inc.'s Motion for Directions, the hearing being held on June 28 and 29, 2017.
3. All of the facts alleged in the within *Notice of Appeal* are true and correct to the best of my knowledge.

AND I HAVE SIGNED THIS 2nd DAY OF OCTOBER, 2017 IN MONTRÉAL, QUÉBEC:

Edward Béchard-Torres

EDWARD BÉCHARD-TORRES

Solemnly affirmed before me at
Montréal, this 2nd day of October 2017

Roxanne Rioux
Commissioner of Oaths for Quebec



NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN OF THIS APPEAL to the following parties:

**Me Bernard Boucher and
Mr. Steven Weisz**

BLAKE CASSELS & GRAYDON S.R.L.
600 de Maisonneuve West Blvd,
Suite 2200
Montreal, Quebec H3A 3J2
Fax: (514) 982-4099 and (416) 982-4099

Attorneys for the Wabush CCAA Parties

Me Martin Roy

STEIN MONAST LLP
70, Rue Dalhousie, Bureau 300
Québec, Québec G1K 4B2
Fax: (418) 523-5391

Attorney for Ville de Sept-Îles

Me Daniel Boudreault

PHILION LEBLANC BEAUDRY,
AVOCATS S.A.
5000, boul. des Gradins, Suite 280
Quebec, Quebec G2J 1N3
Fax: (418) 627-7386

Attorney for the United Steel Workers

**Me Sylvain Rigaud and
Me Chrystal Ashby**

NORTON ROSE FULBRIGHT CANADA
LLP
1 Place Ville Marie, Suite 2500
Montreal, Quebec H3B 1R1
Fax: (514) 286-5474

*Attorneys for FTI Consulting Canada Inc.,
Monitor*

**Mr. Andrew J. Hatnay, Mr. Demetrios
Yiokaris, Ms. Amy Tang and**

Mr. Jules Monteyne
KOSKIE MINSKY LLP
20 Queen Street West, Suite 900, Box 52
Toronto, Ontario M5H 3R3
Fax: (416) 977-3316

*Representative Counsel for the Salaried
Employees and Retirees*

**Mr. Ronald Pink, Q.C., and
Ms. Bettina Quistgaard**

PINK LARKIN LLP
1463 South Park Street, Suite 201
Halifax, Nova Scotia,
P.O. Box 36036 B3J 3S9
Fax: (902) 423-9588

*Attorneys for the Replacement Plan
Administrator, Morneau Shepell Ltd.*

Newfoundland & Labrador Superintendent of Pensions' Notice of Appeal (C.A.M. 500-09-027082-171), October 2, 2017

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Me Pierre Lecavalier
Me Michelle Kellam
DEPARTMENT OF JUSTICE – CANADA
200 René-Lévesque West Blvd.
East Tower, 9th Floor
Montreal, Quebec H2Z 1X4

Fax: (514) 496-4073

*Attorneys for the Attorney General of
Canada*

Me Louis Robillard and
Me Roberto Clocchiatti
VAILLANCOURT ET CLOCCHIATTI,
CONTENTIEUX DE RETRAITE QUEBEC
1055 Boulevard René-Lévesque East
Montréal, Quebec H2L 4S5

Fax: (418) 643-9590

Attorneys for Retraite Quebec

Superior Court of Quebec
(Commercial Division)
Palais de justice de Montréal
1, rue Notre-Dame Est
Montreal, Quebec H2Y 1B6

PLEASE ACT ACCORDINGLY.

MONTREAL, this October 2, 2017

(s) IMK s.e.n.c.r.l. / LLP

M^e Doug Mitchell | dmitchell@imk.ca
M^e Edward Bécharde-Torres | ebecharde@imk.ca

IMK s.e.n.c.r.l./LLP

3500 De Maisonneuve Boulevard West
Suite 1400

Montreal, Quebec H3Z 3C1

T : 514 935-2725 | F : 514 935-2999

Lawyer for the Mis-en-cause

SUPERINTENDENT OF PENSIONS OF NEWFOUNDLAND &
LABRADOR

Our file: 1606-4

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IMK LLP

IMK LLP

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C A N A D A

**PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL**

**N° 500-09-
C.S. 500-11-048114-157**

COURT OF APPEAL

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED:**

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR, AS
REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

APPLICANT (Mise-en-cause)

v.

FTI CONSULTING CANADA INC.

RESPONDENT (Monitor-Petitioner)

-and-

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUEBEC IRON MINING
ULC, WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

RESPONDENTS (Debtors)

-and-

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY AND WABUSH LAKE
RAILWAY COMPANY, LIMITED**

**THE ATTORNEY GENERAL OF
CANADA, ACTING ON BEHALF OF THE
OFFICE OF THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS**

-16-

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON**

**UNITED STEEL WORKERS, LOCALS
6254 AND 6285**

RETRAITE QUÉBEC

**MORNEAU SHEPELL LTD., IN ITS
CAPACITY AS REPLACEMENT
PENSION PLAN ADMINISTRATOR**

VILLE DE SEPT-ÎLES

Mises-en-cause

LIST OF ANNEXES

October 2, 2017

Annexe A: Judgment of the Superior Court of Quebec on the Amended Motion by the Monitor for Directions with Respect to Pension Claims in *Arrangement relative à Bloom Lake*, 2017 QCCS 4057 (Court File S.C. No. 500-11-048114-157).

Annexe B: Monitor FTI Consulting Canada Inc.'s Amended Motion for Directions with Respect to Pension Claims.

MONTREAL, this October 2, 2017

(s) IMK s.e.n.c.r.l. / LLP

M^e Doug Mitchell | dmitchell@imk.ca

M^e Edward Béchard-Torres | ebechardtorres@imk.ca

IMK s.e.n.c.r.l./LLP

3500 De Maisonneuve Boulevard West

Suite 1400

Montreal, Quebec H3Z 3C1

T : 514 935-2725 | F : 514 935-2999

Lawyer for the Mis-en-cause

SUPERINTENDENT OF PENSIONS OF NEWFOUNDLAND &

LABRADOR

Our file: 1606-4 | BI0080

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IMK LLP

IMK LLP

N° 500-09-

COURT OF APPEAL
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED:

HER MAJESTY IN RIGHT OF NEWFOUNDLAND &
LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS

APPLICANT (Mise-en-cause)

v.

FTI CONSULTING CANADA INC.

RESPONDENT (Monitor-Petitioner)

-and-

BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO
MINING CORPORATION, 8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC, WABUSH IRON CO.
LIMITED AND WABUSH RESOURCES INC.

RESPONDENTS (Debtors)

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY COMPANY
LIMITED, WABUSH MINES, ARNAUD RAILWAY COMPANY
AND WABUSH LAKE RAILWAY COMPANY, LIMITED

ET AL.

Mises-en-cause

NOTICE OF APPEAL
(Article 352 C.C.P.)

Appellant
October 2, 2017

COPY



M^e Doug Mitchell
M^e Edward Béchard-Torres
☎ 1606-4

IMK s.e.n.c.r.l./LLP
Place Alexis Nihon • Tour 2
3500, boulevard De Maisonneuve Ouest • bureau 1400
Montréal (Québec) H3Z 3C1
T : 514 935-4460 F : 514 935-2999
BI0080

Representatives of Salaried/Non-Union Employees & Retirees' Application for Leave to Appeal (C.A.M. 500-09-027077-171), October 2, 2017

CANADA

COURT OF APPEAL

PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

IN THE MATTER OF THE
COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, AS AMENDED

S.C.: 500-11-048114-157

C.A.: 500-09-

MICHAL KEEPER, TERENCE WATT, DAMIEN
LEBEL, and NEIL JOHNSON as Representatives of
the Salaried/Non-Union Employees and Retirees

Appellants

BLOOM LAKE GENERAL PARTNER LIMITED,
QUINTO MINING CORPORATION, 8568391
CANADA LIMITED, CLIFFS QUÉBEC IRON
MINING ULC, WABUSH IRON CO. LIMITED,
WABUSH RESOURCES INC.

Debtors

and

THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES,
ARNAUD RAILWAY COMPANY, WABUSH
LAKE RAILWAY COMPANY, LIMITED

Mises-en-cause

and

SYNDICAT DES METALLOS SECTIONS
LOCALES 6254 ET 6285, MORNEAU SHEPELL
LTD. , in its capacity as Replacement Pension Plan
Administrator, RETRAITE QUÉBEC, THE
ATTORNEY GENERAL OF CANADA, acting on
behalf of the OFFICE OF THE SUPERINTENDENT
OF FINANCIAL INSTITUTIONS HER MAJESTY
IN RIGHT OF NEWFOUNDLAND AND
LABRADOR, as represented by the
SUPERINTENDENT OF PENSIONS, VILLE DE
SEPT-ÎLES

Mises-en-cause

FTI CONSULTING CANADA INC.

Monitor-Respondent

APPLICATION FOR LEAVE TO APPEAL FROM AN INTERLOCUTORY DECISION
AND TO SUSPEND PROVISIONAL EXECUTION

(Section 13 and 14 of the CCAA and Articles 30, para. 2, and 357 C.C.P.)

Dated: October 2, 2017

TO ONE OF THE HONOURABLE JUSTICES OF THE COURT OF APPEAL SITTING IN AND FOR THE DISTRICT OF MONTREAL, THE APPELLANTS MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL AND NEIL JOHNSON, IN THEIR CAPACITY AS COURT-APPOINTED REPRESENTATIVES OF THE SALARIED/NON-UNION EMPLOYEES AND RETIREES OF THE "WABUSH CCAA PARTIES" (COLLECTIVELY, THE "SALARIED MEMBERS"), RESPECTFULLY SUBMIT:

I. BACKGROUND

1. In 2013, the Supreme Court of Canada released its decision in *Indalex* where the court held, *inter alia*, that provincial statutory pension deemed trusts in favour of pension plan beneficiaries for amounts owing to a pension plan by their employer apply as a priority claim in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA"), subject only to the doctrine of paramourcy.
2. Paramourcy was applied in *Indalex* to the limited extent of subordinating the deemed trusts in the Ontario *Pension Benefits Act*, RSO 1990, c P.8 ("PBA") (which operate in a very similar manner to the pension deemed trusts in the Québec *Supplemental Pension Plans Act*, chapter R-15.1 ("SPPA"), and the Newfoundland *Pension Benefits Act*, 1997, S.N.L.1996 Chapter P-4.01 ("NLPBA") and the *Pension Benefits Standards Act*, 1985, R.S.C., 1985, c. 32 ("PBSA") which are the three relevant pension statutes in this appeal) to the priority of the DIP lender's priority granted by the CCAA court in *Indalex*.
3. The Supreme Court in *Indalex* made significant progress in settling many legal issues pertaining to the application of pension deemed trusts in CCAA proceedings. *Indalex* has been applied and followed in subsequent cases. Following the Supreme Court's decision, the CCAA court in *Indalex*¹ approved a settlement that distributed estate funds in that case to the pension plan members. In *Timminco*², the Ontario Timminco pension plan recovered as first priority distribution in respect of the underfunded Ontario pension plan deficit, and the Québec Timminco pension plan also recovered a priority payment pursuant to the decision of Mr. Justice Mongeon of the Québec Superior Court who held, relying on *Indalex*, that the deemed trusts in

¹ *Indalex Ltd., Re*, 2013 ONSC 7932 (Ont. S.C.J.)

² *Timminco ltée (Arrangement relatif à)*, 2014 QCCS 174 (Que. S.C.)

- 3 -

section 37 of the SPPA are valid and enforceable with respect to unpaid current service payments and unpaid special payments³.

4. On September 11, 2017, the Honourable Mr. Justice Stephen Hamilton (the “**CCAA Judge**”) of the Québec Superior Court, District of Montreal rendered the Pension Claims Order, a copy of which is attached hereto as **Schedule [1]**;

5. In his sweeping decision covering many areas of pension and insolvency law in different provinces (Québec and Newfoundland) and different jurisdictions (provincial and federal), the CCAA Judge ruled broadly with different interpretations and on different theories, that the pension deemed trusts in the NLPBA, SPPA, and PBSA are of no force or effect in the CCAA proceedings. He thereby rendered all of the Québec and Newfoundland retirees as unsecured creditors without any priority in the CCAA proceedings.

6. The decision of the CCAA Judge in the case under appeal is, in many respects, contrary to the Supreme Court of Canada's decision in *Indalex*, completely contradictory to the decision of Mr. Justice Mongeon in *Timminco*, and injects new uncertainty into pension and insolvency law with respect to the SPPA, NLPBA, and the PBSA pension deemed trusts. It would have the effect of rendering the Québec and Newfoundland retirees of Wabush Mines as unsecured creditors with virtually no hope for recovery for their substantial pension losses in the Wabush Mines CCAA proceedings.

7. As set out herein, leave to appeal, and the appeal itself, should be granted.

II. THE GROUNDS FOR THIS MOTION

8. Since 1965, the Wabush Mines group of companies, namely, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, “**Wabush Mines**”) operated an open-pit iron ore mine in the Town of Wabush, Newfoundland and Labrador, and processing and transport facilities in the Town of Sept-Iles, Québec.

³ *Ibid* at para 135.

Representatives of Salaried/Non-Union Employees & Retirees' Application for Leave to Appeal (C.A.M. 500-09-027077-171), October 2, 2017

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9. Wabush Mines operated as an integrated company for all its employees. The iron ore would first be mined and concentrated at the Scully Mine in the Town of Wabush in south west Labrador. The iron ore concentrate would be loaded into railcars (privately owned by Wabush Mines) and transported by rail to another Wabush Mines facility (Pointe Noire) located near the Town of Sept-Iles, on the St. Lawrence River in Québec.

10. At Pointe Noire, the concentrated ore was made into small iron ore pellets (pelletized) to make it more efficient for smelting in steel mill blast furnaces. The steel makers operating these steel mills are the major consumers of iron ore. The ore pellets would then be loaded into "Lakers" ships and shipped down the St. Lawrence River and into the Great Lakes to customers in Canada and the USA.

11. All of the salaried employees of Wabush Mines - regardless of where in the organization they worked, whether mining the ore, transporting the ore by rail, processing the ore, or loading it onto Lakers for river transport, were employees of Wabush Mines and earned pension benefits in the same plan: the Wabush Salaried Plan.

12. In 2013, the parent company of Wabush Mines, Cliffs Natural Resources ("CNR"), based in Cleveland, Ohio, decided it would disengage and shut down its mining operations in Eastern Canada, including its mining Wabush Mines and processing operations in Newfoundland and Québec. To avoid paying the \$650M - \$750M that CNR estimated as the costs to close its mining operations at Wabush Mines, CNR chose to render Wabush Mines insolvent and then use the CCAA as its disengagement tool.

13. Since the head office of Wabush Mines is located in Montreal, pursuant to section 9 of the CCAA, Wabush Mines applied for CCAA protection from the Québec Superior Court.

14. On May 20, 2015, Wabush Mines was rendered insolvent and obtained protection from its creditors under the CCAA. Since the head office of Wabush Mines is located in Montreal, pursuant to section 9 of the CCAA, Wabush Mines applied for and obtained CCAA protection from the CCAA Judge of the Québec Superior Court in Montreal. The accounting firm of FTI Consulting Inc. was appointed as the monitor.

Representatives of Salaried/Non-Union Employees & Retirees' Application for Leave to Appeal (C.A.M. 500-09-027077-171), October 2, 2017

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15. Wabush Mines did not restructure. Instead, while under CCAA protection, it shut down mining operations, terminated the employees, requested the Newfoundland Superintendent of Pensions to appoint a replacement administrator over the pension plans saying that it did not have the "resources" to administer the pension plans any further itself, and has been liquidating all of its assets to eventually pay toward its creditors' claims.

16. On December 16, 2015, the Newfoundland Superintendent of Pensions (the "**Superintendent**") declared that the Salaried Plan be terminated effective on that date (the "**Wind-up Date**").⁴ The Plans are in the process of being wound up by Morneau Shepell, the actuarial consulting firm appointed by the Superintendent on March 30, 2016 as the replacement pension plan administrator.

17. The Monitor has reported there will be substantial shortfall in paying creditors' claim.

18. Even before the Pension Claims Order, the treatment of the Wabush Mines retirees in the CCAA proceedings has been extraordinarily harsh. The retirees have lost their entire health and life insurance benefits without any prior warning, and have had a 25% reduction to their monthly pension benefits. This has resulted in significant financial hardship to the retirees.

19. This case is very sensitive for the Wabush retirees in Newfoundland and Québec, their families, and their communities.

20. While it was operating, Wabush Mines sponsored two pension plans that are to pay its salaried and unionized employees their pension benefits on retirement that they earned during their employment years with Wabush Mines:

- a) the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company (the aforementioned "**Salaried Plan**"); and

⁴ Affidavit of Terry Watt, sworn on December 14, 2016 ("**Watt Affidavit**"), at para. 18, Schedule 10.

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- b) the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company (the "**Union Plan**")⁵
- (collectively, the "**Pension Plans**").

The loss of health and life insurance benefits

21. Through their years of employment service for the Wabush CCAA Parties, the Salaried Members earned entitlement to be paid pension benefits, Health Benefits, and, for certain salaried employees, supplemental pension benefits;
22. Immediately following its obtaining of CCAA protection, in June, 2015, Wabush Mines terminated the employees' health benefits, life insurance benefits, and unfunded supplemental pension benefits (collectively, "other post-employment benefits" or "**OPEBs**") without giving the retirees prior notice.⁶

The losses to pension benefits

23. The Wabush Pension Plans are registered in the province of Newfoundland and Labrador and regulated under the NLPBA by the Newfoundland Superintendent. All regulatory filings for the plan are made with the Superintendent.⁷
24. The Salaried Plan is a "contributory" defined benefit plan, meaning that employees were required to contribute a percentage of their regular pay into the plans. The company was required under the terms of the plans and statute law to contribute amounts so that the plans would pay the pension benefits earned by the employees.
25. The pension plans are underfunded, meaning they do not have enough funds to pay the full monthly pension benefit to retirees. This predicament has directly caused the 25% reduction to monthly benefits for the Salaried Members and rendered elderly retirees as creditors in the CCAA proceeding of Wabush Mines.

⁵ Monitor's Amended Motion for Directions with respect to Pension Claims dated April 13, 2017 at para. 21 ("**Monitor's Motion**"), Schedule 6.

⁶ *Ibid.* at para. 27.

⁷ Watt Affidavit, *supra* note 4 at para. 13, Schedule 10.

Representatives of Salaried/Non-Union Employees & Retirees' Application for Leave to Appeal (C.A.M. 500-09-027077-171), October 2, 2017

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26. On January 26, 2016, the Salaried Members received a letter from Wabush Mines notifying them that the Superintendent directed Wabush Mines to reduce the amount of monthly pension benefits of the Salaried retirees by 25%.⁸ Morneau has completed its wind-up reports for the pension plans as of the Wind-up Date. The Salaried Plan has a wind-up deficit of \$27,450,000 and the Union Plan has a wind-up deficit of \$27,486,548.

27. With claims for their terminated health benefits and losses to monthly pension benefits, the Salaried retirees are a very significant creditor group:

Employee and Retiree Claims			
	Pension Wind-Up Deficit	Terminated OPEBs*	Terminated Supplemental Retirement Allowance
Salaried	\$27,450,000	\$43,452,000	\$1,483,182.35
USW	\$27,486,548	\$123,885,000	N/A
TOTAL	\$54,936,548	\$167,337,000	\$1,483,182.35

*still subject to confirmation with actuaries for employees and monitor

The Monitor's "Motion for Directions with respect to Pension Claims"

28. On November 16, 2015, at the hearing of the motion by the Monitor for approval of the Claims Procedure Order, Representative Counsel advised the Monitor and the CCAA Judge that any issue(s) regarding the interpretation of the NLPBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication. The Monitor, company, and certain other creditors opposed such a transfer of the NLPBA issue to the Newfoundland Court.

29. On September 20, 2016, the Monitor proceeded to file its Motion for Directions, which was subsequently amended on April 16, 2017.

30. Although styled as a "Motion for Directions", the Monitor sought specific orders and argued strongly that the Wabush Salaried Plan members in Newfoundland and Québec should have the bulk of their statutory deemed trust priorities declared of no effect in the CCAA proceeding and reduced to unsecured claims.

⁸ Watt Affidavit, *supra* note 4 at para. 19, Schedule 10.

31. Currently, the Monitor reports that there is approximately \$75,081,000 total in the different estates of Wabush Mines.⁹ Other than repaying the DIP Loan that had been provided by another subsidiary of CNR, Cliffs Mining Company, at the outset of the CCAA proceedings, there have not been any distributions to creditors. The Monitor's latest estimate of the ranges of potential distribution to unsecured creditors is 0.00% to 2.42% of claims.¹⁰

32. On October 7, 2016, Representative Counsel, Morneau Shepell, and the Superintendent of Pensions of Newfoundland & Labrador (the "Superintendent") each filed Notices of Objection to the Monitor's Motion for Directions. The Notices of Objection, *inter alia*, disagreed with the formulation of the Monitor's questions and proposed alternate more straightforward questions. After extensive negotiations with the Monitor and the company on alternate questions, the Monitor and company did not accept any changes to their questions.

33. In a decision dated January 30, 2017, this Court dismissed the joint request by Representative Counsel, the Superintendent, and Morneau to transfer the issues relating to the interpretation of the NLPBA to the Newfoundland Court. The Monitor's motion was therefore set down for hearing on June 28 and 29, 2017 to decide all of the Monitor's questions.

Reference by the Newfoundland Government to the Newfoundland Court of Appeal

34. In the CCAA Judge's decision of January 30, 2017 declining to transfer the issues of interpretation of the NPBA, he stated at paragraph 89:

[89] ...If the government of Newfoundland and Labrador wishes to obtain a judgment from the courts of the province on the interpretation of the NLPBA, it can refer a matter to the Court of Appeal and Labrador.¹¹ [emphasis added]

35. On March 27, 2017, the Newfoundland & Labrador government, referring to paragraph 89 of the CCAA Judge's decision above, issued an Order in Council directing that a Reference be brought before the Newfoundland & Labrador Court of Appeal and setting out Reference

⁹ Cash balance as at June 16, 2017, per Thirty-Eighth Report of the Monitor dated June 21, 2017 at para 21, Schedule 12.

¹⁰ Thirty-Fourth Report of the Monitor dated April 26, 2017 at p. 26, Schedule 13.

¹¹ *Arrangement relatif à Bloom Lake*, 2017 QCCS 284, at para. 89, Schedule 2.

questions (the “**Reference**”) that are different from the Monitor's questions.¹² The Reference hearing was heard by the Newfoundland Court of Appeal on September 21 and 22, 2017 and the court has reserved its decision;

36. On September 11, 2017, the CCAA Judge released his decision in the Pension Claims Motion;

The decision of the CCAA Judge

37. In his decision, the CCAA Judge made at least 13 determinations:

- a) that the Salaried Plan (and Union Plan) are governed by the PBSA with respect to the employees who worked on the railway, by the SPPA with respect to the non-railway employees who reported for work in Sept-Iles, Québec, and by the NLPBA with respect to the non-railway employees who reported for work in Newfoundland¹³;
- b) that the combined effect of section 8(1) and (2) of the PBSA create a deemed trust in the event of a liquidation of the employer, and that the liquidation was a "triggering event" for the deemed trust¹⁴;
- c) that the statutory deemed trust language identifying the property covered on a so-called "triggering event" is necessary for the effectiveness of a statutory deemed trust based on the reasons of the Supreme Court of Canada in Sparrow Electric (a GST case) which was followed by the Québec Superior Court in *Aveos* (a PBSA deemed trust case)¹⁵;
- d) that the deemed trust under section 49 of the SPPA and the unseizability provision under section 264 of the SPPA are not effective to a deemed trust for Québec pension plan members¹⁶;

¹² March 27, 2017 Certified true copy of a Minute of a Meeting of the Committee of the Executive Council of Newfoundland and Labrador approved by His Honour the Lieutenant-Governor directing a Reference, Schedule 14.

¹³ Pension Claims Order, at para. 80, Schedule 1.

¹⁴ Pension Claims Order, at para. 88, Schedule 1

¹⁵ Pension Claims Order, at para. 99, Schedule 1

¹⁶ Pension Claims Order, at para. 112, Schedule 1

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- e) that the SPPA deemed trust, even if effective, would cover only the unpaid going concern payments and unpaid special payments (to the extent that they relate to Wabush non-railway employees who reported for work in Québec)¹⁷;
- f) that the NLPBA deemed trusts do not apply to the assets of Wabush Mines located within the province of Québec¹⁸;
- g) that the Wabush Mines CCAA proceedings was a liquidation (as compared to a restructuring) that started on May 19, 2015 (the date Wabush Mines obtained protection under the CCAA from the CCAA Judge)¹⁹, and that the deemed trust under section 8(2) of the PBSA and section 32(2) of the NLPBA came into effect on that date, and that the liquidation is the so-called "triggering event" for the creation of the deemed trust in section 32(2) in NLPBA, and further that there is no need for the court to decide whether the "triggering event" must occur prior to the CCAA Initial Order or prior to the sale of the assets²⁰;
- h) that the NLPBA deemed trusts are inoperable in a CCAA proceeding based on the doctrine of paramountcy²¹;
- i) that the lien and charge created by section 32(4) of the NLPBA is a valid fixed charge under the law of Newfoundland and Labrador²²;
- j) that the PBSA deemed trust attaches to the debtor's current property, with effect retroactive to the date that the contributions become due; however, such priority is subordinate to pre-existing secured creditors with a fixed charge²³;
- k) that the PBSA deemed trust is not effective in the CCAA proceedings for reasons other than paramountcy²⁴;

¹⁷ Pension Claims Order, at para. 131, Schedule 1

¹⁸ Pension Claims Order, at para. 154, Schedule 1

¹⁹ The CCAA Judge reversed himself on this finding in his decision of June 26, 2015, where he held that the Wabush CCAA proceedings was not a liquidation at paragraph 79, Schedule 3

²⁰ Pension Claims Order, at paras. 173 and 175, Schedule 1.

²¹ Pension Claims Order, at para. 210, Schedule 1.

²² The Court assumes that the lien and charge under section 32(4) of the NLPBA is a valid fixed charge under the law of Newfoundland and Labrador. See Pension Claims Order, at para. 126, Schedule 1

²³ Pension Claims Order, at paras. 122-124, Schedule 1.

²⁴ Pension Claims Order, at para. 126, Schedule 1.

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- l) that the Pension Claims are only protected to the extent provided for by sections 6(6) and 37(6) of the CCAA²⁵; and
- m) that the scheme of distribution to creditors in the Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3 ("**BIA**") should be incorporated into the CCAA²⁶;

III - ERRORS OF LAW

The CCAA Judge erred in his decision as follows:

38. **Error #1:** concluding that the Salaried Plan (as well as the Union Plan) is regulated on a compartmentalized basis by three different pension statutes for different groups of Wabush Mines pension plan members to be determined either by the province in which they reported for work while they were active employees, or whether the employees worked on an aspect of the Wabush Mines mining operations that in and of itself is subject to federal jurisdiction (e.g., the federal regulation of railways under the *Constitution Act*). Specifically, he erred by finding that the PBSA applies exclusively to the Wabush railway retirees, the SPPA applies exclusively to the Wabush non-railway employees who reported for work in Québec, and that the NLPBA applies exclusively to the non-railway employees who reported for work in Newfoundland. In so doing, he erred by, *inter alia*,:

- a) misinterpreting and misapplying the interpretative principles applicable to multi-jurisdictional pension plans, including, but not limited to, certain inter-provincial agreements respecting pension plans with members in more than one province;
- b) misinterpreting the Salaried Plan, including but not limited to section 12.06 which states that Newfoundland law is the applicable law to the plan;
- c) failing to conclude that the railway workers and those reporting for work in Québec are also concurrently subject to and protected by the NLPBA deemed trusts;

²⁵ Pension Claims Order, at para. 217, Schedule 1.

²⁶ Pension Claims Order, at para. 208, Schedule 1.

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- d) misinterpreting section 5 of the NLPBA to limit the application of the NLPBA deemed trusts to only the Newfoundland-resident members of the Salaried Plan; and
 - e) failing to recognize the historical context of the Salaried Plan, which militates in favour of applying the NLPBA deemed trusts to all employees, including that since the inception of the Salaried Plan in 1968 and for the next 47 years until the CCAA proceedings in 2015, the Salaried Plan had been regulated exclusively by the Newfoundland Superintendent of Pensions in accordance with the NLPBA only including with respect to the funding of the plan; and the federal regulator of the PBSA has had no regulatory involvement with the Salaried Plan;
39. **Error #2:** concluding that the property covered on an event he called a deemed trust "triggering event" is necessary for a statutory deemed trust to be valid, and further erred by misconstruing and misapplying the decision of the Supreme Court of Canada in *Sparrow Electric*²⁷ (a GST case) which was adopted by the Québec Superior Court in *Aveos*²⁸ (a PBSA case) in forming the above conclusion. In particular, he erred, *inter alia*, by:
- a) applying the reasoning of *Sparrow Electric* that deals with specific statutory language deemed trusts for GST under the *Income Tax Act* to pension deemed trusts despite the complete absence of *Sparrow* GST-type language for pension deemed trusts in the CCAA, SPPA, NLPBA, PBSA, or any other statute;
 - b) misinterpreting section 49 of the SPPA to conclude that property to which the deemed trust attaches must be identified for the SPPA deemed trusts to be effective, in contradiction to the decision of the same Québec court in *Timminco*, thus generating opposite legal results on the same issues by the same Québec court; and
 - c) rationalizing that since he found no deemed trust protection for the Québec members of the Salaried Plan under the SPPA, he ought to similarly penalize the

²⁷ *Royal Bank v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411.

²⁸ *Aveos Fleet Performance Inc./Aveos Performance aéronotique inc. (Arrangement relative à)*, 2013, QCCS 5662.

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NLPBA members by finding that the NLPBA deemed trust also does not attach to any of the company's assets in Québec;

40. **Error #3:** concluding that the deemed trusts in section 49 of the SPPA and the unseizability provision under section 264 of the SPPA are not effective to create a deemed trust for the amounts owing to a pension plan by an employer and do not create a property or security interest. In particular, he erred, *inter alia*, by:

- a) finding that even if section 49 of the SPPA created a valid deemed trusts, the deemed trusts would be of no effect in a CCAA; and
- b) mis-interpreting and applying sections 49 and 264 of the SPPA, and rejecting the ratio in *Timminco* which dealt with the same issue in a lengthy decision by a judge of the same court which found that the SPPA deemed trusts are effective in a CCAA proceeding.

41. **Error #4:** not determining the priority issues with respect to the Pension Plan Administrator's lien and charge (a secured claim) pursuant to section 32(4) of the NLPBA despite that the CCAA Judge assumed that such lien and charge is a valid fixed charge under the law of Newfoundland and Labrador;

42. **Error #5:** concluding that the NLPBA deemed trusts, even if valid (which the CCAA Judge held were not in CCAA proceedings, which is an error), do not apply to attach assets located in the Province of Québec. In particular, he erred, *inter alia*, by:

- a) concluding that the Court would not recognize or enforce the deemed trusts under the NLPBA against assets of the employer located in the province of Québec; and
- b) misinterpreting and misapplying Articles 1262, 3079, 3097, 3102 and 3118 of the *Civil Code of Québec*, CQLR c CCQ-1991 ("CCQ") regarding the NLPBA deemed trusts;

43. **Error #6:** determining that the scheme of distribution to creditors in the BIA should be incorporated into the CCAA, and thereby excluding the pension deemed trusts from application

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that are intended to protect pension plan beneficiaries from pension plan underfunding, in particular, he erred, *inter alia*, by:

- a) disregarding the clear language of the Supreme Court of Canada in *Indalex* where the Supreme Court addressed this exact issue and held that BIA priorities are not to be read into the CCAA:

"[51]... *[T]his does not mean* that courts may read bankruptcy priorities into the CCAA at will. Provincial legislation defines the priorities to which creditors are entitled *until that legislation is ousted by Parliament. Parliament did not expressly apply all bankruptcy priorities either to CCAA proceedings or to proposals under the BIA.*";²⁹ [emphasis added]

- b) assuming wrong facts and outcomes in commercial transactions and CCAA proceedings without any evidence in order to support his legal conclusions summarized herein.

44. **Error #7:** concluding that the NLPBA deemed trust "frustrates the purpose of Parliament if it were to operate in the context of a CCAA proceeding" by misapplying the doctrine of paramountcy, and further misinterpreting the language of the CCAA and reading language into the CCAA that does not exist. In particular, he erred, *inter alia*, by:

- a) not following the Supreme Court of Canada's decision in *Indalex* where the Court confirmed (in the context of the Ontario *Pension Benefits Act*) that provincial pension deemed trusts create a valid and enforceable deemed trust in CCAA proceedings, and instead deciding that the NLPBA deemed trusts are not effective in a CCAA proceeding;
- b) finding that the retirees' pension claims are protected only to the limited extent provided for by sections 6(6) and 37(6) of the CCAA despite the complete absence of any limiting language in the CCAA or in the NLPBA, SPPA, and PBSA, and despite that similar arguments were asserted before the Supreme Court

²⁹ *Indalex Ltd., Re*, 2013 SCC 3, at para 51.

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in *Indalex* by the company in that case and were rejected by the Supreme Court; and

- c) interpreting the CCAA to conclude that Parliament only intended that the unpaid normal costs payments but not unpaid special payments and wind-up deficit are to be protected in a CCAA proceeding and that provincial pension deemed trust provisions are of no force or effect in a CCAA proceeding;

45. **Error #8:** concluding that the PBSA deemed trust is not effective in the CCAA proceedings, on the rationale of the timing of legislative amendments and concluding that since the pension provisions in the CCAA (and BIA) were added in December 2007 (coming into force in September 2009), which was after the initial deemed trust protections were inserted into sections 8 and 29 of the PBSA (in June 1986), it must mean that Parliament intended for the PBSA deemed trusts to no longer apply. In so doing, he failed to take into account that the PBSA was in fact amended again by Parliament *after* the pension provisions were added to the CCAA (and BIA). The PBSA was amended on July 12, 2010 (coming into force on April 1, 2011) to specifically remove only the wind up deficit deemed trust from the PBSA, giving rise to the inescapable conclusion that Parliament turned its mind to amending federal pension protections and intentionally kept the PBSA deemed trusts for unpaid current service costs and unpaid special payments in place, in addition to and as a supplement to the provisions it previously added to the CCAA in 2007 in section 6(6) that requires a CCAA Plan of Compromise to provide for the payment of unpaid current service costs only as part of such plan, (unless expressly approved by the CCAA Judge to the contrary). Further, the CCAA Judge misinterpreted section 6(6) of the CCAA.

V. THE TEST FOR LEAVE TO APPEAL IN CCAA CASES IS MET

46. The test for granting leave to appeal in CCAA cases is well established and set out below.
- (a) The point on appeal is of significance to the practice;
 - (b) The point raised is of significance to the action;
 - (c) The appeal is *prima facie* meritorious and is not frivolous; and
 - (d) The appeal will not unduly hinder the progress of the action.

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The criteria for leave to appeal in CCAA cases have been met. Leave to appeal should be granted.

a) *The proposed appeal involves issues that are significant to the practice*

47. The issues in the proposed appeal are significant to insolvency practice in Québec, Newfoundland, as well as the rest of Canada. The interpretation, scope, effect, and application of pension deemed trusts in CCAA proceedings are significant to the insolvency and pension practice. Hamilton J. made determinations on these issues that are inconsistent with decisions of the Supreme Court of Canada and the Québec Superior Court, generating new uncertainty in the law, in particular following the release of *Indalex* which had settled many issues. The decision of this court would assist insolvency practice and help settle the law;

b) *The point raised on the appeal is of significance to the action*

48. The Salaried retirees are both a significant creditor group with claims of approximately \$72 million³⁰ and vulnerable stakeholder group in the Wabush CCAA Proceedings.

49. The points raised on the appeal directly impact the priority of distribution from the Wabush Mines estate to all creditors and therefore are significant to the action;

c) *The proposed appeal is meritorious and not frivolous*

50. The above-noted errors and the misinterpretations of the, NLPBA, CCAA and PBSA (and BIA) and Supreme Court caselaw are palpable and overriding errors and have merit. The issues for the proposed appeal are clearly not frivolous;

d) *The appeal will not hinder the progress of the action*

51. The Wabush CCAA Parties are in liquidation, are not restructuring, and undergoing a sales process in accordance with timelines and procedures that are being calculated by the Monitor and overseen by the CCAA Judge. The next major step is to vet creditors' claims,

³⁰ This includes the pension wind-up deficit, and claims for terminated OPEBs and terminated supplemental retirement allowances, the amount of which are still subject to confirmation from the actuaries for the Salaried retirees and the Monitor.

determine priorities among creditors, and distribute the sales proceeds to creditors. No distributions have been made to creditors and no distribution is scheduled. The appeal will not hinder the progress of the action;

52. The Appellants will ask the Court of Appeal to:

- a) **ALLOW** the appeal;
- b) **SET ASIDE** the judgment in first instance;
- c) **DECLARE THAT:**

i) the NLPBA, PBSA, and SPPA deemed trusts concurrently apply in favour of all the members of the Salaried Plan, are enforceable in the CCAA proceeding, and generate a priority recovery for the Salaried Plan members in respect of the amounts owing that covered by the deemed trusts ahead of all other creditors, ranking only after the priorities granted to the DIP lender and other CCAA court-ordered charges in the CCAA proceedings;

ii) the pension plan administrator's lien and charge under section 32(4) of the NLPBA is a secured claim of the pension plan administrator for the amount of unpaid current service payments, unpaid special payments, and unpaid wind up deficit in respect of all members of the Salaried Plan, including the Wabush retirees who worked on the railway and the Wabush retirees who had reported for work in Québec;

iii) sections 49 and 264 of the SPPA create a valid and enforceable deemed trust over the amount of all unpaid current service payments, and unpaid special payments owing to the Salaried Plan with respect to the Québec retirees and that such contributions with interest are unassignable and unseizable;

iv) the NLPBA, SPPA, and PBSA deemed trusts charge or otherwise apply to all of the applicable Wabush CCAA Parties' assets, including its assets located in Québec;

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- v) the pension plan administrator's lien and charge under section 32(4) of the NLPBA charges or otherwise applies to all of the applicable Wabush CCAA Parties' assets, including its assets located in Québec;
- vi) the scope of the NLPBA deemed trusts and the pension plan administrator's lien and charge covers the amount of unpaid current service payments, unpaid special payments, and the unpaid wind-up deficit of the Salaried Plan; and
- vii) such other declarations and orders as counsel may request and this Honourable Court will grant.

53. The undersigned are the Court-appointed Representative Counsel to the Applicants/Objecting Parties in the latter's capacity as Court-appointed Representatives of all salaried and non-union active and retired employees of the Wabush CCAA Parties. The CCAA Judge made these orders (the "**Representation Order**"), on June 22, 2015, a copy of which is attached to this Motion (**Schedule [5]**; *Order Appointing Representatives and Representative Counsel*).

VII. A STAY OF PROVISIONAL EXECUTION IS WARRANTED

54. Should the relevant provisions in the Pension Claims Order be allowed to stand, then the beneficiaries of the Salaried Plan will suffer serious and irreparable hardship. This Court should stay execution of the Pension Claims Order, suspend any distribution from the CCAA estate that could not be made if this Court finds that the pension claims are entitled to the protection of the pension deemed trusts and/or the lien and charge under the NLPBA, PBSA, and SPPA, which includes but is not limited to the wind up deficit; and that such claims are enforceable against all of the assets of the Wabush CCAA Parties, including but not limited to those assets located in Québec.

VIII. ANY DELAYS FOR SERVICE, FILING AND PRESENTING THIS MOTION SHOULD BE ABRIDGED

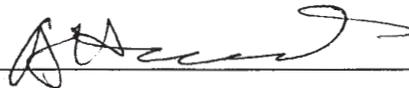
55. Given the gravity of the hardship of the relevant parts of the Pension Claims Order on the Salaried retirees and the need for all stakeholders in the Wabush CCAA Parties to have proper direction on the state of the law applicable to the many issues raised in this appeal, any delays for service, filing and presenting this Motion should be abridged, if necessary;

56. Further, should this Court grant leave to appeal, it is anticipated that all interested parties in the Wabush CCAA Proceedings would cooperate to request case management from this Court to facilitate a fast track appeal hearing of the merits to ensure that the issues are adjudicated quickly and to ensure there is no material delay or prejudice to the CCAA stakeholders;

WHEREFORE, MAY IT PLEASE THIS HONOURABLE COURT TO:

- [A] **GRANT** this application for leave to appeal;
- [B] **ABRIDGE**, if necessary, the delays for serving, filing and presenting the Applicants' Motion for Leave to Appeal and from an Interlocutory Decision and to Suspend Provisional Execution;
- [C] **AUTHORIZE** the Applicants to institute an appeal from the judgment rendered by the Honourable Mr. Justice Stephen W. Hamilton, on September 11, 2017;
- [D] **SUSPEND** the provisional execution of the Pension Claims Order until such time as judgment has been rendered on the appeal; and
- [E] **FIX** a date for hearing the appeal.

TORONTO, October 2, 2017



Andrew J. Hatnay, Demetrios Yiokaris, Amy Tang
KOSKIE MINSKY LLP
20 Queen St. West, Suite 900, Toronto, ON M5H 3R3
Tel: 595-2083 / Fax: 416-204-2872
Email: ahatnay@kmlaw.ca

Attorneys for the Appellants, Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, as Representatives of the Salaried/Non-Union Employees and Retirees

Representatives of Salaried/Non-Union Employees & Retirees' Application for Leave to Appeal (C.A.M. 500-09-027077-171), October 2, 2017

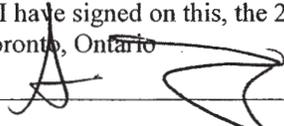
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AFFIDAVIT OF AMY TANG
(October 2, 2017)

I, **AMY TANG**, attorney, practicing law at KOSKIE MINSKY LLP, 20 Queen Street, Suite 900, Toronto, Ontario, M5H 3R3, solemnly affirm:

1. I am an associate at the law firm Koskie Minsky LLP. We are the court-appointed representative counsel to all salaried/non-union employees and retirees (the "**Salaried Members**") of the Wabush CCAA Parties, pursuant to an order of the CCAA Judge on June 22, 2015 (the "**Representation Order**") (**Schedule 5**). We are counsel to the Applicants (Objecting parties) Messrs. Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, who are court-appointed representatives of the Salaried Members, pursuant to the Representation Order;
2. In September 2016, the Respondent and Monitor in the CCAA proceedings, FTI Consulting Inc., filed a "Motion for Direction with respect to Pension Claims", which was amended on April 13, 2017 (**Schedule 6**), before the CCAA Court seeking various relief relating to the pension plans of the Wabush CCAA Parties. We filed a Notice of Objection (**Schedule 7**) to the Motion in October 2016. On September 11, 2017, the CCAA Judge rendered his decision (**Schedule 1**) granting the Respondent's Motion. The Applicants, along with a number of other interested parties, are now seeking leave to appeal the September 11, 2017 order of the CCAA Judge.
3. All the facts alleged in the within *Application for Leave to Appeal from an Interlocutory Decision & to Suspend Provisional Execution* are true and correct to the best of my knowledge. The facts give rise to important questions of law and equity, inter-provincial jurisdiction and the interpretation and application of constitutional law.

And I have signed on this, the 2nd day of October, 2017
in Toronto, Ontario



Solemnly affirmed before me on this, the 2nd day of
October, 2017 in Toronto, Ontario



Commissioner of Oaths

LSUO# 72980C

Representatives of Salaried/Non-Union Employees & Retirees' Application for Leave to Appeal (C.A.M. 500-09-027077-171), October 2, 2017

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LIST OF SCHEDULES

(In support of the Applicants, Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson (as Representatives of the Salaried/Non-Union Employees and Retirees) *Application for Leave to Appeal from an Interlocutory Decision and to Suspend Provisional Execution*

Schedule 1	September 11, 2017 Judgment on the Motion of the Monitor for Directions with Respect to Pension Claims, rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 2	January 30, 2017 Judgment on the Motion of the Monitor, rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 3	June 26, 2015 Judgment on Motion of the Wabush CCAA Parties to Grant Priority to the Interim Lender Charge and to Suspend the Payment of Certain Pension Amortization Payments and Post-Retirement Employee Benefits, and Related Matters, rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 4	August 18, 2015 Judgment on Motion for Leave to Appeal, rendered by the Honourable Nicholas Kasirer, J.A. in Court of Appeal file no. 500-09-025441-155
Schedule 5	June 22, 2015 Order Appointing Representatives and Representative Counsel, rendered by the Honourable Stephen W. Hamilton, J.S.C. in Superior Court file no. 500-11-048114-157
Schedule 6	April 13, 2017 Amended Motion by the Monitor for Directions with Respect to Pension Claims, without attachments
Schedule 7	October 7, 2016 Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims
Schedule 8	Notice of Objection by Superintendent of Pensions of Newfoundland and Labrador
Schedule 9	Notice of Objection by Morneau Shepell, in its capacity as the Replacement Pension Plan Administrator
Schedule 10	Affidavit of Terry Watt in support of the October 7, 2016 Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims, sworn on

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	December 14, 2016
Schedule 11	Wind-Up Actuarial Valuation as at December 16, 2015 of the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush lake Railway Company, Limited
Schedule 12	June 21, 2017 FTI Consulting Canada Inc.'s Thirty-Eighth Report to the Court in its Capacity as Monitor, without appendices
Schedule 13	April 26, 2017 FTI Consulting Canada Inc.'s Thirty-Fourth Report to the Court in its Capacity as Monitor, without appendices
Schedule 14	March 27, 2017 Certified true copy of a Minute of a Meeting of the Committee of the Executive Council of Newfoundland and Labrador approved by His Honour the Lieutenant-Governor directing a Reference

TORONTO, October 2, 2017



Andrew J. Hatnay, Demetrios Yiokaris, Amy Tang
KOSKIE MINSKY LLP
 20 Queen St. West, Suite 900
 Toronto, ON M5H 3R3
 Tel: 595-2083 / Fax: 416-204-2872
 Email: ahatnay@kmlaw.ca

Attorneys for the Applicants, Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

Representatives of Salaried/Non-Union Employees & Retirees' Application for Leave to Appeal
(C.A.M. 500-09-027077-171), October 2, 2017

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NOTICE OF PRESENTATION

TO: FTI CONSULTING CANADA INC.

TD Waterhouse Tower
79 Wellington St. West, Suite 2010, PO Box 104
Toronto, ON M5K 1G8

Attention: Nigel Meakin

Tel: (416) 649-8100 x48065 / Fax: 416-649-8101

Email: nigel.meakin@fticonsulting.com

Respondent – Monitor

AND TO: NORTON ROSE FULBRIGHT CANADA LLP

1 Place Ville Marie, Suite #2500
Montreal, Québec H3B 1R1

Attention: Sylvain Rigaud

Tel: 514-847-4702

Email: sylvain.rigaud@nortonrosefulbright.com

Attorney for the Respondent-Monitor

AND TO: BLAKE, CASSELS & GRAYDON LLP

1 Place Ville Marie, Suite 3000
Montreal, QC H3B 4N8

Attention: Bernard Boucher (Montreal)

Tel: 514-982-4006 / Fax: 514-982-4099

Email: bernard.boucher@blakes.com

BLAKE, CASSELS & GRAYDON LLP

199 Bay St., Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Attention: Steven Weisz (Toronto)

Tel: 416-863-2616

Email: steven.weisz@blakes.com

Attorney for the Debtors and Mises-en-cause, Bloom Lake General Partner

AND TO: IRVING MITCHELL KALICHMAN

3500, De Maisonneuve Blvd. West, Suite 1400

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Montréal, Québec H3Z 3C1

Attention: Doug Mitchell
Tel: 514 935-2725 / Fax: 514 935-2999
dmitchell@imk.ca
Edward Bechard-Torres
Tel: 514 934-7743 / Fax: 514 935-2999
ebechardtorres@imk.ca

Attorney to Superintendent of Pensions (Newfoundland and Labrador)

AND TO: PHILION LEBLANC BEAUDRY AVOCATS
5000, boul. des Gradins, bureau 280
Québec, QC G2J 1N3

Attention: Daniel Boudreault
Tel: 514.387.3538 / Fax: 514.387.7386
dboudreault@plba.ca

Attorney to the Syndicat des Metallos, Section Locale 9996, Section Locale 6254,
Section Locale 6285

AND TO: PINK LARKIN
Suite 201, 1463 South Park Street
P.O. Box 36036, Halifax
Nova Scotia, B3J 3S9

Attention: Ron Pink
Tel: 902-423-7777 / Fax: 902-423-9588
Email: rpink@pinklarkin.com
Bettina Quistgaard
Tel: 902-423-7777 / Fax 902-423-9588
Email: bquistgaard@pinklarkin.com

Attorney for Morneau Shepell Ltd., in its capacity as Replacement Pension Plan
Administrator

AND TO: VAILLANCOURT & CLOCCHIATTI
2600, boul. Laurier, Suite 501
Québec, QB G1V 4T3

Attention: Louis Robillard
Tel: 418-657-8702
louis.robillard@retraiteQuébec.gouv.qc.ca

Attorneys for the Attorney General of Québec and Retraite Québec

Representatives of Salaried/Non-Union Employees & Retirees' Application for Leave to Appeal (C.A.M. 500-09-027077-171), October 2, 2017

- 25 -

AND TO: OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS (OSFI)

Department of Justice – Canada
Guy-Favreau Complex
200 Rene-Levesque Blvd. West, 9th Floor
Montreal, QC H2Z 1X4

Attention: Pierre Lecavalier and Michelle Kellam
Tel: 514-496-4073 / Fax: 514-283-3856
pierre.lecavalier@justice.gc.ca
michelle.kellam@justice.gc.ca

Attorney for the Attorney General of Canada

AND TO: STEIN MONAST LLP

70, Dalhousie, Suite 300
Québec, QC G1K 4B2

Attention: Richard Laflamme
Tel: 418-640-4418 / Fax: 418-523-5391
Email: richard.laflamme@steinmonast.ca

Attorneys for Ville de Sept-Iles

NOTICE IS HEREBY GIVEN that the *Application for leave to appeal from an interlocutory decision and to suspend provisional execution* will be presented before a judge of the Court of Appeal sitting at Edifice Ernest-Cormier, located at 100 Notre-Dame Street East, in Montreal, on October 31, 2017 at 9:30 a.m.

PLEASE ACT ACCORDINGLY.

TORONTO, October 2, 2017



Andrew J. Hatnay, Demetrios Yiokaris, Amy Tang
KOSKIE MINSKY LLP

20 Queen St. West, Suite 900
Toronto, ON M5H 3R3
Tel: 595-2083 / Fax: 416-204-2872
Email: ahatnay@kmlaw.ca

Attorneys for the Appellants, Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, as Representatives of the Salaried/Non-Union Employees and Retirees of Wabush Mines

Representatives of Salaried/Non-Union Employees & Retirees' Notice of Appeal (C.A.M. 500-09-027077-171), October 2, 2017

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

S.C.: 500-11-048114-157

C.A.: 500-09-

COURT OF APPEAL

**IN THE MATTER OF THE
COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, AS AMENDED**

**MICHAL KEEPER, TERENCE WATT, DAMIEN
LEBEL, and NEIL JOHNSON as Representatives
of the Salaried/Non-Union Employees and
Retirees**

Appellants

**BLOOM LAKE GENERAL PARTNER LIMITED,
QUINTO MINING CORPORATION, 8568391
CANADA LIMITED, CLIFFS QUEBEC IRON
MINING ULC, WABUSH IRON CO. LIMITED,
WABUSH RESOURCES INC .**

Debtors

and

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES, ARNAUD
RAILWAY COMPANY, WABUSH LAKE
RAILWAY COMPANY, LIMITED**

Mises-en-cause

and

**SYNDICAT DES METALLOS SECTIONS
LOCALES 6254 ET 6285, MORNEAU SHEPELL
LTD. , in its capacity as Replacement Pension
Plan Administrator, RETRAITE QUEBEC, THE
ATTORNEY GENERAL OF CANADA, acting on
behalf of the OFFICE OF THE SUPERINTENDENT
OF FINANCIAL INSTITUTIONS HER MAJESTY IN
RIGHT OF NEWFOUNDLAND AND LABRADOR,
as represented by the SUPERINTENDENT OF
PENSIONS, VILLE DE SEPT-ILES**

Mises-en-cause

FTI CONSULTING CANADA INC.

Monitor-Respondent

NOTICE OF APPEAL

(Article 352 C.C.P.)

Appellant

Dated: October 2, 2017

1. The Appellants appeal from the Judgment on the Amended Motion by the Honourable Mr. Justice Stephen Hamilton (the "**CCAA Judge**") of the Québec Superior Court (Commercial Division), District of Montreal, rendered on September 11, 2017 (the "**Pension Claims Order**"), wherein it was rendered;

- (a) granting the Motion by the Monitor for Directions with respect to Pension Claims;
- (b) declaring that the trusts created under the Québec *Supplemental Pension Plans Act*, chapter R-15.1 ("**SPPA**"), *Pension Benefits Standards Act*, 1985, R.S.C., 1985, c. 32 ("**PBSA**"), and the Newfoundland *Pension Benefits Act*, 1997, S.N.L.1996 Chapter P-4.01 ("**NLPBA**") are not enforceable in the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") proceedings; and
- (c) declaring that the employee contributions and the normal cost payments are protected to the extent provided by sections 6(6) and 37(6) of the CCAA;

2. The date of the Judgment is September 11, 2017;

3. The duration of the hearing was from June 28 to 29, 2017;

4. The Appellants file with this Notice of Appeal a copy of the judgment in first instance in **Schedule [1]**;

INTRODUCTION:

5. In 2013, the Supreme Court of Canada released its decision in *Indalex* where the court held, *inter alia*, that provincial statutory pension deemed trusts in favour of pension plan beneficiaries for amounts owing to a pension plan by their employer apply as a priority claim in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**"), subject only to the doctrine of paramountcy.

6. Paramountcy was applied in *Indalex* to the limited extent of subordinating the deemed trusts in the Ontario *Pension Benefits Act*, RSO 1990, c P.8 ("**PBA**") (which operate in a very similar manner to the pension deemed trusts in the SPPA, NLPBA and the PBSA which are the three relevant pension statutes in this appeal) to the priority of the DIP lender's priority granted by the CCAA court in *Indalex*.

7. The Supreme Court in *Indalex* made significant progress in settling many legal issues pertaining to the application of pension deemed trusts in CCAA proceedings. *Indalex* has been applied and followed in subsequent cases. Following the Supreme Court's decision, the CCAA court in *Indalex*¹ approved a settlement that distributed estate funds in that case to the pension plan members. In *Timminco*², the Ontario Timminco pension plan recovered as first priority distribution in respect of the underfunded Ontario pension plan deficit, and the Québec Timminco pension plan also recovered a priority payment pursuant to the decision of Mr. Justice Mongeon of the Québec Superior Court who held, relying on *Indalex*, that the deemed trusts in section 37 of the SPPA are valid and enforceable with respect to unpaid current service payments and unpaid special payments³.

8. In his sweeping decision covering many areas of pension and insolvency law in different provinces (Québec and Newfoundland) and different jurisdictions (provincial and federal), the CCAA Judge ruled broadly with different interpretations and on different theories, that the pension deemed trusts in the NLPBA, SPPA, and PBSA are of no force or effect in the CCAA proceedings. He thereby rendered all of the Québec and Newfoundland retirees as unsecured creditors without any priority in the CCAA proceedings.

9. The decision of the CCAA Judge in the case under appeal is, in many respects, contrary to the Supreme Court of Canada's decision in *Indalex*, completely contradictory to

¹ *Indalex Ltd., Re*, 2013 ONSC 7932 (Ont. S.C.J.)

² *Timminco Itée (Arrangement relatif à)*, 2014 QCCS 174 (Que. S.C.)

³ *Ibid* at para 135

the decision of Mr. Justice Mongeon in *Timminco*, and injects new uncertainty into pension and insolvency law with respect to the SPPA, NLPBA, and the PBSA pension deemed trusts. It would have the effect of rendering the Québec and Newfoundland retirees of Wabush Mines as unsecured creditors with virtually no hope for recovery for their substantial pension losses in the Wabush Mines CCAA proceedings.

The decision of the CCAA Judge

10. In his decision, the CCAA Judge made at least 13 determinations:
- a) that the Salaried Plan (and Union Plan) are governed by the PBSA with respect to the employees who worked on the railway, by the SPPA with respect to the non-railway employees who reported for work in Sept-Iles, Québec, and by the NLPBA with respect to the non-railway employees who reported for work in Newfoundland⁴;
 - b) that the combined effect of section 8(1) and (2) of the PBSA create a deemed trust in the event of a liquidation of the employer, and that the liquidation was a "triggering event" for the deemed trust⁵;
 - c) that the statutory deemed trust language identifying the property covered on a so-called "triggering event" is necessary for the effectiveness of a statutory deemed trust based on the reasons of the Supreme Court of Canada in *Sparrow Electric* (a GST case) which was followed by the Québec Superior Court in *Aveos* (a PBSA deemed trust case)⁶;
 - d) that the deemed trust under section 49 of the SPPA and the unseizability provision under section 264 of the SPPA are not effective to a deemed trust for Québec pension plan members⁷;

⁴ Pension Claims Order, at para. 80, Schedule 1.

⁵ Pension Claims Order, at para. 88, Schedule 1

⁶ Pension Claims Order, at para. 99, Schedule 1

⁷ Pension Claims Order, at para. 112, Schedule 1

- e) that the SPPA deemed trust, even if effective, would cover only the unpaid going concern payments and unpaid special payments (to the extent that they relate to Wabush non-railway employees who reported for work in Québec)⁸;
- f) that the NLPBA deemed trusts do not apply to the assets of Wabush Mines located within the province of Québec⁹;
- g) that the Wabush Mines CCAA proceedings was a liquidation (as compared to a restructuring) that started on May 19, 2015 (the date Wabush Mines obtained protection under the CCAA from the CCAA Judge)¹⁰, and that the deemed trust under section 8(2) of the PBSA and section 32(2) of the NLPBA came into effect on that date, and that the liquidation is the so-called "triggering event" for the creation of the deemed trust in section 32(2) in NLPBA, and further that there is no need for the court to decide whether the "triggering event" must occur prior to the CCAA Initial Order or prior to the sale of the assets¹¹;
- h) that the NLPBA deemed trusts are inoperable in a CCAA proceeding based on the doctrine of paramountcy¹²;
- i) that the lien and charge created by section 32(4) of the NLPBA is a valid fixed charge under the law of Newfoundland and Labrador¹³;
- j) that the PBSA deemed trust attaches to the debtor's current property, with effect retroactive to the date that the contributions become due; however,

⁸ Pension Claims Order, at para. 131, Schedule 1

⁹ Pension Claims Order, at para. 154, Schedule 1

¹⁰ The CCAA Judge reversed himself on this finding in his decision of June 26, 2015, where he held that the Wabush CCAA proceedings was not a liquidation at paragraph 79, Exhibit 2

¹¹ Pension Claims Order, at paras. 173 and 175, Schedule 1.

¹² Pension Claims Order, at para. 210, Schedule 1.

¹³ The Court assumes that the lien and charge under section 32(4) of the NLPBA is a valid fixed charge under the law of Newfoundland and Labrador. See Pension Claims Order, at para. 126, Schedule 1

such priority is subordinate to pre-existing secured creditors with a fixed charge¹⁴;

- k) that the PBSA deemed trust is not effective in the CCAA proceedings for reasons other than paramountcy¹⁵;
- l) that the Pension Claims are only protected to the extent provided for by sections 6(6) and 37(6) of the CCAA¹⁶; and
- m) that the scheme of distribution to creditors in the Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3 ("**BIA**") should be incorporated into the CCAA¹⁷;

I - GROUNDS OF APPEAL

The CCAA Judge erred in his decision as follows:

11. **Error #1:** concluding that the Salaried Plan (as well as the Union Plan) is regulated on a compartmentalized basis by three different pension statutes for different groups of Wabush Mines pension plan members to be determined either by the province in which they reported for work while they were active employees, or whether the employees worked on an aspect of the Wabush Mines mining operations that in and of itself is subject to federal jurisdiction (e.g., the federal regulation of railways under the *Constitution Act*). Specifically, he erred by finding that the PBSA applies exclusively to the Wabush railway retirees, the SPPA applies exclusively to the Wabush non-railway employees who reported for work in Québec, and that the NLPBA applies exclusively to the non-railway employees who reported for work in Newfoundland. In so doing, he erred by, *inter alia*,

- a) misinterpreting and misapplying the interpretative principles applicable to multi-jurisdictional pension plans, including, but not limited to, certain inter-

¹⁴ Pension Claims Order, at paras. 122-124, Schedule 1.

¹⁵ Pension Claims Order, at para. 126, Schedule 1.

¹⁶ Pension Claims Order, at para. 217, Schedule 1.

¹⁷ Pension Claims Order, at para. 208, Schedule 1.

provincial agreements respecting pension plans with members in more than one province;

- b) misinterpreting the Salaried Plan, including but not limited to section 12.06 which states that Newfoundland law is the applicable law to the plan;
- c) failing to conclude that the railway workers and those reporting for work in Québec are also concurrently subject to and protected by the NLPBA deemed trusts;
- d) misinterpreting section 5 of the NLPBA to limit the application of the NLPBA deemed trusts to only the Newfoundland-resident members of the Salaried Plan; and
- e) failing to recognize the historical context of the Salaried Plan, which militates in favour of applying the NLPBA deemed trusts to all employees, including that since the inception of the Salaried Plan in 1968 and for the next 47 years until the CCAA proceedings in 2015, the Salaried Plan had been regulated exclusively by the Newfoundland Superintendent of Pensions in accordance with the NLPBA only including with respect to the funding of the plan; and the federal regulator of the PBSA has had no regulatory involvement with the Salaried Plan;

12. **Error #2:** concluding that the property covered on an event he called a deemed trust "triggering event" is necessary for a statutory deemed trust to be valid, and further erred by misconstruing and misapplying the decision of the Supreme Court of Canada in *Sparrow Electric*¹⁸ (a GST case) which was adopted by the Québec Superior Court in *Aveos*¹⁹ (a PBSA case) in forming the above conclusion. In particular, he erred, *inter alia*, by:

¹⁸ *Royal Bank v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411.

¹⁹ *Aveos Fleet Performance Inc./Aveos Performance aéronotique inc. (Arrangement relative à)*, 2013, QCCS 5662.

- a) applying the reasoning of *Sparrow Electric* that deals with specific statutory language deemed trusts for GST under the *Income Tax Act* to pension deemed trusts despite the complete absence of *Sparrow* GST-type language for pension deemed trusts in the CCAA, SPPA, NLPBA, PBSA, or any other statute;
- b) misinterpreting section 49 of the SPPA to conclude that property to which the deemed trust attaches must be identified for the SPPA deemed trusts to be effective, in contradiction to the decision of the same Québec court in *Timminco*, thus generating opposite legal results on the same issues by the same Québec court; and
- c) rationalizing that since he found no deemed trust protection for the Québec members of the Salaried Plan under the SPPA, he ought to similarly penalize the NLPBA members by finding that the NLPBA deemed trust also does not attach to any of the company's assets in Québec;

13. **Error #3:** concluding that the deemed trusts in section 49 of the SPPA and the unseizability provision under section 264 of the SPPA are not effective to create a deemed trust for the amounts owing to a pension plan by an employer and do not create a property or security interest. In particular, he erred, *inter alia*, by:

- a) finding that even if section 49 of the SPPA created a valid deemed trusts, the deemed trusts would be of no effect in a CCAA; and
- b) mis-interpreting and applying sections 49 and 264 of the SPPA, and rejecting the ratio in *Timminco* which dealt with the same issue in a lengthy decision by a judge of the same court which found that the SPPA deemed trusts are effective in a CCAA proceeding.

14. **Error #4:** not determining the priority issues with respect to the Pension Plan Administrator's lien and charge (a secured claim) pursuant to section 32(4) of the NLPBA despite that the CCAA Judge assumed that such lien and charge is a valid fixed charge under the law of Newfoundland and Labrador;

15. **Error #5:** concluding that the NLPBA deemed trusts, even if valid (which the CCAA Judge held were not in CCAA proceedings, which is an error), do not apply to attach assets located in the Province of Québec. In particular, he erred, *inter alia*, by:

- a) concluding that the Court would not recognize or enforce the deemed trusts under the NLPBA against assets of the employer located in the province of Québec; and
- b) misinterpreting and misapplying Articles 1262, 3079, 3097, 3102 and 3118 of the *Civil Code of Québec*, CQLR c CCQ-1991 ("**CCQ**") regarding the NLPBA deemed trusts;

16. **Error #6:** determining that the scheme of distribution to creditors in the BIA should be incorporated into the CCAA, and thereby excluding the pension deemed trusts from application that are intended to protect pension plan beneficiaries from pension plan underfunding, in particular, he erred, *inter alia*, by:

- a) disregarding the clear language of the Supreme Court of Canada in *Indalex* where the Supreme Court addressed this exact issue and held that BIA priorities are not to be read into the CCAA:

"[51]... **[T]his does not mean** that courts may read bankruptcy priorities into the CCAA at will. Provincial legislation defines the priorities to which creditors are entitled **until that legislation is ousted by Parliament. Parliament did not expressly apply all**

bankruptcy priorities either to CCAA proceedings or to proposals under the BIA.";²⁰ [emphasis added]

- b) assuming wrong facts and outcomes in commercial transactions and CCAA proceedings without any evidence in order to support his legal conclusions summarized herein.

17. **Error #7:** concluding that the NLPBA deemed trust "frustrates the purpose of Parliament if it were to operate in the context of a CCAA proceeding" by misapplying the doctrine of paramountcy, and further misinterpreting the language of the CCAA and reading language into the CCAA that does not exist. In particular, he erred, *inter alia*, by:

- a) not following the Supreme Court of Canada's decision in *Indalex* where the Court confirmed (in the context of the Ontario *Pension Benefits Act*) that provincial pension deemed trusts create a valid and enforceable deemed trust in CCAA proceedings, and instead deciding that the NLPBA deemed trusts are not effective in a CCAA proceeding;
- b) finding that the retirees' pension claims are protected only to the limited extent provided for by sections 6(6) and 37(6) of the CCAA despite the complete absence any limiting language in the CCAA nor in the NLPBA, SPPA, and PBSA, and despite that similar arguments were asserted before the Supreme Court in *Indalex* by the company in that case and were rejected by the Supreme Court; and
- c) interpreting the CCAA to conclude that Parliament only intended that the unpaid normal costs payments but not unpaid special payments and wind-up deficit are to be protected in a CCAA proceeding and that provincial pension deemed trust provisions are of no force or effect in a CCAA proceeding;

²⁰ *Indalex Ltd., Re*, 2013 SCC 3, at para 51.

18. **Error #8:** concluding that the PBSA deemed trust is not effective in the CCAA proceedings, on the rationale of the timing of legislative amendments and concluding that since the pension provisions in the CCAA (and BIA) came into force in September 2009, which was after the deemed trust protections were inserted into sections 8 and 29 of the PBSA, it must mean that Parliament intended for the PBSA deemed trusts to no longer apply. In so doing, he failed to take into account that the PBSA was in fact amended by Parliament *years after* the pension provisions were added to the CCAA (and BIA) on April 1, 2011 to specifically remove only the wind up deficit deemed trust from the PBSA, giving rise to the inescapable conclusion that Parliament turned its mind to amending federal pension protections and intentionally kept the PBSA deemed trusts for unpaid current service costs and unpaid special payments in place, in addition to and as a supplement to the provisions it previously added to the CCAA in section 6(6) that requires a CCAA Plan of Compromise to provide for the payment of unpaid current service costs only as part of such plan, (unless expressly approved by the CCAA Judge to the contrary). Further, the CCAA Judge misinterpreted section 6(6) of the CCAA.

19. The Appellants will ask the Court of Appeal to:

- a) **ALLOW** the appeal;
- b) **SET ASIDE** the judgment in first instance;
- c) **DECLARE THAT:**
 - i) the NLPBA, PBSA, and SPPA deemed trusts concurrently apply in favour of all the members of the Salaried Plan, are enforceable in the CCAA proceeding, and generate a priority recovery for the Salaried Plan members in respect of the amounts owing that covered by the deemed trusts ahead of all other creditors, ranking only after the priorities granted to the DIP lender and other CCAA court-ordered charges in the CCAA proceedings;

- ii) the pension plan administrator's lien and charge under section 32(4) of the NLPBA is a secured claim of the pension plan administrator for the amount of unpaid current service payments, unpaid special payments, and unpaid wind up deficit in respect of all members of the Salaried Plan, including the Wabush retirees who worked on the railway and the Wabush retirees who had reported for work in Québec;
- iii) sections 49 and 264 of the SPPA create a valid and enforceable deemed trust over the amount of all unpaid current service payments, and unpaid special payments owing to the Salaried Plan with respect to the Québec retirees and that such contributions with interest are unassignable and unseizable;
- iv) the NLPBA, SPPA, and PBSA deemed trusts charge or otherwise apply to all of the applicable Wabush CCAA Parties' assets, including its assets located in Québec;
- v) the pension plan administrator's lien and charge under section 32(4) of the NLPBA charges or otherwise applies to all of the applicable Wabush CCAA Parties' assets, including its assets located in Québec;
- vi) the scope of the NLPBA deemed trusts and the pension plan administrator's lien and charge covers the amount of unpaid current service payments, unpaid special payments, and the unpaid wind-up deficit of the Salaried Plan; and
- vii) such other declarations and orders as counsel may request and this Honourable Court will grant.

Representatives of Salaried/Non-Union Employees & Retirees' Notice of Appeal (C.A.M. 500-09-027077-171), October 2, 2017

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Notice of this Notice of Appeal is given to:

TO: FTI CONSULTING CANADA INC.
TD Waterhouse Tower
79 Wellington St. West, Suite 2010, PO Box 104
Toronto, ON M5K 1G8

Attention: Nigel Meakin
Tel: (416) 649-8100 x48065 / Fax: 416-649-8101
Email: nigel.meakin@fticonsulting.com

Monitor – Respondent *in first instance*

AND TO: NORTON ROSE FULBRIGHT CANADA LLP
1 Place Ville Marie, Suite #2500
Montreal, Québec H3B 1R1

Attention: Sylvain Rigaud
Tel: 514-847-4702
Email: sylvain.rigaud@nortonrosefulbright.com

Attorney for the Respondent-Monitor

AND TO: BLAKE, CASSELS & GRAYDON LLP
1 Place Ville Marie, Suite 3000
Montreal, QC H3B 4N8

Attention: Bernard Boucher (Montreal)
Tel: 514-982-4006 / Fax: 514-982-4099
Email: bernard.boucher@blakes.com

BLAKE, CASSELS & GRAYDON LLP
199 Bay St., Suite 4000, Commerce Court West
Toronto, ON M5L 1A9

Attention: Steven Weisz (Toronto)
Tel: 416-863-2616
Email: steven.weisz@blakes.com

Attorney for the Debtors and Mises-en-cause, Bloom Lake General Partner

AND TO: IRVING MITCHELL KALICHMAN
3500, De Maisonneuve Blvd. West, Suite 1400
Montréal, Québec H3Z 3C1

Attention: Doug Mitchell
Tel: 514 935-2725 / Fax: 514 935-2999
dmitchell@imk.ca
Edward Bechard-Torres
Tel: 514 934-7743 / Fax: 514 935-2999
ebechardtorres@imk.ca

Attorney to Superintendent of Pensions (Newfoundland and Labrador)

AND TO: PHILION LEBLANC BEAUDRY AVOCATS
5000, boul. des Gradins, bureau 280
Québec, QC G2J 1N3

Attention: Daniel Boudreault
Tel: 514.387.3538 / Fax: 514.387.7386
dboudreault@plba.ca

Attorney to the Syndicat des Metallos, Section Locale 9996, Section Locale 6254, Section Locale 6285

AND TO: PINK LARKIN
Suite 201, 1463 South Park Street
P.O. Box 36036, Halifax
Nova Scotia, B3J 3S9

Attention: Ron Pink
Tel: 902-423-7777 / Fax: 902-423-9588
Email: rpink@pinklarkin.com
Bettina Quistgaard
Email: bquistgaard@pinklarkin.com

Attorney for Morneau Shepell Ltd., in its capacity as Replacement Pension Plan Administrator

AND TO: VAILLANCOURT & CLOCCHIATTI
2600, boul. Laurier, Suite 501
Québec, QB G1V 4T3

Attention: Louis Robillard
Tel: 418-657-8702
louis.robillard@retraiteQuebec.gouv.qc.ca

Attorneys for the Attorney General of Québec and Retraite Québec

Representatives of Salaried/Non-Union Employees & Retirees' Notice of Appeal (C.A.M. 500-09-027077-171), October 2, 2017

- 15 -

AND TO: OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS (OSFI)

Department of Justice – Canada
Guy-Favreau Complex, 200 Rene-Levesque Blvd. West, 9th Floor
Montreal, QC H2Z 1X4

Attention: Pierre Lecavalier and Michelle Kellam
Tel: 514-496-4073 / Fax: 514-283-3856
pierre.lecavalier@justice.gc.ca

Attorney for the Attorney General of Canada

AND TO: STEIN MONAST LLP

70, Dalhousie, Suite 300
Québec, QC G1K 4B2

Attention: Richard Laflamme
Tel: 418-640-4418 / Fax: 418-523-5391
Email: richard.laflamme@steinmonast.ca

Attorney for Ville de Sept-Iles

And to the Québec Superior Court (Commercial Division) of the Province of Québec, District of Montreal, located at 1, rue Notre-Dame Est, Montreal, Québec.

TORONTO, October 2, 2017



Andrew J. Hatnay, Demetrios Yiokaris, Amy Tang
KOSKIE MINSKY LLP

20 Queen St. West, Suite 900
Toronto, ON M5H 3R3

Tel: 595-2083 / Fax: 416-204-2872

Email: ahatnay@kmlaw.ca / dyiokaris@kmlaw.ca

Attorneys for the Applicants, Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson as Representatives of the Salaried/Non-Union Employees and Retirees of Wabush Mines

Representatives of Salaried/Non-Union Employees & Retirees' Notice of Appeal (C.A.M. 500-09-027077-171), October 2, 2017

CANADA

**PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

S.C.: 500-11-048114-157

C.A.: 500-09-

COURT OF APPEAL

**IN THE MATTER OF THE
COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c.
C-36, AS AMENDED**

**MICHAL KEEPER, TERENCE WATT, DAMIEN
LEBEL, and NEIL JOHNSON as Representatives
of the Salaried/Non-Union Employees and
Retirees**

Appellants

**BLOOM LAKE GENERAL PARTNER LIMITED,
QUINTO MINING CORPORATION, 8568391
CANADA LIMITED, CLIFFS QUEBEC IRON
MINING ULC, WABUSH IRON CO. LIMITED,
WABUSH RESOURCES INC .**

Debtors

and

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES, ARNAUD
RAILWAY COMPANY, WABUSH LAKE
RAILWAY COMPANY, LIMITED**

Mises-en-cause

and

**SYNDICAT DES METALLOS SECTIONS
LOCALES 6254 ET 6285, MORNEAU SHEPELL
LTD. , in its capacity as Replacement Pension
Plan Administrator, RETRAITE QUEBEC, THE
ATTORNEY GENERAL OF CANADA, acting on
behalf of the OFFICE OF THE SUPERINTENDENT
OF FINANCIAL INSTITUTIONS HER MAJESTY IN
RIGHT OF NEWFOUNDLAND AND LABRADOR,
as represented by the SUPERINTENDENT OF
PENSIONS, VILLE DE SEPT-ILES**

Mises-en-cause

FTI CONSULTING CANADA INC.

Monitor-Respondent

LIST OF SCHEDULES IN SUPPORT OF NOTICE OF APPEAL

(Article 352 C.C.P.)

Appellant

Dated: October 2, 2017

Representatives of Salaried/Non-Union Employees & Retirees' Notice of Appeal (C.A.M. 500-09-027077-171), October 2, 2017

Schedule I	Judgment rendered by the Honourable Stephen W. Hamilton, J.S.C. of the Québec Superior Court (Commercial Division), District of Montreal with respect to the Motion of the Monitor for Directions with Respect to Pension Claims rendered on September 11, 2017, Court file no. 500-11-048114-157
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TORONTO, October 2, 2017



Andrew J. Hatnay, Demetrios Yiokaris, Amy Tang
KOSKIE MINSKY LLP
20 Queen St. West, Suite 900
Toronto, ON M5H 3R3
Tel: 595-2083 / Fax: 416-204-2872
Email: ahatnay@kmlaw.ca

Attorneys for the Applicants, Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson as Representatives of the Salaried/Non-Union Employees and Retirees of Wabush Mines

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-09-

N°: 500-11-048114-157

COURT OF APPEAL

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

THE ATTORNEY GENERAL OF CANADA,
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDENT OF FINANCIAL
INSTITUTIONS

APPELLANT – Mis en cause

v.

FTI CONSULTING CANADA INC.

RESPONDENT - Monitor

-and-

BLOOM LAKE GENERAL PARTNER
LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUEBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY
LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY
LIMITED

MISES EN CAUSE - Mises en cause

-and-

HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR, AS
REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON
UNITED STEEL WORKERS, LOCALS 6254
AND 6285
RETRAITE QUÉBEC
MORNEAU SHEPELL LTD., IN ITS
CAPACITY AS REPLACEMENT PENSION
PLAN ADMINISTRATOR
VILLE DE SEPT-ÎLES**

MIS EN CAUSE - Mis en cause

APPLICATION FOR LEAVE TO APPEAL

(Section 13 and 14 of the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36
and Section 30, para. 2 and 357 C.C.P.)

Appellant

Dated September 29, 2017

**TO ONE OF THE HONOURABLE JUSTICES OF THE COURT OF APPEAL SITTING
IN AND FOR THE REGISTRY OF MONTREAL, THE APPLICANT, THE ATTORNEY
GENERAL OF CANADA, ACTING IN HIS OWN CAPACITY AND ON BEHALF OF THE
OFFICE OF THE SUPERINTENDANT OF FINANCIAL INSTITUTIONS (OSFI),
RESPECTFULLY SUBMITS:**

INTRODUCTION

- 1- The Debtors obtained protection from their creditors under the Companies' Creditors Arrangement Act, RSC 1985 c. C-36 (hereinafter CCAA);
- 2- This is a motion for leave to appeal by the Attorney General of Canada acting on its own behalf and on behalf of the Superintendent of Financial Institutions (collectively the AGC), of the decision of the Honourable Mr. Justice Stephen Hamilton (the CCAA Judge) dated September 11, 2017. A copy of this decision is attached to this motion as **Schedule 1**;
- 3- The AGC seeks leave to appeal that decision, which granted the Motion by the Monitor for Directions with respect to Pension Claims and declared, among other

things, that trusts created under the *Pension Benefits Standards Act, 1985* (hereinafter *PBSA*) are not enforceable in CCAA proceedings;

- 4- The Applicant respectfully requests that this Court:
 - (a) Grant leave to appeal from that decision with respect to the issue noted above;
 - (b) Render any further relief that this Honourable Court deems just and appropriate;
- 5- If leave to appeal is granted, the Applicant will ask the Court of Appeal to
 - (a) Reverse the CCAA Judge's decision declaring that the trust created under the PBSA is not enforceable in CCAA proceedings, particularly in the context of the case at hand where the almost all of debtors' assets have been liquidated under the CCAA without a plan being presented to the creditors;
 - (b) Declare that, unlike deemed trusts in favour of the crown, a deemed trust created by subsections 8(1) and (2) of the *PBSA* cannot be treated as a floating charge ranking after the previous securities;

GROUNDS FOR THIS MOTION

- 6- The Debtors and the *mises en cause* received protection under the CCAA by a first initial order issued in January 27, 2015 (Bloom Lake Parties) and by a second initial order rendered on May 28, 2015 (Wabush Parties) (**Schedules 2 and 3**);
- 7- Even before either of these orders were made, the Debtors and the *mises en cause* had already ceased their mining activities and the majority of the employees had already been dismissed; (Motion for the Issuance of an Initial Order, **Schedule 4**);
- 8- The CCAA Judge recognized that the Debtors are liquidating, and not restructuring their affairs (Para 160 of the decision);

- 9- In fact, by the time the CCAA Judge rendered the judgment for which leave to appeal is sought, the CCAA Judge had already rendered 14 Vesting Orders;
- 10- Almost all of the assets have already been liquidated;
- 11- As appears from the decision dated September 11, 2017, two pension plans for the employees and former employees of the Debtors are the issue in that decision;
- 12- On December 16, 2015 OSFI terminated the Pension Plan for Bargaining Unit Employees (**Schedule 5**); on the same date the Superintendent of Pensions of Newfoundland and Labrador terminated the same pension plan as well as the Pension Plan for Salaried Employees (**Schedule 6**);
- 13- No plan of arrangement had been presented to the creditors. All evidence suggests that the debtors will end the CCAA procedures without ever filing a plan with their creditors;
- 14- The Attorney General of Canada challenged the Controller's motion seeking directives from the Court. The AGC argued that the liquidation of the business under the CCAA constitutes a liquidation within the meaning of subsection 8(2) of the *PBSA* and, as such, the deemed trust created by sections 8(2) applies to the extent of the amounts owing to the pension plans under s 8(1);

DECISION OF THE CCAA JUDGE

- 15- The CCAA Judge found that a liquidation under the CCAA constitutes a liquidation in accordance with subsection 8(2) of the *PBSA* and that this triggers the deemed trust (Para 218 a) of the decision);
- 16- The Judge likens the deem trust to a floating charge that ranks after all the previous specific charges;
- 17- The Judge concludes that the *PBSA* ss 8(2) deemed trust does not apply to matters under the CCAA, Parliament having protected only normal cost payments,

employee deductions, and payments in respect of defined contribution provisions under the CCAA;

- 18- Furthermore, the CCAA omitted to rule on the issue of the payment of the normal payments for the period from December 17 to 31, 2015 (Para 13, note 16 of the decision);
- 19- The Attorney General of Canada is in agreement with the CCAA Judge with respect to the application of the pension benefits legislation of different jurisdictions in the context of the present case, in which the pension plans were multi-jurisdictional.

QUESTIONS PROPOSED TO THE COURT OF APPEAL

- 1- In the context of a liquidation conducted under the guise of the CCAA and that does not result in any plan of arrangement being submitted to the creditors, can section 6(6) of the CCAA be used to conclude that the intention of Parliament in such a context was to protect only the normal cost payments, employee deductions, and payments in respect of defined contribution provisions?
- 2- Is the deemed trust created by section 8(2) of the *PBSA* comparable to a floating charge?
- 3- Could the CCAA Judge, in the absence of a plan of arrangement, refer to the Scheme of Distribution under the *Bankruptcy and Insolvency Act* to exclude the application of the ss 8(2) *PBSA* deemed trust?

ERRORS OF LAW

- 20- The CCAA Judge erred in law when he interpreted the intention of Parliament and concluded that the deemed trust created by ss 8(2) of the *PBSA* has no application in a liquidation carried out under the CCAA, even if said liquidation does not lead to any recovery plan for the creditors;

- 21- The CCAA Judge erred in mistaking Parliament's intention in the context of corporate restructuring for Parliament's intention in the context of liquidation;
- 22- The CCAA Judge also erred in concluding that in a CCAA case, without even being able to vote on the matter, the beneficiaries of the pension plans have no protection other than those available under the CCAA;
- 23- The CCAA Judge erroneously applied the principles of statutory interpretation. His conclusion in the present case rendered two federal statutes irreconcilable;
- 24- The CCAA Judge held that bankruptcy and liquidation are elements that trigger the *PBSA* deemed trust, though he also concluded that this trust does not apply in matters of the *CCAA* or proposals. In so doing, he created a different regime for bankruptcy, one which contravenes the very wording of section 8(2) of the *PBSA*;
- 25- The CCAA Judge applied the interpretative criteria concerning deemed trusts in favour of the crown to the deemed trusts of the pension plan, without taking into account:
 - The broad and liberal criteria that must be applied in matters of the protection of pension plans¹;
 - The unseizable nature of assets that make up a pension plan;
 - The intention of Parliament to provide increased protection to pension plans; the beneficiaries of those plans being, by virtue of ss 6(6) of the *CCAA*, the only ones able to renounce this protection;
 - Section 37 (1) of the *CCAA*;
- 26- The CCAA Judge failed to rule on whether normal payments should be made for the period from December 17 to 31, 2015;

¹ *Buschau v. Roger Communication Inc.* [2006] 1 RCS 973; *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Institutions)* [2004] 3 RCS 152; *Schmidt v. Air Product Canada Limited* [1974] 2 RCS 611;

TEST FOR LEAVE TO APPEAL

- 27- The criteria for leave to appeal in CCAA have been met:
- (a) The proposed appeal involves issues that are significant to the practice
- 28- The issues that would be raised on appeal are very important to the practice in matters of insolvency and, more precisely, to the liquidation of assets within the framework of the CCAA.
- (b) The point raised on the appeal is of significance to the action
- 29- The pension plan was terminated in December 2015 because the plan has failed to meet the prescribed tests and standards for solvency as required by subsection 9(1) of the PBSA and sections 8 and 9 of the Regulations, and that the employer has discontinued all of its business operations. Without the contributions due up to and including December 31, 2015, the impact on the beneficiaries of these pension plans is very significant and cannot be remedied later.
- (c) The proposed appeal is meritorious and not frivolous
- 30- The grounds for appeal include an erroneous analysis of the intent of Parliament and of the scope of the deemed trust under section 8(2) of the PBSA. In addition, the CCAA Court concluded that in the context of the CCAA, ss 8(2) does not apply, such that beneficiaries of a pension plan can be provided less than what is provided by ss 8(2) PBSA, and without the power to vote (i.e to accept or deny this reduction) provided by ss 6(6) of the CCAA when there is a plan. These are certainly not frivolous grounds.
- (d) The appeal will not hinder the progress of the action
- 31- Although this case began in May 2015, the assets have now been liquidated and no plan of arrangement is foreseeable. In the circumstances, the proposed appeal will not delay administration of this file, which appears to be headed towards a release from the CCAA without an arrangement or reorganisation.

CONCLUSION SOUGHT ON APPEAL

32- The appellant will ask the Court of Appeal to:

- a) GRANT the appeal;
- b) OVERTURN in part the judgment rendered in first instance;
- c) REJECT in part the request for directives of the Monitor;
- d) DECLARE that, in the context of liquidation under the CCAA, the deemed trust under section 8(2) of the PBSA applies, and, as a result, the amounts owed must be paid to the pension plans unless the beneficiaries of the plans accept lesser amounts as part of a plan submitted to them;
- e) DECLARE THAT NORMAL PAYMENTS ARE DUE UP TO DECEMBER 31, 2015;
- f) ORDER costs against the Respondent and other contesting parties/intervenors in both first instance and appeal;

FOR THESE REASONS, MAY IT PLEASE THE COURT :

GRANT the present motion;

AUTHORISE the appellant to commence an appeal of the judgment rendered on September 11, 2017 by the Honourable Stephen W. Hamilton of the Superior Court, Commercial Division, district of Montreal bearing file number 500-11-048114-157;

THE WHOLE, with costs follow.

MONTREAL, September 29, 2017


ATTORNEY GENERAL OF CANADA

Office of the Superintendent of Financial Institutions' Application for Leave to Appeal (C.A.M. 500-09-027076-173), September 29, 2017

Department of Justice - Canada
(Code d'impliqué : BC 0565)
Québec Regional Office
Guy-Favreau Complex
200, René-Lévesque Blvd West
East Tower, 9th Floor
Montréal, Québec H2Z 1X4

**Per : M^e Pierre Lecavalier
M^e Michelle Kellam**

Tel. : 514 283-4042 / 514 496-4073

Fax : 514 283-3856

Pierre.lecavalier@justice.gc.ca

Michelle.kellam@justice.gc.ca

notificationPGC-AGC.civil@justice.gc.ca

Ref. : 8072696

Office of the Superintendent of Financial Institutions' Application for Leave to Appeal (C.A.M. 500-09-027076-173), September 29, 2017

SOLEMN DECLARATION

I, the undersigned Tamara DeMos, Managing Director, Private Pension Plans Division at the Office of the Superintendent of Financial Institutions Canada, having its head office at 255 Albert Street, Floor 14, in the city of Ottawa, province of Ontario K1A 0H2, certify the following:

1. I am the Managing Director, Private Pension Plans Division, at the Office of the Superintendent of Financial Institutions Canada;
2. All of the alleged facts in the Application for Leave to Appeal dated September 29, 2017 are true.

OTTAWA, September 29, 2017


TAMARA DEMOS

Solemnly affirmed before me in
Ottawa, province of Ontario, on
September 29, 2017


Commissioner for oaths

Tara Berish | LSUC # 53352A

NOTICE OF PRESENTATION

TO: Mtre Sylvain Rigaud and Mtre Chrystal Ashby
Sylvain.rigaud@nortonrosefulbrigh.com
Chrystal.ashby@nortonrosefulbright.com
Notifications-mtl@nortonrosefulbright.com
NORTON ROSE FULBRIGHT CANADA, LLP
1 Place Ville Marie, Suite 2500
Montréal, Québec H3B 1R1
Counsel for the RESPONDENT

Mtre Bernard Boucher
Bernard.boucher@blakes.com
BLAKE, CASSELS & GRAYDON LLP
1 Place Ville Marie, Suite 3000
Montréal, Québec H3B 4N8
Counsel for the MISES EN CAUSE

Mtre Doug Mitchell and Mtre Edward Béchard-Torres
dmitchell@imk.ca
ebechardtorres@imik.ca
IRVING MITCHELL KALICHMAN
3500 De Maisonneuve Blvd. West, Suite 1400
Montréal, Québec H3Z 3C1
Counsel for the MIS EN CAUSE Her Majesty in Right of Newfoundland & Labrador, as represented by the Superintendent of Pensions

Mtre Nicholas Scheib and Mtre Andrew J. Hatnay
Nick@scheib.ca
ahatnay@kmlaw.ca
600, De Maisonneuve Blvd. West, Suite 1700
Montréal, Québec H3A 3J3
Counsel for the MIS EN CAUSE Michael Keeper, Terence Watt, Damien Lebel, and Neil Johnson

Mtre Daniel Boudreault and Mtre Jean-François Beaudry
dboudreault@plba.ca
jfbeaudry@plba.ca
Philion LeblancBeaudry Avocats s.a.
5000, des Gradins Blvd. Suite 280
Québec, Québec G2J 1N3
Counsel for the MIS EN CAUSE United Steel Workers, Locals 6254 and 6285

Mtre Louis Robillard
Louis.robillard@retraitequebec.gouv.qc.ca

Office of the Superintendent of Financial Institutions' Application for Leave to Appeal (C.A.M. 500-09-027076-173), September 29, 2017

RETRAITE QUÉBEC
Direction des Affaires juridiques
2600, Laurier Blvd., Suite 501
Québec, Québec G1V 4T3
Counsel for the MIS EN CAUSE Retraite Québec

Mtre Ronald A. Pink and Mtre Bettina Quistgaard
rpink@pinklarkin.com
bquisgaard@pinklarkin.com
PINK LARKIN
1463 South Park Street, Suite 201
Halifax, Nova Scotia B3J 1G0
Counsel for the MIS EN CAUSE Morneau Shepell Ltd.

Mtre Martin Roy
Martin.roy@steinmonast.ca
notification@steinmonast.ca
STEIN MONAST LLP ATTORNEYS
70 Dalhousie Street, Suite 300
Québec, Québec G1K 4B2
Counsel for the MIS EN CAUSE Ville de Sept-Îles

TAKE NOTICE that the present Application for Leave to Appeal will be presented for adjudication before one of the honourable judges of the Cour of Appeal, sitting in and for the District of Montréal, in the Ernest-Cormier Building, located at 100, Notre-Dame Street East, Montréal, Québec, on **October 31, 2017**, at 9 h 30, in Room RC-18.

DO GOVERN YOURSELF ACCORDINGLY.

MONTRÉAL, September 29, 2017


ATTORNEY GENERAL OF CANADA

Department of Justice - Canada
(Code d'impliqué : BC 0565)
Québec Regional Office
Guy-Favreau Complex
200, René-Lévesque Blvd West

Office of the Superintendent of Financial Institutions' Application for Leave to Appeal (C.A.M. 500-09-027076-173), September 29, 2017

East Tower, 9th Floor
Montréal, Québec H2Z 1X4

Per : M^e Pierre Lecavalier
M^e Michelle Kellam

Tel. : 514 283-4042 / 514 496-4073

Fax : 514 283-3856

Pierre.lecavalier@justice.gc.ca

Michelle.kellam@justice.gc.ca

notificationPGC-AGC.civil@justice.gc.ca

Ref. : 8072696

N° 500-11-048114-157

**COURT OF APPEAL OF QUEBEC
DISTRICT OF MONTRÉAL**

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

**THE ATTORNEY GENERAL OF CANADA, ACTING
ON BEHALF OF THE OFFICE OF THE
SUPERINTENDENT OF FINANCIAL INSTITUTIONS**

APPELLANT- Mis en cause

v.

FTI CONSULTING CANADA INC.

RESPONDENT - Monitor

-and-

BLOOM LAKE GENERAL PARTNER LTD ET AL.

MISES EN CAUSE – Mises en cause

-and-

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND &
LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS ET AL.**

MIS EN CAUSE - Mis en cause

**APPLICATION FOR LEAVE TO APPEAL
(S. 13 & 14 of CCAA and S. 30, al.2 & 357 CCP)**

Appellant

Dated September 29, 2017

ORIGINAL

**ATTORNEY GENERAL OF CANADA
Department of Justice - Canada
Guy-Favreau Complex
200 René-Lévesque Blvd. West
East Tower, 9th Floor
Montréal, Québec H2Z 1X4**

Mtre Pierre Lecavalier / Mtre Michelle Kellam

Tel. : 514 283-4042 / 514 496-4073 OP 0828

Fax : 514 283-3856 BC 0565

Email : Pierre.lecavalier@justice.gc.ca

Michelle.kellam@justice.gc.ca

NotificationPGC-AGC.civil@justice.gc.ca

Ref. : 8072696

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-09-027076-173

N°: 500-11-048114-157

COURT OF APPEAL

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED:

THE ATTORNEY GENERAL OF CANADA,
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDENT OF FINANCIAL
INSTITUTIONS, having its head office at 255
Albert Street, 14th Floor, in the city of
Ottawa, province of Ontario K1A 0H2

APPELLANT – Mis en cause

v.

FTI CONSULTING CANADA INC., a
corporation legally constituted, having its
head office at the TD Waterhouse Tower, 79
Wellington Street West, Suite 2010, in the
city of Toronto, province of Ontario M5K 1G8

RESPONDENT – Monitor

-and-

**BLOOM LAKE GENERAL PARTNER
LIMITED**, corporation legally constituted,
formerly located at 1155 Robert-Bourassa
Boulevard, Suite 508, in the City of Montréal,
province of Québec H3B 3A7

QUINTO MINING CORPORATION,
corporation legally constituted, formerly
located at 1155 Robert-Bourassa Boulevard,
Suite 508, in the City of Montréal, province of
Québec H3B 3A7

8568391 CANADA LIMITED, corporation
legally constituted, formerly located at
1 Place Ville Marie, Suite 3000, in the City of
Montréal, province of Québec H3B 4N8

CLIFFS QUEBEC IRON MINING ULC,
corporation legally constituted, located at
2600-595 St Burrard, in the city of
Vancouver, province of British Columbia V7X
1L3

WABUSH IRON CO. LIMITED, corporation
legally constituted, located at 200 Public

Square, Suite 3300, Cleveland, Ohio, United States 44114

WABUSH RESOURCES INC., corporation legally constituted, located at 199 Bay Street, Suite 4000, in the city of Toronto, province of Ontario M5L 1A9

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, corporation legally constituted, formerly located at 1155 Robert-Bourassa Boulevard, Suite 508, in the City of Montréal, province of Québec H3B 3A7

BLOOM LAKE RAILWAY COMPANY LIMITED, corporation legally constituted, located at 235 Water Street, Suite 1100 , in the city of St. John's, province of Newfoundland & Labrador A1C 1B6

WABUSH MINES, corporation legally constituted, located at 199 Bay Street, Suite 4000, in the city of Toronto, province of Ontario M5L 1A9

ARNAUD RAILWAY COMPANY, corporation legally constituted, formerly located at 1505 de la Pointe Noire Road, in the city of Sept-Îles, province of Québec G4R 4L4

WABUSH LAKE RAILWAY COMPANY LIMITED, corporation legally constituted, located at 235 Water Street, Suite 1100 , in the city of St. John's, province of Newfoundland & Labrador A1C 1B6

MISES EN CAUSE - Mises en cause

-and-

HER MAJESTY IN RIGHT OF NEWFOUNDLAND & LABRADOR, AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS, having its head office at the Confederation Building, at 100 Prince Philip Drive, West Block, 2nd Floor, in the city of St. John's, in the province of Newfoundland & Labrador A1B 4J6

-and-

MICHAEL KEEPER, residing and domiciled at 1049 Fitzsimmons Drive, in the city of Brockville, province of Ontario K6V 0A1

TERENCE WATT, residing and domiciled at 1001 – 6 Willow Street, in the city of Waterloo, province of Ontario N2J 4S3

DAMIEN LEBEL, , residing and domiciled at 14 de Pegase Street, in the city of Bonsecours, province of Québec J0E 1H0

NEIL JOHNSON, residing and domiciles at 72 Whiteway Drive, in the city of Wabush, province of Newfoundland & Labrador A0R 1B0

-and-

UNITED STEEL WORKERS, LOCALS 6254 AND 6285, corporation legally constituted, having its head office at 234 Eglinton Avenue East, 8th Floor, in the city of Toronto, province of Ontario M4P 1K7

-and-

RETRAITE QUÉBEC, having its head office at 2600, Laurier Boulevard, Suite 501 In the city of Québec, province of Québec G1V 4T3

-and-

MORNEAU SHEPELL LTD., IN ITS CAPACITY AS REPLACEMENT PENSION PLAN ADMINISTRATOR, having its head office at 7071 Bayers Road, suite 3007, in the city of Halifax, province of Nova Scotia B3L 2C2

-and-

VILLE DE SEPT-ÎLES, municipal corporation legally constituted, having its head office at 546 De Quen Avenue, in the city of Sept-Îles, province of Québec G4R 2R4

MIS EN CAUSE - Mis en cause

AMENDED NOTICE OF APPEAL
(S. 206 to 208 and 352 C.C.P.)

Appellant

Dated January 4, 2018

1. The appellant appeals from a judgment of the Superior Court (Commercial Division) rendered on September 11 2017, by the Honourable Stephen W. Hamilton, District of Montreal, rendered that :

"GRANTS the Motion by the Monitor for Directions with respect to Pensions Claims;

DECLARES that the trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings;

DECLARES that the employee contributions and the normal cost payments are protected to the extent provided for by sections 6(6) and 37(6) of the CCAA

THE WHOLE WITHOUT COSTS"

2. The date of the notice of judgment is September 11 2017;
3. The duration of the trial was of 2 days;
4. The appellant file with this notice of appeal a copy of the judgment in first instance in Schedule 1;
5. The value of the subject matter of the dispute is \$8 880 469.00;
6. The trial judge erred in his judgment for the following reasons :
 - a) The CCAA Judge erred in law when he interpreted the intention of the legislator in concluding that the Deem Trust created by section 8(2) of the PBSA had no application in a liquidation carried out under the CCAA, even if said liquidation does not lead to any recovery plan for the creditors;
 - b) The CCAA Judge confused the intention of the legislator in the context of corporate restructuring or reorganisation with the intent of the legislator in the context of liquidation;
 - c) The CCAA Judge also erred in concluding that the beneficiaries of the pension plan do not have any protection other than normal payments in a CCAA case without even being able to vote on the matter;

- d) The CCAA Judge erroneously applied the principles of statutory interpretation, as his conclusion in the present case rendered two federal statutes irreconcilable;
 - e) The CCAA Judge, in holding that bankruptcy and liquidation are elements that trigger the Deem Trust that does not apply in matters of the CCAA or proposals, creates a different regime for bankruptcy that contravenes the very wording of section 8(2) of the PBSA;
 - f) The CCAA Judge applied the interpretation criteria of the Deem Trust to the Crown to the Deem Trust of the pension plan without taking into account:
 - The broad and liberal criteria that needs to be applied in matters of the protection of pension plans (Bushau and Smith);
 - The elusive nature of the assets that make up the pension plan;
 - The intention of legislator to provide increased protection to pension plans; the beneficiaries being the ones able to renounce this protection, under section 6(6) of the CCAA;
 - Section 37(1) of the CCAA;
 - g) The CCAA Judge failed to rule on whether normal payments should be made for the period from December 16 to 31, 2015;
7. The appellant will ask the Court of Appeal to :
- a) **GRANT** the appeal;
 - b) **OVERTURN** in part the judgment rendered in first instance;
 - c) **REJECT** in part the request for directives of the Monitor;
 - d) **DECLARE** that, in the context of liquidation under the CCAA, the deemed trust under section 8(2) of the PBSA applies (...);
 - e) **DECLARE** that the product of the sale of the debtor companies' assets, up to the amount that is due to the pension plans and protected by the deemed trust

created by s 8(2) of the *Pension Benefits Standards Act, 1985*, is excluded from the debtor's assets;

f) **DECLARE** that the amounts owed must be paid to the pension plans unless the beneficiaries of the plans accept lesser amounts as part of a plan submitted to them;

g) **DECLARE** that normal payments are due up to December 31, 2015;

(...)

NOTICE of this Amended Notice of Appeal is given to:

(...)

Mtre Sylvain Rigaud
 Mtre Chrystal Ashby
sylvain.rigaud@nortonrosefulbright.com
chrystal.ashby@nortonrosefulbright.com
Notifications-mtl@nortonrosefulbright.com
 NORTON ROSE FULBRIGHT CANADA, LLP
 Suite 2500 - 1 Place Ville Marie
 Montréal, Québec H3B 1R1
Counsel for the RESPONDENT FTI Consulting Canada Inc. (...)

and

(...)

Mtre Bernard Boucher
Bernard.boucher@blakes.com
 BLAKE, CASSELS & GRAYDON LLP
 1 Place Ville Marie, Suite 3000
 Montréal, Québec H3B 4N8
Counsel for the MISES EN CAUSE Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Quebec Iron Mining ULC, Wabush Iron Co. Limited, Wabush Resources inc., The Bloom Lake Iron Ore Mine Limited Partnership, Bloom Lake Railway Company Limited, Wabush Mines, Arnaud Railway Company, Wabush Lake Railway Company Limited (...)

and

(...)

Mtre Doug Mitchell
 Mtre Edward Béchard-Torres
dmitchell@imk.ca
ebechardtorres@imk.ca
 IRVING MITCHELL KALICHMAN
 3500 De Maisonneuve Blvd., Suite 1400
 Montréal, Québec H3Z 3C1

Counsel for the MIS EN CAUSE Her Majesty in Right of Newfoundland & Labrador, as represented by the Superintendent of Pensions (...)

and

(...)

Mtre Mark Meland
Fishman Flanz Meland Paquin

mmeland@ffmp.ca

Mtre Andrew J. Hatnay

Mtre Amy Tang

ahatnay@kmlaw.ca

atang@kmlaw.ca

600, De Maisonneuve Blvd West

Suite 1700

Montréal, Québec H3A 3J3

Counsel for the MIS EN CAUSE Michael Keeper, Terence Watt,
Damien Lebel, and Neil Johnson (...)

and

(...)

Mtre Daniel Boudreault

Mtre Jean-François Beaudry

dboudreault@plba.ca

jfbeaudry@plba.ca

PHILION LEBLANC BEAUDRY AVOCATS s.a.

5000, des Gradins Blvd., Suite 280

Québec, Québec G2J 1N3

Counsel for the MIS EN CAUSE United Steel Workers, Locals 6254
and 6285 (...)

and

(...)

Mtre Louis Robillard

louis.robillard@retraitequebec.gouv.qc.ca

RETRAITE QUÉBEC

Direction des Affaires juridiques

2600, boul. Laurier, Suite 501

Québec, Québec G1V 4T3

Counsel for the MIS EN CAUSE Retraite Québec (...)

and

(...)

Mtre Ronald A. Pink, Q.C.

Mtre Bettina Quistgaard

rpink@pinklarkin.com

bquistgaard@pinklarkin.com

Office of the Superintendent of Financial Institutions' Amended Notice of Appeal (C.A.M. 500-09-027076-173), January 4, 2018

Pink Larkin
1463 South Park Street, Suite 201
PO Box 36036
Halifax, Nova Scotia B3J 1G0
Counsel for the MIS EN CAUSE Morneau Shepell Ltd. (...)

and

(...)

Mtre Martin Roy
Martin.roy@steinmonast.ca
notification@steinmonast.ca
Stein Monast L.L.P. Attorneys
70 Dalhousie Street, Suite 300
Québec, Québec G1K 4B2
Counsel for the MIS EN CAUSE Ville de Sept-Îles (...)

(...)

MONTREAL, January 4, 2018


ATTORNEY GENERAL OF CANADA

Department of Justice - Canada
(Code d'impliqué : BC 0565)
Québec Regional Office
Guy-Favreau Complex
200, René-Lévesque Blvd West
East Tower, 9th Floor
Montréal, Québec H2Z 1X4

Per : M^e Pierre Lecavalier
M^e Michelle Kellam
M^e Antoine Lippé

Tel. : 514 283-4042 / 514 496-4073 /
514 496-1955

Fax : 514 283-3856

Pierre.lecavalier@justice.gc.ca

Michelle.kellam@justice.gc.ca

Antoine.lippe@justice.gc.ca

notificationPGC-AGC.civil@justice.gc.ca

Ref. : 9281114

NOTICE FOLLOWING ARTICLE 26 OF THE CIVIL PRACTICE REGULATION

Within 10 days after notification, the respondent, the intervenors and the impleaded parties must file a representation statement giving the name and contact information of the lawyer representing them or, if they are not represented, a statement indicating as much. If an application for leave to appeal is attached to the notice of appeal, the intervenors and the impleaded parties are only required to file such a statement within 10 days after the judgment granting leave or after the date the judge takes note of the filing of the notice of appeal (Article 358, para. 2 *C.C.P.*).

If a party fails to file a representation by counsel (*or a non-representation statement*), it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party. If the statement is filed after the expiry of the time limit, the Clerk may accept the filing subject to conditions that the Clerk may determine (Article 30 *Civil Practice Regulation*).

The parties shall notify their proceedings (*including briefs and memoranda*) to the appellant and to the other parties who have filed a representation (*or non-representation statement*) (Article 25, para. 1 *Civil Practice Regulation*).

N° 500-09-027076-173

COURT OF APPEAL OF QUEBEC
DISTRICT OF MONTRÉAL

IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED:

THE ATTORNEY GENERAL OF CANADA, ACTING ON
BEHALF OF THE OFFICE OF THE SUPERINTENDENT
OF FINANCIAL INSTITUTIONS

APPELLANT- Mis en cause

v.

FTI CONSULTING CANADA INC.

RESPONDENT - Monitor

-and-

BLOOM LAKE GENERAL PARTNER LTD ET AL.

MISES EN CAUSE – Mises en cause

-and-

HER MAJESTY IN RIGHT OF NEWFOUNDLAND &
LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS ET AL.

MIS EN CAUSE - Mis en cause

AMENDED NOTICE OF APPEAL
(S. 206 to 208 and 352 C.C.P.)

Appellant

Dated January 4, 2018

ORIGINAL

ATTORNEY GENERAL OF CANADA
Department of Justice - Canada
Guy-Favreau Complex
200 René-Lévesque Blvd. West
East Tower, 9th Floor
Montréal, Québec H2Z 1X4

Mtre Pierre Lecavalier / Mtre Michelle Kellam /
Mtre Antoine Lippé

Tel. : 514 283-4042 / 514 496-4073 / 514 496-1955
Fax: 514 283-3856 OP 0828
Notification PGC-AGC.civil@justice.gc.ca BC 0565
Email : Pierre.lecavalier@justice.gc.ca
Michelle.kellam@justice.gc.ca
Antoine.lippe@justice.gc.ca

Ref. : 9281114

Within 10 days after notification, the respondent, the intervenors and the impleaded parties must file a representation statement giving the name and contact information of the lawyer representing them or, if they are not represented, a statement indicating as much. If an application for leave to appeal is attached to the notice of appeal, the intervenors and the impleaded parties are only required to file such a statement within 10 days after the judgment granting leave or after the date the judge takes note of the filing of the notice of appeal. (Article 358, al. 2 C.C.P.).

The parties shall notify their proceedings, including briefs and memoranda, to the appellant and to the other parties who have produced a representation or non-representation statement. (Article 25, al. 1 of the Civil Practice Regulation).

If a party fails to produce a representation or a non-representation statement, it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party. (Article 30 of the Civil Practice Regulation).

Minutes of the Hearing leading to Judgment under Appeal, June 28 and 29, 2017

CANADA		PROCÈS-VERBAL D'AUDIENCE		COUR SUPÉRIEURE
PROVINCE DE QUÉBEC				Chambre commerciale
DISTRICT DE MONTRÉAL		Référé de	Salle prévue 15.12	Date 28 juin 2017
No :				
500-11-048114-157		L'HONORABLE STEPHEN W. HAMILTON, J.C.S.		JH5439

Petitioners	Attorney(s)
BLOOM LAKE GENERAL PARTNER LIMITED QUINTO MINING CORPORATION 8568391 CANADA LIMITED	BLAKE CASSELS & GRAYDON S R L M ^e Bernard BOUCHER (P) M ^e Emily HAZLETT (P)
Mises-en-cause	Attorney(s)
THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP ET AL.	BLAKE CASSELS & GRAYDON S R L M ^e Bernard BOUCHER (P) M ^e Emily HAZLETT (P)
Monitor	Attorney(s)
FTI CONSULTING CANADA INC.	NORTON ROSE FULLBRIGHT LLP M ^e Sylvain RIGAUD (P) M ^e Chrystal ASHBY (P)
Creditors	Attorneys
CITY OF SEPT-ÎLES	STEIN MONAST M ^e Martin ROY (P)
SUPERINTENDENT OF PENSIONS – NEWFOUNDLAND	IRVING MITCHELL KALICHMAN M ^e Edward BÉCHARD-TURRES (P) M ^e Dory MITCHELL (P)
ATTORNEY GENERAL OF CANADA	DEPARTMENT OF JUSTICE – CANADA M ^e Pierre LECAVALIER (P) M ^e Michelle KELLAM (P)
FOR THE RETIREES/REPRESENTATIVES NON-UNION LOW RED SALARIED	KOSKIE MIWSKY M ^e Andrew HATNAY (P) M ^e Demetrios YIOKARIS (P) M ^e Jules MONTEYNE (P)
SYNDICAT DES MÉTALLOS	PHILION, LEBLANC, BEAUDRY, AVOCATS M ^e Daniel BOUDREAU (P)
MORNEAU SHEPELL, Administrator	M ^e Ronald A. PINK (P)
RETRAITE QUÉBEC	VAILLANCOURT CLOCCHIATTI M ^e Louis ROBILLARD (P)

GREFFIER : Lucie Thibodeau g.a.c.s. STÉNOGRAPHE : N/A

(Suite) Procès-verbal du 28 juin 2017
500-11-048114-157

NATURE DE LA CAUSE :
1. #494 AMENDED MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS
2. # 531 MOTION FOR AN ORDER FOR LEGAL COSTS OF SALARIED/NON-UNION EMPLOYEES AND RETIREES

Début : 09 :30 a.m.	Début : 13 :45 p.m.
Fin : 12 :46	Fin : 16 :00

09 :30 **OUVERTURE** de l'audience
 Identification de la cause et des avocats
 Gestion
 M^e Lecavalier dépose un cahier additionnel d'autorités

2. MOTION FOR AN ORDER FOR LEGAL COSTS OF SALARIED/NON-UNION EMPLOYEES AND RETIREES (#531)

09 :36 Représentations de M^e Hatnay sur les amendements de la requête (#531).

09 :38 Aucune objection de M^e Rigaud quant aux amendements.

M. Nigel Meakin (Monitor), en appel conférence, n'a rien à ajouter.

09 :39 (Suite) Représentations de M^e Hatnay qui soumet au Tribunal un projet de jugement intitulé : Fourth order for legal costs of salaried/non-union employees and retirees.

JUDGMENT (Motion #531)

09 :40 Pour les motifs énoncés verbalement et enregistrés mécaniquement, le TRIBUNAL :

GRANTS this motion. Et

SIGNE séance tenante, le projet de jugement intitulé : FOURTH ORDER FOR LEGAL COSTS OF SALARIED/NON-UNION EMPLOYEES AND RETIREES. (Voir l'ordonnance jointe au procès-verbal)

1. AMENDED MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS (#494)

09:41 Gestion – Échange de part et d'autre

09:43 Représentations de M^e Mitchell – Échange avec le Tribunal

PLAIDOIRIES EN DEMANDE

09: 52 **Argumentation de M^e Rigaud**

09:53 Remarques préliminaires d^e M^e Rigaud

09:58 Question du Tribunal

10:08 Référence au cahier d'autorités (Lacco – Onglet 6)

(Suite) Procès-verbal du 28 juin 2017
500-11-048114-157

10:26 Référence à R-24 (Régime de pension des employés salariés)

10:32 Référence au cahier d'autorités (Stelco – Onglet 7)

10:46 Référence au cahier d'autorités (Dinney – Onglet 14)

10:51 Référence au cahier d'autorités (Champagne – p. 13 – par. 39)

10:57 Référence au cahier d'autorités (Mc Leod - Onglet)

11:03 **SUSPENSION** de l'audience

11:25 **REPRISE** de l'audience

(Suite) Argumentation de M^e Rigaud

11:26 Référence au cahier d'autorités (Husky Oil – Onglet 25)

11:32 Référence au cahier d'autorités (Samson Bélair – Onglet 6)

12:10 Référence au cahier d'autorités (Lemare Lake Logging Ltd – Onglet)

12:27 Référence à R-14 (Avis de terminaison des régimes par OSFI et à R-13 (Avis de terminaison des régimes par le surintendant de Terre-Neuve)

12:35 Référence au cahier d'autorités (Dauphin Plains Credit Union Ltd – Onglet)

12:37 Référence au cahier d'autorités (Century Services – Onglet 20)

12:46 **SUSPENSION** de l'audience

13:45 **REPRISE** de l'audience

Ré identification de la cause et des avocats

(Suite) PLAIDOIRIES EN DEMANDE

(Suite) Argumentation de M^e Rigaud

13:56 Référence au cahier d'autorités (Indalex - Onglet)

14:01 Référence au cahier d'autorités (- Onglet 10)

14:03 Commentaire et questions du Tribunal

14:06 Intervention de M^e Hatnay

14:06 (Suite) Argumentation de M^e Rigaud

14:08 Question du Tribunal

14:09 Commentaire du Tribunal

(Suite) Procès-verbal du 28 juin 2017
500-11-048114-157

- 14:11 Référence à R-18 et R-19 (Proofs of claims)
Question du Tribunal
- 14:31 Fin de l'argumentation de M^e Rigaud
- 14:32 **Argumentation de M^e Boucher**
- 14:35 Référence au cahier d'autorités (Indalex)
- 14:37 Référence au cahier d'autorités (Onglet 11)
- 14:41 Référence au cahier d'autorités (Husky Oil - Onglet)
- 15:00 Fin de l'argumentation
Gestion
- 15:01 **SUSPENSION** de l'audience
- 15:19 **REPRISE** de l'audience
- Argumentation de M^e Roy**
- M^e Roy dépose son cahier de Documents et autorités additionnelles
Référence à R-10 et R-12 (Approval vesting orders)
- 15:22 Référence au cahier des autorités du représentant des employés non-syndiqués (Onglet 14)
- 15:24 Référence au cahier des autorités (Pérusse – Onglet 12)
- 15:26 Référence au cahier des autorités (Sparrow et Indalex – Onglet)
- 15:28 Référence au cahier des autorités (- Onglet 18)
- 15:33 Référence au cahier des autorités (Gareau – Onglet 23)
- 15:35 Référence au cahier des autorités (Aveos - Onglet 20)
- 15:38 Référence à M-4 (Taxes foncières)
- 15:40 Référence au cahier des autorités (Les Sûretés, Louis Payette – Onglet 2)
- 15:45 Référence à R-16 et R-17
- 15:47 Référence au cahier des autorités (Les Priorités et hypothèques, Denise Pratte – Onglet 24)
- 15:48 Référence au cahier des autorités additionnelles (Louis Payette – Onglet 27)
- 15:50 Référence au cahier des autorités additionnelles (Loi sur la fiscalité municipale – Onglet 26)
Référence à M-4 (Taxes municipales)
- 15:53 Questions du Tribunal – Échange avec M^e Roy

(Suite) Procès-verbal du 28 juin 2017
500-11-048114-157

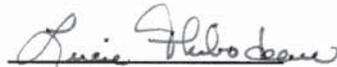
15:56 Intervention de M^e Rigaud

15:57 Fin de l'argumentation

Gestion

La cause #494 est continuée le 29 juin 2017 en salle 15.12 à 9 heures 30.

16:00 **FIN de l'audience**


Lucie Thibodeau, g.a.c.s.

Minutes of the Hearing leading to Judgment under Appeal, June 28 and 29, 2017

CANADA		PROCESS-VERBAL D'AUDIENCE		COUR SUPÉRIEURE	
PROVINCE DE QUÉBEC				Chambre commerciale	
DISTRICT DE MONTRÉAL		Référée de	Salle prévue 15.12	Date 29 Juin 2017	554
No. 500-11-048114-157					
L'HONORABLE STEPHEN W. HAMILTON, J.C.S.					JH54397

Petitioners	Attorney(s)
BLOOM LAKE GENERAL PARTNER LIMITED QUINTO MINING CORPORATION 8568391 CANADA LIMITED	BLAKE CASSELS & GRAYDON S R L M ^e Bernard BOUCHER (P)
Mises-en-cause	Attorney(s)
THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP ET AL.	BLAKE CASSELS & GRAYDON S R L M ^e Bernard BOUCHER (P)
Monitor	Attorney(s)
FTI CONSULTING CANADA INC.	NORTON ROSE FULLBRIGHT LLP M ^e Sylvain RIGAUD (P) M ^e Chrystal ASHBY (P)
Creditors	Attorneys)
CITY OF SEPT-ILES	STEIN MONAST M ^e Martin ROY (P)
SUPERINTENDENT OF PENSIONS – NEWFOUNDLAND	IRVING MITCHELL KALICHMAN M ^e Edward BÉCHARD-TORRES (P) M ^e Dory MITCHELL (P)
ATTORNEY GENERAL OF CANADA	DEPARTMENT OF JUSTICE – CANADA M ^e Pierre LECAVALIER (P) M ^e Michelle KELLAM (P)
FOR THE RETIREES/REPRESENTATIVES NON-UNION LOW RED SALARIED	KOSKIE MINSKY M ^e Andrew HATNAY (P) M ^e Demetrios YIOKARIS (P) M ^e Jules MONTEYNE (P)
SYNDICAT DES MÉTALLOS	PHILION, LEBLANC, BEAUDRY, AVOCATS M ^e Daniel BOUDREAU (P)
MORNEAU SHEPELL, Administrator	M ^e Ronald A. PINK (P)
RETRAITE QUÉBEC	VAILLANCOURT CLOCCHIATTI M ^e Louis ROBILLARD (P)

GREFFIER : *Lucie Thibodeau g.a.c.s.* STÉNOGRAPHE :

N/A

(Suite Procès-verbal du 29 juin 2017
500-11-048114-157)

NATURE DE LA CAUSE :
1. #494 AMENDED MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS

Début : 09 :28 a.m.	Début : 14 :00
Fin : 12 :39	Fin : 16 :33

09 :28 **OUVERTURE** de l'audience
Identification de la cause et des avocats
Gestion

09:32 M^e Mitchell dépose un cahier additionnel d'autorités

ARGUMENTATION EN DÉFENSE

09: 32 **Argumentation de M^e Mitchell**

Référence au Cahier additionnel des autorités (l'affaire Facebook)

Échange avec le Tribunal

09:37 Référence au Cahier des autorités (Indalex)

09:43 Référence à la section 32 du Pension Benefits Act (PBA), 1997 NL

09:44 Référence à la section 61 du Pension Benefits Act, 1997 NL

09:45 Intervention du Tribunal et questions

09:48 Référence à la section 62 du Pension Benefits Act, 1997 NL

09:51 Question du Tribunal

09:54 **Argumentation de M^e Béchard-Torres**

09:56 Référence au Cahier des autorités (Indalex et Husky Oil)

09:58 Référence à Bankruptcy and Insolvency Act (BIA), section 67

10:01 Référence au Personal Property Security Act (PPSA)

10:02 Référence au Cahier des autorités (Canadian Western Bank, onglet 19)

10:05 Référence au Cahier des autorités (Onglet 10)

10:07 Référence au Cahier des autorités (Grand Forest, onglet 24)

10:16 Commentaire du Tribunal

10:19 Référence au Cahier des autorités (Onglets 32 et 33)

10:20 Commentaire et question du Tribunal

(Suite) Procès-verbal du 29 juin 2017
500-11-048114-157

- 10:24 Référence au Cahier des autorités
- 10:29 Commentaires du Tribunal et questions
- 10:35 Commentaires du Tribunal - Échanges
- 10:38 **Argumentation de M^e Hatnay**
- 10:40 Référence à la Companies' Creditors Arrangements Act (CCAA)
- 10:47 Questions du Tribunal
- 10:56 Référence au Cahier des autorités (Indalex)
- 10:57 Intervention du Tribunal
- 11:06 Question et commentaires du Tribunal
- 11:13 Questions et commentaires du Tribunal
Échanges entre le Tribunal et M^e Hatnay
- 11:18 Référence au Cahier des autorités (Onglet 13)
- 11:28 Commentaire du Tribunal
- 11:30 **SUSPENSION de l'audience**
- 11:46 **REPRISE de l'audience**
- (Suite) Argumentation de M^e Hatnay**
- 11:48 Commentaire du Tribunal
- 11:51 Référence au Cahier des autorités (Onglet 8 – Indalex)
- 11:55 Question du Tribunal
- 11:59 Question du Tribunal
- 12:06 Question du Tribunal
- 12:10 **Argumentation de M^e Boudreault**
- 12:12 Précisions du Tribunal
- 12:13 Référence à R-17
- 12:15 Référence à R-24 et à R-23
- 12:19 Référence à R-22
- 12:21 Référence à l'Annexe B (Tableau comparatif du contrôleur)

(Suite) Procès-verbal du 29 juin 2017
500-11-048114-157

12:31 Commentaire du Tribunal – Échanges avec M^e Boudreault

12:38 Gestion

12:39 **SUSPENSION** de l'audience

14:00 **REPRISE** de l'audience

Ré identification de la cause et des avocats

(Suite) ARGUMENTATION EN DÉFENSE

Argumentation de M^e Lecavalier

14:02 Référence au Cahier des autorités additionnelles (Onglet 1 –)

14:03 Référence au Cahier des autorités additionnelles (Onglets 3, 4 et 5 – Ontario Hydro – Bell Canada –)

14:04 Référence au Cahier des autorités additionnelles (Onglet 9 -)

14:07 Référence au Cahier des autorités additionnelles (Onglet 20 – Renvoi sur les valeurs mobilières)

14:09 Intervention du Tribunal

14:13 Référence au Cahier des autorités additionnelles (Onglet 17 – Sparrow)

14:19 Référence au Cahier des autorités additionnelles (Onglets 13, 14 et 15 – AbitibiBowater – Fraser Paper – United Airlines)

14:22 Questions du Tribunal

14:28 Référence au Cahier des autorités additionnelles (Onglet 24, Pierre-André Côté sur l'Interprétation des lois – art 1270 et 1271 c.c.)

14:30 Référence au Cahier des autorités additionnelles (Onglet 16 – Cliffs over Maple Bay)

14:38 **Argumentation de M^e Robillard**

14:42 Question du Tribunal

14:44 Référence à la Loi sur les régimes supplémentaires de retraite (Art 74)

14:49 Référence à l'affaire Indalex

14:56 Référence à l'affaire AbitibiBowater

15:05 Question et commentaires du Tribunal

(Suite) Procès-verbal du 29 juin 2017
500-11-048114-157

15:12 **Argumentation de M^e Pink**

15:15 **SUSPENSION de l'audience**

15:29 **REPRISE de l'audience**

RÉPLIQUE

15:30 **M^e Rigaud**

15:32 Question du Tribunal – Échanges avec M^e Rigaud

15:41 Question du Tribunal

15:44 M^e Rigaud remet au Tribunal des extraits la Loi sur l'interprétation

16:04 Échange entre le Tribunal et M^e Rigaud

16:09 **M^e Boucher**

16:10 Référence au Cahier des autorités (Onglets 24 et 35 – Grant Forest - Indalex)

16:14 Question du Tribunal

16:22 Référence à R-20 et R-21

16:24 Référence à l'affaire Indalex

16:27 **M^e Roy**

16:29 Référence au Cahier des autorités (Onglet 29 – Affaire Gareau)

16:31 Le Tribunal s'adresse aux avocats.

La cause est mise en délibéré à compter de ce jour.

16:33 **FIN de l'audience**


Lucie Thibodeau, g.a.c.s.

SUPERIOR COURT

(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-048114-157

DATE: January 30, 2017

PRESIDED BY THE HONOURABLE STEPHEN W. HAMILTON, J.S.C.

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

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

Petitioners

And

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY LIMITED
WABUSH LAKE RAILWAY COMPANY LIMITED**

Mises en cause

And

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL
AND NEIL JOHNSON
SYNDICAT DES MÉTALLOS, SECTIONS LOCALES 6254 ET 6285
MORNEAU SHEPELL LTD, IN ITS CAPACITY AS
REPLACEMENT PENSION PLAN ADMINISTRATOR
HER MAJESTY IN RIGHT OF NEWFOUNLAND
AND LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

500-11-048114-157

PAGE: 2

**THE ATTORNEY GENERAL OF CANADA, ACTING
ON BEHALF OF THE OFFICE OF THE SUPERINTENDENT
OF FINANCIAL INSTITUTIONS
RÉGIE DES RENTES DU QUÉBEC
VILLE DE SEPT-ÎLES**

Mises en cause

And

FTI CONSULTING CANADA INC.

Monitor

JUDGMENT

INTRODUCTION

[1] The debtors have filed proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").¹ They owe substantial liabilities under two pension plans, including special payments, catch-up special payments and wind-up deficiencies. The Monitor has filed a motion for directions with respect to the priority of the various components of the pension claims.

[2] A preliminary issue has arisen as to whether the Court should request the aid of the Supreme Court of Newfoundland and Labrador (the "NL Court") with respect to the scope and priority of the deemed trust and other security created by the Newfoundland and Labrador *Pension Benefit Act* ("NLPBA"),² which regulates in part the pension plans.

CONTEXT

[3] On May 19, 2015, the Petitioners Wabush Iron Co. Limited and Wabush Resources Inc. and the Mises-en-cause Wabush Mines (a joint venture of Wabush Iron and Wabush Resources), Arnaud Railway Company and Wabush Lake Railway Company Limited (together the "Wabush CCAA Parties") filed a motion for the issuance of an initial order under the CCAA, which was granted the following day by the Court.

[4] Prior to the filing of the motion, Wabush Mines operated (1) the iron ore mine and processing facility located near the Town of Wabush and Labrador City, Newfoundland and Labrador, and (2) the port facilities and a pellet production facility at Pointe-Noire, Québec. Arnaud Railway and Wabush Lake Railway are both federally regulated

¹ R.S.C. 1985, c. C-36.

² S.N.L. 1996, c. P-40.1.

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railways that transported iron ore concentrate from the Wabush mine to the Pointe-Noire port. The operations had been discontinued and the employees terminated or laid off prior to the filing of the CCAA motion.

[5] The Wabush CCAA Parties have two pension plans for their employees which include defined benefits:

- A hybrid pension plan for salaried employees at the Wabush mine and the Pointe-Noire port hired before January 1, 2013, known as the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company (the “Salaried Plan”); and
- A pension plan for unionized hourly employees at the Wabush mine and Pointe-Noire port, known as the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company (the “Union Plan”).

[6] Wabush Mines was the administrator of both plans.

[7] The majority of the employees covered by the plans reported for work in Newfoundland and Labrador while some reported for work in Québec. Moreover, some of the employees covered by the Union Plan worked for Arnaud Railway, which is a federally regulated railway. The result is that the Salaried Plan is governed by the NLPBA, while the Union Plan is governed by both the NLPBA and the federal *Pension Benefits Standards Act* (“PBSA”).³ Further, the Union suggests that the Québec *Supplemental Pension Plans Act* (“SPPA”)⁴ might be applicable to employees or retirees who reported for work in Québec. Both plans are subject to regulatory oversight by the provincial regulator in Newfoundland and Labrador, the Superintendent of Pensions (the “NL Superintendent”), while the Union Plan is also subject to regulatory oversight by the federal pension regulator, the Office of the Superintendent of Financial Institutions (“OSFI”). The Québec regulator, Retraite Québec, might also have a role to play.

[8] On June 26, 2015, in the context of approving the interim financing of the debtors, the Court ordered the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments and the annual lump sum “catch-up” payments coming due under the plans, and confirmed the priority of the Interim Lender Charge over the deemed trusts with respect to the pension liabilities. The Court also ordered the

³ R.S.C. 1985 (2nd Supp.), c. 32.

⁴ CQLR, c R-15.1, s. 49.

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suspension of payment of other post-retirement benefits, including life insurance, health care and a supplemental retirement arrangement plan.⁵

[9] On December 16, 2015, the NL Superintendent terminated both plans effective immediately on the basis that the plans failed to meet the solvency requirements under the regulations, the employer has discontinued all of its business operations and it was highly unlikely that any potential buyer of the assets would agree to assume the assets and liabilities of the plans.⁶ On the same date, OSFI terminated the Union Plan effective immediately for the same reasons.⁷

[10] Both the NL Superintendent and OSFI reminded the Wabush CCAA Parties of the employer's obligation upon termination of the plan to pay into the pension fund all amounts that would be required to meet the solvency requirements and the amount necessary to fund the benefits under the plan. They also referred to the rules with respect to deemed trusts.⁸

[11] On January 26, 2016, the salaried retirees received a letter from Wabush Mines notifying them that the NL Superintendent had directed Wabush Mines to reduce the amount of monthly pension benefits of the members by 25%.⁹ Retirees under the Union Plan had their benefits reduced by 21% on March 1, 2016.¹⁰

[12] On March 30, 2016, the NL Superintendent and OSFI appointed Morneau Shepell Ltd as administrator for the plans.¹¹

[13] The Wabush CCAA Parties paid the monthly normal cost payments for both plans up to the termination of the plans on December 16, 2015. As a result, the monthly normal cost payments for the Union Plan were fully paid as of December 16, 2015.¹² The monthly normal cost payments for the Salaried Plan had been overpaid in the amount of \$169,961 as of December 16, 2015.¹³

⁵ 2015 QCCS 3064; motion for leave to appeal dismissed, 2015 QCCA 1351.

⁶ Exhibit R-13.

⁷ Exhibit R-14.

⁸ Exhibits R-13 and R-14.

⁹ Exhibit RESP-7.

¹⁰ Affidavit of Terence Watt, sworn December 14, 2016, par. 19.

¹¹ Exhibit R-15.

¹² There is a debate as to whether the Wabush CCAA Parties were required to pay the full monthly payment for December or only a pro-rated portion. The amount at issue for the period from December 17 to 31, 2015 is \$21,462.

¹³ Exhibit R-16.

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[14] However, the Wabush CCAA Parties ceased making the special payments in June 2015 pursuant to the order issued by the Court, with the result that unpaid special payments as of December 16, 2015 total \$2,185,752 for the Salaried Plan¹⁴ and \$3,146,696 for the Union Plan.¹⁵

[15] Further, the Wabush CCAA Parties did not make the lump sum “catch-up” special payments that came due after June 2015. The amount payable is now calculated to be \$3,525,125.¹⁶ These amounts became known with certainty only when the actuarial report was completed and filed in July 2015, but some of these amounts may relate to the pre-filing period.

[16] Finally, the plans are underfunded. The Plan Administrator estimates the wind-up deficits as at December 16, 2015 to be approximately \$26.7 million for the Salaried Plan and approximately \$27.7 million for the Union Plan.

[17] As a result, according to the Monitor, the total amounts owing are approximately \$28.7 million to the Salaried Plan and \$34.4 million to the Union Plan.

[18] The Plan Administrator filed a proof of claim in respect of the Salaried Plan that includes a secured claim in the amount of \$24 million and a restructuring claim in the amount of \$1,932,940,¹⁷ and a proof of claim with respect to the Union Plan that includes a secured claim in the amount of \$29 million and a restructuring claim in the amount of \$6,059,238.¹⁸

[19] The differences in the numbers are not important at this stage. It is sufficient to note that there are very large claims and that the Plan Administrator claims the status of a secured creditor with respect to a substantial part of its claims.

[20] It is also important to note that the Wabush CCAA Parties held assets both in Newfoundland and Labrador and in Québec. Many of the Québec assets have been sold and have generated substantial proceeds currently held by the Monitor.

[21] The Monitor is now working through the claims procedure. In that context, the Monitor applies to the Court for an order declaring that:

- a) normal costs and special payments outstanding as at the date of the Wabush Initial Order are subject to a limited deemed trust;

¹⁴ Exhibit R-16.

¹⁵ Exhibit R-17.

¹⁶ Exhibit R-17.

¹⁷ Exhibit R-18.

¹⁸ Exhibit R-19.

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- b) normal costs and special payments payable after the date of the Wabush Initial Order, including additional special payments and catch up payments established on the basis of actuarial reports issued after the Wabush Initial Order, constitute unsecured claims;
- c) the wind-up deficiencies constitute unsecured claims; and
- d) any deemed trust created pursuant to the NLPBA may only charge property in Newfoundland and Labrador.

[22] Those issues are not yet before the Court. A preliminary issue has arisen as to whether the Court should request the aid of the NL Court with respect to the scope and priority of the deemed trust and the lien created by the NLPBA and whether the deemed trust and the lien extend to assets located outside of Newfoundland and Labrador.

POSITION OF THE PARTIES

[23] All parties agree that (1) the Court has jurisdiction to deal with all of the issues, and (2) the Court has the discretion to request the aid of the NL Court.

[24] Three parties suggest that the Court should exercise that discretion and request the aid of the NL Court:

- The Plan Administrator;
- The representatives of the salaried employees and retirees; and
- The NL Superintendent.

[25] The representatives of the salaried employees and retirees have proposed that the following questions should be resolved by the NL Court:

1. The Supreme Court of Canada has confirmed in *Indalex* that provincial laws apply in CCAA proceedings, subject only to the doctrine of paramountcy. Assuming there is no issue of paramountcy, what is the scope of section 32 in the NPBA [NLPBA] deemed trusts in respect of:
 - a) unpaid current service costs;
 - b) unpaid special payments; and,
 - c) unpaid wind-up liability.
2. The Salaried Plan is registered in Newfoundland and regulated by the NPBA.

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- a) (i) Does the PBSA deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?
- (ii) If yes, is there a conflict with the NPBA and PBSA if so, how is the conflict resolved?
- b) (i) Does the SPPA also apply to those members of the Salaried Plan who reported for work in Québec?
- (ii) If yes, is there a conflict with the NPBA and SPPA and if so, how is the conflict resolved?
- (iii) Do the Quebec SPPA deemed trusts also apply to Québec Salaried Plan members?
3. Is the NPBA lien and charge in favour of the pension plan administrator in section 32(4) of the NPBA a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?

[26] Three other parties suggest that the Court should not transfer any issues to the NL Court and should decide all of the issues:

- The Monitor;
- The Syndicat des métallos, sections locales 6254 et 6285; and
- The Ville de Sept-Îles.

[27] The Ville de Sept-Îles argues that the request to transfer should be dismissed because it is too late.

[28] Finally, two parties do not take a position on the request to transfer:

- The Attorney-General of Canada, acting on behalf of OSFI; and
- Retraite Québec.

ANALYSIS

1. The jurisdiction of the CCAA Court

[29] In principle, all issues relating to a debtor's insolvency are decided before a single court.¹⁹ This rule is based on the "public interest in the expeditious, efficient and

¹⁹ *Sam Lévy & Associés Inc. v. Azco Mining Inc.*, 2001 SCC 92, par. 25-28.

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economical clean-up of the aftermath of a financial collapse.”²⁰ This public interest favours a “single control” of insolvency proceedings by one court as opposed to their fragmentation among several courts.²¹

[30] The Supreme Court in *Sam Lévy* concluded as follows with respect to the relevant test:

76 In the present case, we are confronted with a federal statute that *prima facie* establishes one command centre or “single control” (*Stewart, supra*, at p. 349) for all proceedings related to the bankruptcy (s. 183(1)). Single control is not necessarily inconsistent with transferring particular disputes elsewhere, but a creditor (or debtor) who wishes to fragment the proceedings, and who cannot claim to be a “stranger to the bankruptcy”, has the burden of demonstrating “sufficient cause” to send the trustee scurrying to multiple jurisdictions. Parliament was of the view that a substantial connection sufficient to ground bankruptcy proceedings in a particular district or division is provided by proof of facts within the statutory definition of “locality of a debtor” in s. 2(1). The trustee in that locality is mandated to “recuperate” the assets, and related proceedings are to be controlled by the bankruptcy court of that jurisdiction. The Act is concerned with the economy of winding up the bankrupt estate, even at the price of inflicting additional cost on its creditors and debtors.²²

(Emphasis added)

[31] Although the *Sam Lévy* case was decided in the context of the *Bankruptcy and Insolvency Act* (“BIA”),²³ the same principles apply in the context of the other insolvency legislation, including the CCAA.²⁴ The CCAA court has jurisdiction to deal with all of the issues that arise in the context of the CCAA proceedings.²⁵ The stay of proceedings under the CCAA gives effect to this principle by preventing creditors from bringing proceedings outside the CCAA proceedings without the authorization of the CCAA court.

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

²⁰ *Ibid*, par. 27.

²¹ *Ibid*, par. 64.

²² *Ibid*, par. 76.

²³ R.S.C. 1985, c. B-3.

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

²⁵ Section 16 CCAA provides that the orders of the CCAA court are enforced across Canada.

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

2. The discretion to ask for the assistance of another court

[34] There are however situations where another court can deal more efficiently with specific issues. The CCAA Court has jurisdiction to ask for the assistance of another court under Section 17 CCAA:

17 All courts that have jurisdiction under this Act and the officers of those courts shall act in aid of and be auxiliary to each other in all matters provided for in this Act, and an order of a court seeking aid with a request to another court shall be deemed sufficient to enable the latter court to exercise in regard to the matters directed by the order such jurisdiction as either the court that made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.

[35] The representative of the salaried employees and retirees also pleaded the notion of *forum non conveniens* under the Civil Code:

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

[36] The Supreme Court held in *Sam Lévy*²⁶ that Article 3135 C.C.Q. does not apply in bankruptcy matters because of Section 187(7) BIA, which provides:

187 (7) The court, on satisfactory proof that the affairs of the bankrupt can be more economically administered within another bankruptcy district or division, or for other sufficient cause, may by order transfer any proceedings under this Act that are pending before it to another bankruptcy district or division.

[37] While Section 17 CCAA is not as explicit, the Court is satisfied that it is not necessary or appropriate to refer to Article 3135 C.C.Q. in the present context. The CCAA court is not being asked to decline jurisdiction, but rather it is being asked to seek the assistance of another court.

[38] The Court is therefore satisfied that, notwithstanding the general rule that it should rule on all issues that arise in the context of these insolvency proceedings, it can seek the assistance of another court. It is a discretionary decision of this Court, based on factors such as cost, expense, risk of contradictory judgments, expertise, etc.

²⁶ *Supra* note 19, par. 62.

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3. Specific grounds

[39] The arguments put forward in support of the referral of the issues to the NL Court can be summarized as follows:

a) Legal considerations:

- These are complex and important issues of provincial law;
- The courts in Newfoundland and Labrador possess far greater expertise in interpreting the NLPBA than does the courts in Québec, although these specific questions have not yet been considered by any court in Newfoundland and Labrador;
- The interpretation of the NLPBA is a question of the intention of the legislator in Newfoundland and Labrador, and the NL Court is better situated to determine this intention;

b) Factual considerations:

- It is a question of purely local concern and it may significantly impact a large number of residents of Newfoundland and Labrador;
- The province of Newfoundland and Labrador is closely connected to the dispute: a majority of the employees reported for work in the province and the Wabush CCAA Parties maintained significant business operations in the province;
- If justice is to be done and be seen to be done it is important that consequential decisions on provincial legislation be made by the courts of that province;
- The representatives of the salaried employees and retirees want the NL Court to interpret the NLPBA;

c) Practical considerations:

- The law of another province is treated as a question of fact in Québec, with the result that the conclusion on a matter of foreign law is not binding on subsequent courts and can only be overturned in the presence of a palpable and overriding error;
- It might be difficult to prove the law of Newfoundland and Labrador in a Québec court given the lack of jurisprudence on the specific issues;

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- There will be increased costs if the Québec Court interprets the NLPBA because of the need to retain experts to provide legal opinions;
- There is no reason to believe that fragmenting the proceedings will result in additional delay;
- The judgment to be rendered will be a precedent and only a decision of the courts of Newfoundland and Labrador would be an authoritative precedent;
- Other persons or parties may wish to intervene on the issue of the scope of the Section 32 NLPBA deemed trusts, which would be more practical in the NL Court.

[40] These arguments do not convince the Court that this is an appropriate case to refer the issues to the NL Court.

a) Legal considerations

[41] This is the key argument put forward by the parties suggesting that the NLPBA issues be referred to the NL Court: the issues relate to the NLPBA, and the NL Court is best qualified to interpret the NLPBA.

[42] The Court accepts as a starting point that the NLPBA applies in the present matter: the pension plans are regulated by the NL Superintendent in accordance with the NLPBA (although OSFI also regulates the Union Plan in accordance with the PBSA) and the plans expressly provide that they are interpreted in accordance with the NLPBA.

[43] The Court also accepts the obvious proposition that the NL Court is more qualified to deal with an issue of Newfoundland and Labrador law than the courts of Québec, particularly since Newfoundland and Labrador is a common law jurisdiction and Québec is a civil law jurisdiction.

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

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

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

[98] Si on revoie les considérations du Juge, portant sur dix points, pour conclure que le for géorgien est préférable, deux aspects principaux en ressortent, soit les coûts et la loi applicable.

[99] Quant à cette dernière considération, elle n'est pas d'un grand poids, à mon avis. Parce que le débat porte sur les faits plutôt que sur le droit. Parce que la *common law* est tout de même familière aux tribunaux québécois. Parce que faire la preuve de la loi d'un État américain n'est pas un grand défi, c'est même chose courante.

[100] Et surtout, parce que le critère de la loi applicable ne constitue pas en soi un facteur important. Dans tout litige international, les conflits de lois sont l'ordinaire et non l'exception.²⁷

[47] In other words, the mere fact that a dispute is governed by foreign law is not a good reason to send the case to the foreign jurisdiction. This principle was applied in a CCAA context in the *MMA* case.²⁸

[48] There are examples in the insolvency context of the court with jurisdiction over the insolvency declining to send an issue governed by foreign law to the foreign court. In *Sam Lévy*, the Supreme Court declined to send an insolvency matter to British Columbia simply because there was a choice of B.C. law, stating, "The Quebec courts are perfectly able to apply the law of British Columbia."²⁹

[49] In *Lawrence Home Fashions Inc./Linge de maison Lawrence inc. (Syndic de)*, Justice Schragger, then of this Court, stated :

[18] In any event, should equitable set-off under Ontario law become relevant to the case, Québec judges sitting in such matters, on the presentation of the appropriate evidence, are readily capable of dealing with foreign law issues. Indeed, this is a frequent occurrence particularly in insolvency matters.³⁰

[50] The Ontario courts rejected similar arguments in *Essar Algoma*:

[80] Ontario courts can and do often apply foreign law. In this case I do not consider the fact that the law to be applied is Ohio law much of a factor, if any.³¹

²⁷ *Stormbreaker Marketing and Productions Inc. c. Weinstock*, 2013 QCCA 269, par. 98-100.

²⁸ *MMA*, *supra* note 24, par. 20.

²⁹ *Sam Lévy*, *supra* note 19, par. 61.

³⁰ 2013 QCCS 3015, par. 18.

³¹ *Supra* note 24, par. 80. See also *Nortel Networks*, *supra* note 24, par. 29.

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[51] The Monitor submitted cases in which Québec courts have interpreted different provisions of the pension laws of other provinces.³² The Court also notes that it dealt to a more limited extent with the deemed trust under the NLPBA in its decision dated June 26, 2015.

[52] There are nevertheless circumstances where the CCAA court has referred legal issues to the courts of another province. The *Curragh*³³ and *Yukon Zinc*³⁴ judgments were cited as examples of such cases. However, in both cases, the legal issues related to the *Yukon Miners Lien Act*.³⁵ Justice Farley in *Curragh* wrote :

This legislation and its concept of the lien affecting the output of the mine or mining claim is apparently unique to the Yukon Territory.³⁶

[53] Moreover, both cases involved real rights on property in Yukon.

[54] The parties also pointed to *Timminco* as precedent authority directly on point supporting the transfer of a pension issue by the CCAA court to the jurisdiction where the pension plan is registered and has been administered.³⁷ However, *Timminco* is not a precedent in that the parties in that case consented to the referral of the issue and Justice Morawetz simply gave effect to their consent.

[55] Without concluding that the Court would only refer a legal issue if the foreign law at issue is unique, the Court concludes that the arguments favouring the referral of a legal issue are stronger when the foreign law is unique.

[56] It is therefore important to examine the issues that might be referred to the NL Court and the uniqueness of the NLPBA provisions that are at issue in the present matter.

[57] The representatives of the salaried employees and retirees identify the relevant questions as being the scope of the deemed trust and of the lien and charge under Section 32 NLPBA, as well as the interaction between the NLPBA and the federal and Québec statutes.

[58] Section 32 NLPBA provides:

³² *Emerson Électrique du Canada ltée c. Chatigny*, 2013 QCCA 163; *Bourdon c. Stelco inc.*, 2004 CanLII 13895 (QC CA).

³³ *Canada (Minister of Indian Affairs and Northern Development) v. Curragh Inc.*, [1994] O.J. No. 953 (Gen. Div.)

³⁴ *Yukon Zinc Corp. (Re)*, 2015 BCSC 1961.

³⁵ R.S.Y. 2002, c. 151.

³⁶ *Supra* note 33, par. 11. See also *Yukon Zinc*, *supra* note 34, par. 47 and 57.

³⁷ *Timminco Limited (Re)*, 2012 ONSC 5959.

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32. (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

- (a) the money in the pension fund;
- (b) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) any special payments prescribed by the regulations, that have accrued to date; and
- (c) all
 - (i) amounts deducted by the employer from the member's remuneration, and
 - (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.

(3) Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.

(4) An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).

[59] The first point is that there is nothing particularly unique about Section 32 NLPBA.

[60] There is a very similar deemed trust provision in Section 8(1) and (2) PBSA:

8 (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:

(a) the moneys in the pension fund,

(b) an amount equal to the aggregate of the following payments that have accrued to date:

(i) the prescribed payments, and

(ii) the payments that are required to be made under a workout agreement; and

(c) all of the following amounts that have not been remitted to the pension fund:

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

(2) In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

[61] In Québec, the SPPA provides :

49. Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.

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[62] There are similar deemed trusts and/or liens in every Canadian province outside Québec except Prince Edward Island: Ontario,³⁸ British Columbia,³⁹ Alberta,⁴⁰ Saskatchewan,⁴¹ Manitoba,⁴² Nova Scotia⁴³ and New Brunswick.⁴⁴

[63] The second point is that there is no Newfoundland and Labrador jurisprudence interpreting the relevant provisions of the NLPBA. The NL Superintendent pleaded that “the courts of Newfoundland & Labrador possess far greater expertise in interpreting the PBA [NLPBA] than does the Superior Court of Québec.” While this is undoubtedly true with respect to the NLPBA as a whole, it is not true with respect to Section 32 NLPBA. In an earlier ruling also issued in the *Yukon Zinc* matter, Justice Fitzpatrick of the B.C. Supreme Court refused to decline jurisdiction and refer a matter involving the *Yukon Miners Lien Act* to the courts of Yukon and one of the factors that went against referring the matter to the Yukon court was the lack of jurisprudence in the Yukon court.⁴⁵

[64] Moreover, in this case, because of the similarities between the NLPBA and the federal and other provincial pension laws, the judge interpreting the NLPBA will likely refer to decisions of the courts of other provinces interpreting their legislation or the federal PBSA.

[65] The Québec Court should be in as good a position as the NL Court in that exercise.

[66] Finally, as is typical in these cases, there is a close interplay between the NLPBA and the CCAA. The first question proposed by the representatives of the salaried employees and retirees is: “Assuming there is no issue of paramountcy, what is the scope of section 32 in the NPBA [NLPBA] deemed trusts”. The scope of the NLPBA is not relevant if the NLPBA does not apply because of a conflict with the CCAA and federal paramountcy. In that sense, there may not even be a need to deal with the interpretation of the NLPBA.

[67] Moreover, there are issues in this case with the federal PBSA and the Québec SPPA. The representatives of the salaried employees and retirees suggest that the following questions are relevant:

2. The Salaried Plan is registered in Newfoundland and regulated by the NPBA.

³⁸ Ontario *Pension Benefits Act*, R.S.O. 1990, c. P.8, s. 57.

³⁹ British Columbia *Pension Benefits Standards Act*, S.B.C. 2012, c. 30, s. 58

⁴⁰ Alberta *Employment Pension Plans Act*, S.A. 2012, c. E-8.1, s. 58 and 60.

⁴¹ Saskatchewan *Pension Benefits Act*, 1992, S.S. 1992, c P-6.001, s. 43

⁴² Manitoba *Pension Benefits Act*, C.C.S.M., c. P32, s. 28.

⁴³ Nova Scotia *Pension Benefits Act*, S.N.S. 2011, c. 41, s. 80.

⁴⁴ New Brunswick *Pension Benefits Act*, S.N.B. 1987, c P-5.1, s. 51.

⁴⁵ *Yukon Zinc Corporation (Re)*, 2015 BCSC 836, par. 90.

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- a) (i) Does the PBSA deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?

(ii) If yes, is there a conflict with the NPBA and PBSA if so, how is the conflict resolved?
- b) (i) Does the SPPA also apply to those members of the Salaried Plan who reported for work in Québec?

(ii) If yes, is there a conflict with the NPBA and SPPA and if so, how is the conflict resolved?

(iii) Do the Quebec SPPA deemed trusts also apply to Québec Salaried Plan members?

[68] The representatives of the salaried employees and retirees and the NL Superintendent suggest that, in the interests of simplicity and expediency, all of these questions should be referred to the NL Court.

[69] The Court has great difficulty with this suggestion. On what basis should the Court conclude that the NL Court is in a better position to decide whether the Québec SPPA and deemed trust apply to employees who reported for work in Québec (question 2(b)(i) and (iii)) and how the conflict between the NLPBA and the SPPA should be resolved (question 2(b)(ii))? The first are pure questions of Québec law, and the last is a question where the laws of Québec and of Newfoundland and Labrador have equal application. There are similar questions with respect to the federal PBSA (question 2(c)), which the Court is in as good a position to decide as the NL Court.

[70] The Court will not refer issues of Québec law or federal law to the NL Court, and if those issues are too closely interrelated to the NLPBA issues, or if in the interests of simplicity and expediency they should all be decided by the same court, then the solution is not to refer any issues to the NL Court.

[71] In the earlier *Yukon Zinc* ruling where Justice Fitzpatrick refused to refer the matter to the courts of Yukon, she found that the issues related to the interrelationship between the Yukon *Miners Lien Act* and the rights asserted by others under B.C. law, in relation to assets the majority of which were located in British Columbia:

[89] As for the law to be applied to the various issues, it is clear that whatever forum is used to resolve these issues, there will be a blend of both British Columbian contract law and Yukon miner's lien law. The majority of the concentrate is located in British Columbia and was in this Province well before the 2015 Procon Lien was registered. Further, the contract rights are to be decided in accordance with British Columbian law, particularly as to if, and if so, when, title to the concentrate passed from Yukon Zinc to Transamine.

[90] This is not akin to the situation discussed in *Ecco Heating Products Ltd. v. J.K. Campbell & Associates Ltd.*, 1990 CanLII 1631 (BC CA), [1990] 48 B.C.L.R. (2d) 36 (C.A.), where the major issue arose under builder's lien legislation in British Columbia and where the court referred to the "extensive existing relevant jurisprudence" in British Columbia: at 43-44. It is common ground here that there is no case law on the issues of scope and priority under the *MLA* that arise here, let alone relevant Yukon jurisprudence.

[91] It is quite apparent that some issues arise under the *MLA* and, in particular, issues relating to Procon's rights in relation to the concentrate remaining in Yukon which is claimed by Transamine under British Columbian law. Transamine argues that this Court can take judicial notice of the *MLA*: see *Evidence Act*, R.S.B.C. 1996, c. 124, s. 24(2)(e). In any event, Procon has fully researched the issues as they arise under the *MLA* and made submissions on them. To turn the tables on Procon, if I were to decline jurisdiction in favour of the Yukon courts, there equally would be issues as to the Yukon court interpreting and applying British Columbian law on the contract issues.

[92] It would be impossible in the circumstances to bifurcate the issues based on the applicable law. Even if bifurcation was available, it would be neither a practical nor an efficient strategy in resolving the issues between Yukon Zinc, Procon and Transamine.

(Emphasis added)

[72] In the present matter, the bulk of the assets on which the deemed trust or the lien created by the NLPBA may apply are the proceeds of the sale of assets in Québec.

[73] On balance, the legal considerations do not favour referring the issues to the NL Court.

b) Factual considerations

[74] The parties suggesting that the NLPBA issues be referred to the NL Court also argue that these are essentially local issues that should be decided by the local court.

[75] It is clear that there are significant factual links between these issues and the province of Newfoundland and Labrador.

[76] In particular, the Wabush mine is located in Newfoundland and Labrador and most of the employees reported to that mine. As a result, many of the retirees are currently resident in Newfoundland and Labrador. The representatives of the salaried employees and retirees want the NL Court to interpret the NLPBA.

[77] However, there are equally strong factual links to the province of Québec: the Pointe-Noire facility is in Québec and most of the railway joining the Wabush mine and the Pointe-Noire facility is in Québec. There are almost as many employees and retirees in Québec:

	Salaried Plan	Union Plan
Newfoundland and Labrador	313	1,005
Québec	329	661
Other	14	66 ⁴⁶

[78] As a result, this is not a matter of purely local concern in Newfoundland and Labrador.

[79] Although the representatives of the salaried employees and retirees want the NL Court to interpret the NLPBA, more than half of the persons that they represent live in Québec.

[80] It is also worth noting that the Union, which represents more employees and retirees, asks that the case remain in Québec, even though most of their members reside in Newfoundland and Labrador.

c) Practical considerations

[81] The parties suggesting that the NLPBA issues be referred to the NL Court argue that the law of Newfoundland and Labrador is in principle a question of fact in a Québec court which is proven with expert witnesses. They argue that this has a series of somewhat inconsistent consequences:

- The parties will have to hire experts, which is costly and time consuming;
- It will be difficult to find experts because these questions have never been litigated before;
- If there is an appeal, the interpretation of the NLPBA will be treated as a question of fact and therefore only subject to be overturned if there is a palpable and overriding error.

⁴⁶ Watt Affidavit, par. 16.

[82] This seems to exaggerate the difficulty. The Court can take judicial notice of the law of another province.⁴⁷ This is particularly true when it is an issue of interpreting a statute.⁴⁸ In this case, where the parties plead that it will be difficult to find an expert, it seems unlikely that the Court would require expert evidence. This is particularly so when the provisions of the NLPBA which are at issue are similar to the provisions of the federal PBSA with respect to which expert evidence is not admissible. If there is no expert evidence to be offered, then there is no expense. A finding of fact with respect to expert evidence may attract the higher standard for appellate review of a palpable and overriding error.⁴⁹ This does not mean that every ruling on an issue of foreign law attracts the same standard. If the judge decides the interpretation of the NLPBA without considering the credibility of expert witnesses, then there is no reason for the Court of Appeal to apply the higher standard for appellate review.

[83] In terms of cost, it is difficult to see how the cost of continuing the proceedings in Québec will be higher than the cost of hiring attorneys in Newfoundland and Labrador and debating part of the issues there. The Union and Sept-Îles argued that it would be more expensive for them to argue the issues in Newfoundland and Labrador, and they added that they pay their own costs, unlike the representatives of the salaried employees and retirees and the Plan Administrator.

[84] Another issue is the delays that the referral might create.

[85] Sept-Îles bases its argument that it is too late now to raise the issue of a transfer on the fact that the Court already dealt with some of these issues 18 months ago. The representatives of the salaried employees and retirees plead that they raised the issue of a possible transfer of issues to the NL Court at the hearing of the motion for approval of the Claims Procedure Order on November 16, 2015.

[86] The Court will not dismiss the issue for lateness. However, it is relevant that the issue is being debated now as opposed to 18 months ago. If the issue had been debated at that time, the Court might have been less concerned about the possible delays that would result from referring the issues to the NL Court.

[87] The parties suggesting that the NLPBA issues be referred to the NL Court plead that there is no reason to believe that fragmenting the proceedings will result in additional delay. They do not however offer the Court any concrete indication of how quickly the case could proceed through the NL Court and any appeal.

[88] The Court is concerned by the possible delay. The parties pointed to *Timminco*, where the CCAA Court transferred a pension issue to the Québec Superior Court, as an example of how these referrals should work. In that case, the parties consented to refer

⁴⁷ Article 2809 C.C.Q.

⁴⁸ *Constructions Beauce-Atlas inc. c. Pomerleau inc.*, 2013 QCCS 4077, par. 14.

⁴⁹ *Canada (Minister of Citizenship and Immigration) v. Asini*, 2001 FCA 311, par. 26.

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the Québec pension aspects of the CCAA file that was being litigated in Ontario to a Québec court. Even in those circumstances, the delay between the referral (October 18, 2012)⁵⁰ and the final judgment of the Québec court (January 24, 2014)⁵¹ was over 15 months.

[89] Finally, the Court does not consider the question of whether its decision will or will not be treated as a precedent to be a relevant consideration. Similarly, the Court does not consider the possibility of intervenants to be relevant. The Court's focus is on resolving the difficulties of the parties appearing before it. If the government of Newfoundland and Labrador wishes to obtain a judgment from the courts of the province on the interpretation of the NLPBA, it can refer a matter to the Court of Appeal of Newfoundland and Labrador.⁵²

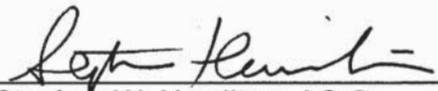
CONCLUSION

[90] For all of the foregoing reasons, the Court concludes that it is not appropriate in the present circumstances to refer the proposed questions to the NL Court.

FOR THESE REASONS, THE COURT:

[91] **DECIDES** that it has jurisdiction to deal with the issues related to the interpretation of the Newfoundland and Labrador *Pension Benefits Act* in the context of the present proceedings under the *Companies' Creditors Arrangement Act* and that it will not refer those issues to the Supreme Court of Newfoundland and Labrador;

[92] **THE WHOLE WITHOUT JUDICIAL COSTS.**



Stephen W. Hamilton, J.S.C.

Mtre Bernard Boucher
BLAKE, CASSELS & GRAYDON
For the Petitioners

Mtre Sylvain Rigaud
Mtre Chrystal Ashby
NORTON ROSE FULBRIGHT CANADA
For the Monitor

⁵⁰ *Supra* note 37.

⁵¹ 2014 QCCS 174.

⁵² *Judicature Act*, R.S.N.L. 1990, c. J-4, Section 13.

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Mtre Nicholas Scheib
SCHEIB LEGAL
Mtre Andrew Hatnay
KOSKIE MINSKY LLP
For the mises en cause Michael Keeper, Terence Watt,
Damien Lebel, and Neil Johnson

Mtre Daniel Boudreault
PHILION, LEBLANC, BEAUDRY
For the mise en cause Syndicat des métallos, sections locales 6254 et 6285

Mtre Ronald A. Pink
PINK LARKIN
For the mise en cause Morneau Shepell Ltd, in its capacity
as replacement pension plan administrator

Mtre Doug Mitchell
Mtre Edward Béchard-Torres
IRVING MITCHELL KALICHMAN
For the mise en cause Her Majesty in Right of Newfoundland and
Labrador, as represented by the Superintendent of Pensions

Mtre Pierre Lecavalier
MINISTÈRE DE LA JUSTICE CANADA
For the mise en cause the Attorney General of Canada, acting on behalf
of the office of the Superintendent of financial institutions

Mtre Sophie Vaillancourt
Mtre Roberto Clocchiatti
RETRAITE QUÉBEC
For the mise en cause Régie des rentes du Québec

Mtre Martin Roy
STEIN MONAST
For the mise en cause Ville de Sept-Îles

Date of hearing: December 20, 2016

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

DATE: June 26, 2015

BY THE HONOURABLE STEPHEN W. HAMILTON

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED:**

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**
Petitioners

And
**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUS MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED**
Mises-en-cause

And
FTI CONSULTING CANADA INC.
Monitor

And

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**HER MAJESTY IN RIGHT OF NEWFOUNLAND AND LABRADOR,
AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS,**

THE ATTORNEY GENERAL OF CANADA,

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254,

SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285,

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL AND NEIL JOHNSON, AS
REPRESENTATIVES OF THE SALARIED/NON-UNION EMPLOYEES AND
RETIRES**

Objecting parties

**JUDGMENT ON THE MOTION OF THE WABUSH CCAA PARTIES TO GRANT
PRIORITY TO THE INTERIM LENDER CHARGE AND TO SUSPEND THE
PAYMENT OF CERTAIN PENSION AMORTIZATION PAYMENTS AND POST-
RETIREMENT EMPLOYEE BENEFITS (#144), AND RELATED MATTERS**

INTRODUCTION

[1] These proceedings raise essentially three issues:

1. Can and should the Court order that the charge in favour of the interim lender rank ahead of the statutory deemed trusts for payments due by the debtors to the pension plan?
2. Can and should the Court suspend the debtors' obligation to pay the special amortization payments to the pension plan?
3. Can and should the Court suspend the debtors' obligation to pay the other post-employment benefits for the retirees?

BACKGROUND

The parties

[2] On May 20, 2015, the Petitioners Wabush Iron Co. Limited and Wabush Resources Inc. and the Mises-en-cause Wabush Mines (a joint venture of Wabush Iron and Wabush Resources), Arnaud Railway Company and Wabush Lake Railway Company Limited (the "Wabush CCAA Parties") filed a motion for the issuance of an

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initial order under the *Companies' Creditors Arrangement Act*¹ (CCAA), which was granted on that date by the Court (the "Wabush Initial Order").

[3] Prior to the filing of the motion, Wabush Mines operated the iron ore mine and processing facility located near the Town of Wabush and Labrador City, Newfoundland and Labrador, and the port facilities and a pellet production facility at Pointe-Noir, Québec. Arnaud and Wabush Lake Railway are both federally regulated railways that are involved in the transportation of iron ore concentrate from the Wabush mine to the Pointe-Noir port.

The pension plans and other post-employment benefits

[4] The Wabush CCAA Parties have two defined benefit pension plans for their employees:

- The pension plan for salaried employees at the Wabush mine and the Pointe-Noire port hired before January 1, 2013, called the Contributory Pension Plan for Salaried Employees of Wabush Mines JV, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company; and
- The pension plan for unionized hourly employees at the Wabush mine and Pointe-Noire port, called the Pension Plan for Bargaining Unit Employees of Wabush Mines JV, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company.

[5] Wabush Mines is the administrator of both plans.

[6] Because some of the employees covered by the plans work in Newfoundland and Labrador and because others work in federally regulated industries, the plans are subject to regulatory oversight by both the federal pension regulator, the Office of the Superintendent of Financial Institutions ("OSFI"), and the provincial regulator in Newfoundland and Labrador, the Superintendent of Pensions (the "N&L Superintendent").

[7] The monthly normal cost payments for the plans for 2015 based on a valuation as at January 1, 2014 are \$50,494.83 for the hourly plan and \$41,931.25 for the salaried plan, for a total monthly normal cost payment of \$92,46.08. All monthly normal cost payments in respect of the plans for January through April, 2015 have been paid in full.

[8] The plans are underfunded. Based on estimate received from the Wabush CCAA Parties' pension consultant, the Wabush CCAA Parties believe the estimated wind-up

¹ R.S.C. 1985, c. C-36, as amended.

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deficiencies for the plans as at January 1, 2015 to be a total of approximately \$41.5 million, consisting of approximately \$18.2 million for the salaried plan and approximately \$23.3 million for the hourly plan.

[9] The Wabush CCAA Parties are required to pay monthly amortization payments based on the 2014 valuation of \$393,337.00 for the hourly plan and \$273,218.58 for the salaried plan, for a total monthly amortization payment of \$666,555.58. All monthly amortization payments in respect of the plans for January through April, 2015 have been paid in full, save for a shortfall of approximately \$130,000.

[10] In addition to the monthly amortization payments, the Wabush CCAA Parties are also required to make a lump sum “catch-up” amortization payment for the plans estimated to be approximately \$5.5 million due in July 2015.

[11] The Wabush CCAA Parties currently provide other post-employment benefits (“OPEBs”), including life insurance and health care, to former hourly and salaried employees hired before January 1, 2013, which vary based on whether retirees were formerly members of a bargaining unit or were non-unionized salaried employees.

[12] As of December 31, 2014, accumulated benefits obligations for the OPEBs totalled approximately \$52.1 million. The premiums required to fund the foregoing OPEBs are approximately \$182,000 a month.

[13] In addition to the foregoing, there is a supplemental retirement arrangement plan for certain current and former salaried employees of Wabush Mines JV. The obligations under this plan are approximately \$1.01 million.

The Interim Financing

[14] Prior to filing the motion for the issuance of an initial order, the Wabush CCAA Parties entered into the Interim Financing Term Sheet with Cliffs Mining Company (the “Interim Lender”). The Interim Lender is a subsidiary of the ultimate parent of the Wabush CCAA Parties.

[15] The cash flow statement filed with the motion for the issuance of an initial order showed that the Wabush CCAA Parties had run out of cash and were not anticipating any receipts from operations other than two small rental payments, with the result that they needed the Interim Financing to continue even their limited operations for the duration of the CCAA process.

[16] The Interim Financing Term Sheet provided that the Interim Lender would advance a maximum principal amount of US\$10,000,000 to provide for short-term liquidity needs of the Wabush CCAA Parties while they are under CCAA protection. The Interim Lender’s obligation to advance funds is subject to a number of conditions and covenants, including the following:

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- The Interim Lender will have a charge in the principal amount of CDN\$15,000,000 which will have priority over all charges against the Wabush CCAA Parties' property except for certain specified charges;² and
- The Wabush CCAA Parties will not make any special payments in relation to the pension plans or any payments in respect of OPEBs.³

CCAA proceedings

[17] As a result of the foregoing, the Wabush CCAA Parties asked the Court as part of the Wabush Initial Order on May 20, 2015 to approve the Interim Financing Term Sheet and to create the Interim Lender Charge, but not to give the Interim Lender Charge priority over the existing secured creditors until they had the chance to be heard.

[18] The Monitor filed its Fifth Report in which it recommended that the Court approve the Interim Financing Term Sheet and the granting of the Interim Lender Charge.

[19] Based on the evidence presented at the hearing on May 20, 2015,⁴ the Court granted the Wabush Initial Order, including the approval of the Interim Financing Term Sheet and the create of the Interim Lender Charge ranking after the existing secured creditors.

[20] The Wabush Initial Order provided for a comeback hearing on June 9, 2015.

[21] On May 29, 2015, the Wabush CCAA Parties filed their "Motion for the issuance of an order in respect of the Wabush CCAA parties (1) granting priority to certain CCAA charges, (2) approving a Sale and Investor Solicitation Process *nunc pro tunc*, (3) authorizing the engagement of a Sale Advisor *nunc pro tunc*, (4) granting a Sale Advisor Charge, (5) amending the Sale and Investor Solicitation Process, (6) suspending the payment of certain pension amortization payments and post-retirement employee benefits, (7) extending the stay of proceedings, (8) amending the Wabush Initial Order accordingly", in which they sought various conclusions including (1) an order granting priority to the Interim Lender Charge over all charges against the Wabush CCAA Parties' property, subject to certain exceptions not relevant here, and (2) an order suspending the payment of the special payments and the OPEBs.

² Sections 7(1) and 8(2) of the Interim Financing Term Sheet

³ Section 25(h), which does specify that the Wabush CCAA Parties shall be entitled to make normal cost payments under defined benefit plans.

⁴ The Court heard the evidence of Clifford Smith, an officer of the Wabush CCAA Parties, and Nigel Meakin, a representative of the Monitor.

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[22] In addition, the Wabush CCAA Parties sent a letter on May 29, 2015 to 2,092 retirees and to the union representatives to advise them of the hearing on June 9, 2015 and to advise them that they would present on June 9, 2015 requests that the Interim Lender Charge be given priority over the deemed trusts relating to pension payments and that the special payments and the payment of the OPEBs be suspended.

[23] Prior to the comeback hearing, the Wabush CCAA Parties and the Monitor received various notices of objection, which can be classified into two categories as follows:

- (a) the first category of notices of objection were filed on behalf of (1) the Administration Portuaire de Sept-Îles/Sept-Iles Port authority ("SIPA"), (2) the Iron Ore Company of Canada ("IOC"), and (3) MFC Industrial Ltd., and pertained to the reservation of certain contractual rights;
- (b) the second category of notices of objection were filed on behalf of (1) the N&L Superintendent, (2) OSFI, (3) United Steelworkers Locals 6254 and 6285 (the "Union"), and (4) Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson in their personal capacity and as the proposed representatives of all non-union employees and retirees of the Wabush CCAA Parties. These notices of objection will be described more fully below.

[24] On June 9, 2015, the Court granted the Wabush comeback motion in part and issued an order, which reserved the rights of SIPA, IOC and MFC as follows:

[10] **DECLARES** that this Order approving the SISP as it relates to the Wabush CCAA Parties *nunc pro tunc* is without prejudice to the rights, if 'any, of the Administration Portuaire de Sept-Îles/Sept-Iles Port Authority (hereinafter the "SIPA"), vis à vis the Wabush CCAA Parties, including: (i) the rights of the SIPA, acting as successor in the rights of the National Harbours Board, pursuant to the agreement referred to and communicated as Exhibit O-1 in support of SIPA's Notice of objection dated April 13, 2015; and (ii) the rights of SIPA, acting as successor in the rights of the Canada Ports Corporation, pursuant to the agreement referred to and communicated as Exhibit O-7 in support of SIPA's Notice of objection already filed in the Court record and dated April 13, 2015;

[11] **DECLARES** that this Order approving the SISP as it relates to the Wabush CCAA Parties *nunc pro tunc* is without prejudice to the rights, if any of the Iron Ore Company of Canada or its related companies (hereinafter the "IOC"), vis-à-vis the Wabush CCAA Parties, including, but not limited to, the rights pursuant to the Subscription Agreement dates August 3, 1959 referred to in IOC's Notice of objection already filed in the Court record and dated April 13, 2015;

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[12] **DECLARES** that this Order approving the SISP as it relates to the Wabush CCAA Parties *nunc pro tunc* is without prejudice to the rights, if any, of MFC Industrial Ltd. ("MFC") if any, vis-à-vis the Wabush CCAA Parties, including pursuant to an Amendment and Consolidation of Mining Leases dated September 2, 1959 and related sub-leases (as amended from time to time) as it relates to the property of Wabush CCAA Parties.

[13] **RESERVES** the right of IOC, SIPA and of MFC to raise any such rights at a later stage if need be;

[25] The Court scheduled a hearing on June 22, 2015 to deal with the remaining requests of the Wabush CCAA Parties in relation to the priority of the Interim Lender Charge and the suspension of the special payments and the OPEBs:

[6] **RESERVES** the rights of Her Majesty in right of Newfoundland and Labrador, as represented by the Superintendent of Pensions, the Syndicat des Métallos, Section Locale 6254, the Syndicat des Métallos, Section 6285 and the Attorney General of Canada to contest the priority of the Interim Lender Charge over the deemed trust(s) as set out in the Notices of Objection filed by each of those parties in response to the Motion, which shall be heard and determined at the hearing scheduled on June 22, 2015;

[...]

[21] **ORDERS** the request by the Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015;

[22] **ORDERS** the request by Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015;

[23] **ORDERS** the Wabush CCAA Parties' request for an order for the suspension of payment by the Wabush CCAA Parties of other post-retirement benefits to former hourly and salaried employees of their Canadian subsidiaries hired before January 1, 2013, including without limitation payments for life insurance, health care and a supplemental retirement arrangement plan, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015;

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THE POSITION OF THE OBJECTING PARTIES

[26] Prior to the hearing on June 22, 2015, the parties exchanged outlines of their respective arguments. The four retirees also filed the “Motion for an order appointing the Petitioners-Mises-en-cause as representative of salaried/non-union and retired employees of the Wabush CCAA Parties” seeking to be appointed as representatives of salaried/non-union and retired employees of the Wabush CCAA Parties and to seek funding for their counsel. This motion was granted by consent on June 22, 2015.

[27] The positions taken by the objecting parties can be summarized as follows:

<u>Objection Raised/Objecting Parties</u>	<u>N&L S.</u>	<u>OSFI</u>	<u>Union</u>	<u>Non-union retirees</u>
Suspension of Amortization Payments	Objects	Objects*	Objects	Object**
Suspension of OPEBs	--	--	Objects	Object
Superpriority of Interim Lender Charge	Objects*	Objects	Objects	--

* Not in the notice of objection, but in the written argument

** In the notice of objection and the written argument, but partly withdrawn at hearing

[28] Moreover, in its notice of objection and written argument, the Union requests that that one officer from each of the two locals be designated by the Court as the persons responsible for responding to questions from unionized retirees of the Wabush CCAA Parties and providing them with information about their rights and recourses, and that those persons be funded by the Wabush CCAA Parties.

N&L Superintendent

[29] The N&L Superintendent objects to the Wabush CCAA Parties’ request for a suspension of the special payments. He argues that the suspension of the special payments sought by the Wabush CCAA Parties contravenes Sections 32 and 61(2) of the Newfoundland and Labrador *Pension Benefits Act, 1997*⁵ (the “N&L Act”).

[30] He does not raise any objection with respect to the suspension of the OPEBs.

[31] In his notice of objection, the N&L Superintendent also reserved his right to raise additional objections. In his written argument, he adds an argument with respect to the priority of the Interim Lender Charge, which he also claims would contravene Sections 32 and 61(2) of the N&L Act.

[32] In addition to the foregoing, the N&L Superintendent also claims in its written argument that the Wabush CCAA Parties are in a conflict of interest when it comes to

⁵ SNL 1996, c. P-4.01, as amended.

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the administration of the pension plans, and suggests that other, less stringent financing alternatives would have been available.

[33] Finally, the N&L Superintendent further claims that additional information with regards to paragraphs 83 to 91 of the Wabush Comeback Motion needs to be divulged in order for it to be able to properly carry out its statutory duties under the N&L Act, including to assess the financial status of the plans. However, at the hearing, representations were made that information had been provided and no specific order was sought. The Court reserves the N&L Superintendent's rights in this regard.

OSFI

[34] In its notice of objection, OSFI objects solely to the granting of the priority of the Interim Lender Charge, and only inasmuch as this would result of a priming rank over the normal cost payments owing to the pension plans which benefit from priority under Sections 8 and 36(2) of the *Pension Benefits Standards Act, 1985*⁶ ("PBSA").

[35] In its written argument, OSFI instead invokes the statutory deemed trust in connection with outstanding special payments.

[36] OSFI now also challenges the suspension of the special payments on the basis that the Wabush CCAA Proceedings would not constitute a restructuring, but rather a liquidation.

[37] According to OSFI, the impact of the deemed trust is to render any and all amount owing to the pension plans inalienable and exempt from seizure, such that, as a result, the Interim Lender Charge could not obtain a security on those assets.

The Union

[38] In its notice of objection, the Union opposes the suspension of both the special payments and the OPEBs, and seeks an order that the Wabush CCAA parties be forced to make such payments notwithstanding the terms of the Interim Financing Term Sheet.

[39] In doing so, the Union insists on the hardship such a suspension would cause for the retirees, whose claims are alimentary in nature.

[40] The Union also asks the Court to preserve the rank of the deemed trust for amounts owing to the pension plans, and seeks to have this deemed trust rank ahead of or equal with the Interim Lender Charge.

⁶ R.S.C. 1985, c. 32 (2nd Supp.), as amended.

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[41] The notice of objection and the written argument also argue for the appointment of a representative to handle the numerous queries of union members.

Non-union retirees

[42] In their notice of objection, the non-union retirees object to the suspension of the OPEBs and the special payments sought by the Wabush CCAA Parties on the basis of the significant prejudice such relief would cause to the retirees.

[43] In their written argument, they argue that such a suspension would in fact amount to a disclaimer or resiliation of agreements, subject to the provisions of Section 32 CCAA, which it is argued were not respected in the case at hand.

[44] They add that the conditions of the Interim Lender Term Sheet should not allow the Wabush CCAA Parties to circumvent the requirements of said Section 32 CCAA.

[45] At the hearing, they indicated that they objected most strenuously to the suspension of the OPEBs, because of the impact on the retirees. They indicated that they would not object to a short-term suspension of the special payments, until the Wabush CCAA Parties collected the tax refunds they were expecting and therefore had funds other than the Interim Financing with which to make the special payments.

POSITION OF THE WABUSH CCAA PARTIES

[46] The Wabush CCAA Parties argue that they do not have any funds or any source of funds and therefore that they need the Interim Financing.

[47] They also argue that even with the Interim Financing, they do not have any funds available to continue to pay the special payments or any of the OPEBs, as the Interim Financing Term Sheet prohibits such payments.

[48] On the law, they argue that the deemed trusts created under the PBSA and the N&L Act are not effective to protect the special payments or the OPEBs in the CCAA context. As a consequence, the Interim Lender Charge requested by the Wabush CCAA Parties does not prime any security under the PBSA or the N&L Act. Further, since those payments are unsecured and relate to pre-filing services, there is no reason for the Wabush CCAA Parties to make those payments.

[49] They therefore argue that the Court should exercise its discretion to give the Interim Lender Charge priority over the deemed trusts and to suspend the obligation to pay the special payments and the OPEBs.

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POSITION OF THE MONITOR

[50] The Monitor filed its Seventh Report for purposes of the comeback hearing.

[51] In its report, it supports the position taken by the Wabush CCAA Parties.

[52] Its legal argument supports the legal argument put forward by the Wabush CCAA Parties.

ISSUES IN DISPUTE

[53] The issues in dispute can be outlined as follows;

- (a) Can and should the Court order that the Interim Lender Charge rank ahead of all encumbrances, including statutory deemed trusts?
- (b) Can and should the Court suspend the Wabush CCAA Parties' obligation to pay the special payments?
- (c) Can and should the Court suspend the Wabush CCAA Parties' obligation to pay the OPEBs?

ANALYSIS

[54] The three issues have significant overlaps. The Court will nevertheless analyze them sequentially, and will adopt its previous reasoning to the extent it is relevant.

1. Super-priority of the Interim Lender Charge***General***

[55] What is at issue is the conflict between the super-priority of the interim lender charge under Section 11.2 CCAA and the statutory deemed trusts created by Section 8 PBSA and Section 32 of the N&L Act.

[56] Section 11.2 CCAA allows the Court, after considering the factors set out in Section 11.2(4) CCAA, to create an interim lender charge and to give that charge priority over the claim of any secured creditor of the debtor:

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard

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to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

(Emphasis added)

[57] OSFI and the N&L Superintendent, supported by the Union, argue that Section 11.2 CCAA does not allow the Court to give the interim lender charge priority over the deemed trusts in pension matters created by their respective legislations.

[58] The argument put forward by OSFI and the N&L Superintendent is essentially that the employer is deemed to hold the amounts in trust, and therefore they are not "part of the company's property" and cannot be charged under Section 11.2 CCAA.

[59] The Wabush CCAA Parties argue that there is a conflict between the legislation creating the deemed trusts and the CCAA and that the CCAA must prevail:

- The CCAA prevails over the PBSA as a matter of statutory interpretation of two pieces of federal legislation, and

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- The CCAA prevails over the N&L Act because of the constitutional doctrine of federal paramountcy.

[60] Because the arguments are different with respect to the PBSA and the N&L Act, the Court will deal with them separately.

[61] These are not new issues. The courts, including the Supreme Court, have been called upon to deal with the effect of federal and provincial deemed trusts in the insolvency context on numerous occasions. There have also been a number of statutory amendments, some designed to overturn the results of judgments.

[62] Because of the urgency of rendering judgment in this matter, the Court will not embark on an exhaustive analysis of all of these judgments and amendments.

Effectiveness of the PBSA deemed trust in CCAA proceedings

[63] OSFI relies on Sections 8(1) and (2) and 36(2) of the PBSA, which provide as follows:

8. (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:

(a) the moneys in the pension fund,

(b) an amount equal to the aggregate of the following payments that have accrued to date:

(i) the prescribed payments, and

(ii) the payments that are required to be made under a workout agreement; and

(c) all of the following amounts that have not been remitted to the pension fund:

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

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(2) In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

36. (2) Any agreement or arrangement to assign, charge, anticipate or give as security

(a) any benefit provided under a pension plan, or

(b) any money withdrawn from a pension fund pursuant to section 26

is void or, in Quebec, null.

(Emphasis added)

[64] The deemed trust created by Section 8 PBSA is intended to cover all amounts due by the employer to the pension fund. These would include the normal payments, as well as the special payments.

[65] Section 8(1) PBSA requires the employer to keep the required amounts separate and apart from its own moneys, and deems the employer to hold them in trust. In the present matter, the required amounts have not been kept separate and apart and the assets subject to the trust have been comingled with other assets. Pursuant to the decision of the Supreme Court in *Sparrow Electric*, the consequence is that the trust created by Section 8(1) PBSA does not exist because the subject-matter of the trust cannot be and never was identifiable.⁷

[66] As a result, the relevant provision is Section 8(2) PBSA which provides that the amount shall be deemed to be separate and apart, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

[67] However, Section 8(2) PBSA only applies "[i]n the event of any liquidation, assignment or bankruptcy of an employer". It attaches to any property which lawfully belongs to the employer when the triggering event occurred.⁸

[68] The issue of the triggering event could be determinative in the present case. If the triggering event has not occurred, then there is no deemed trust and no obstacle to the Court granting the priority required by the Interim Lender.

⁷ *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411, par. 28.

⁸ *Ibid.*, par. 38.

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[69] It is clear that there has been no assignment or bankruptcy in the present matter. Further, there is no liquidation under Part XVIII of the *Canada Business Corporations Act*⁹ or equivalent provincial legislation. A CCAA proceeding does not appear to trigger the application of Section 8(2) PBSA. However, OSFI argues that these CCAA proceedings are really a liquidation, because it is very likely that the ongoing sale process will result in the sale of all of the assets of the Wabush CCAA Parties.

[70] In interpreting the word “liquidation” in Section 8(2) PBSA, and in particular whether it includes a liquidation under the CCAA,¹⁰ the Court will consider more generally how the deemed trust under Section 8(2) PBSA is dealt with under the CCAA.

[71] It must be emphasized at the outset that the deemed trust under Section 8(2) PBSA is not a deemed trust in favour of the Crown. This is a fundamental distinction. Section 37(1) CCAA, which renders all deemed trusts in favour of the Crown ineffective in the CCAA context, subject to certain exceptions, has no application to the deemed trust under Section 8(2) PBSA. As a result, many of the cases cited to the Court, which deal with the effectiveness of deemed trusts in favour of the Crown, must be applied with caution in the present circumstances.

[72] In particular, the Wabush CCAA Parties rely on language in the Supreme Court’s judgment in *Century Services*¹¹ that must be read carefully. Justice Deschamps refers in paragraph 45 to “the general rule that deemed trusts are ineffective in insolvency”. There is no such general rule, other than Section 37(1) CCAA (and Section 67(2) of the *Bankruptcy and Insolvency Act*¹²) which applies only to deemed trusts in favour of the Crown. She begins the paragraph with a reference to the predecessor of Section 37(1) CCAA and she refers throughout the paragraph to Crown claims and Crown priorities. She must be referring to Crown deemed trusts in that sentence as well. Justice Fish’s comments in paragraph 95 must be similarly limited. The Court respectfully disagrees with Justice Schragger in *Aveos*¹³ on this issue and concludes that there is no general rule that deemed trusts in favour of anyone other than the Crown are ineffective in insolvency. Deemed trusts will be interpreted restrictively as exceptions to the general principle that the assets of the debtor are available for all of the creditors,¹⁴ but there is no general rule that they are ineffective.

[73] However, other provisions of the CCAA deal expressly with pension obligations. Sections 6(6) and 36(7) CCAA were added to the CCAA in 2009. They provide that an

⁹ R.S.C. 1985, c. C-44, as amended.

¹⁰ In *Aveos Fleet Performance Inc./Aveos Performance aéronautique inc. (Arrangement relatif à)*, 2013 QCCS 5762, par. 66, Justice Schragger (then of this Court) leaves open the possibility that the liquidation of Aveos under the CCAA may have triggered Section 8(2) PBSA.

¹¹ *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60, [2010] 3 S.C.R. 379.

¹² R.S.C. 1985, c. B-3, as amended.

¹³ *Aveos*, *supra* note 10, par. 74-75.

¹⁴ *White Birch Paper Holding Company (Arrangement relatif à)*, 2012 QCCS 1679, par. 141-142.

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arrangement can only be sanctioned or an asset sale approved by the Court, if provision is made for the payment of certain enumerated pension obligations, including deductions from employee salaries and normal cost contributions of the employer, but not including special payments.

[74] It is difficult to reconcile Sections 6(6) and 36(7) CCAA with a broad interpretation of Section 8(2) PBSA. Why would the legislator give specific protection to the normal payments by amending the CCAA in 2009 if the deemed trust protecting not only the normal payments but also the special payments was effective in the CCAA context? Why would the legislator not protect the special payments under Sections 6(6) and 36(7) CCAA if they were already protected under a deemed trust? What happens to the deemed trust for the special payments if there is an arrangement or an asset sale? Because both statutes were adopted by the same legislator, we must try to determine the legislator's intent.

[75] In *Century Services*, the Supreme Court was faced with a conflict between the deemed trust for GST and the CCAA. Justice Deschamps adopted "a purposive and contextual analysis to determine Parliament's true intent".¹⁵ She concluded that the deemed trust for GST did not apply in a CCAA proceeding, even though the language in the *Excise Tax Act*¹⁶ provided that the deemed trust was effective notwithstanding any law of Canada other than the BIA. She attached importance to the "internal logic of the CCAA".¹⁷

[76] Moreover, in *Indalex*, Justice Deschamps referred to the conclusions of a Parliamentary committee which had considered extending the protection afforded the beneficiaries of pension plans. The committee made the policy decision not to extend that protection. Justice Deschamps concluded that "courts should not use equity to do what they wish Parliament had done through legislation."¹⁸

[77] The Court therefore adopts the following reasoning to resolve the conflict in the present case:

Given that the pension provisions of the *BIA* and *CCAA* came into force much later than s. 8 of the *PBSA*, normal interpretation would require that the later legislation be deemed to be remedial in nature. Likewise, since those provisions of the *BIA* and *CCAA* are the more specific provisions, normal interpretation would take them to have precedence over the general. Finally, the limited scope of the protection given to pension claims in the *BIA* and the *CCAA* would, by application of the doctrine of implied exclusion, suggest that Parliament did not intend there to be any additional protection. In enacting *BIA* subs. 60(1.5) and

¹⁵ *Century Services*, *supra* note 11, par. 44.

¹⁶ R.S.C. 1985, c. E-15, as amended.

¹⁷ *Century Services*, *supra* note 11, par. 46.

¹⁸ *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 272, par. 81-82. See also *Aveos*, *supra* note 10, par. 77.

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65.13(8) and ss. 81.5 and 81.6 and CCAA subs. 6(6) and 37(6), while not amending subs. 8(2) of the *PBSA* (by adding explicit priority language or by removing the insolvency trigger), Parliament demonstrated the intent that pension claims would have protection in insolvency and restructurings only to the limited extent set out in the *BIA* and the *CCAA*.¹⁹

(Emphasis added)

[78] For all of these reasons, the Court concludes that Parliament's intent is that federal pension claims are protected in insolvency and restructurings only to the limited extent set out in the *BIA* and the *CCAA*, notwithstanding the potentially broader language in the *PBSA*.

[79] In the alternative, the Court could conclude that a liquidation under the *CCAA* does not fall within the term "liquidation" in Section 8(2) *PBSA* such that there has been no triggering event.

[80] Either way, the Court concludes that the deemed trust under Section 8(2) *PBSA* does not prevent the Court from granting priority to the Interim Lender Charge, if the conditions of Section 11.2 *CCAA* are met.

Effectiveness of the N&L Act deemed trust in CCAA proceedings

[81] The N&L Superintendent relies on the combined effect of Sections 32 and 61(2) of the N&L Act:

32. (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

- (a) the money in the pension fund;
- (b) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) any special payments prescribed by the regulations, that have accrued to date; and
- (c) all
 - (i) amounts deducted by the employer from the member's remuneration, and

¹⁹ Sam Babe, "What About Federal Pension Claims? The Status of *Pension Benefits Standards Act, 1985* and *Pooled Registered Pension Plans Act* Deemed Trust Claims in Insolvency" (2013), 28 N.C.D.Rev. 25, p. 30.

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- (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.

(3) Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.

(4) An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).

61. (1) On termination of a pension plan, the employer shall pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the regulations for solvency, including

- (a) an amount equal to the aggregate of
- (i) the normal actuarial cost, and
 - (ii) special payments prescribed by the regulations,

that have accrued to the date of termination; and

- (b) all
- (i) amounts deducted by the employer from members' remuneration, and
 - (ii) other amounts due to the pension fund from the employer that have not been remitted to the pension fund at the date of termination.

(2) Where, on the termination, after April 1, 2008, of a pension plan, other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan, the employer shall, as prescribed by the regulations, make the payments into the pension fund, in

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addition to the payments required under subsection (1), that are necessary to fund the benefits provided under the plan.

(Emphasis added)

[82] The key provision, Section 32(2) of the N&L Act, is virtually identical to Section 8(2) PBSA. As a result, much of the analysis set out above applies here as well.

[83] However, the analysis takes a different turn once one reaches the conclusion that it is difficult to reconcile the broad deemed trust under Section 32(2) of the N&L Act with the more limited protection under Section 6(6) and 36(7) CCAA.

[84] This is a conflict between provincial legislation and federal legislation. Constitutional doctrine instructs the courts to try to interpret the federal and provincial legislation in such a way as to avoid the conflict, but this is not the same exercise as trying to find the intent of a single legislator who adopted conflicting pieces of legislation.

[85] For the purposes of this analysis, the Court will assume that the N&L Act is valid and is intended to be effective in an insolvency context. This means that the province granted greater protection to pension obligations than the federal legislator recognized in the CCAA. The principles of interpretation set out above do not apply to resolve a conflict between a federal statute and a provincial statute. There is no basis for interpreting the statutes in such a way as to make them consistent.

[86] There is also a potential conflict with respect to the priority of the interim Lender Charge: under Section 11.2 CCAA, the Court can create an interim lender charge over all of the debtor's property and give it priority over all other charges, except that the province has created a deemed trust which, if it is effective, subtracts assets from the debtor's property and makes them unavailable to be charged in favour of the interim lender.

[87] The question is therefore whether the province can create such a charge that could prevent the Court from granting priority to an interim lender charge.

[88] The Supreme Court in *Indalex* held in the circumstances of that case, that the interim lender charge had priority over the provincial deemed trust by reason of the application of the doctrine of federal paramountcy, because the CCAA's purpose would be frustrated without the interim lender charge.²⁰ The trial judge in *Indalex* had rejected the deemed trust and therefore had not considered the doctrine of paramountcy. However, in granting the interim lender charge, he had considered the factors in Section 11.2(4) CCAA and had concluded that the interim lender charge was necessary and in

²⁰ *Indalex*, *supra* note 18, par. 60. See also *White Birch*, *supra* note 14, par. 217; *Timminco Itée (Arrangement relatif à)*, 2014 QCCS 174, par. 85.

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the best interest of *Indalex* and its stakeholders. The Supreme Court held that these findings were sufficient for paramountcy to apply.

[89] As a result, the Court can give priority to the Interim Lender Charge over the deemed trust under the N&L Act if the test for federal paramountcy is met. The Court will consider the paramountcy issue as part of its analysis of the factors under Section 11.2(4) CCAA.

Factors under Section 11.2(4) CCAA

[90] Section 11.2(4) CCAA sets out a non-exhaustive list of the factors the Court should consider before it creates an interim lender charge:

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

[91] The Court already considered those factors when it decided to create the Interim Lender Charge on May 20, 2015.

[92] In his Fifth Report dated May 19, 2015, the Monitor provided the following comments on the factors listed in Section 11.2(4) CCAA:

The period during which the company is expected to be subject to proceedings under the CCAA

(a) While the deadline for the submission of binding offers pursuant to the SISP has yet to be set, based the Wabush May 18 Forecast and preliminary discussions regarding the potential timeline for the completion of the SISP, it is

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believed that the Interim Financing Term Sheet provides sufficient liquidity to enable the Wabush CCAA Parties to complete the SISP;

How the company's business and affairs are to be managed during the proceedings

(b) The Wabush CCAA Parties' senior personnel and Boards of Directors remain in place to manage the business and affairs of the Wabush CCAA Parties. The Wabush CCAA Parties and their management will also have the benefit of the expertise and experience of their legal counsel and the Monitor;

Whether the company's management has the confidence of its major creditors

(c) The largest creditors of the Wabush CCAA Parties are affiliated companies who the Monitor understands to have confidence in the Wabush CCAA Parties' management. Other major creditors include the pension plans described in the May 19 Motion, employee groups in respect of other post-retirement benefits and various contract counterparties. None of the major creditors has to date expressed any concern to the Monitor in respect of the Wabush CCAA Parties' management;

Whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company

(d) Based on the Wabush May 18 Forecast, without the Interim Facility the Wabush CCAA Parties would be unable to pay their obligations, maintain their assets or complete the SISP. The Wabush CCAA Parties and the Monitor are of the view that approval of the Interim Facility would likely enhance the prospects of generating recoveries for stakeholders, whether through a sale or a restructuring plan;

The nature and value of the company's property

(e) The Wabush CCAA Parties' assets are described in the May 19 Motion, and consist primarily of real estate, equipment, inventory and income tax receivables. The value of the Wabush CCAA Parties' property will be determined through the SISP. Nothing has come to the attention of the Monitor in respect of the nature of the Wabush CCAA Parties' property that, in the Monitor's view, ought to be given particular consideration in connection with the Interim Lender Charge;

Whether any creditor would be materially prejudiced as a result of the proposed Charge

(f) The proposed Interim Facility will provide the Wabush CCAA Parties the opportunity to complete the SISP and to maximize recoveries for stakeholders. Borrowings under the Interim Financing Term Sheet are limited to a maximum of US\$10 million. The Interim Lender Charge secures only the Interim Financing Obligations and is limited to \$15 million. The Monitor is of the view that any

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potential detriment caused to the Wabush CCAA Parties' creditors by the Interim Lender Charge should be outweighed by the benefits that it creates; and

Other potential considerations

(g) The Monitor has researched the terms of recent interim financings based on information publicly available, a summary of which is attached hereto as Appendix C. Based on this research and Monitor's experience, the Monitor believes that the terms of the Interim Financing Term Sheet are in line with or better than market. The Monitor is of the view that the Interim Financing Term Sheet represents the best alternative available in the circumstances that would provide access to financing within the necessary timeframe.

[93] In his testimony before the Court on May 20, 2015, Clifford Smith testified that the Wabush CCAA Parties had attempted to obtain financing elsewhere, but that only a related party was willing to provide financing.

[94] The Court makes the following findings:

- The Sale and Investor Solicitation Process (SISP) is in the interests of the Wabush CCAA Parties and their stakeholders because it should lead to greater recovery;
- Without new financing, the Wabush CCAA Parties do not have enough cash to complete the SISP. The cash flow projection attached to the Fifth Report shows the Wabush CCAA Parties running out of cash in the week ending May 22, 2015;
- Without new financing, it is therefore likely that the Wabush CCAA Parties will go bankrupt;
- The Wabush CCAA Parties and the Monitor have not identified any other sources of new financing;
- The terms and conditions of the Interim Financing are reasonable, and the security is limited to the amount of the new financing.

[95] This is sufficient for the Court to conclude that the Interim Financing should be approved and the Interim Lender Charge should be granted with priority over the deemed trust under the PBSA, if it is effective in the CCAA context.

[96] With respect to the deemed trust under the N&L Act, there is the added issue of whether giving effect to the deemed trust would frustrate the federal purpose under the CCAA. Under the Interim Lender Term Sheet, the super-priority is a condition precedent to the Interim Lender's obligation to advance the funds. That condition will not be met if

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the Court gives effect to the deemed trust under the N&L Act, which puts the financing at risk.

[97] The objecting parties argue that the Court's jurisdiction to make appropriate orders should not be ousted by the terms of the Interim Lender Term Sheet. However, there is nothing peculiar about this provision in the Interim Lender Term Sheet. The importance of the super-priority to interim lenders has consistently been recognized by the courts. As stated by the Supreme Court in *Indalex*:

... case after case has shown that "the priming of the DIP facility is a key aspect of the debtor's ability to attempt a workout" (J. P. Sarra, *Rescue! The Companies' Creditors Arrangement Act* (2007), at p. 97). The harsh reality is that lending is governed by the commercial imperatives of the lenders, not by the interests of the plan members or the policy considerations that lead provincial governments to legislate in favour of pension fund beneficiaries.²¹

(Emphasis added)

[98] Similarly, Justice Morawetz stated in *Timminco*:

[49] In the absence of the court granting the requested super priority, the objectives of the CCAA would be frustrated. It is neither reasonable nor realistic to expect a commercially motivated DIP lender to advance funds in a DIP facility without super priority. The outcome of a failure to grant super priority would, in all likelihood, result in the Timminco Entities having to cease operations, which would likely result in the CCAA proceedings coming to an abrupt halt, followed by bankruptcy proceedings. Such an outcome would be prejudicial to all stakeholders, including CEP and USW.²²

(Emphasis added)

[99] The objecting parties also plead that the Interim Lender is related to the Wabush CCAA Parties and therefore has interests which might be different than those of an arm's length lender.

[100] However, there is no evidence that gives credence to the suggestion that the Interim Lender will advance funds without the super-priority. To the contrary, the attorney representing the Interim Lender made it clear at the hearing that there would be no advance of funds if the super-priority was not confirmed. Further, the Court is not satisfied that it has the jurisdiction to order the Interim Lender to advance the funds on terms other than those that it has accepted.

²¹ *Indalex*, *supra* note 18, par. 59

²² *Timminco Limited (Re)*, 2012 ONSC 948, par. 49. This passage was quoted with approval in *White Birch*, *supra* note 14, par. 215.

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[101] In all of these circumstances, the Court concludes that giving effect to the deemed trust under the N&L Act carries a serious risk of frustrating the CCAA process. The Court therefore concludes that the doctrine of federal paramountcy is engaged, and it concludes that the N&L Act is not effective to that extent.

[102] The Court will therefore order that the Interim Lender Charge shall have priority over the deemed trusts under the PBSA and the N&L Act.

2. Suspension of special payments

[103] Further, the Wabush CCAA Parties asked that their obligation to make the special payments to the pension plans be suspended.

[104] The Courts have consistently recognized a jurisdiction to suspend the obligation to make special payments and OPEB payments “when necessary to enhance liquidity to promote the survival of a company in financial distress.”²³

[105] Several reasons underlie the existence of this jurisdiction.

[106] First, the normal pension payments that the employer is required to make relate to the current services rendered by the current employees and the Court’s jurisdiction to affect those payments is limited by the principle that the debtor must pay for current services. However, the special payments relate to a deficit that has accumulated in the pension plan. Pension benefits are deferred compensation for services that were provided by the retiree while he or she was an employee.²⁴ As a result, the special payments relate to services provided to the employer before the filing, and as such, they can be qualified as pre-filing obligations.²⁵

[107] Second, the special payments are unsecured in the CCAA context. Sections 6(6) and 36(7) create a priority in the CCAA context for the normal payments but not for the special payments. As discussed above, the deemed trust under Section 8(2) PBSA has no effect in a CCAA proceeding, and the deemed trust under Section 32(2) of the N&L

²³ *Aveos*, *supra* note 10, par. 88. See also *White Birch Paper Holding Company (Arrangement relatif à)*, 2010 QCCS 764, par. 94-100; *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 2028, par. 27, 31-32; *Papiers Gaspésia Inc., Re*, 2004 CanLII 40296 (QC CS), par. 87-92; *Collins & Aikman Automotive Canada Inc. (Re)*, 2007 CanLII 45908 (ON SC), par. 90-92; *Fraser Papers Inc. (Re)*, 2009 CanLII 39776 (ON SC), par. 20; *Timminco Limited (Re)*, 2012 ONSC 506, par. 61-63.

²⁴ *IBM Canada Limited v. Waterman*, 2013 SCC 70, [2013] 3 S.C.R. 985, par. 4.

²⁵ *White Birch*, *supra* note 23, par. 97; *Fraser Papers*, *supra* note 23, par. 20; *Sproule v. Nortel Networks Corporation*, 2009 ONCA 833, par. 20-21. In *Aveos*, *supra* note 10, par. 86-88, Justice Schragger concluded that this characterization was not necessary for the court to have jurisdiction to suspend the payments.

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Act, in purporting to create a security interest not recognized under the CCAA, is not effective to the extent that it conflicts with the CCAA.²⁶

[108] As a result, the payment of the special payments would constitute payments to an unsecured pre-filing creditor, which could be qualified as preferential in the sense that no other unsecured pre-filing creditor is being paid.

[109] In any event, even without this characterization, the courts have a broad discretion under the CCAA to render orders that are necessary to allow the debtor to make a proposal to its creditors.

[110] In the exercise of this discretion, it is important to consider the facts.

[111] The special payments for the two plans are made up of monthly amortization payments in the amount of \$666,555.58 per month and a lump sum “catch-up” amortization payment of approximately \$5.5 million due in July 2015.

[112] The Wabush CCAA Parties do not have the funds available to make these payments. The cash flow statements filed with the Court show that the Wabush CCAA Parties need the funds from the Interim Financing to meet their current obligations other than the special payments. The Interim Lender Term Sheet expressly requires the Wabush CCAA Parties not to make any special payments. As a result, forcing the Wabush CCAA Parties to make the special payments would lead to a default under the Interim Financing and a likely bankruptcy.²⁷

[113] The objecting parties criticize the position taken by the Interim Lender in prohibiting the payment of the special payments.

[114] However, the position taken by the Interim Lender in this file is consistent with the position taken by other interim lenders in other files:

[55] *Fairfax* [the interim lender] a indiqué au Tribunal que ce financement avait été octroyé pour financer les activités courantes de *Bowater* et ne pouvait ainsi être utilisé pour payer les cotisations d'équilibre aux régimes de retraite. Le financement est aussi sujet au respect de différents ratios de solvabilité.²⁸

[115] Moreover, the Interim Lender's position makes sense as a commercial matter. Why should the Interim Lender advance funds that will be used to pay someone else's debt, particularly one which is pre-filing and unsecured? It is the Interim Lender's intention to fund the Wabush CCAA Parties with the amount required to get them

²⁶ *Indalex*, *supra* note 18, par. 56.

²⁷ See a similar argument in *Collins & Aikman*, *supra* note 23, par. 91-92; *Fraser Papers*, *supra* note 23, par. 21;

²⁸ *AbitibiBowater*, *supra* note 23, par. 55. See also *Ivaco Inc. (Re)*, 2006 CanLII 34551 (Ont.C.A.), par. 17; *Fraser Paper*, *supra* note 23, par. 23.

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through the SISP so that they can repay the loan. It is not in the Interim Lender's interest to fund preferential payments to unsecured pre-filing creditors. The language cited above about the harsh commercial realities of interim financing applies here as well.

[116] Moreover, the Court is being asked to suspend the obligation to make the special payments, and is not being asked to alter the collective agreement or extinguish the obligation to pay these amounts.²⁹

[117] As a result, the beneficiaries of the pension plans would not be prejudiced by this suspension. The wind-up deficiencies for the two pension plans as at January 1, 2015 are estimated to be a total of approximately \$41.5 million. The purpose of the special payments is to reduce that deficiency and to improve the situation over time such that the beneficiaries will receive the full amounts to which they are entitled. The suspension of the special payments means that their position is not improved, but it is not worsened. Their debt remains and benefits from whatever priority it is entitled to at law.

[118] For all of these reasons, the Court will order the suspension of the special payments to the pension funds.

3. Suspension of the OPEBs

[119] The Wabush CCAA Parties currently provide OPEBs, including life insurance and health care, to former hourly and salaried employees.

[120] As of December 31, 2014, accumulated benefits obligations for the OPEBs totalled approximately \$52.1 million. The premiums required to fund the foregoing OPEBs are approximately \$182,000 a month.

[121] In addition to the foregoing, there is a supplemental retirement arrangement plan for certain current and former salaried employees of Wabush Mines JV. The obligations under this plan are approximately \$1.01 million.

[122] The Wabush CCAA Parties do not have any funding available to continue to pay any of the foregoing OPEBs, as the Interim Financing Term Sheet prohibits such payments. They seek an order from the Court suspending the payment of the OPEBs *nunc pro tunc* to the Wabush Filing Date.

[123] The reasoning as to the existence and the exercise of the discretion to suspend these payments is much the same as for the special payments. The Wabush CCAA Parties do not have the funds to make the payments, and the Interim Lender Term Sheet does not allow them to make these payments. These amounts relate to services

²⁹ Section 33 CCAA; *Syndicat national de l'amiante d'Asbestos inc. c. Mine Jeffrey inc.*, [2003] R.J.Q. 420 (C.A.), par. 57-58.

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provided pre-filing and they are unsecured. They are in a sense even less secured than the special payments because the deemed trusts created by the PBSA and the N&L Act do not purport to cover these payments.

[124] The retirees plead that there are two important differences.

[125] First, the amount at issue is only \$182,000 per month. The retirees suggest that the Wabush CCAA Parties should be able to find this amount somewhere. The Wabush CCAA Parties continue to argue that they do not have the funds with which to make these payments, and the Interim Lender Term Sheet in any event prevents them from making these payments. Given the cash flow statement filed with the Court and the language of the Interim Lender Term Sheet, the Court accepts that the Wabush CCAA Parties do not have the funds.

[126] The second difference pleaded by the retirees is that they suffer a clear prejudice. The OPEBs are provided through an insurance policy, and if the Wabush CCAA Parties fail to pay the premium, the policy will be cancelled, leaving the retirees with no health insurance and only a claim against the insolvent Wabush CCAA Parties. The Court assumes this to be correct and accepts that this will cause hardship to the retirees.

[127] The retirees argue that this is equivalent to a disclaimer or rescission of the insurance contract by the Wabush CCAA Parties, which is invalid because the formalities under Section 32(1) CCAA were not followed, and the test under Section 32(4) CCAA for the Court to authorize the disclaimer or rescission was not met. Section 32(4)(c) provides that one of the factors to be considered is “whether the disclaimer or rescission would likely cause significant financial hardship to a party to the agreement.”

[128] This argument does not withstand scrutiny.

[129] There is a tri-partite relationship. The employer has obligations to the beneficiaries, and has entered into an insurance policy with the insurer so that the insurer provides those benefits to the beneficiaries. If the employer stops paying the premiums, the insurer will terminate the insurance policy. This does not affect the employer’s obligations to the beneficiaries,³⁰ but the beneficiaries will be left with an insolvent debtor instead of the insurer.

[130] However, the contract that is being terminated is the contract between the Wabush CCAA Parties and the insurer for the benefit of the beneficiaries. The counterparty is the insurer. It is not suggested that the insurer will suffer any significant financial hardship as a result of the termination of the contract. The contract between the Wabush CCAA Parties and the beneficiaries is not being terminated.

³⁰ *Ibid*, par. 58.

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[131] Moreover, the Wabush CCAA Parties are not disclaiming or resiliating the contract. The Wabush CCAA Parties are seeking authorization to stop paying under a contract, just as they have undoubtedly stopped paying under a number of other contracts. When the debtor defaults, the counter-party has a number of options, including terminating the contract. Even if termination by the counter-party is the likely result, as in this case, it does not mean that the debtor has disclaimed or resiliated the contract. Otherwise, the debtor would have to follow the formalities and pass the test in Section 32 CCAA every time it defaulted under a contract.

[132] At the end of the day, the answer is the same as for the special payments, and the payment of the OPEBs should also be suspended.³¹

[133] The Court is very mindful of the hardship that the suspension of the OPEB payments and the termination of the insurance policy will cause to the beneficiaries. Unfortunately, that hardship appears to be inevitable. Even if the Court ordered the Wabush CCAA Parties to keep paying the premium during the SISP, that would be only a temporary solution and it is very likely if not inevitable that following the conclusion of the SISP, the Wabush CCAA Parties will cease their operations and the insurance policy will be terminated.

4. Breach of fiduciary duties

[134] The objecting parties also pleaded that Wabush Mines is in a situation of conflict of interest because it is both the administrator of the pension plans and one of the Wabush CCAA Parties seeking relief with respect to the pension plans.

[135] The PBSA and the N&L Act allow the employer to act as administrator, and the insolvency of the employer inevitably leads to the type of potential conflict in which Wabush Mines finds itself.

[136] Consistent with the views expressed by the Supreme Court in *Indalex*, the Court concludes that the giving of notice to the regulators, the Union and the retirees, the postponement of the hearing from June 9, 2015 to June 22, 2015 to allow the objecting parties to present their arguments, and the consent to the motion presented by the four retirees for a representation order allowing them to represent all salaried/non-union employees and retirees and related beneficiaries at the expense of the Wabush CCAA Parties, all show that the employer acted in good faith in a way consistent with its fiduciary duties to the beneficiaries of the pension plans.³²

³¹ See also *White Birch*, *supra* note 23, par 40.

³² *Indalex*, *supra* note 18, par. 73.

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5. Representation order sought by the Union

[137] The Union requests that one officer from each of the two locals be designated by the Court as the persons responsible for responding to questions from unionized retirees of the Wabush CCAA Parties and providing them with information about their rights and recourses. Further, the Union asks that those persons be funded by the Wabush CCAA Parties.

[138] The individuals that the Union proposes are officers of the two locals. The Union is essentially asking the Court to designate these individuals and to order that a portion of their salary be paid by the Wabush CCAA Parties. At the present time, the Union estimates that the two individuals spend one half of their time responding to calls, although that time seems to be decreasing. The admissions filed in lieu of the testimony of Frank Beaudin refer to the volume of calls received by the Union since the May 29, 2015 letter was sent to the retirees.

[139] The Monitor is a Court officer whose duties include providing information of this nature. However, the Court also recognizes that the Union has received and will continue to receive calls from the unionized retirees. It is appropriate for the Union to provide information to its retired members and to designate specific individuals to provide the information in order to ensure that there is consistency in the information provided.

[140] However, this is not a matter that requires the intervention of the Court. The Union can handle matters of communications with its former members without a Court order. The Union does not seek an order that it be authorized to represent these unionized retirees. If the Union were to make such a motion, the Court would have to consider whether there is a potential conflict between the current employees and the retirees.

[141] Further, the Court does not consider it appropriate that the Wabush CCAA Parties be ordered to pay part of the salary of the two individuals. They are salaried union officers. Providing information of this nature is within their functions.

[142] For these reasons, the Union's motion will be dismissed.

FOR THESE REASONS, THE COURT:

[143] **DISMISSES** the contestations by Her Majesty in right of Newfoundland and Labrador, represented by the Superintendent of Pensions, the Attorney General of Canada and the Syndicat des Métallos, Section Locale 6254 and the Syndicat des Métallos, Section Locale 6285 to the priority of the Interim Lender Charge over deemed trusts, as set out in paragraph 47 of the Wabush Initial Order, as amended on June 9,

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2015, and **CONFIRMS** the priority of the Interim Lender Charge over deemed trusts, as set out in paragraph 47 of the Wabush Initial Order, as amended on June 9, 2015;

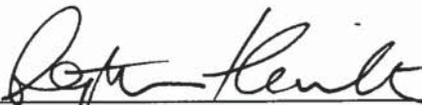
[144] **ORDERS** the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date;

[145] **ORDERS** the suspension of payment by the Wabush CCAA parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date;

[146] **ORDERS** the suspension of payment by the Wabush CCAA Parties of other post-retirement benefits to former hourly and salaried employees of their Canadian subsidiaries hired before January 1, 2013, including without limitation payments for life insurance, health care and a supplemental retirement arrangement plan, *nunc pro tunc* to the Wabush Filing Date.

[147] **DISMISSES** the Motion to Modify the Initial Order presented by the Syndicat des Métallos, Section Locale 6254 and the Syndicat des Métallos, Section Locale 6285;

[148] **WITHOUT COSTS.**


STEPHEN W. HAMILTON, J.S.C.

Mtre Bernard Boucher
Mtre Steven Weisz
BLAKE CASSELS & GRAYDON S.R.L.
For the Petitioners Bloom Lake General Partner Limited et al

Mtre Matthew Gottlieb
LAX O'SULLIVAN SCOTT LISUS LLP

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Independent Counsel for the Board of Directors of Petitioners

Mtre Sylvain Rigaud
Mtre Chrystal Ashby
NORTON ROSE FULLBRIGHT LLP
For the Monitor FTI Consulting Canada Inc.

Mtre Doug Mitchell
Mtre Leslie-Anne Wood
IRVING MITCHELL KALICHMAN
For Her Majesty in right of Newfoundland and Labrador, as represented by the
Superintendent of Pensions

Mtre Pierre Lecavalier
DEPARTMENT OF JUSTICE - CANADA
For the Attorney General of Canada

Mtre Jean-François Beaudry
PHILION, LEBLANC, BEAUDRY, AVOCATS
For the Syndicat des Métallos, Section Locale 6254 and the Syndicat des Métallos,
Section Locale 6285

Mtre Nicholas Scheib
SCHEIB LEGAL
And
Mtre Andrew J. Hatnay
Mtre Ari Kaplan
KOSKIE MINSKY LLP
For Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson, as representatives
for the salaried/non-union employees and retirees

Mtre Gerry Apostolatos
LANGLOIS KRONSTROM DESJARDINS
For the Creditors Quebec North Shore and Labrador Railway Company Inc., Air Inuit
Ltd, Metso Shared Services Ltd, Iron Ore Company of Canada, and WSP Canada Inc.

Mtre Louis Dumont
DENTON
For the Interim Lender Cliffs Quebec Iron Mining ULC

Hearing date: June 22, 2015

Leave to Appeal from Judgment on Pension Priority and Suspension of Certain Payments Denied (Justice Kasirer J.C.A), August 18, 2015

COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-025441-155
500-09-025469-156
(500-11-048114-157)

DATE: AUGUST 18, 2015

PRESIDING: THE HONOURABLE NICHOLAS KASIRER, J.A.

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

500-09-025441-155

**MICHAEL KEEFER, TERENCE WATT, DAMIEN LEBEL AND NEIL JOHNSON, as
representatives of the salaried / non-union employees and retirees**

APPLICANTS – objecting parties

v.

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUEBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC**

RESPONDENTS – petitioners

and

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED**

IMPLEADED PARTIES – impleaded parties

and

FTI CONSULTING CANADA INC.

IMPLEADED PARTY – monitor

Leave to Appeal from Judgment on Pension Priority and Suspension of Certain Payments Denied (Justice Kasirer J.C.A), August 18, 2015

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and

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented
by THE SUPERINTENDENT OF PENSIONS
THE ATTORNEY GENERAL OF CANADA
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285
IMPLEADED PARTIES – objecting parties**

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**SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254
SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285
APPLICANTS – objecting parties**

v.

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUEBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC
RESPONDENTS – petitioners**

and

**THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED
IMPLEADED PARTIES – impleaded parties**

and

**FTI CONSULTING CANADA INC.
IMPLEADED PARTY – monitor**

and

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented
by
THE SUPERINTENDENT OF PENSIONS
THE ATTORNEY GENERAL OF CANADA
MICHAEL KEEFER, TERENCE WATT, DAMIEN LABEL AND NEIL JOHNSON, as
representatives of the salaried / non-union employees and retirees
IMPLEADED PARTIES – objecting parties**

and

QUEBEC NORTHSORE AND LABRADOR RAILWAY COMPANY INC.

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IRON ORE COMPANY OF CANADA
IMPLEADED PARTY – impleaded parties

JUDGMENT

[1] Sitting as judge in chambers pursuant to sections 13 and 14 of the *Companies' Creditors Arrangement Act*¹ ("CCAA") and articles 29, 511 and 550 C.C.P., I am seized of two motions for leave to appeal from a judgment of the Superior Court, District of Montreal (the Honourable Stephen Hamilton), rendered on June 26, 2015. The Superior Court dismissed contestations made on behalf of the petitioners, who are, respectively, representatives of non-union employees and retired employees (petitioners in court file C.A.M. 500-09-025441-155 and hereinafter designated the "Salaried Members") and the Syndicat des Métallos, sections locales 6254 and 6285 (in court file C.A.M. 500-09-025469-156, hereinafter referred to together as the "Union"). In so doing, the Superior Court confirmed the respondent's request to grant priority to an interim lender charge over claims made by the petitioners based on deemed trusts in pension legislation. The Court also suspended certain payments due under pension plans as well as for post-retirement benefits.

[2] The Union filed an amended motion prior to the hearing. Both motions for leave also ask for orders to suspend provisional execution of the judgment notwithstanding appeal.

I Background

[3] The facts are usefully and completely recounted in the judgment *a quo*.²

[4] On May 20, 2015, the CCAA Judge Hamilton, J. granted a motion for the issuance of an initial order to commence proceedings under the CCAA to respondents Wabush Iron Ore Co. Ltd., Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Railway Co. Ltd. (the "Wabush CCAA Parties"). The CCAA proceedings as they concern the Wabush CCAA Parties were joined to CCAA proceedings started some four months earlier involving the "Bloom Lake CCAA Parties".³

¹ R.S.C. 1985, c. C-36.

² 2015 QCCS 3064.

³ The pre-existing CCAA proceedings were commenced on January 27, 2015, by an initial order issued by Castonguay, J. of the Superior Court, in respect of Bloom Lake General Partner Ltd., Quinto Mining Corp., 8568391 Canada Ltd., Cliffs Quebec Iron Mining ULC, The Bloom Lake Iron Ore Partnership and Bloom Lake Railway Co. Ltd. (the "Bloom Lake CCAA Parties").

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[5] Prior to the filing of the motion, Wabush Mines operated an iron ore mine located near the Town of Wabush and Labrador City, in the province of Newfoundland and Labrador, with facilities at Pointe-Noire, Quebec.

[6] The Wabush CCAA Parties are currently involved in a court-ordered sales process, originally commenced in the Bloom Lake CCAA proceedings, whereby they seek to sell assets with a view either to concluding a plan of compromise with their creditors (including the petitioners) or disposing of assets and distributing the proceeds to creditors (including the petitioners).

[7] The Wabush CCAA Parties have two defined pension plans for their employees, one for salaried employees and the other for unionized employees paid an hourly wage. Because some employees work in a provincially-regulated setting in Newfoundland and Labrador and others work in federally-regulated industries, the plans are subject to oversight by both the federal Office of Superintendent of Financial Institutions and the Newfoundland and Labrador Superintendent of Pensions.

[8] Both plans are underfunded. The CCAA Judge set forth estimated amounts to be paid as winding-up deficiencies, monthly amortization payments and lump-sum “catch-up” amortization payments. He noted as well that the Wabush CCAA Parties provide other post-employment benefits (“OPEB”), including health care and life insurance, to certain retired employees. Accumulated benefits’ obligations for the OPEBs, as well as monthly premiums required to fund those benefits, are to be paid by the Wabush CCAA Parties. In addition, amounts are due pursuant to a supplemental retirement arrangement plan for certain salaried employees (see paras [4] to [13] of the judgment).

[9] The Wabush CCAA Parties arranged for interim financing (a debtor-in-possession or “DIP” loan) from Cliffs Mining Company, a related company. The CCAA Judge was of the view that the Wabush CCAA Parties’ cash-flow was compromised and that the interim financing was necessary to continue operations during restructuring. The Wabush initial order approved an interim financing term sheet pursuant to which the interim lender would provide US\$10M of interim financing, on conditions, for the Wabush CCAA Parties short-term liquidity needs during the CCAA proceedings. These conditions included, as the CCAA Judge recorded in paragraph [16] of his reasons, a requirement that the interim lender have a charge in the principal amount of CDN \$15M, with priority over all charges, against Wabush CCAA Parties’ property, subject to some exceptions. There is a further condition that Wabush CCAA Parties may not make any special payments in relation to the pension plans or any payments in respect of the OPEBs. The initial order granted the interim lender charge of \$15M but did not give priority to that charge over existing secured creditors in order to allow the parties to make representations at a comeback hearing.

[10] At that comeback hearing, the Wabush CCAA Parties sought, *inter alia*, priority for the interim lender charge ahead of deemed trusts created by pension legislation and a suspension of obligations to pay amortization payments in relation to the pension

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plans and payments for OPEBs. The Salaried Members and the Union contested these matters. The CCAA Judge issued an order on June 9, 2015 granting priority to the interim lender charge, subject to the rights of, *inter alia*, the Salaried Members, the Union and the federal and provincial pension authorities to be determined at a later hearing.

[11] That hearing on June 22, 2015 gave rise to the judgment *a quo* in which the CCAA Judge granted the Wabush CCAA Parties' comeback motion and dismissed the contestations brought by the Salaried Members and the Union.

II The judgment of the Superior Court

[12] The CCAA Judge made numerous findings and rendered different orders, not all of which concern the motions before me. I will limit my comments to those aspects of the judgment relevant here.

[13] After setting forth the context and the arguments of the parties, the CCAA Judge considered the conflict between the super-priority of the interim lender charge and the deemed trusts created by federal and provincial legislation. (His findings in respect of the provincial rules do not concern us directly at this stage).

[14] As to the impact of CCAA proceedings on the deemed trust created by subsection 8(2) of the *Pension Benefits Standards Act, 1985*,⁴ the judge wrote "there is no general rule that deemed trusts in favour of anyone other than the Crown are ineffective in insolvency" (para. [72]). He then considered the effect of subsection 8(2) PBSA on the provisions of the CCAA that deal with pension obligations, including subsections 6(6) and 36(7) CCAA that were added to the Act in 2009. Based on his interpretation of the general rule in subsection 8(2) PBSA and the particular rules in the CCAA, the judge concluded, as an exercise of statutory interpretation, that "Parliament's intent is that federal pension claims are protected in [...] restructurings only to the limited extent set out in the [...] CCAA, notwithstanding the potentially broader language in the PBSA" (para. [78]). In the alternative, he wrote, "the Court could conclude that a liquidation under the CCAA does not fall within the term "liquidation" in Subsection 8(2) PBSA such that there has been no triggering event" (para. [79]). Either way, he observed, the deemed trust in subsection 8(2) PBSA did not prevent him from granting a priority to the interim lending charge if the conditions of section 11.2 CCAA were met.

[15] After considering the relevant factors under the CCAA to the facts of the case, the CCAA Judge decided that the proposed sale was in the interests of the Wabush CCAA Parties and their stakeholders as it should lead to a greater recovery. The sale required new financing and, without that financing, it is likely that the Wabush CCAA Parties would go bankrupt. The judge also expressed his view that the terms and conditions of the interim financing were reasonable, and that the security is limited to

⁴ R.S.C. 1985, c. 32 (2nd Supp.).

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the amount of the new financing. He then wrote that “[t]his is sufficient for the Court to conclude that the Interim Financing should be approved and the interim lender charge should be granted with priority over the deemed trust under the PBSA, if it is effective in the CCAA context” (para. [95]). He also found that the terms of the interim lending sheet, including the requirement that the interim lender be granted super priority, were not unusual and that he was not satisfied that the Superior Court had jurisdiction to order the lender to advance the funds on other terms (para. [100]).

[16] The CCAA Judge then gave reasons for his decision to grant the Wabush CCAA Parties’ request that their obligation to make special and OPEB payments be suspended. He held that forcing the Wabush CCAA Parties to make special payments would lead to a default under the interim financing arrangement and a likely bankruptcy (para. [112]). He came to the same conclusion in respect of the OPEBs (para. [122]). In so doing, he rejected the argument that the suspension of the OPEBs amounted to a rescission of the insurance contract under which the benefits are provided, rescission which would have required notice under section 32 CCAA (paras [127] to [131]).

[17] The CCAA Judge rejected all other grounds for contestation. He confirmed the priority of the interim lending charge over the deemed trusts as set out in the initial order; he ordered the suspension of payment by the Wabush CCAA Parties of monthly amortization payments, of the annual lump sum catch-up payments, and of other post-retirement benefits.

III The motions for leave

[18] The two motions raise some similar issues but are different in scope.

[19] The Salaried Members ask for leave to appeal in respect of conclusions relating to two aspects of the judgment.

[20] First, the Salaried Members seek to reverse the CCAA Judge’s approval of what they characterize as the termination of OPEBs and of payment of supplemental pension benefits imposed by the Wabush CCAA Parties without proper notice as required by section 32 CCAA. In this regard, the Salaried Members object to the following paragraph in the judgment *a quo*:

[146] ORDERS the suspension of payment by the Wabush CCAA Parties of other post-retirement benefits to former hourly and salaried employees of their Canadian subsidiaries hired before January 1, 2013, including without limitation payments for life insurance, health care and a supplemental retirement arrangement plan, *nunc pro tunc* to the Wabush Filing Date.

[21] In argument, the Salaried Members also contended that the CCAA Judge’s finding that the Wabush CCAA Parties did not have the funds to meet the \$182,000

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monthly payments for the premiums to fund the OPEBs and the supplemental pension benefits was mistaken.

[22] Second, the Salaried Members seek to reverse that portion of the CCAA Judge's reasons bearing on the ineffectiveness of the federal statutory deemed trust in CCAA proceedings. They say that to hold the deemed trust priority under the PBSA to be "of no force and effect in CCAA Proceedings on a wholesale basis" is wrong in law. Specifically they state that the deemed trust priority should continue to apply for the benefit of Salaried Members over the assets of the company in future priority distributions (after the DIP and CCAA-ordered priorities). For this second argument, the Salaried Members target the following paragraphs of the CCAA Judge's reasons as they pertain to the effectiveness of the PBSA deemed trust in CCAA proceedings:

[78] For all of these reasons, the Court concludes that Parliament's intent is that federal pension claims are protected in insolvency and restructurings only to the limited extent set out in the *BIA* and the *CCAA*, notwithstanding the potentially broader language in the PBSA.

[79] In the alternative, the Court could conclude that a liquidation under the CCAA does not fall within the term "liquidation" in Section 8(2) PBSA such that there has been no triggering event.

[23] It may be noted that the Salaried Members had initially contemplated objecting to the non-payment of other amounts owing by the Wabush CCAA Parties in respect of the pension plans. But given limits to the Wabush CCAA Parties' cash-flow and the significant amounts of these payments, the Salaried Members chose not to pursue the objections in these proceedings.

[24] As noted, the Salaried Members also ask to suspend provisional execution notwithstanding appeal of this order.

[25] The Union's proposed appeal is somewhat broader.

[26] In respect of the portion of the judgment regarding the deemed trust provided in the PBSA, the Union is of the view, like the Salaried Members, that the CCAA Judge erred in holding that the subsection 8(2) PBSA deemed trust is ineffective in CCAA proceedings. Moreover, the Union disagrees with the CCAA Judge that the pension amortization payments constitute ordinary, unsecured claims under the CCAA rather than trust claims (paras [103] to [118] of the judgment). The Union also says the CCAA Judge was mistaken in deciding that the financing conditions in respect of the interim financial loan were reasonable insofar as those conditions precluded the payment of OPEBs (paras [119] to [133]). The judge should have set aside the unreasonable conditions in the interim lending sheet. Had he done so, the judge would have found that the Wabush CCAA Parties had the necessary funds to make the payments owed under the plans.

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[27] The Union also seeks a stay of provisional execution of the judgment.

[28] It bears mentioning that the Union's motion was filed late. In keeping with section 14(2) CCAA, the Union obtained permission from the CCAA Judge to bring the late appeal, subject to the determination by a judge in chambers of this Court as to whether the appeal is a serious one.⁵ None of the parties objected to this way of proceeding and I find the Union's amended motion to be correctly before me.

IV Criteria for granting leave

[29] The test for leave under the CCAA is well known. Writing for the Court of Appeal for Saskatchewan in *Re Stomp Pork Farm Ltd.*,⁶ Jackson, J.A. wrote:

[15] In a series of cases emanating first from British Columbia and then from Quebec, Alberta and Ontario, there has developed a consensus among the Courts of Appeal that leave to appeal an order or decision made under the CCAA should be granted only where there are serious and arguable grounds that are of real significance and interest to the parties and to the practice in general. The test is often expressed as a four-part one:

1. whether the issue on appeal is of significance to the practice;
2. whether the issue raised is of significance to the action itself;
3. whether the appeal is *prima facie* meritorious or, on the other hand, whether it is frivolous; and,
4. whether the appeal will unduly hinder the progress of the action.

[30] Judges sitting in chambers of this Court have consistently applied this four-part test to measure the seriousness of a proposed appeal. As my colleague Hilton, J.A. observed in *Statoil Canada Ltd. (Arrangement relative à)*,⁷ the above-mentioned four criteria are understood to be cumulative, with the result that if a petitioner fails to establish any one of them, the motion for leave will be dismissed. Hilton, J.A. alluded to the oft-repeated injunction that a petitioner seeking leave to appeal faces a heavy burden given the role of a CCAA judge, the discretionary character of the decisions he or she must make and the nature of the proceedings. He recalled the longstanding cautionary note that motions for leave should only be granted "sparingly".⁸

⁵ 2015 QCCS 3584, paras [32] to [34] (*per* Hamilton, J.).

⁶ 2008 SKCA 73 (footnotes omitted).

⁷ 2013 QCCA 851, para. [4] (in chambers).

⁸ *Ibid.*, para. [4].

[31] The grounds upon which a stay of provisional execution notwithstanding appeal may be granted by a judge in chambers are also well known.⁹ Applying the principles developed pursuant to article 550 C.C.P. to this case, I note that the petitioners must show that the judgment suffers from a plain weakness; that failing to grant the stay would result in serious harm (sometimes characterized as irreparable harm) to them; and that the balance of inconvenience favours granting a stay.

IV Analysis

[32] Despite the importance of certain of the questions raised in the motions for leave to the practice and to this action, and notwithstanding the *prima facie* meritorious character of some arguments made by the petitioners, I am of the respectful view that both the Salaried Members and the Union have failed to meet the test for leave. In particular, they have not convinced me that an appeal would not unduly hinder the progress of the action.

[33] I shall make brief comments on each of the four criteria in turn.

IV.1 Importance of the questions to the practice

[34] Some questions raised in both motions, to varying degrees, have importance to the practice as that notion is understood in connection with applications for leave brought under sections 13 and 14 CCAA.

[35] The issue of the effectiveness of the PBSA deemed trust in CCAA proceedings raised in both motions meets this first criterion. This issue is not, as the respondent argued, a settled matter. In pointing to the CCAA Judge's comment in paragraph [61] to the effect that "[t]hese are not new issues", respondent has, it seems to me, quoted the judge out of context. It is of course true, as the CCAA Judge observed, that courts, including the Supreme Court, have been called upon to consider the effect of statutory deemed trusts in insolvency on numerous occasions. But as the CCAA Judge's own reasons make plain, the interpretation of the deemed trust protection in subsection 8(2) PBSA in light of amendments made to the CCAA in 2009, in particular subsections 6(6) and 36(7), involve a different exercise of statutory interpretation. In undertaking that work, the judge did have the benefit of principles set out in *Century Services*¹⁰ relating to the conflict between the deemed trust for the GST and the CCRA, in *Sparrow Electric*¹¹ dealing with a deemed trust in favour of the Crown in respect of payroll deductions for taxation, as well as *Indalex*¹² in which a conflict between provincial deemed trust and federal insolvency law was in part at issue. But these settings were different from that of the case at bar. Others have observed that difficulties arising out of

⁹ Recently summarized by the Court in *Imperial Tobacco Canada Ltd. v. Conseil québécois sur le tabac et la santé*, 2015 QCCA 1224, para. [14].

¹⁰ *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379.

¹¹ *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411.

¹² *Sun Indalex Finance, LLC v. United Steelworkers*, [2013] 1 S.C.R. 272.

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the interaction between deemed trust rules for pensions and the CCAA persist, notwithstanding the jurisprudence of the Supreme Court on point.¹³ Moreover, the narrow issue would be new to this Court and the practice would have a precise consideration of the interaction between the federal deemed trust in subsection 8(2) and the CCAA by an appellate court.

[36] This is not to say that the CCAA Judge was the first to consider the problem. He had the benefit of *Aveos*¹⁴, decided by Schragger, J., as he then was, as well as a scholarly paper on the topic which he cited with approval in paragraph [77]. And while the CCAA Judge and Schragger, J. agree on central aspects of that interpretation exercise, they are not at ones on all points, including the importance of a Crown exception in this context (as the CCAA Judge himself noted at para. [72]). While I recognize the care with which the CCAA Judge examined the question of statutory interpretation, as well as the alternative argument as to whether “any liquidation” within the meaning of subs. 8(2) PBSA includes CCAA proceedings – a point not given full analysis in *Aveos* – the matter of the effectiveness of the federal deemed trust in CCAA proceedings is not settled law and remains important to CCAA practice.

[37] Is the issue raised by the Salaried Members of the proper scope of section 32 CCAA, and the prior notice rule, also of sufficient importance to the practice?

[38] As I will note below, I am of the respectful view that the merits of this argument are less strong. Nonetheless, the matter of the proper scope of section 32 in light of the kind of insurance contract that provided benefits here, and in particular of competing notions of suspension and termination of OPEBs, is one of importance to the practice.

[39] What about the Union’s argument that the judge erred in holding that the terms of the interim financing were reasonable?

[40] This decision was one that called upon the CCAA Judge to make a determination of fact and exercise discretion afforded him under the Act, matters generally viewed as less consequential to the practice. Moreover, it would seem to me that the ability of a lender to determine the basis of risk he or she is willing to tolerate in a restructuring is not a matter widely disputed. I have not been convinced that this point, viewed on its own, is important to the practice.

¹³ Scholars have alluded to the different permutations of the deemed trust problem in CCAA matters as important to the practice: see, e.g., Janis P. Sarra, *Rescue! The Companies’ Creditors Arrangement Act*, 2nd ed. (Toronto: Carswell, 2013) at 370 *et seq.* and a useful comment by Jassmine Girgis entitled “*Indalex*: Priority of Provincial Deemed Trusts in CCAA Restructuring” posted by the University of Calgary Faculty of Law on the website <http://ablawg.ca> in which the author comments on the on-going importance of the issue after *Indalex*.

¹⁴ *Aveos Fleet Performance Inc. (arrangement relatif à)*, 2013 QCCS 5762.

IV.2 Importance of the questions to the present action

[41] The decision not to apply the PBSA deemed trust in CCAA proceedings has meaningful negative consequences for both the Salaried Members and the Union. The importance to the action in this regard seems beyond serious dispute.

[42] I agree with the petitioners that the question relating to the suspension or termination of the OPEBs is also significant to the action. The CCAA Judge recognized at para. [126] and again at para. [133] of his reasons that if the Wabush CCAA Parties fail to pay the premiums on the insurance policy, the policy will be cancelled thereby causing hardship to the Petitioners. I agree too with the position of counsel to the Union who argued that aspects of the pension claims may usefully be compared to alimentary claims, and that the hardship in suspending them gives the question sufficient importance to the action.

IV.3 The proposed appeals are *prima facie* meritorious and not frivolous

[43] The arguments brought in service of the petitioners' view that the deemed trust under the PBSA remains effective in CCAA proceedings are not frivolous. While the exercise of statutory interpretation undertaken by the CCAA Judge – which, it should be noted, is not a discretionary exercise in and of itself – shows no *prima facie* weakness, that is not to say that it precludes an arguable case for the other side.¹⁵ There are, in my view, grounds for framing a statutory interpretation argument for the petitioners' position that have *prima facie* merit when one considers, for example, that the CCAA amendments are the product of a complicated evolution; that the CCAA and the PBSA have different policy objectives which may shape interpretation; that the relevance of principles developed by the Supreme Court in other settings to the deemed trusts problem faced in this case is the matter of fair debate; that comparisons might be made with deemed trust regimes from the provinces or other statutes, and more. All of these factors suggest to me that, notwithstanding the strength of the judgment *a quo*, there are *prima facie* meritorious lines of argument that might be pressed on appeal. The parties debated vigorously the scope of “any liquidation” in subs. 8(2) PBSA before me, for example, as they did the proper scope of amendments to the CCAA and the policy they reflect. On the question of the effectiveness of the PBSA deemed trust as raised by the Salaried Members and in the first three grounds of appeal in the Union's amended motion, I am of the view that this criterion is satisfied.

¹⁵ The gradation between “*prima facie* meritorious” and “frivolous” is not always clear, and the better view may well be that “meritorious” and “frivolous” do not constitute a *summa division* for proposed appeals: see *Statoil, supra*, note 7, para. [11]. It is certainly true that the petitioners may have an arguable case – one with *prima facie* merit – but that the judgment *a quo* may still be said to suffer from no apparent weakness: see the helpful comments, albeit in another context, in *Droit de la famille – 081957*, 2008 QCCA 1541, para. [4] (Morissette, J.A., in chambers).

[44] The issue of the proper scope of section 32 CCAA, and the prior notice rule, strikes me, from my disadvantaged position, to be less compelling, but I would not say it is wholly lacking in merit.

[45] Counsel for the monitor argued, in support of the respondents' position that leave should be refused, that this ground of appeal was frivolous. He contended that the CCAA Judge rightly held that section 32 plainly did not apply to the resiliation of the Wabush CCA Parties' insurance contract. Like the respondents, the monitor said the CCAA Judge rightly relied on *Mine Jeffrey*¹⁶ decided by this Court in 2003, and that his analysis of the "tri-partite relationship" between the employer, the insurer and the beneficiary in paragraphs [129] *et seq.* is free from error.

[46] The question as to the applicability of section 32 here is not frivolous, even if *Mine Jeffrey* presents a formidable obstacle to a successful appeal. While not equal in strength, arguments raised by counsel for the Salaried Members as to type of contract to which the rule applies and, in particular, to the distinction between the termination of a contract and the suspension of a contract, are not without some merit. While I recognize that the test of the relative merit of the arguments proposed can be construed in some circumstances as requiring more than "a limited prospect of success"¹⁷ given the nature of CCAA proceedings, I would not dismiss the motions on this narrow issue on this basis alone.

[47] The Union says the interim lender's conditions should be set aside as unreasonable. I am not convinced that this argument is *prima facie* meritorious.

[48] Counsel for the Union argues strongly that the interim lender should not be allowed to dictate terms to the CCAA Judge or to the stakeholders as a whole by imposing conditions on financing that have the effect of exploiting the vulnerability of the employees and former employees. He says that if the interim lender's conditions were struck as unreasonable, the Wabush CCAA Parties would have access to those funds and that there would be no need to suspend the various payments due to the petitioners.

[49] With respect, this argument strikes me as flawed in two respects. First, it requires an overturning of the CCAA Judge's view – with all the advantages of perspective he has in so deciding – that as a matter of fact the conditions of the interim financing are reasonable. Secondly, the Union has left unanswered the questions raised by the judge concerning the "harsh commercial realities of interim financing" at paragraph [115]. Why indeed should the interim lender advance funds be used to pay someone else's debt, particularly one that is pre-filing and unsecured? Why should a condition of the financing be ignored, effectively forcing the lender to advance funds on disadvantageous terms to

¹⁶ *Syndicat national de l'amiante d'Asbestos inc. c. Mine Jeffrey Inc.*, [2003] R.J.Q. 420 (C.A.).

¹⁷ *Doman Industries Ltd. v. Communications, Energy and Paperworkers' Union, Local 514*, 2004 BCCA 253, para. [15] (per Prowse, J.A., in chambers).

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which it did not agree? It is not a matter of the CCAA Judge being callous or insensitive to hardship faced by vulnerable parties. In my view, the comment of Deschamps, J. for the majority in *Indalex*, as adapted to the setting of federal deemed trusts, is apposite here: “The harsh reality is that lending is governed by the commercial imperatives of the lenders, not by the interests of the plan members or the policy considerations that lead provincial governments to legislate in favour of pension fund beneficiaries”.¹⁸

IV.4 The appeal will not hinder the progress of the action

[50] The petitioners argue that the Wabush CCAA Parties are undergoing a court-supervised sales process in accordance with timelines and procedures that are supervised by the CCAA Judge with the oversight of the monitor. In the circumstances, they say, the proposed appeal, especially if it were placed on an accelerated roll, would not hinder the progress of the action. They contend, to differing degrees, that the CCAA Judge erred in his measure of the financial vulnerability of the Wabush CCAA Parties. Mindful no doubt of the difficulty that this aspect of the analysis presents to their leave application, the Salaried Members “part company” (to use the expression of counsel) with the Union in framing their appeal more narrowly, in particular in respect of the recognition that the DIP loan enjoys a wider priority than does the Union, and in limiting their claim in respect of the payments that should escape suspension.

[51] Given the findings of fact concerning the fragility of the Wabush CCAA Parties as observed by the CCAA Judge, I find the positions of both petitioners on this point unconvincing. Even the “strategic” decision of the Salaried Members to contest the judgment on a narrower basis does not satisfy this criterion. In my view, both proposed appeals would unduly hinder the action.

[52] My conclusion is based largely on the findings of fact arrived at by the CCAA Judge regarding the vulnerability of the Wabush CCAA Parties at this stage of the restructuring.

[53] In canvassing the circumstances in which the interim financing was put in place, the CCAA Judge observed that the cash-flow position of the Wabush CCAA Parties was compromised with the result that they needed the interim financing to continue even their limited operations during the CCAA process (para. [16]). The CCAA Judge made the following specific findings, which I consider to be findings of fact: (1) that the sale and investor solicitation process in progress are in the interests of the Wabush CCAA Parties and their stakeholders because they will likely lead to a greater recovery; (2) that without new financing, the Wabush CCAA Parties could not complete the sale; (3) that without new financing allowing them to complete the sale, it is likely that the Wabush CCAA Parties will go bankrupt; (4) that the Wabush CCAA Parties and the monitor have not identified any other source of new financing; and (5) that the terms of the interim financing are reasonable (para. [94]).

¹⁸ *Indalex*, *supra* note 12, para. [59].

[54] When discussing the suspension of special payments, the CCAA Judge observed, at para. [112]:

[112] The Wabush CCAA Parties do not have the funds available to make these payments. The cash flow statements filed with the Court show that the Wabush CCAA Parties need the funds from the Interim Financing to meet their current obligations other than the special payments. The Interim Lender Term Sheet expressly requires the Wabush CCAA Parties not to make any special payments. As a result, forcing the Wabush CCAA Parties to make the special payments would lead to a default under the Interim Financing and a likely bankruptcy.

[Footnote omitted.]

[55] In respect of the suspension of the OPEBs – including what the Salaried Members characterize as the modest premiums of \$182,000 per month and the supplemental retirement arrangement plan amount – the CCAA Judge recalled at para. [122] that “[t]he Wabush CCAA Parties do not have any funding valuable to continue to pay any of the foregoing OPEBs, as the Interim Financing Sheet prohibits such payments”. In para. [125], the CCAA Judge explained that it was not enough to say, as did the Salaried Members, that \$182,000 and the supplemental amount could be found elsewhere if the interim lending sheet prevents them from making the payments: “Given the cash flow statement filed with the Court and the language of the Interim Lender Sheet, the Court accepts that the Wabush CCAA Parties do not have the funds”.

[56] These findings of fact, while not immune from review, are deserving of deference on appeal. It is not enough to say, without more, that the amount is a small one in the grand scheme of things, as do the Salaried Members, or that another interim lender could be found without difficulty as the action proceeds. The CCAA Judge decided specifically otherwise. A reviewable error would have to be shown on this point to overcome the strong impression that comes from reading the judgment that granting leave and suspending provisional execution would hinder the action.

[57] In like circumstances, leave has been denied. Recently in *Bock inc. (arrangement relative à)*,¹⁹ my colleague Bich, J.A. declined to grant leave, notwithstanding the presence of a question she characterized as “interesting” for the purposes of an eventual appeal and one in respect of which, like ours, there was a paucity of appellate court consideration. “Granting leave to appeal”, she wrote at para. [12] of her reasons, “would most likely jeopardize the course of the action and cause irreparable harm to the debtor company and, consequently, all other stakeholders (creditors, employees, etc.)”. Similarly, in *Re: Consumer Packaging Inc.*,²⁰ a bench of

¹⁹ 2013 QCCA 851 (in chambers).

²⁰ 2001 CanLII 6708 (Ont. C.A.).

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the Court of Appeal for Ontario declined to grant leave in circumstances where conditions set by the interim lender meant that the time and financial constraints that would have come with an appeal were prohibitive: “Leave to appeal should not be granted”, wrote the Court at para. [5], “where, as in the present case, granting leave would be prejudicial to restructuring the business for the benefit of stakeholders as a whole [...]”.²¹

[58] All told, the risk of default on the interim financing and of bankruptcy to the Wabush CCAA Parties is serious. Granting leave would, in this setting, risk hindering the action. If leave were granted, the petitioners would likely obtain, at best, a Pyrrhic victory if they succeeded on appeal.

[59] Given my conclusion that leave should be denied, the motions seeking a stay of the judgment pursuant to article 550 C.C.P. are without further object and should be dismissed as well. In any event, the conditions necessary for a stay were not present. While the petitioners have, to be sure, shown that they have an arguable case, they have not pointed to something I would characterize as a weakness in the judgment *quo*. They did satisfy the burden of showing that the failure to grant a stay would cause them harm. However, the balance of inconvenience – considering the impact that lifting the stay would have on the Wabush CCAA Parties – would not have favoured granting a stay.

[60] Counsel should be commended for their helpful presentation of the matter in dispute.

[61] **FOR THE AFOREMENTIONED REASONS:** the undersigned:

[62] **DISMISSES** the Salaried Members motion for leave to appeal and for a stay, with costs;

²¹ As a final observation on this point, it may be recalled that, prudently, the CCAA Judge offered a further observation that gives weight, I think, to the conclusion that granting leave would be inopportune here. He suggested that even if the PBSA deemed trusts were effective in CCAA proceedings, he would have exercised his discretion under the CCAA to grant priority to the interim lender: see para. [95].

Leave to Appeal from Judgment on Pension Priority and Suspension of Certain Payments Denied (Justice Kasirer J.C.A), August 18, 2015

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[63] **DISMISSES** the Union's amended motion for leave to appeal and for a stay, with costs.



NICHOLAS KASIRER, J.A.

Mtre Andrew J. Hatnay
Mtre Ari Nathan Kaplan
KOSKIE MINSKY LLP
Mtre Geeta Narang
NARANG & ASSOCIÉS
Mtre Nicholas Scheib (absent)
SCHEIB LEGAL
For Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

Mtre Bernard Boucher
BLAKE CASSELS & GRAYDON S.R.L. (MONTREAL)
For Bloom Lake General Partner

Mtre Steven Weisz
BLAKE CASSELS & GRAYDON S.R.L. (TORONTO)
For Bloom Lake General Partner

Mtre Louis Dumont
DENTONS CANADA LLP
For Cliffs Quebec Iron Mining ULC

Mtre Sylvain Rigaud
NORTON ROSE FULBRIGHT CANADA LLP
For FTI Consulting Canada Inc.

Mtre Douglas Mitchell (absent)
Mtre Leslie-Anne Wood (absent)
IRVING MITCHELL KALICHMAN
For Her Majesty in right of Newfoundland and Labrador, as represented by the Superintendent of Pensions

Mtre Pierre Lecavalier
DEPARTMENT OF JUSTICE – CANADA
For the Attorney General of Canada

Leave to Appeal from Judgment on Pension Priority and Suspension of Certain Payments Denied (Justice Kasirer J.C.A), August 18, 2015

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Mtre Jean-François Beaudry

PHILION, LEBLAND, BEAUDRY, AVOCATS, S.A.

For the Syndicat des Métallos, Section Locale 6254 and Section Locale 6285

Mtre Gerald N. Apostolatos

LANGLOIS KRONSTRÖM DESJARDINS

For the Creditors Quebec North Shore and Labrador Railway Company Inc. and Iron Ore Company of Canada

Date of hearing: August 5, 2015

SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-048114-157

DATE: July 25, 2017

PRESIDED BY THE HONOURABLE STEPHEN W. HAMILTON, J.S.C.

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

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

Petitioners

And

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY LIMITED
WABUSH LAKE RAILWAY COMPANY LIMITED**

Mises en cause

And

FTI CONSULTING CANADA INC.

Monitor

And

VILLE DE FERMONT
Objecting Party

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JUDGMENT ON THE CCAA PARTIES' MOTION
FOR THE ISSUANCE OF AN ORDER APPROVING THE ALLOCATION
METHODOLOGY AND OTHER RELIEF (#516)
AND THE NOTICE OF OBJECTION OF VILLE DE FERMONT

INTRODUCTION

[1] The Court is asked to approve an allocation methodology developed by the Monitor to allocate the proceeds of realization from asset sale transactions and the costs of the CCAA proceedings on a principled basis among the CCAA Parties and, where necessary, among their assets. The Court is also asked to authorize the repayment of some post-filing inter-company indebtedness and the payment of undisputed outstanding property taxes.

[2] One secured creditor opposes the allocation methodology because it argues that the methodology produces an inequitable result when it is applied to the proceeds of sale of certain assets over which the secured creditor claims priority.

CONTEXT

[3] The CCAA Parties initiated proceedings under the *Companies' Creditors Arrangement Act*¹ on January 27, 2015 for the Bloom Lake Parties and May 20, 2015 for the Wabush Mines Parties.

[4] Since those dates, the CCAA Parties entered into sixteen asset sale transactions in which they sold substantially all of their assets.

[5] With respect to each asset sale transaction, the Court issued an Approval and Vesting Order which generally provided, *inter alia*, the following provisions:

- The assets vested in the purchaser free and clear of any security;
- The security attached to the net proceeds from the sale; and
- The net proceeds were held by the Monitor on behalf of the creditors, pending further order of the Court.

[6] As of June 16, 2017, the total amount held by the Monitor from the asset sales and from other sources was \$157,989,000.² With the sale of the Wabush Mine, that amount now exceeds \$160 million.

¹ R.S.C. 1985, c. C-36 (« CCAA »).

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[7] The Monitor developed the Proposed Allocation Methodology to allocate the proceeds of realization and the costs on a principled basis. The Monitor summarizes his methodology as follows:

- (a) Realizations from transactions would be allocated amongst specific assets and specific CCAA Parties as set out in each transaction agreement, which, in each case, are the allocations proposed by an arm's length purchaser;
- (b) Non-transaction related realizations specifically attributable to a CCAA Party would be allocated to that CCAA Party. For example cash on hand at the commencement of the CCAA Proceedings and collection of accounts receivable;
- (c) Non-transaction related realizations not specifically attributable to a CCAA Party would be allocated pro-rata based on total realizations. For example, interest on funds held by the Monitor;
- (d) Costs specifically attributable to an asset or asset category would be applied to that asset or category. For example, railcar storage fees would be applied against railcar proceeds;
- (e) Costs specifically attributable to a CCAA Party would be allocated to that CCAA Party. For example, Bloom Lake mine and Wabush Mine direct operating costs would be allocated to BLLP and to Wabush Mine JV respectively;
- (f) Costs not specifically attributable to a CCAA Party would be allocated pro-rata based on net realizations after specifically attributable costs. For example, costs of management and legal and professional costs. Within this category, legal and professional fees billed on the Bloom Lake accounts will be allocated amongst the Bloom Lake CCAA Parties, legal and professional fees billed on the Wabush accounts will be allocated amongst the Wabush CCAA Parties and legal and professional fees billed on the joint Bloom/Wabush accounts will be allocated amongst all of the CCAA Parties; and
- (g) As the Wabush Mines joint venture is not a legal entity, it does not have assets and liabilities in its own right. Accordingly any realizations and costs notionally allocated to Wabush Mines in the foregoing steps would be allocated to the joint venturers, WICL and WRI, based on their respective joint venture interests.³

² Thirty-Eighth Report to the Court Submitted by FTI Consulting Canada Inc., in its Capacity as Monitor, dated June 21, 2017, par. 12.

³ Thirty-Sixth Report to the Court Submitted by FTI Consulting Canada Inc., in its Capacity as Monitor, dated May 26, 2017, par. 36.

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[8] The CCAA Parties asked the Court to approve the Proposed Allocation Methodology and to authorize the repayment of some post-filing inter-company indebtedness and the payment of undisputed outstanding property taxes.

[9] A number of creditors objected, principally on the basis that they did not have sufficient information or time to take a position. Concerns were also raised as to whether the Proposed Allocation Methodology and the proposed payments were prejudicial to the potential deemed trusts relating to Pension claims.⁴

[10] The hearing originally scheduled for May 31, 2017 was postponed to June 26, 2017. During that period, the concerns raised by the creditors other than Ville de Fermont were resolved and their objections were withdrawn.

[11] Ville de Fermont maintained its objection and refined its position. It no longer objects to the Proposed Allocation Methodology generally, but it argues that the Proposed Allocation Methodology produces an inequitable result when it is applied to the proceeds of the sale of the Bloom Lake mine and related assets to Québec Iron Ore Inc. and that it should be varied in that instance. It does not contest the repayment of the post-filing inter-company indebtedness and the payment of undisputed outstanding property taxes but argues that the payment that it receives should be greater.

ANALYSIS

1. Proposed Allocation Methodology generally

[12] The Proposed Allocation Methodology is intended to allocate all realizations and costs among the various CCAA Parties and, to the extent necessary, among various assets or asset categories.

[13] The Monitor has developed the Proposed Allocation Methodology on a principled basis, without reference to the result for any specific creditor. In other words, the Monitor developed rules that would be applied in the same way to each realization and cost as opposed to allocating each realization and cost on a case-by-case basis.

[14] Allocating realizations and costs on a case-by-case basis would inevitably lead to disputes as different creditors are treated differently. The better approach is to develop a methodology applicable to all situations.

[15] However, it is important to recognize that a general methodology may not work in all circumstances and that the parties have the right to challenge the general methodology if it produces an inequitable result in particular circumstances.

⁴ Notices of Objection were filed by the Superintendent of Financial Institutions, the Union, Ville de Fermont, the Representative Employees, the Replacement Plan Administrator and the Superintendent of Pensions for Newfoundland and Labrador.

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[16] The Court will review the Proposed Allocation Methodology in a general way in this section, and will review the particular application to the Bloom Lake mine proceeds in a separate section. The Court has the power to intervene, whether at the general level or in a specific matter, to ensure that the creditors are treated equitably.⁵

[17] To the extent that it is necessary to allocate the proceeds of a single transaction among different CCAA Parties (in the event of multiple vendors) or different assets or categories of assets (in the event that there are multiple assets or categories of assets and different secured creditors with claims against different assets or categories of assets), the Proposed Allocation Methodology uses as a starting point the contractual allocation of the purchase price among the vendors and among the assets.

[18] The contractual allocation of the purchase price is a reasonable starting point, on the assumption that it is an allocation done by an arm's length third party who has no interest in the allocation of the proceeds.

[19] However, the contractual allocation will be not be given the same weight if the creditor can demonstrate that (1) that the purchaser is not at arm's length, (2) that the purchaser has an interest in the allocation of the proceeds, either because it or a related party is a creditor or because it made a deal with a creditor, or (3) that the CCAA Parties negotiated the allocation.

[20] In the present matter, the Monitor testified that the purchasers were typically asked to provide allocations and that the vendors accepted the allocations without negotiation. In those circumstances, we can assume that the purchaser's allocation of the purchase price reflects the purchaser's assessment of the relative value of the assets purchased.

[21] However, even if the purchaser is an arm's length third party with no interest in the allocation of the proceeds, it will nevertheless be open to a creditor to demonstrate that a particular contractual allocation is not reasonable.

[22] Typically, there will be two ways to demonstrate that the purchaser's contractual allocation of the price is not reasonable (1) the purchaser had a reason to allocate the purchase price in a way that does not reflect its assessment of the relative value of the assets, or (2) the purchaser's assessment of the relative value of the assets is clearly wrong.

[23] The burden will be on the creditor challenging the contractual allocation. It will generally not be sufficient to simply say that the purchaser's allocation was tax-driven in the sense that the purchaser may want to allocate more or less of the purchase price to certain assets or categories of assets because of the tax treatment of certain categories of assets, first because there are always tax considerations and second because, even

⁵ *Métaux Kitco inc. (Arrangement relatif à)*, 2016 QCCS 444, par. 48.

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then, the allocation must be reasonable in order to withstand scrutiny by the taxation authorities.

[24] To establish that the purchaser's assessment of the relative value of the assets is clearly wrong, the creditor will have to demonstrate a significant departure from the relative value of the assets.

[25] For the non-transaction related realizations, the Methodology divides them into those specifically attributable to a CCAA Party (such as cash on hand at the commencement of the proceedings and accounts receivable collected), and those which are not (such as interest). Those which are specifically attributable to a CCAA Party are attributed to that party, and those which are not specifically attributable to a CCAA Party are allocated pro rata to the realizations. That seems reasonable.

[26] For costs, the approach is similar:

- Costs specifically attributable to an asset or asset category (e.g. storage fees) are applied to that asset or category;
- Costs specifically attributable to a CCAA Party (e.g. mine operating costs) are allocated to that CCAA Party; and
- Costs not specifically attributable to a CCAA Party (e.g. management and legal and professional fees) are allocated pro rata based on net realizations.

[27] The Monitor represented that the Proposed Allocation Methodology is consistent with the allocation methodology approved in the Timminco Limited and Bécancour Silicon Inc. CCAA proceedings.⁶

[28] For all of the foregoing reasons, the Court will approve the Proposed Allocation Methodology, subject to the objection by Ville de Fermont.

2. Proposed repayment and payments

[29] The CCAA Parties also ask the Court to authorize the repayment of certain inter-company funding and the payment of uncontested property taxes due.

[30] These conclusions are not contested by any creditor, except that Ville de Fermont suggests that more of its claim should be paid.

[31] The proposed repayment to Bloom Lake LP by CQIM relates to advances in the amount of approximately \$4.1 million made by Bloom Lake LP to CQIM pursuant to the Bloom Lake Initial Order. The Court is satisfied that the Monitor holds sufficient funds to

⁶ Ontario Court File No.: CV-12-9539-00CL

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repay those amounts and that it is appropriate to repay those amounts now to avoid further interest charges.

[32] The partial payment of property taxes relates to amounts that (1) are not contested,⁷ (2) have priority, and (3) are not subject to any prior security including the potential deemed trusts relating to Pension claims.

[33] The Monitor explains that he will not know how much is payable until the Proposed Allocation Methodology is approved and the billing information is updated. He anticipates that there will be amounts payable by Bloom Lake LLP to Ville de Fermont and by CQIM to Ville de Sept-Îles.

[34] Given the preconditions to any such payment and given that the payment will be in the interest of the estate because interest will stop running, the Court will authorize the payments.

[35] It is in the interest of the estate that these amounts be paid or repaid notwithstanding any appeal. The Court will order provisional execution of this portion of its judgment.

3. Allocation of the Bloom Lake mine sale proceeds

[36] The Bloom Lake CCAA Parties sold the Bloom Lake mine and related assets to Québec Iron Ore Inc. on December 11, 2015. The Court issued an Approval and Vesting Order on January 27, 2016, and the transaction closed on April 11, 2016.

[37] The cash portion of the purchase price was \$10.5 million. The purchaser also assumed certain liabilities. The Asset Purchase Agreement included at Schedule R an allocation of the cash portion of the purchase price as between the various sellers. At the request of the Monitor, the purchaser provided a more detailed allocation of the cash portion of the purchase price among the various assets or categories of assets.⁸ The Monitor testified that the contractual allocation was accepted by the CCAA Parties without negotiation.

[38] Ville de Fermont did not contest the sale and it does not now contest the purchase price. Its contestation is limited to the contractual allocation as between three categories of assets in the total amount of \$6.9 million:⁹

⁷ There are substantial unpaid municipal taxes owed to Ville de Fermont, but, as described below, the municipal evaluations are challenged. As a result, the undisputed amount is only \$3.4 million (see 36th Report, par. 45).

⁸ Exhibit OF-1.

⁹ *Ibid.*

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Bloom Lake mine fixed assets (buildings and constructions on the site pertaining to the Mining Rights)	\$1,500,000
Bloom Lake Mining Lease and Real Property Leases	\$1,400,000
Bloom Lake Real Property Fermont housing	\$4,000,000
TOTAL	\$6,900,000

[39] The first two categories of assets, to which the purchaser allocated \$2,900,000, represent the mine. The third category, Fermont housing, includes a property referred to as the "hotel" and 28 residences Fermont, divided as follows:¹⁰

"Hotel"	\$2,909,489.77
28 residences (values varying between \$15,718.95 and \$56,168.43)	\$1,090,510.23
TOTAL	\$4,000,000

[40] The purchaser allocated the \$4,000,000 among the residential properties pro rata to their municipal evaluations: the portion of the purchase price allocated to each residential property is equal to 15.8% of the municipal evaluation of that property.¹¹

[41] Ville de Fermont argues that the contractual allocation of the \$6.9 million between the mine and the residential properties is unreasonable and that the purchaser undervalued the mine. It argues that the Court should substitute an allocation of the \$6.9 million which is proportional to the municipal evaluations of the properties.¹²

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Exhibit OF-2.

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	Municipal evaluations	Allocation of price
Mine buildings	\$314,710,000 ¹³	\$6,324,370
Mine immoveable	\$3,299,000 ¹⁴	\$66,296
"Hotel"	\$18,435,400 ¹⁵	\$509,334
28 Residences	\$6,909,800	
TOTAL	\$343,354,200	\$6,900,000

[42] The Monitor argued that it was reasonable for the purchaser to place relatively little value on the mine and more value on the residential properties, because the mine is more of a liability than an asset in that it is not operational and has costs of \$1.5 million per month and significant environmental obligations. In any event, the Monitor argues that all parties agree that the residential properties are worth more than \$4 million such that allocating \$4 million to the residential properties cannot be unreasonable.

[43] The two positions lead to very different results. The taxes owing to Ville de Fermont on the mine are in the range of \$16-18 million and the taxes owing on the residential properties are only \$500,000-600,000. As a result, using the contractual allocation, Ville de Fermont receives \$2.9 million from the mine and \$500,000-600,000 from the residential properties, for a total of \$3.4-3.5 million. Using Ville de Fermont's proposed allocation, it receives the full \$6.9 million. In other words, Ville de Fermont receives an additional \$3.4-3.5 million on its proposed allocation.

[44] As mentioned above, the purchaser was asked to provide the contractual allocation and it was accepted by the CCAA Parties without negotiation. There is no suggestion that the purchaser is not at arm's length or that the purchaser has any interest in the allocation of the proceeds. As a result, the Court will presume that the contractual allocation is reasonable and the burden is on Ville de Fermont to prove that it is not.

¹³ Exhibit OF-3.

¹⁴ *Ibid.*

¹⁵ Exhibit OF-4.

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[45] Ville de Fermont first suggests that the purchaser had an interest in skewing the contractual allocation to give less value to the mine and more value to the residential properties. It suggests that the purchaser was motivated by tax considerations – it would improve its position in a subsequent sale. However, there was no proof of this interest. Moreover, if, as the CCAA Parties suggest, the purchaser's assessment was that the houses were more likely to be sold and it was trying to reduce the capital gain on a subsequent sale of the houses, that would suggest that allocating more value to the houses was reasonable.

[46] Ville de Fermont also suggests that the contractual allocation may be intended to help the purchaser with its challenge of the municipal evaluation of the mine. Again there is no proof of any such intent. Further, whether the purchaser allocates \$2.9 million or \$6.3 million of the purchase price to the mine will not likely make much difference when it is attempting to reduce the municipal evaluation from \$318,009,000 to \$50,000,000.

[47] The principal argument put forward by Ville de Fermont is that the allocation should be proportional to the municipal evaluations.¹⁶

[48] It is clear that the municipal evaluation of the mine bears little relationship with its current value. The municipal evaluation of the mine is \$318,009,000. Ville de Fermont defended the municipal evaluation, arguing that it represented only 15% of the total amount invested of \$2 billion. However, the amount invested is not necessarily the same as value. The mine, together with the residential properties, sold for a total of \$6.9 million after a sale process. That must be taken to be the current market value of the properties. The purchaser allocated \$2.9 million of the price to the mine and Ville de Fermont argues that it should be \$6.3 million. Whether the mine is worth 1% of its municipal evaluation or 2%, it is clear that the municipal evaluation does not reflect the value of the mine.

[49] Further, the municipal evaluation of the mine is contested. The CCAA Parties seek to reduce the municipal evaluation of the mine properties from a total of \$318,009,000 to \$105,000,000 for 2013-14-15 and to \$50,000,000 for 2016-17-18. That challenge is being continued by the purchaser. The CCAA Parties also seek a reduction of the municipal evaluation of the hotel from \$12,786,600 to \$6,393,000 in 2013-14-15, and the purchaser seeks a reduction from \$18,435,400 to \$2,500,000 in 2016-17-18.¹⁷ The CCAA Parties and the purchaser do not seek any reduction for the houses.

¹⁶ The *Skeena* case cited by Ville de Fermont does not support its position. In that case, the City of Prince Rupert, as secured creditor for unpaid property taxes, objected to the allocation of costs to the unsold property based on its appraised value, because the appraisal (which was substantially lower than the municipal evaluation) overstated the value of the property (*New Skeena Forest Products Inc. v. Kitwanga Lumber Co.*, 2005 BCCA 192, par. 250).

¹⁷ Exhibit OF-8.

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[50] The CCAA Parties put forward arguments as to why they contest the municipal evaluation of the mine: the evaluation was established in 2011 and was not adjusted since then to take into account changes in the price of iron ore; and the evaluation was increased by \$140 million because of Phase II, which was never completed. Moreover, as set out above, the mine is not operational, and has costs of \$1.5 million per month and significant environmental liabilities.

[51] The Court can only conclude that the municipal evaluation of the mine is not a reliable indication of its value.

[52] In any event, Ville de Fermont does not argue that the mine is worth \$318 million. In arguing for a pro rata allocation, Ville de Fermont is arguing instead for the notion of relative evaluations: if the mine is worth only 2% of its municipal evaluation, then the residential properties should be worth only 2% of their municipal evaluations.

[53] This argument carries more weight when the properties are more similar. In fact, in its contractual allocation, the purchaser applied the notion of proportionality to the residential properties: they were each allocated 15.8% of their municipal evaluations.

[54] However, in principle, the factors that determine the value of a mine (quantity of remaining iron ore, price of iron ore, operating costs) are very different from the factors that determine the value of a house (characteristics of the house and the local housing market). The value of one need not track the other.

[55] Ville de Fermont argued that the local housing market was closely tied to the mine: if the mine reopens, the residential properties have value, but if the mine does not reopen, the residential properties are worth nothing since there is no demand for them. As a result, Ville de Fermont argues that either both the mine and the residential properties have value or neither has value. In either event, Ville de Fermont argues that the residential properties cannot be worth more than the mine.

[56] This led to a debate between the two witnesses as to the potential market for the residential properties if the mine does not reopen. The Monitor testified that the residential properties have value even if the mine stays shut, because the Fire Lake North project is only 40 kilometres away and the government has announced that the road link to Fermont is being improved. The evaluator for Ville de Fermont testified that the Fire Lake North project will not create a demand for housing in Fermont: it is 90 kilometres away on a bad road, there are already 140 housing units in Fire Lake, and Arcelor purchased the Mont Wright camp which has additional residential units.

[57] This proof is inconclusive. In the absence of better proof, Ville de Fermont has not satisfied its burden of showing that the contractual allocation is unreasonable. As a result, the objection of Ville de Fermont will be dismissed, and the Proposed Allocation Methodology will be approved without any modification.

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FOR THESE REASONS, THE COURT:

[58] **GRANTS** the CCAA Parties' Motion for the Issuance of an Order Approving the Allocation Methodology and Other Relief (#516).

[59] **APPROVES** the following allocation methodology, including the purchase price allocations in the purchase and sale transactions approved by the Court:

- (a) Realizations from transactions would be allocated amongst specific assets and specific CCAA Parties as set out in each transaction agreement, which, in each case, are the allocations proposed by an arm's length purchaser;
- (b) Non-transaction related realizations specifically attributable to a CCAA Party would be allocated to that CCAA Party. For example cash on hand at the commencement of the CCAA Proceedings and collection of accounts receivable;
- (c) Non-transaction related realizations not specifically attributable to a CCAA Party would be allocated pro-rata based on total realizations. For example, interest on funds held by the Monitor;
- (d) Costs specifically attributable to an asset or asset category would be applied to that asset or category. For example, railcar storage fees would be applied against railcar proceeds;
- (e) Costs specifically attributable to a CCAA Party would be allocated to that CCAA Party. For example, Bloom Lake mine and Wabush Mine direct operating costs would be allocated to BLLP and to Wabush Mine JV respectively;
- (f) Costs not specifically attributable to a CCAA Party would be allocated pro-rata based on net realizations after specifically attributable costs. For example, costs of management and legal and professional costs. Within this category, legal and professional fees billed on the Bloom Lake accounts will be allocated amongst the Bloom Lake CCAA Parties, legal and professional fees billed on the Wabush accounts will be allocated amongst the Wabush CCAA Parties and legal and professional fees billed on the joint Bloom/Wabush accounts will be allocated amongst all of the CCAA Parties; and
- (g) As the Wabush Mines joint venture is not a legal entity, it does not have assets and liabilities in its own right. Accordingly any realizations and costs notionally allocated to Wabush Mines in the foregoing steps would be

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allocated to the joint venturers, WICL and WRI, based on their respective joint venture interests.

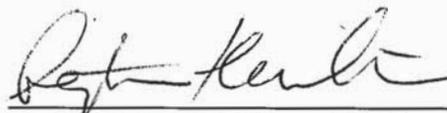
[60] **PERMITS** the repayment of approximately \$4.1 million advanced by Bloom Lake LP to CQIM since the start of the CCAA Proceeding.

[61] **PERMITS** the payment on account of outstanding property taxes owed by the CCAA Parties for any portion of the outstanding property taxes that are not in dispute or otherwise contested, provided that:

- (a) there exists no competing claim which may rank equal or higher to the outstanding property taxes pursuant to a security or priority (including the Pension Claims at stake in the Monitor's Motion for Directions with respect to Pension Claims); and
- (b) the proceeds of sale available further to the application of the allocation methodology are sufficient to do so.

[62] **ORDERS** the provisional execution of conclusions 60 and 61 of this Judgment, notwithstanding any appeal and without the necessity of furnishing any security.

[63] **WITHOUT COSTS.**



Stephen W. Hamilton, J.S.C.

Mtre Bernard Boucher
BLAKE, CASSELS & GRAYDON
For the Petitioners

Mtre Roger P. Simard
DENTONS
For Cliffs Quebec Iron Mining ULC

Mtre Sylvain Rigaud
NORTON ROSE FULBRIGHT CANADA
For the Monitor

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Mtre Gabriel Serena
Mtre Denis Cloutier
Mtre Jean-François Delisle
CAIN LAMARRE
For Ville de Fermont

Mtre Richard Laflamme
STEIN MONAST
For Ville de Sept-Îles

Mtre Daniel Boudreault
PHILION LEBLANC BEAUDRY AVOCATS
For Syndicat des métallos, sections locales 6254 et 6285

Mtre Edward Béchard-Torres
IRVING MITCHELLE KALICHMAN
For Her Majesty in Right of Newfoundland and Labrador, as represented by the
Superintendent of pensions

Date of hearing: June 26, 2017

COUR D'APPEL

CANADA
PROVINCE DE QUÉBEC
GREFFE DE MONTRÉAL

N°: 500-09-027026-178
(500-11-048114-157)

PROCÈS-VERBAL D'AUDIENCE

DATE : Le 4 décembre 2017

CORAM : LES HONORABLES JULIE DUTIL, J.C.A.
MARIE ST-PIERRE, J.C.A.
ROBERT M. MAINVILLE, J.C.A.

**DANS L'AFFAIRE DE L'ARRANGEMENT
DE BLOOM LAKE GENERAL PARTNER
LIMITED ET AL.**

REQUÉRANTE	AVOCATS
VILLE DE FERMONT	Me DENIS CLOUTIER Me GABRIEL SERENA-BÉLISLE <i>(Cain Lamarre, s.e.n.c.r.l.)</i>
INTIMÉES	AVOCAT
BLOOM LAKE GENERAL PARTNER LIMITED QUINTO MINING CORPORATION 8568391 CANADA LIMITED CLIFFS QUÉBEC IRON MINING ULC WABUSH IRON CO. LIMITED WABUSH RESOURCES INC.	Me ILIA KRAVTSOV <i>(Blake, Cassels & Graydon, s.e.n.c.r.l.)</i>

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MIS EN CAUSE	AVOCATS
BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP BLOOM LAKE RAILWAY COMPANY LIMITED WABUSH MINES ARNAUD RAILWAY COMPANY LIMITED WABUSH LAKE RAILWAY COMPANY LIMITED	Me ILIA KRAVTSOV <i>(Blake, Cassels & Graydon LLP)</i>
FTI CONSULTING CANADA INC.	Me SYLVAIN RIGAUD <i>(Norton Rose Fulbright Canada, S.E.N.C.R.L., s.r.l.)</i>
SYNDICAT DES MÉTALLOS, sections locales 6254 et 6285	Me DANIEL BOUDREAULT <i>(Philion Leblanc Beaudry avocats)</i>

DESCRIPTION : **Requête pour permission d'appeler hors délai d'un jugement rendu le 25 juillet 2017 par l'honorable Stephen W. Hamilton de la Cour supérieure, district de Montréal**
 (Articles 13 et 14 de la *Loi sur les arrangements avec les créanciers des compagnies* et articles 357 et 363, alinéa 2 *C.p.c.*)

Greffier d'audience : Robert Osadchuck

Salle : Pierre-Basile-Mignault

AUDITION

10 h 41 Début de l'audition. Identification des avocats.

10 h 41 Argumentation de Me Cloutier.

11 h 02 Intervention de Me Serena-Bélisle.

11 h 03 Suspension.

11 h 22 Reprise.

Leave to Appeal from Judgment on Allocation Methodology Granted, December 4, 2017

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11 h 22 Argumentation de Me Rigaud

11 h 44 Argumentation de Me Kravtsov.

11 h 52 Commentaires de Me Boudreault.

11 h 53 Réplique de Me Cloutier.

11 h 55 Suspension.

12 h 12 Reprise.

12 h 12 Par la Cour : arrêt – voir page 4.

Robert Osadchuck
Greffier d'audience



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PAR LA COUR**ARRÊT**

[1] La requérante demande la permission d'appeler hors délai d'une décision de la Cour supérieure du 25 juillet 2017. Les circonstances ayant amené le «hors délai» pour déposer la requête pour permission d'appeler sont bien expliquées dans la requête et ne sont pas contestées.

[2] Quant à la requête pour permission d'appeler, la Cour est d'avis qu'il y a lieu d'y faire droit tout en établissant un échéancier et en fixant une date rapprochée d'audition.

POUR CES MOTIFS, LA COUR :

[3] **ACCUEILLE** la requête pour permission d'appeler;

[4] **AUTORISE** l'appelante à appeler du jugement rendu le 25 juillet 2017 par le juge Stephen W. Hamilton de la Cour supérieure dans le dossier 500-11-048114-157;

[5] **FIXE** le pourvoi pour une audition le **14 mars 2018, en salle Pierre-Basile-Mignault, à 9h30**, pour une durée de **90 minutes** (30 minutes pour l'appelante, 30 minutes pour les intimées et 30 minutes pour la mise en cause FTI);

[6] **ORDONNE** à l'appelante, après avoir notifié copie aux intimées et aux mis en cause, de déposer au greffe au plus tard le **5 janvier 2018**, cinq exemplaires d'une argumentation n'excédant pas **15 pages**. Tous les documents nécessaires pour statuer sur l'appel (*jugement attaqué, actes de procédures, pièces, extraits de déposition...*) doivent y être joints;

[7] **ORDONNE** aux intimées et aux mis en cause, après avoir notifié copie à la partie appelante, de déposer au greffe, au plus tard le **26 janvier 2018**, cinq exemplaires d'une argumentation n'excédant pas **15 pages** et, s'il y a lieu, d'un complément de documentation;

[8] **RAPPELLE** aux parties les articles 376 *C.p.c.* et 55 du *Règlement de procédure civile* :

376. L'appel devient caduc lorsque l'appelant n'a pas déposé son mémoire ou son exposé avant l'expiration des délais impartis pour ce dépôt. Le greffier délivre un constat de caducité, à moins qu'un juge ne soit saisi d'une demande de prolongation.

L'intimé ou toute autre partie qui ne respecte pas les délais pour le dépôt de son mémoire ou de son exposé est forclos de le faire; de plus, il ne peut être entendu à l'audience, à moins que la Cour d'appel ne l'autorise.

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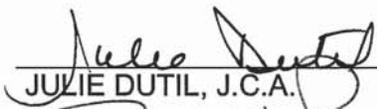
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55. Présentation. L'exposé comporte une page de présentation, une table des matières et une pagination continue.

De plus, les dispositions relatives aux mémoires (*incluant les mentions finales de l'auteur*) s'appliquent aux exposés en faisant les adaptations nécessaires.

[9] **RAPPELLE** aux parties la Directive G-3 du greffier (dernière modification: 27 février 2017) qui les encourage fortement à joindre une version technologique du mémoire ou de l'exposé et du cahier de sources à chacun des exemplaires de la version papier de ces documents. Cette version technologique doit être confectionnée en format Word et/ou PDF (si disponible, la version Word est recommandée) permettant la recherche par mots-clés et être enregistrée sur un support matériel. La clé USB est le format privilégié par la Cour, mais les CD/DVD-ROM sont également acceptés ;

[10] **LE TOUT**, frais judiciaire à suivre.



JULIE DUTIL, J.C.A.



MARIE ST-PIERRE, J.C.A.



ROBERT M. MAINVILLE, J.C.A.

COUR SUPÉRIEURE

(Chambre commerciale)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-11-048114-157

DATE : 17 novembre 2016

SOUS LA PRÉSIDENTE DE : L'HONORABLE STEPHEN W. HAMILTON, J.C.S.

DANS L'AFFAIRE DE L'ARRANGEMENT DE :

**BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.
THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED**
Débitrices

et

FTI CONSULTING CANADA INC.
Contrôleur

et

**SOCIÉTÉ FERROVIAIRE ET PORTUAIRE DE POINTE-NOIRE S.E.C.
ADMINISTRATION PORTUAIRE DE SEPT-ÎLES/SEPT-ÎLES PORT AUTHORITY**
Requérantes

et

VILLE DE SEPT-ÎLES
Mise en cause

500-11-048114-157

2

JUGEMENT SUR LES REQUÊTES POUR JUGEMENT DÉCLARATOIRE DE
SOCIÉTÉ FERROVIAIRE ET PORTUAIRE DE POINTE-NOIRE S.E.C. (#393) ET
ADMINISTRATION PORTUAIRE DE SEPT-ÎLES/SEPT-ÎLES PORT AUTHORITY (#389)

INTRODUCTION

[1] Les acheteurs de plusieurs immeubles, dans le cadre de procédures en vertu de la *Loi sur les arrangements avec les créanciers des compagnies*¹, recherchent un jugement déclarant qu'ils ne sont pas responsables, à quelque titre que ce soit, de quelque taxe due à la municipalité pour la période antérieure à leur achat.

CONTEXTE

[2] Les débitrices font l'objet d'ordonnances initiales prononcées en vertu de la LACC le 27 janvier 2015, pour les parties Bloom et le 20 mai 2015, pour les parties Wabush.

[3] Les débitrices sont propriétaires de plusieurs immeubles dans la municipalité de la Ville de Sept-Îles.

[4] Lors des ordonnances initiales, les parties Bloom doivent à la Ville, en taxes municipales sur les immeubles, 205 299,11 \$ et les parties Wabush doivent 1 071 001,54 \$, incluant les intérêts jusqu'au 18 décembre 2015².

[5] Suite aux ordonnances initiales, la Ville transmet régulièrement des factures pour les taxes municipales au contrôleur des parties Bloom et des parties Wabush³, mais ne reçoit aucun paiement. La réclamation de la Ville pour la période entre les ordonnances initiales et les dates des ventes s'élève à 9 211 693,40 \$⁴. La Ville plaide que le contrôleur lui indique à plusieurs reprises que les taxes seront payées à même le produit des ventes des immeubles.

[6] Les immeubles sont vendus aux requérantes en mars 2016.

[7] Ces ventes sont le résultat d'un processus :

- Un processus de sollicitation d'offres est approuvé par le Tribunal le 17 avril 2015 et modifié le 9 juin 2015⁵;

¹ L.R.C. (1985), ch. C-36. Ci-après LACC.

² Pièce M-3. Les montants mentionnés dans ce jugement sont à parfaire selon la Ville et ne sont pas admis par les requérantes. Le Tribunal inclut ces montants qu'à titre indicatif.

³ Pièce M-5.

⁴ Pièce M-4.

⁵ Pièce P-1.

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- Investissement Québec, à titre de mandataire du gouvernement du Québec, dépose une offre afin d'acquérir certains actifs de certaines des débitrices, dont les immeubles;
- Les vendeurs, de concert avec le contrôleur et un consultant, déterminent que l'offre d'IQ est l'offre conforme la plus élevée;
- IQ et les vendeurs négocient une convention d'achat d'actifs signée le 23 décembre 2015⁶;
- Les vendeurs exercent l'option de soustraire des actifs vendus à IQ, un terrain connu comme le bloc Z;
- Le 26 janvier 2016, les vendeurs signent une convention d'achat d'actifs pour vendre le bloc Z à Administration portuaire de Sept-Îles;
- Le 1^{er} février 2016, IQ cède ses droits à Société ferroviaire et portuaire de Pointe-Noire S.E.C.;
- Les achats par Société ferroviaire et Administration portuaire sont conditionnels au prononcé d'ordonnances d'approbation et de dévolution prévoyant que les acheteurs acquièrent les immeubles libres de toute charge et que le produit des transactions est assujéti aux charges au lieu et place des immeubles;
- Le 1^{er} février 2016, le Tribunal autorise les deux ventes par ordonnances d'approbation et de dévolution⁷; et
- Les 8 et 10 mars 2016, les immeubles sont vendus à Société ferroviaire et Administration portuaire⁸.

[8] Le contrôleur détient le produit des ventes en attendant les directives du Tribunal quant à sa distribution.

[9] La Ville est au courant des ordonnances d'approbation et de dévolution depuis au plus tard le 11 mars 2016, date de signification des certificats du contrôleur suite aux ventes⁹. Elle n'a jamais contesté la validité des ordonnances.

⁶ Pièce P-2.

⁷ Pièces P-3 et R-4 (Société ferroviaire) et pièce R-3 (Administration portuaire).

⁸ Pièce R-10 est l'acte de vente à l'Administration portuaire, et les pièces P-4 et R-5 sont les certificats de contrôleur.

⁹ Pièce R-12. De plus, les projets d'ordonnances d'autorisation et de dévolution avaient été transmis au procureur de la Ville le 29 janvier 2016 (pièce R-11), et les ordonnances avaient été notifiées au procureur de la Ville par la suite.

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[10] Suite aux ventes, le 23 mars 2016, la Ville invoque l'article 2.2.5 de son Règlement de lotissement¹⁰, qui exige le paiement des taxes municipales exigibles et impayées comme condition préalable à l'approbation d'un plan-projet de lotissement, pour refuser de délivrer le permis de lotissement demandé par Administration portuaire quant au bloc Z, tant que les arrérages de taxes municipales ne sont pas payés¹¹.

[11] Le 4 avril 2016, Société ferroviaire remet à la Ville un chèque de 746 139,65 \$ en paiement partiel (pour la période du 8 mars 2016 au 30 avril 2016) du premier versement des taxes de l'année 2016¹². Le 31 mai 2016, Société ferroviaire fait parvenir à la Ville un chèque de 1 667 806,38 \$ pour acquitter le deuxième versement.

[12] Le 1^{er} juin 2016, la Ville informe Société ferroviaire qu'elle doit imputer le premier paiement reçu aux taxes impayées les plus anciennes, c'est-à-dire les taxes municipales pour 2015, et aux intérêts sur celles-ci¹³. Elle fait de même avec le deuxième paiement.

[13] Le 8 septembre 2016, Société ferroviaire fait parvenir à la Ville un chèque de 1 667 806,38 \$ avec instructions de n'imputer ce paiement qu'au troisième versement des taxes de l'année 2016¹⁴.

[14] Le 14 septembre 2016, la Ville retourne le dernier chèque en indiquant que Société ferroviaire est responsable de l'ensemble des taxes échues en fonction de l'article 498 de la *Loi sur les cités et villes*¹⁵ et que la Ville doit imputer tout paiement sur les taxes municipales échues les plus anciennes selon le *Code civil du Québec*¹⁶.

[15] Dans ce contexte, Société ferroviaire et Administration portuaire déposent des demandes de jugement déclaratoire le 3 octobre 2016. Elles demandent au Tribunal de déclarer qu'elles ne sont pas responsables, à quelque titre que ce soit, des taxes pour la période avant le 8 ou le 10 mars 2016.

POSITION DES PARTIES

[16] Les requérantes plaident que, suite aux ordonnances d'approbation et de dévolution, elles achètent les immeubles libres de toute charge, et que la Ville n'a donc aucun recours contre elles pour le paiement des taxes municipales et intérêts avant la date d'achat. Les dispositions de la LCV et du Règlement de lotissement qui sont invoquées ne sont que des façons indirectes d'exiger le paiement des taxes par les requérantes.

¹⁰ Règlement numéro 2007-104 (pièce M-7). Le règlement est autorisé par l'article 115, alinéa 11 de la *Loi sur l'aménagement et l'urbanisme*, RLRQ, ch. A-19.1.

¹¹ Pièces R-7 à R-9.

¹² Pièce P-6.

¹³ Pièce P-7.

¹⁴ Pièce P-8.

¹⁵ RLRQ, ch. C-19.

¹⁶ Pièce P-9.

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[17] Elles ajoutent que la Ville est protégée parce que le produit des ventes est assujéti aux charges de la Ville au lieu et place des immeubles.

[18] La Ville reconnaît que sa priorité pour les taxes municipales doit s'exercer contre le produit des ventes et non pas contre les immeubles, en raison des ordonnances d'approbation et de dévolution.

[19] Toutefois, elle plaide que les dispositions de la LCV et du Règlement de lotissement continuent de s'appliquer. Elle demande au Tribunal de déclarer que Société ferroviaire et Administration portuaire sont responsables de toute taxe sur les immeubles achetés pour la période postérieure au 21 décembre 2015.

ANALYSE

1. Les ordonnances d'approbation et de dévolution

[20] Les ordonnances d'approbation et de dévolution prévoient ce qui suit :

[13] **ORDERS and DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear from any and all right, title, benefits, priorities, claims (including claims provable in bankruptcy in the event that the Vendors should be adjudged bankrupt), liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, trusts, deemed trusts (whether contractual, statutory, or otherwise), assignments, judgments, executions, writs of seizure or execution, notices of sale, options, agreements, rights of distress, legal, equitable or contractual setoff, adverse claims, levies, taxes, disputes, debts, charges, options to purchase, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, the permitted encumbrances, easements and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.

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[21] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the balance of the Proceeds remaining following deduction for applicable Cure Costs (if any) and Transfer Taxes (if any is payable) that are remitted by the Monitor pursuant to Paragraph 20 of this Order (the "**Net Proceeds**") shall stand in the place and stead of the Purchased Assets, and that upon the issuance of the Certificate, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Closing.

(Nous soulignons)

[21] La Ville ne remet pas en question la validité des ordonnances. De toute façon, il serait trop tard pour elle de le faire¹⁷ :

[20] In this case, the A&V Order [Approval and Vesting Order] determined the rights of the parties represented in that proceeding in respect of the assets that were the subject of the sale. Although Herbal Care had not been given notice and was not represented at the hearing giving rise to the A&V Order, this non-participation does not, in my view, impact on this motion. Herbal Care took no steps after becoming aware of the A&V Order to set aside or vary the A&V Order and did not appeal the A&V Order. Herbal Care is, in my view, bound by the terms of the A&V Order.

[22] L'intention des ordonnances est claire : les acheteurs acquièrent les immeubles libres de toute charge de toute nature, et les charges sont transférées sur le produit de la vente.

[23] Il est évident qu'un acheteur paiera moins cher s'il achète avec le risque de se faire poursuivre pour les dettes de son vendeur¹⁸. Le but des ordonnances est de permettre aux débitrices de vendre au meilleur prix possible, au bénéfice de l'ensemble des créanciers, sans toutefois préjudicier les créanciers garantis et les créanciers prioritaires.

[24] Cette façon de faire est expressément reconnue et permise par l'article 36(6) LACC :

(6) Le tribunal peut autoriser la disposition d'actifs de la compagnie, purgés de toute charge, sûreté ou autre restriction, et, le cas échéant, est tenu d'assujettir le produit de la disposition ou d'autres de ses actifs à une charge, sûreté ou autre restriction en faveur des créanciers touchés par la purge.

[25] La Ville ne conteste pas que sa priorité pour les taxes municipales en vertu des articles 2651(5) et 2654.1 C.c.Q. est purgée par les ordonnances et se rattache au

¹⁷ *Royal Bank of Canada v. Body Blue Inc.*, 2008 CanLII 19227 (ON SC), par. 20.

¹⁸ *Papiers Gaspésia inc. (Arrangement relatif à)*, 2004 CanLII 41522 (QC CS), par. 89-90; *Canadian Red Cross Society (Re)*, 1998 CanLII 14907 (ON SC), par. 42.

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produit des ventes plutôt qu'aux immeubles. Le Tribunal n'a pas à décider, à ce stade, de la priorité entre la Ville et les autres créanciers ou de l'obligation du contrôleur de payer les taxes après les ordonnances initiales. Il suffit de noter que la Ville a la même priorité et les mêmes droits contre le produit des ventes qu'elle avait contre les immeubles.

[26] Dans le présent dossier, la Ville plaide qu'elle a (1) un droit personnel contre les requérantes pour les arrérages de taxes en vertu de l'article 498 LCV, et (2) le droit de refuser de délivrer un permis de lotissement en vertu de son Règlement de lotissement tant que les arrérages ne sont pas payés.

2. Article 498 LCV

[27] La Ville plaide que l'article 498 LCV lui donne un recours personnel contre l'acheteur d'un immeuble pour les taxes municipales impayées sur cet immeuble, même si les taxes ont été imposées pour une période antérieure à l'achat :

498. Les taxes municipales imposées sur un immeuble peuvent être réclamées aussi bien du locataire, de l'occupant ou autre possesseur de cet immeuble que du propriétaire, de même que de tout acquéreur subséquent de cet immeuble, lors même que tel locataire, occupant, possesseur ou acquéreur ne sont pas inscrits sur le rôle d'évaluation.

(Nous soulignons)

[28] Elle plaide que la purge des charges n'affecte pas ses recours personnels, dont le recours personnel contre l'acheteur.

[29] La Ville cite à l'appui de cet argument la décision du juge Gascon, alors à cette cour, dans *AbitibiBowater*¹⁹ :

[9] As worded, the Vesting Orders will not, however, exempt the Purchaser from environmental obligations in respect of the Properties. ...

...

[11] Contrary to what some of the Provinces have argued, the Vesting Orders, as they will be issued, will not extinguish the Provinces existing remedies, if any, under their statutes against a former owner or occupier resulting from past environmental obligations or liabilities.

...

[13] In the Court's opinion, the Vesting Orders, as sought and as granted, do not, in and of themselves, compromise such potential environmental liabilities of Abitibi towards the Provinces

¹⁹ 2010 QCCS 4294, par. 9, 11 et 13.

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[30] La Ville s'appuie en particulier sur le paragraphe 9 du jugement, où le juge Gascon semble imposer des obligations à l'acheteur de l'immeuble.

[31] Toutefois, il faut mettre ce paragraphe dans son contexte. La débitrice vendait l'immeuble à sa filiale et l'ordonnance de dévolution prévoyait expressément qu'elle n'affectait pas les obligations de la filiale comme acheteur de l'immeuble :

[6.1] **ORDERS AND DECLARES** that subject to any other or further order of this Court, nothing in this Order reduces or makes inapplicable (i) any obligation under any enactment of the Province of New Brunswick that the Vendors or the Purchaser or any other person may have by virtue of having been or becoming the owner or operator of the Purchased Assets or any of them, or (ii) any consent by, approval of, notice to or other similar requirement involving the provincial government or a regional or municipal government under any enactment of the Province of New Brunswick relating to the transfer of the Purchased Assets or any of them. Nothing in this paragraph shall change in any way the provisions of paragraph 14 of this Court's Re-Amended Receivership Order in respect of 4513541 Canada Inc. dated September 1, 2010.

(Nous soulignons)

[32] Donc, lorsque le juge Gascon dit au paragraphe 9, « As worded, the Vesting Orders will not, however, exempt the Purchaser from environmental obligations in respect of the Properties », il ne fait que répéter ce que l'ordonnance prévoit. Les paragraphes 11 et 13 ne traitent que des obligations du vendeur.

[33] La professeure Sarra se penche sur ce jugement et conclut seulement que l'ordonnance de dévolution n'affecte pas la responsabilité de l'ancien propriétaire ou occupant quant aux obligations passées²⁰ :

The vesting orders would not extinguish the Provinces' existing remedies, if any, under their statutes against a former owner or occupier resulting from past environmental obligations or liabilities.

(Nous soulignons)

[34] Elle ajoute aussi une mise en garde en précisant que le dossier AbitibiBowater commence avant l'entrée en vigueur des amendements de 2009, dont l'article 36 LACC.

[35] En conséquence, le juge Gascon n'établit aucunement un principe selon lequel les ordonnances de dévolution, en vertu de l'article 36(6) LACC, ne peuvent exempter l'acheteur des obligations personnelles qui lui sont imposées par une loi provinciale.

[36] De plus, la Cour d'appel de l'Ontario interprète de façon large une ordonnance de dévolution très semblable aux présentes ordonnances, pour conclure que l'acheteur

²⁰ Janis P. SARRA, *Rescue! The Companies' Creditors Arrangement Act*, 2013, 2^e éd., Carswell, Toronto, p. 265.

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n'est pas responsable pour la portion d'un ajustement de taxes ayant lieu après son achat, mais portant en partie sur la période avant l'achat²¹ :

[27] Having regard to the broad and inclusive language used in clauses 11 and 12, I am satisfied that the increased realty taxes at issue fall within those provisions. Those taxes are properly characterized as a future claim for realty taxes that existed at the time of closing but remained to be quantified. As such, it cannot be said to be "contingent" because liability for the increased taxes to the date of closing had crystallized prior to the date of closing.

(Nous soulignons)

[37] Dans le cas présent, il est clair que les ordonnances d'approbation et de dévolution visent non seulement les droits réels, mais aussi les droits personnels qui suivent l'immeuble : l'énumération des droits purgés par le paragraphe 13 inclut les items suivants : « claims », « liabilities (direct, indirect, absolute or contingent) », « obligations » et « debts ». Ce sont clairement des droits personnels.

[38] De plus, il serait trop facile de déjouer le but de l'article 36(6) LACC et des ordonnances de dévolution si un droit personnel qui suit l'immeuble ne peut être purgé. La Cour d'appel a jugé dans *Château d'Amos* que le droit personnel conféré à la municipalité par l'article 498 LCV ne peut survivre en cas de faillite²² :

Dans un cas comme dans l'autre, quelle que soit l'alternative retenue, la municipalité, qui ne serait pas créancière garantie et qui ne s'appuierait que sur sa priorité et l'article 498 L.C.V., se verrait payée en totalité de sa créance, avant tout autre créancier chirographaire, et au détriment soit des créanciers garantis ou de la masse ou des deux, suivant le prix offert et la valeur des créances hypothécaires, en contradiction directe, à mon avis, à l'ordre de priorité établi par l'article 136 L.F.I.

Cette conséquence directe de la survie à la faillite de l'applicabilité de l'article 498 L.C.V. me paraît expressément incompatible avec les dispositions de la L.F.I.

Je suis donc d'avis, comme les deux juges de la Cour supérieure, que le droit strictement personnel conféré à la municipalité par l'article 498 L.C.V. ne saurait survivre lorsque, comme en l'espèce, un immeuble est vendu par le syndic, à l'intérieur de la réalisation des biens du failli.

(Nous soulignons)

²¹ *Credit Union Central of Ontario Limited v. Heritage Property Holdings Inc.*, 2008 ONCA 167, par. 27. Il y avait aussi une disposition analogue à l'article 498 LCV, mais la Cour d'Appel ne traite pas de cet aspect du dossier (voir note 1).

²² *Château d'Amos Itée (Syndic de)*, [1999] R.J.Q. 2612 (C.A.), p. 2649.

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[39] L'ajout suite à cet arrêt de l'article 2654.1 C.c.Q. pour donner à la Ville un droit réel ne change pas ce raisonnement et le même principe s'applique en vertu de la LACC²³.

[40] La Ville cite l'arrêt *Hydro-Québec c. 2951-1433 Québec inc.*²⁴, qui semble contredire *Château d'Amos*. Dans l'arrêt *Hydro-Québec*, la Cour d'appel confirme le droit de suite d'Hydro-Québec contre un propriétaire subséquent qui a acquis l'immeuble du syndic à la faillite de la débitrice d'Hydro-Québec. Cet arrêt ne réfère pas à l'arrêt *Château d'Amos* rendu un mois plus tôt. Dans les circonstances, le Tribunal préfère suivre l'arrêt *Château d'Amos*, qui porte sur la même disposition qui est en jeu dans le présent dossier.

[41] La Ville cite aussi la décision de cette Cour dans *9249-7007 Québec inc. c. Desbiens (Municipalité de)*²⁵. Toutefois, dans ce dossier, les acquéreurs subséquents s'étaient engagés à payer tous les « impôts fonciers échus et à échoir », ce qui est l'inverse du présent dossier.

[42] Le Tribunal conclut que le droit de la Ville de poursuivre les acheteurs en paiement des arrérages de taxes et d'intérêts pour la période avant le 8 ou le 10 mars est purgé par les ordonnances d'approbation et de dévolution. La Ville doit donc imputer les paiements par les acheteurs sur les plus vieilles dettes dues par les acheteurs et non sur la dette payable par les débitrices.

3. Article 2.2.5 du Règlement de lotissement

[43] L'autre argument mis de l'avant par la Ville découle de l'article 2.2.5 du son Règlement de lotissement :

2.2.5 Paiement des taxes municipales

Tout propriétaire doit, comme condition préalable à l'approbation d'un plan-projet de lotissement, payer les taxes municipales qui sont exigibles et impayées à l'égard des immeubles compris dans le plan.

[44] Dans sa lettre du 25 avril 2016, les procureurs de la Ville répondent à l'argument d'Administration portuaire soulevant l'ordonnance d'approbation et de dévolution comme suit²⁶ :

Bien que conscient des éléments que vous énoncez à votre missive [pièce R-8], il n'en reste pas moins que les arrérages de taxes dus à notre cliente bénéficient d'un droit de suite dans l'immeuble.

²³ *Century Services Inc. c. Canada (Procureur général)*, 2010 CSC 60, par. 76, 78; *Nortel Networks Corporation (Re)*, 2015 ONCA 681, par. 35; *Groupe Bikini Village inc. (Proposition de)*, 2015 QCCS 1317, par. 11-12; *Kitchener Frame Limited (Re)*, 2012 ONSC 234, par. 47, 73.

²⁴ 1999 CanLII 13482 (QC CA).

²⁵ 2014 QCCS 671.

²⁶ Pièce R-9.

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C'est ce qui explique les différentes dispositions de la réglementation municipale exigeant le paiement des taxes municipales avant que certaines opérations soient effectuées.

(Nous soulignons)

[45] Le principe demeure le même : les acheteurs ne sont aucunement responsables du paiement des taxes municipales pour la période avant leur acquisition des immeubles. Le droit de suite de la Ville est donc purgé par les ordonnances d'approbation et de dévolution.

[46] Enfin, la Ville plaide aussi que le Règlement de lotissement constitue un « Permitted Encumbrance » selon le paragraphe 7 de l'annexe B aux ordonnances d'approbation et de dévolution :

7. The provisions of Applicable Laws, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning;

[47] En conséquence, selon la Ville, le Règlement de lotissement n'est pas visé par la purge des droits.

[48] Le Tribunal rejette cet argument. Le paragraphe 7 vise les règles de développement et de zonage et non pas une règle incluse dans un règlement de lotissement qui vise le paiement des taxes.

CONCLUSIONS

[49] La Ville ne peut donc pas exiger des acheteurs le paiement des taxes pour la période avant leur acquisition des immeubles, soit directement par le biais de l'article 498 LCV, soit indirectement en refusant l'approbation d'un plan-projet de lotissement tant que ces taxes ne sont pas payées.

[50] Le Tribunal interprète donc la LCV et le Règlement de lotissement de façon à ne pas entrer en conflit avec ce résultat : les expressions « taxes municipales imposées » à l'article 498 LCV et « les taxes municipales qui sont exigibles et impayées » à l'article 2.2.5 du Règlement de lotissement doivent donc se limiter aux taxes municipales imposées après les acquisitions par les acheteurs suivant une ordonnance de dévolution.

[51] Comme résultat, la Ville ne peut imputer les paiements de taxes de Société ferroviaire et Administration portuaire sur les arrérages de taxes avant les achats, mais doit imputer les paiements sur les taxes dues par Société ferroviaire et Administration portuaire. De plus, la Ville ne peut refuser de délivrer des permis de lotissement en raison des arrérages de taxes avant les achats.

[52] Le Tribunal accueille donc les requêtes des requérantes. Le Tribunal note que les conclusions demandées par les requérantes sont formulées de façon plus générale

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et rend son jugement en conséquence. Si toutefois cette déclaration n'est pas suffisante pour régler le problème, le Tribunal réserve le droit des requérantes de présenter une demande de clarifier la déclaration pour donner effet à la conclusion du Tribunal ci-dessus exprimée.

POUR CES MOTIFS, LE TRIBUNAL :

[53] **ACCUEILLE** les requêtes en jugement déclaratoire présentées par Société ferroviaire et portuaire de Pointe-Noire S.E.C. et Administration portuaire de Sept-Îles/Sept-Îles Port Authority;

[54] **ORDONNE** que tout délai préalable pour la présentation des requêtes soit, par les présentes, abrégé et accepté de façon à ce que celles-ci soient valablement présentables le 21 octobre 2016 et **DISPENSE**, par les présentes, de toute signification supplémentaire;

[55] **DÉCLARE** que Société ferroviaire et Administration portuaire ne sont pas responsables, à quelque titre que ce soit, de quelque contribution ou taxe due à la Ville de Sept-Îles en date du 8 mars 2016 relativement aux immeubles décrits à l'Annexe A du présent jugement et en date du 10 mars 2016 relativement aux immeubles décrits à l'Annexe B (les « Taxes préachat »);

[56] **DÉCLARE** que les Taxes préachat ne peuvent être invoquées contre Société ferroviaire et Administration portuaire et/ou les immeubles décrits aux Annexes A et B (les « Immeubles »);

[57] **DÉCLARE** que toute réclamation de la Ville de Sept-Îles pour les Taxes préachat est un « Encumbrance » selon les ordonnances d'approbation et de dévolution émises par le Tribunal le 1^{er} février 2016 (les « Ordonnances »);

[58] **DÉCLARE** que, conformément aux Ordonnances, les Immeubles sont vendus à Société ferroviaire et Administration portuaire le 8 mars 2016 et le 10 mars 2016 respectivement, francs, quittes et libres de toute réclamation de la Ville de Sept-Îles pour les Taxes préachat;

[59] **DÉCLARE** que toute réclamation de la Ville de Sept-Îles pour les Taxes préachat est annulée et radiée à l'égard des Immeubles lors de l'émission des certificats du contrôleur;

[60] **DÉCLARE** que toute réclamation de la Ville de Sept-Îles pour les Taxes préachat est transférée sur le produit des ventes des Immeubles détenu par le contrôleur;

[61] **ORDONNE** l'exécution provisoire de la présente ordonnance nonobstant appel et sans exigence quelconque de fournir une sûreté ou une provision pour frais;

[62] **LE TOUT avec frais de justice.**

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Stephen W. Hamilton, j.c.s.

Me Alain Tardif
Me Gabriel Faure
McCARTHY TÉTRAULT
Pour Société ferroviaire et portuaire Pointe-Noire S.E.C.

Me Luc Morin
Me Nicolas Mancini
FASKEN MARTINEAU DuMOULIN
Pour Administration portuaire de Sept-Îles/Sept-Îles Port Authority

Me Richard Laflamme
Me Antoine Beaudoin
STEIN MONAST
Pour la Ville de Sept-Îles

Me Ilia Kravtsov
BLAKE, CASSELS & GRAYDON
Pour les débitrices

Me Sylvain Rigaud
Me Chrystal Ashby
NORTON ROSE FULBRIGHT CANADA
Pour le contrôleur

Me Nicholas Scheib
Pour les retraités

Me Daniel Boudreault
PHILION, LEBLAND, BEAUDRY
Pour le Syndicat des métallos

Date d'audience : 21 octobre 2016

**ANNEXE A – DESCRIPTION DES IMMEUBLES ACHETÉS PAR SOCIÉTÉ
FERROVIAIRE ET PORTUAIRE DE POINTE-NOIRE S.E.C.**

**1) CLIFFS QUÉBEC IRON MINING ULC / CLIFFS QUÉBEC MINE DE FER ULC
formerly known as CONSOLIDATED THOMPSON IRON MINES LIMITED
("Consolidated")**

(a) Superficies created under the terms of the unregistered lease agreement number 474-109 between Administration Portuaire de Sept-Îles (the "**Lessor**") and Consolidated (the "**Lessee**") executed on October 29, 2009, with respect to all structures, buildings, work, infrastructure or equipment used to handle, transport and store, erected or placed by the Lessee on the leased premises which are composed of the following lots:

Lot FOUR MILLION SEVEN HUNDRED EIGHTY-SEVEN THOUSAND ONE HUNDRED AND FIFTY-SIX (4 787 156) of the Cadastre of Québec, in the Land Registration Division of Sept-Îles;

**2) WABUSH IRON CO. LIMITED (for an undivided interest of 26.83%) and
WABUSH RESOURCES INC., (for an undivided interest of 73.17%)**

(a) LAND ADJACENT TO THE PORT OF SEPT-ÎLES: All rights, title and interest in the following immovable properties known and designated as:

i) Lot number THREE MILLION SIX HUNDRED AND SIXTY-NINE THOUSAND AND FIFTY-EIGHT (3 669 058) of the Cadastre of Québec, Registration Division of Sept-Îles;

ii) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND THIRTY-FOUR (3 708 334) of the Cadastre of Québec, Registration Division of Sept-Îles;

iii) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND TWELVE (3 931 512) of the Cadastre of Québec, Registration Division of Sept-Îles;

iv) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND EIGHT (3 931 508) of the Cadastre of Québec, Registration Division of Sept-Îles;

v) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-THREE (3 708 383) of the Cadastre of Québec, Registration Division of Sept-Îles;

vi) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-FOUR (3 708 384) of the Cadastre of Québec, Registration Division of Sept-Îles;

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vii) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-FIVE (3 708 385) of the Cadastre of Québec, Registration Division of Sept-Îles;

viii) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND THIRTY-FIVE (3 931 535) of the Cadastre of Québec, Registration Division of Sept-Îles;

ix) A part of lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND FORTY-ONE (3 931 541) of the Cadastre of Québec, Registration Division of Sept-Îles, excluding the following:

Une partie du lot 3 931 541, de figure irrégulière, bornée vers le nord-est et le nord par les lots 3 708 360 et 3 708 361, chemin de la Pointe-Noire, vers le nord-est, l'est, le nord, l'ouest et le sud-ouest par le lot 3 931 533, vers le nord et l'est par le lot 3 708 360, chemin de la Pointe-Noire, vers le nord par la partie restante du lot 3 931 541, vers le nord est par le lot 3 708 376, vers le sud et le sud-est par un territoire non cadastré, vers le sud-ouest et le sud par la limite des hautes eaux (marées) de la Baie-des-Sept-Îles (Territoire non cadastré), vers l'ouest par le lot 3 669 046, par un territoire non cadastré et par les lots 3 669 047 et 4 711 908, vers le sud-ouest par le lot 4 711 908 et vers le nord-ouest par le lot 3 708 359, rue Albard-Blanchard; mesurant successivement 505,92 mètres, 30,04 mètres, 150,00 mètres, 50,02 mètres, 657,10 mètres, 7,87 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 94,78 mètres, 49,86 mètres, 49,98 mètres, 148,10 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 394,80 mètres et 338,91 mètres de long d'une courbe ayant un rayon de 815,00 mètres vers le nord-est, 104,06 mètres, 60,01 mètres, 90,00 mètres, 30,33 mètres, 51,32 mètres; 92,25 mètres d'arc le long d'une courbe ayant un rayon de 615,00 mètres, 35,95 mètres, 25,76 mètres, 21,05 mètres, 31,26 et 25,82 mètres vers le nord, 6,83 mètres vers le nord-ouest, 20,63 mètres, 51,45 mètres et 29,29 mètres vers le nord, 48,07 mètres, 5,39 mètres et 430,00 mètres vers le nord-ouest, 7,07 mètres vers le nord-est, 67,89 mètres vers l'est, 51,05 mètres d'arc le long d'une courbe ayant un rayon de 45,00 mètres vers le nord-est, 32,02 mètres vers le nord, 37,34 mètres vers l'est, 22,02 mètres vers le sud, 77,00 mètres vers l'est, 57,00 mètres vers le nord, 44,00 mètres vers l'ouest, 55,00 mètres vers le nord, 25,00 mètres vers l'ouest, 41,82 mètres et 25,72 mètres d'arc le long d'une courbe ayant un rayon de 40,00 mètres vers le sud-ouest, 40,70 mètres vers le sud, 98,10 mètres vers l'ouest, 35,21 mètres et 38,89 mètres d'arc le long d'une courbe ayant un rayon de 782,00 mètres vers le nord, 14,99 mètres vers le nord-ouest, 29,76 mètres vers le nord, 24,96 mètres vers le nord-ouest, 19,63 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 24,55 mètres, 34,28 mètres d'arc le long d'une courbe ayant un rayon de 783,50 mètres, 29,45 mètres, 107,02 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 180,94 mètres, 50,00 mètres, 35,00 mètres et 15,04

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mètres vers le nord, 35,33 mètres vers l'est, 20,00 mètres, 70,46 mètres, 25,96 mètres, 63,00 mètres, 64,57 mètres, 61,30 mètres, 81,51 mètres d'arc le long d'une courbe ayant un rayon de 917,00 mètres vers le nord, 5,47 mètres vers le nord-ouest, 159,48 mètres d'arc le long d'une courbe ayant un rayon de 915,00 mètres, 193,99 mètres et 313,53 mètres vers le nord, 617,36 mètres vers le nord-est, 2111,36 mètres, 936,11 mètres et 232,24 mètres vers le sud, 265,84 mètres vers le sud-est, 1694,70 mètres mesurée en suivant une ligne sinueuse vers le sud-ouest et le sud, 135,90 mètres mesurée en suivant une ligne sinueuse vers le sud, 94,29 mètres, 1056,76 mètres et 389,82 mètres vers l'ouest, 78,00 mètres vers le sud-ouest et 89,56 mètres d'arc le long d'une courbe ayant un rayon de 522,92 mètres, 22,33 mètres d'arc le long d'une courbe ayant un rayon de 50,53 mètres et 30,67 mètres vers le nord-ouest; contenant une superficie de 3 321 872 mètres carrés.

- i) A part of lot number THREE MILLION SIX HUNDRED AND SIXTY-NINE THOUSAND TWO HUNDRED FOURTEEN (3 669 214) of the Cadastre of Québec, Registration Division of Sept-Îles, excluding the following:

De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés.;

- xi) Lot number FOUR MILLION EIGHT HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED AND EIGHTY-ONE (4 873 981) of the Cadastre of Québec, Registration Division of Sept-Îles.

- xii) Lot number FOUR MILLION EIGHT HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED AND EIGHTY-THREE (4 873 983) of the Cadastre of Québec, Registration Division of Sept-Îles.

With all constructions erected thereon, including the building bearing civic number 1505 Chemin de la Pointe-Noire, in the City of Sept-Îles, Province of Québec.

3) ARNAUD RAILWAY COMPANY/COMPAGNIE DE CHEMIN DE FER ARNAUD

(a) All rights, title and interest in the immovable properties located in the City of Sept-Îles forming a railway known and designated as being composed of the following lots:

i) Lot number THREE MILLION SIX HUNDRED SIXTY-NINE THOUSAND TWO HUNDRED AND EIGHTY-NINE (3 669 289) of the Cadastre of Québec, Registration Division of Sept-Îles.

ii) Lot number THREE MILLION SIX HUNDRED SIXTY-NINE THOUSAND THREE HUNDRED AND TEN (3 669 310) of the Cadastre of Québec, Registration Division of Sept-Îles.

iii) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND TWO HUNDRED AND TWENTY-THREE (3 708 223) of the Cadastre of Québec, Registration Division of Sept-Îles.

iv) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND THIRTEEN (3 708 313) of the Cadastre of Québec, Registration division of Sept-Îles.

v) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND SIXTEEN (3 708 316) of the Cadastre of Québec, Registration division of Sept-Îles.

vi) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND EIGHTEEN (3 708 318) of the Cadastre of Québec, Registration division of Sept-Îles.

vii) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND NINETEEN (3 708 319) of the Cadastre of Québec, Registration division of Sept-Îles.

viii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED TWO (3 931 502) of the Cadastre of Québec, Registration division of Sept-Îles.

ix) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FOUR (3 931 504) of the Cadastre of Québec, Registration division of Sept-Îles.

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x) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED AND FIVE (3 931 505) of the Cadastre of Québec, Registration Division of Sept-Îles.

xi) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SIX (3 931 506) of the Cadastre of Québec, Registration division of Sept-Îles.

xii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SEVEN (3 931 507) of the Cadastre of Québec, Registration division of Sept-Îles.

xiii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED NINE (3 931 509) of the Cadastre of Québec, Registration division of Sept-Îles.

xiv) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED AND THIRTY (3 931 530) of the Cadastre of Québec, Registration Division of Sept-Îles.

xv) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY (3 931 540) of the Cadastre of Québec, Registration division of Sept-Îles.

xvi) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY-TWO (3 931 542) of the Cadastre of Québec, Registration division of Sept-Îles.

xvii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY-FOUR (3 931 544) of the Cadastre of Québec, Registration division of Sept-Îles.

xviii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FIFTY-TWO (3 931 552) of the Cadastre of Québec, Registration division of Sept-Îles.

xix) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND SIX HUNDRED AND TWENTY-THREE (3 931 623) of the Cadastre of Québec, Registration Division of Sept-Îles.

xx) Lot number THREE MILLION NINE HUNDRED FORTY THOUSAND NINE HUNDRED EIGHTY-ONE (3 940 981) of the Cadastre of Québec, Registration division of Sept-Îles.

xxi) Lot number FOUR MILLION EIGHTY-FIVE THOUSAND SEVEN HUNDRED NINETY-FOUR (4 085 794) of the Cadastre of Québec, Registration division of Sept-Îles.

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(b) Superficies created under the terms of the unregistered lease agreement (File 919352 00 000) between Le Ministre des Ressources Naturelles et de la Faune (the "**Lessor**") and Consolidated and subsequently transferred to Arnaud Railway Company (the "**Lessee**") executed by the Lessor on March 18, 2010 and by the Lessee on March 22, 2010, with respect to all constructions to be erected or installed by the Lessee on the leased premises being four (4) parcels of land situated in a territory without a cadastral survey, in the Township of Letellier, containing 115 hectares, without being more fully described.

**ANNEXE B – DESCRIPTION DE L'IMMEUBLE ACHETÉ PAR ADMINISTRATION
PORTUAIRE DE SEPT-ÎLES/SEPT-ÎLES PORT AUTHORITY**

The immovable known and described as being composed of a part of lot 3 931 541, lot 3 931 539 and part of lot 3 669 214, all of the cadastre of Québec, registration division of Sept-Îles, such lot and parts of lots being for purposes hereof particularly described as follows:

- a) Une partie du lot 3 931 541 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

Une partie du lot 3 931 541, de figure irrégulière, bornée vers le nord-est et le nord par les lots 3 708 360 et 3 708 361, chemin de la Pointe-Noire, vers le nord-est, l'est, le nord, l'ouest et le sud-ouest par le lot 3 931 533, vers le nord et l'est par le lot 3 708 360, chemin de la Pointe-Noire, vers le nord par la partie restante du lot 3 931 541, vers le nord est par le lot 3 708 376, vers le sud et le sud-est par un territoire non cadastré, vers le sud-ouest et le sud par la limite des hautes eaux (marées) de la Baie-des-Sept-Îles (Territoire non cadastré), vers l'ouest par le lot 3 669 046, par un territoire non cadastré et par les lots 3 669 047 et 4 711 908, vers le sud-ouest par le lot 4 711 908 et vers le nord-ouest par le lot 3 708 359, rue Alband-Banchard; mesurant successivement 505,92 mètres, 30,04 mètres, 150,00 mètres, 50,02 mètres, 657,10 mètres, 7,87 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 94,78 mètres, 49,86 mètres, 49,98 mètres, 148,10 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 394,80 mètres et 338,91 mètres de long d'une courbe ayant un rayon de 815,00 mètres vers le nord-est, 104,06 mètres, 60,01 mètres, 90,00 mètres, 30,33 mètres, 51,32 mètres; 92,25 mètres d'arc le long d'une courbe ayant un rayon de 615,00 mètres, 35,95 mètres, 25,76 mètres, 21,05 mètres, 31,26 et 25,82 mètres vers le nord, 6,83 mètres vers le nord-ouest, 20,63 mètres, 51,45 mètres et 29,29 mètres vers le nord, 48,07 mètres, 5,39 mètres et 430,00 mètres vers le nord-ouest, 7,07 mètres vers le nord-est, 67,89 mètres vers l'est, 51,05 mètres d'arc le long d'une courbe ayant un rayon de 45,00 mètres vers le nord-est, 32,02 mètres vers le nord, 37,34 mètres vers l'est, 22,02 mètres vers le sud, 77,00 mètres vers l'est, 57,00 mètres vers le nord, 44,00 mètres vers l'ouest, 55,00 mètres vers le nord, 25,00 mètres vers l'ouest, 41,82 mètres et 25,72 mètres d'arc le long d'une courbe ayant un rayon de 40,00 mètres vers le sud-ouest, 40,70 mètres vers le sud, 98,10 mètres vers l'ouest, 35,21 mètres et 38,89 mètres d'arc le long d'une courbe ayant un rayon de 782,00 mètres vers le nord, 14,99

mètres vers le nord-ouest, 29,76 mètres vers le nord, 24,96 mètres vers le nord-ouest, 19,63 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 24,55 mètres, 34,28 mètres d'arc le long d'une courbe ayant un rayon de 783,50 mètres, 29,45 mètres, 107,02 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 180,94 mètres, 50,00 mètres, 35,00 mètres et 15,04 mètres vers le nord, 35,33 mètres vers l'est, 20,00 mètres, 70,46 mètres, 25,96 mètres, 63,00 mètres, 64,57 mètres, 61,30 mètres, 81,51 mètres d'arc le long d'une courbe ayant un rayon de 917,00 mètres vers le nord, 5,47 mètres vers le nord-ouest, 159,48 mètres d'arc le long d'une courbe ayant un rayon de 915,00 mètres, 193,99 mètres et 313,53 mètres vers le nord, 617,36 mètres vers le nord-est, 2111,36 mètres, 936,11 mètres et 232,24 mètres vers le sud, 265,84 mètres vers le sud-est, 1694,70 mètres mesurée en suivant une ligne sinueuse vers le sud-ouest et le sud, 135,90 mètres mesurée en suivant une ligne sinueuse vers le sud, 94,29 mètres, 1056,76 mètres et 389,82 mètres vers l'ouest, 78,00 mètres vers le sud-ouest et 89,56 mètres d'arc le long d'une courbe ayant un rayon de 522,92 mètres, 22,33 mètres d'arc le long d'une courbe ayant un rayon de 50,53 mètres et 30,67 mètres vers le nord-ouest; contenant une superficie de 3 321 872 mètres carrés.

- b) Le lot 3 931 539 du cadastre du Québec, circonscription foncière de Sept-Îles, lequel est plus particulièrement décrit comme suit:

De figure irrégulière, borné vers le nord-est par le lot 3 708 384, vers le sud-est et le nord-est par le lot 3 669 214, vers le sud, le sud-est, le sud-ouest et le sud par le lot 3 708 360, chemin de la Pointe-Noire, vers l'ouest, le sud et l'est par le lot 3 931 537 et vers le sud et le sud-ouest par le lot 3 708 361, chemin de la Pointe-Noire; mesurant successivement 235,54 mètres d'arc le long d'une courbe ayant un rayon de 813,35 mètres, 1535,40 mètres, 186,61 mètres d'arc le long d'une courbe ayant un rayon de 1796,57 mètres et 331,60 mètres vers le nord-est, 72,09 mètres vers le sud-est, 877,32 mètres vers le nord-est, 151,85 mètres, 31,62 mètres et 19,37 mètres vers le sud, 30,53 mètres vers le sud-est, 48,54 mètres et 19,57 mètres vers le sud, 6,62 mètres vers le sud-ouest, 72,62 mètres, 24,33 mètres, 34,11 mètres, 87,75 mètres d'arc le long d'une courbe ayant un rayon de 585,00 mètres, 48,70 mètres, 29,68 mètres, 90,00 mètres, 60,01 mètres et 45,00 mètres vers le sud, 45,00 mètres vers l'ouest, 40,00 mètres vers le sud, 45,00 mètres vers l'est, 19,06 mètres vers le sud, 326,43 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 394,80 mètres, 148,84 mètres d'arc le long d'une courbe ayant un rayon de 6 015,00 mètres, 50,26 mètres, 50,16 mètres, 95,29 mètres, 7,91

Declaratory Judgment with respect to Municipal Taxes, November 17, 2016

mètres d'arc le long d'une courbe ayant un rayon de 6 015,00 mètres, 657,10 mètres, 50,02 mètres, 150,00 mètres, 30,04 mètres et 522,35 mètres vers le sud-ouest ; contenant une superficie de 662 919,9 mètres carrés.

- c) Une partie du lot 3 669 214 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés.

Leave to Appeal from Declaratory Judgment with respect to Municipal Taxes Denied
(Justice Marcotte, J.C.A.), January 9, 2017

COUR D'APPEL

CANADA
PROVINCE DE QUÉBEC
GREFFE DE MONTRÉAL

N° : 500-09-026478-164
(500-11-048114-157)

DATE : 9 janvier 2017

SOUS LA PRÉSIDENTE DE L'HONORABLE GENEVIÈVE MARCOTTE, J.C.A.

DANS L'AFFAIRE DE L'ARRANGEMENT DE :
VILLE DE SEPT-ÎLES
REQUÉRANTE – mise en cause

c.

SOCIÉTÉ FERROVIAIRE ET PORTUAIRE DE POINTE-NOIRE S.E.C.
ADMINISTRATION PORTUAIRE SEPT-ÎLES / SEPT-ÎLES PORT AUTHORITY
INTIMÉES – requérantes

et

BLOOM LAKE GENERAL PARTNER LIMITED
BLOOM LAKE RAILWAY COMPANY LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUEBEC IRON MINING ULC
THE BLOOM LAKE IRON ORE MINE LTD PARTNERSHIP
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC
WABUSH MINES
ARNAUD RAILWAY COMPANY
SYNDICAT DES MÉTALLOS, SECTIONS LOCALES 6254 ET 6285
MISES EN CAUSE – débitrices

et

FTI CONSULTING CANADA INC.
MISE EN CAUSE – contrôleur

JUGEMENT

[1] La requérante Ville de Sept-Îles (Ville) demande la permission d'appeler d'un jugement rendu le 17 novembre 2016 par la Cour supérieure, Chambre commerciale, district de Montréal (l'honorable Stephen W. Hamilton) qui accueille la requête en jugement déclaratoire des intimées.

[2] Ces dernières ont acheté des immeubles dans le cadre de procédures en vertu de la *Loi sur les arrangements avec les créanciers des compagnies (LACC)*¹. Par requête en jugement déclaratoire présentée dans le dossier constitué en vertu de la *LACC*, elles ont demandé au tribunal de déclarer qu'elles ne sont pas responsables des taxes dues à la municipalité pour la période précédant leur achat.

[3] La Ville plaidait que l'article 498 de la *Loi sur les cités et villes (LCV)*² lui donne un recours personnel contre l'acheteur d'un immeuble pour les taxes municipales impayées sur cet immeuble, même lorsque imposées pour une période antérieure à cet achat. Elle invoquait par ailleurs que son règlement de lotissement lui permettait de refuser d'octroyer le permis de lotissement recherché par les acheteurs, vu les arrérages de taxes accumulés avant leur achat.

[4] Le juge de première instance a rejeté ces prétentions. Il a déclaré que la Ville ne pouvait imputer les paiements de taxes des intimées sur les arrérages de taxes précédant les achats en raison du recours personnel dont dispose la Ville en vertu de l'article 498 *LCV*³ et qu'elle ne pouvait non plus refuser de délivrer des permis de lotissement en raison de ces mêmes arrérages, en invoquant son règlement de lotissement.

[5] Il a conclu que le droit de la Ville de poursuivre les acheteurs en paiement des arrérages de taxes et d'intérêts pour la période précédant leur achat était purgé par les ordonnances d'approbation et de dévolution rendues antérieurement à cette vente, dont la Ville n'a d'ailleurs pas contesté la validité.

[6] Il s'exprimait ainsi aux paragraphes [21] à [24] du jugement :

[21] La Ville ne remet pas en question la validité des ordonnances. De toute façon, il serait trop tard pour elle de le faire : [Référence omise]

¹ L.R.C. (1985), c. C-36.

² RLRQ, c. C-19.

³ Art. 498. Les taxes municipales imposées sur un immeuble peuvent être réclamées aussi bien du locataire, de l'occupant ou autre possesseur de cet immeuble que du propriétaire, de même que de tout acquéreur subséquent de cet immeuble, lors même que tel locataire, occupant, possesseur ou acquéreur ne sont pas inscrits sur le rôle d'évaluation.

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[20] In this case, the A&V Order [Approval and Vesting Order] determined the rights of the parties represented in that proceeding in respect of the assets that were the subject of the sale. Although Herbal Care had not been given notice and was not represented at the hearing giving rise to the A&V Order, this non-participation does not, in my view, impact on this motion. Herbal Care took no steps after becoming aware of the A&V Order to set aside or vary the A&V Order and did not appeal the A&V Order. Herbal Care is, in my view, bound by the terms of the A&V Order.

[22] L'intention des ordonnances est claire : les acheteurs acquièrent les immeubles libres de toute charge de toute nature, et les charges sont transférées sur le produit de la vente.

[23] Il est évident qu'un acheteur paiera moins cher s'il achète avec le risque de se faire poursuivre pour les dettes de son vendeur. Le but des ordonnances est de permettre aux débitrices de vendre au meilleur prix possible, au bénéfice de l'ensemble des créanciers, sans toutefois préjudicier les créanciers garantis et les créanciers prioritaires. [Référence omise]

[24] Cette façon de faire est expressément reconnue et permise par l'article 36(6) LACC :

(6) Le tribunal peut autoriser la disposition d'actifs de la compagnie, purgés de toute charge, sûreté ou autre restriction, et, le cas échéant, est tenu d'assujettir le produit de la disposition ou d'autres de ses actifs à une charge, sûreté ou autre restriction en faveur des créanciers touchés par la purge.

[7] Il paraît aussi utile de reprendre les extraits pertinents des ordonnances visées par la requête en jugement déclaratoire, tels que reproduits au jugement de première instance :

[13] **ORDERS and DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear from any and all right, title, benefits, priorities, claims (including claims provable in bankruptcy in the event that the Vendors should be adjudged bankrupt), liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, trusts, deemed trusts (whether contractual, execution, notices of sale, options, agreements, rights of distress,

legal, equitable or contractual setoff, adverse claims, levies, taxes, disputes, debts, charges, options to purchase, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the “**Encumbrances**”), including without limiting the generality of the foregoing Encumbrances created by order of this Court and all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, the permitted encumbrances, easements and restrictive covenants listed on **Schedule “B”** hereto (the “**Permitted Encumbrances**”) and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.

...

[21] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the balance of the Proceeds remaining following deduction for applicable Cure Costs (if any) and Transfer Taxes (if any is payable) that are remitted by the Monitor pursuant to Paragraph 20 of this Order (the “**Net Proceeds**”) shall stand in the place and stead of the Purchased Assets, and that upon the issuance of the Certificate, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Closing.⁴

[8] La permission d’appeler du jugement en cause est régie par les articles 13 et 14 de la LACC. Or, dans l’affaire *Statoil Canada Ltd. (Arrangement relatif à)*⁵, mon collègue le juge Hilton soulignait à bon droit que, suivant une jurisprudence établie, ce genre de permission n’est pas fréquemment accordée, et qu’elle ne l’est que lorsque l’ensemble des quatre conditions cumulatives requises sont satisfaites :

⁴ Jugement entrepris, paragr. 20.

⁵ 2012 QCCA 665.

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[3] A threshold issue is the criteria to be considered upon such an application for leave. Based on the judgment of Wittman, J.A., as he then was, in *Resurgence Asset Management LLC v. Canadian Airlines Corp.*,⁶ there are four such criteria:

- whether the point on appeal is of significance to the practice;
- whether the point raised is of significance to the action itself;
- whether the appeal is prima facie meritorious, or, on the other hand, whether it is frivolous, and;
- whether the appeal will unduly hinder the progress of the action.

[4] Judges of this Court to whom such applications have been addressed have held unanimously that the four criteria are cumulative; with the result that an applicant's failure to establish any one of them will result in the dismissal of the application.⁷ In addition, it is also generally understood that an applicant carries a heavy burden in order to obtain leave, and that appellate courts will only grant such applications sparingly.⁸

[9] En l'espèce, la Ville, par ses arguments, remet en question l'opportunité de rendre les ordonnances d'approbation et de dévolution qui ont acquis la force de chose jugée en février 2016 et que la Ville n'a pas cru opportun de contester. Elle tente de faire valoir, après le fait, un argument sur la portée de ces ordonnances qui est contraire à l'intention du juge qui a rendu ces mêmes ordonnances en des termes clairs.

[10] La Ville ne me convainc pas que les moyens d'appel soulevés sont soutenable, alors que la décision à l'égard de laquelle elle cherche à se pourvoir tient des faits de l'affaire et du texte clair des ordonnances déjà rendues.

POUR CES MOTIFS, LA SOUSSIGNÉE :

⁶ [2000] A.J. No. 610, 2000 ABCA 149, paragr. 6 et 7.

⁷ Voir 4370422 *Canada inc. (Davie Yards inc.) (Arrangement relatif à)*, 2011 QCCA 2442, aux paragr. 11 et 12 (J. Pelletier); *Newfoundland and Labrador v. AbitibiBowater inc.*, 68 C.B.R. (5th) 57, 2010 QCCA 965, aux paragr. 25–29 (J. Chamberland); *Papiers Gaspésia inc. (Arrangement relatif à)*, 9 C.B.R. (5th) 103, au paragr. 5 (J. Bich); *Société industrielle de décolletage et d'outillage (SIDO) ltée (Arrangement relatif à)*, 2010 QCCA 403, au paragr. 9 (J. Bich); *Imprimerie Mirabel inc. v. Ernst & Young inc.*, 2010 QCCA 1244, au paragr. 5 (J. Dufresne).

⁸ Voir *supra*, note 5, paragr. 3 et 4.

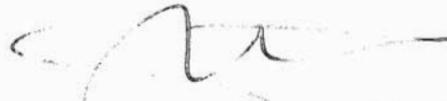
Leave to Appeal from Declaratory Judgment with respect to Municipal Taxes Denied (Justice Marcotte, J.C.A.), January 9, 2017

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[11] **REJETTE** la requête pour permission d'appeler du jugement déclaratoire;

[12] **AVEC LES FRAIS DE JUSTICE.**



GENEVIÈVE MARCOTTE, J.C.A.

M^e Richard Laflamme
M^e Félix Antoine Pinard-Beaudoin
Stein Monast
Pour la requérante

M^e Alain N. Tardif
M^e Chloé D'Astous
McCarthy Tétrault
Pour Société ferroviaire et portuaire de Pointe-Noire S.E.C.

M^e Luc Morin
M^e Nicolas Mancini
Fasken Martineau Dumoulin
Pour Administration portuaire Sept-Îles / Sept-Îles Port Authority

M^e Iliia Kravtsov
Blake, Cassels & Graydon
Pour Bloom Lake General Partner Limited, Bloom Lake Railway Company Limited,
Quinto Mining Corporation, 8568931 Canada Limited, Cliffs Quebec Iron Mining ULC,
The Bloom Lake Iron ORE Mine Ltd Partnership, Wabush Iron Co. Limited, Wabush
Resources inc., Wabush Mines, Arnaud Railway Company

M^e Sylvain Rigaud
Norton Rose Fulbright Canada
Pour FTI Consulting Canada inc.

M^e Daniel Boudreault
Philion, Leblanc, Beaudry, avocats, S.A.
Pour Syndicat des métallos, sections locales 6254 et 6285

Date d'audience : 21 décembre 2016

Approval and Vesting Order with respect to the Sale of Certain Assets (Block Z), February 1, 2016

SUPERIOR COURT
(Commercial Division)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

DATE: February 1st, 2016

PRESIDING: THE HONOURABLE STEPHEN W. HAMILTON J.S.C.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED:

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

WABUSH MINES

Mise-en-cause

-and-

ADMINISTRATION PORTUAIRE DE SEPT-ÎLES / SEPT-ÎLES PORT AUTHORITY

Mise-en-cause

-and-

**THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION DIVISION
OF SEPT-ÎLES**

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

APPROVAL AND VESTING ORDER

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- [1] **ON READING** the Petitioners' *Motion for the Issuance of an Approval and Vesting Order with respect to the sale of certain assets*, as amended and re-amended (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the 17th and 18th Reports of the Monitor dated January 22 and 27, 2016 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of the Petitioners' and the Monitor's attorneys;
- [4] **SEEING** that it is appropriate to issue an order approving the transaction (the "**Transaction**") contemplated by the agreement entitled Asset Purchase Agreement (the "**Purchase Agreement**") dated as of January 26, 2016 by and among the Petitioners *Wabush Iron Co. Limited* and *Wabush Resources Inc.*, as vendors (collectively, the "**Vendors**"), and *Administration Portuaire de Sept-Îles / Sept-Îles Port Authority* as purchaser (the "**Purchaser**"), a copy of which was filed as Exhibit R-22 to the Motion, and vesting in the Purchaser all of the Vendors' right, title and interest in and to all of the Purchased Assets (as defined in the Purchase Agreement).

FOR THESE REASONS, THE COURT HEREBY:

- [5] **GRANTS** the Motion.
- [6] **ORDERS** that all capitalized terms in this Order shall have the meaning given to them in the Purchase Agreement unless otherwise indicated herein.

SERVICE

- [7] **ORDERS** that any prior time period for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
- [8] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

- [9] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Vendors is hereby authorized and approved, *nunc pro tunc*, without prejudice to the rights of creditors to object to the allocation of proceeds as among them and as among the Vendors, in each case for distribution purposes only.
- [10] **AUTHORIZES AND DIRECTS** the Monitor to hold the Deposit, *nunc pro tunc*, and to apply, disburse and/or deliver the Deposit or the applicable portions thereof in accordance with the provisions of the Purchase Agreement and this Order.

EXECUTION OF DOCUMENTATION

- [11] **AUTHORIZES AND DIRECTS** the Vendors, the Purchaser and the Monitor to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in or contemplated by the Purchase Agreement (Exhibit R-22), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Monitor, and any other ancillary document which could be required or useful to give full and complete effect thereto.

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AUTHORIZATION

- [12] **ORDERS and DECLARES** that this Order shall constitute the only authorization required by the Vendors to proceed with the Transaction and that no shareholder approval, if applicable, shall be required in connection therewith.

VESTING OF THE PURCHASED ASSETS

- [13] **ORDERS and DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest free and clear, absolutely and exclusively in and with the Purchaser, from any and all right, title, benefits, priorities, claims (including claims provable in bankruptcy in the event that the Vendors should be adjudged bankrupt), liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, trusts, deemed trusts (whether contractual, statutory, or otherwise), assignments, judgments, executions, writs of seizure or execution, notices of sale, options, agreements, rights of distress, legal, equitable or contractual setoff, adverse claims, levies, taxes, disputes, debts, charges, options to purchase, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, the permitted encumbrances, easements and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [14] **ORDERS and DIRECTS** the Monitor, upon receipt of payment in full of the Purchase Price and of each of the Conditions Certificates, to (i) issue forthwith the Certificate concurrently to the Vendors and the Purchaser; and (ii) file forthwith after issuance thereof a copy of the Certificate with the Court.
- [15] **DECLARES** that the Monitor shall be at liberty to rely exclusively on the Conditions Certificates in issuing the Certificate, without any obligation to independently confirm or verify the waiver or satisfaction of the applicable conditions.
- [16] **AUTHORIZES and DIRECTS** the Monitor to receive and hold the Purchase Price and to remit the Purchase Price in accordance with the provisions of this Order.

CANCELLATION OF SECURITY REGISTRATIONS

- [17] **ORDERS** the Land Registrar of the Registry Office for the Registration Division of Sept-Îles, upon presentation of the Certificate in the form appended as Schedule "A" and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the immovable property identified in **Schedule "C"** hereto (the "**Immovable Property**") and (ii) to cancel any and all Encumbrances on the Immovable Property (other than Permitted Encumbrances), including, without limitation, the registrations published at the said Registry Office listed on **Schedule "D"** hereto.

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NET PROCEEDS

- [18] **ORDERS** that the Purchase Price payable to the Vendors in accordance with the Purchase Agreement (the "**Net Proceeds**") shall be remitted to the Monitor and shall, subject to the provisions of this Order, be held by the Monitor on behalf of the Vendors pending further order of the Court.
- [19] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon issuance of the Certificate, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Closing.
- [20] **ORDERS** that upon the issuance of the Certificate, the Purchaser shall have no recourse or claim of any kind against the Net Proceeds.

RELEASE OF FUNDS TO FUND COSTS AND EXPENSES OF THE WABUSH CCAA PARTIES

- [21] **AUTHORIZES and DIRECTS** the Monitor to fund the costs and expenses of the Wabush CCAA Parties (the "**Expense Payments**") out of the Net Proceeds by way of weekly draws by the Wabush CCAA Parties against cash flow projections to be prepared by the Wabush CCAA Parties from time to time and as approved by the Monitor and subject to the Monitor holding such reserves as it considers necessary to secure the CCAA Charges (as defined in the initial order rendered by this Court on May 20, 2015, as amended, restated, rectified or otherwise modified from time to time).
- [22] **ORDERS** that notwithstanding:
- a) the pendency of these proceedings;
 - b) any assignment in bankruptcy;
 - c) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (the "**BIA**") or otherwise and any order issued pursuant to any such application; or
 - d) the provisions of any federal or provincial legislation;

the remittance of the Expense Payments in accordance with this Order is to be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendors, the Purchaser or the Monitor, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- [23] **AUTHORIZES** the Monitor to take any and all steps which the Monitor, in its sole discretion and in consultation with the Vendors, may deem necessary in order to give effect to the above orders for the Expense Payments. Any such remittances made by the Monitor will be made without prejudice to any arguments concerning the allocation of such remittances amongst the CCAA Parties and the CCAA Parties will subsequently bring a motion on notice to the service list for an order allocating the remittances amongst the CCAA Parties.

PROTECTION OF PERSONAL INFORMATION

- [24] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Vendors are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendors' records pertaining to the Vendors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendors.

VALIDITY OF THE TRANSACTION

- [25] **ORDERS** that notwithstanding:
- a) the pendency of these proceedings;
 - b) any assignment in bankruptcy;
 - c) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the BIA or otherwise and any order issued pursuant to any such application; or
 - d) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendors, the Purchaser or the Monitor, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

LIMITATION OF LIABILITY

- [26] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to take control, or to otherwise manage all or any part of the Purchased Assets. The Monitor shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [27] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.

GENERAL

- [28] **DECLARES** that the Vendors and the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [29] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [30] **DECLARES** that the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order. All

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courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

[31] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.

[32] **ORDERS** the provisional execution of the present Order, notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS, save in case of contestation.



STEPHEN W. HAMILTON J.S.C.

M^{re} Bernard Boucher
(Blake, Cassels & Graydon LLP)
Attorneys for the Petitioners

Hearing date: February 1, 2016

SCHEDULE "A" TO APPROVAL AND VESTING ORDER

FORM OF CERTIFICATE OF THE MONITOR

SUPERIOR COURT

(Commercial Division)

C A N A D A

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

File: No: 500-11-048114-157

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED:**

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

WABUSH MINES

Mise-en-cause

-and-

ADMINISTRATION PORTUAIRE DE SEPT-ÎLES / SEPT-ÎLES PORT AUTHORITY

Mise-en-cause

-and-

**THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION DIVISION
OF SEPT-ÎLES**

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

CERTIFICATE OF THE MONITOR

RECITALS

- A.** Pursuant to an initial order rendered by the Honourable Mr. Justice Martin Catonguay, J.S.C., of the Superior Court of Québec, [Commercial Division] (the "**Court**") on January 27, 2015 (as amended on February 20, 2015 and as may be further amended from time to time, the "**Initial Order**"), FTI Consulting Canada Inc. (the "**Monitor**") was appointed to monitor the business and financial affairs of Cliffs Québec Iron Mining ULC, Quinto Mining Corporation, 8568391 Canada Limited, Bloom Lake General Partner Limited, the Bloom Lake Railway Company Limited and The Bloom Lake Iron Ore Mine Limited Partnership (collectively, the "**Bloom Lake CCAA Parties**").
- B.** Pursuant to an order of the Court granted May 20, 2015, the Monitor was appointed to monitor the business and financial affairs of Wabush Iron Co. Limited, Wabush Resources Inc., Arnaud Railway Company, Wabush Lake Railway Company Limited and Wabush Mines (collectively, the "**Wabush CCAA Parties**"). The Wabush CCAA Parties and the Bloom Lake CCAA parties are referred to herein collectively as the "**CCAA Parties**".
- C.** Pursuant to an order (the "**Approval and Vesting Order**") rendered by the Court on February 1st, 2016, the transaction contemplated by the Asset Purchase Agreement dated as of January 26, 2016 (the "**Purchase Agreement**") by and among Wabush Iron Co. Limited and Wabush Resources Inc., as vendors, and Administration Portuaire De Sept-Îles / Sept-Îles Port Authority, as purchaser (the "**Purchaser**") was authorized and approved, with a view, *inter alia*, to vest in and to the Purchaser, all of the Vendors' right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement).
- D.** Each capitalized term used and not defined herein has the meaning given to such term in the Purchase Agreement.
- E.** The Approval and Vesting Order provides for the vesting of all of the Vendors' right, title and interest in and to the Purchased Assets in the Purchaser, in accordance with the terms of the Approval and Vesting Order and upon the delivery of a certificate (the "**Certificate**") issued by the Monitor confirming that the Vendors and the Purchaser have each delivered Conditions Certificates to the Monitor.
- F.** In accordance with the Approval and Vesting Order, the Monitor has the power to authorize, execute and deliver this Certificate.
- G.** The Approval and Vesting Order also directed the Monitor to file with the Court, a copy of this Certificate forthwith after issuance thereof.

THEREFORE, IN RELIANCE UPON THE CONDITIONS CERTIFICATES ADDRESSED AND DELIVERED TO THE MONITOR BY EACH OF THE VENDORS AND THE PURCHASER, THE MONITOR CERTIFIES THE FOLLOWING:

1. The Monitor has received payment in full of the Purchase Price in accordance with the Purchase Agreement.

Approval and Vesting Order with respect to the Sale of Certain Assets (Block Z), February 1, 2016

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2. The Vendors and the Purchaser have each delivered to the Monitor the Conditions Certificates evidencing that all applicable conditions under the Purchase Agreement have been satisfied and/or waived, as applicable.
3. The Closing Time is deemed to have occurred on at <TIME> on <*>, 2016.

THIS CERTIFICATE was issued by the Monitor at <TIME> on <*>, 2016.

**FTI Consulting Canada Inc., in its capacity as
Monitor of the CCAA Parties, and not in its personal
or corporate capacity.**

By: _____
Name: Nigel Meakin

SCHEDULE "B" TO APPROVAL AND VESTING ORDER
PERMITTED ENCUMBRANCES

1. Servitude registered at the Registry Office for the Registration Division of Sept-Îles, under number 2 161;
2. Servitude registered at the Registry Office for the Registration Division of Sept-Îles, under number 32 464;
3. Servitudes or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Purchased Assets, provided such servitudes or rights-of-way are registered on title of the Purchased Assets;
4. Servitudes for the supply of utilities to the Purchased Assets and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, provided such servitudes are registered on title of the Purchased Assets;
5. Any unregistered servitudes or rights of way by Hydro-Québec to occupy a part of the Purchased Assets to install any circuits, poles and necessary equipment required for the connection or the network, in accordance to its by-law number 634 relating to the supply of electricity and any servitudes granted prior to January 1, 1917 which affect the Purchased Assets;
6. Restrictive covenants, private deed restrictions and other similar land use control agreements, provided they are registered on title to the Purchased Assets;
7. Any minor encroachments by any structure located on the Purchased Assets onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Purchased Assets;
8. Any title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Purchased Assets;
9. The provisions of Applicable Laws, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning;
10. Any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent; and
11. Servitudes in favour of Hydro-Québec registered at the Registry Office for the Registration Division of Sept-Îles, under numbers 75 876 and 75-877.

SCHEDULE "C" TO APPROVAL AND VESTING ORDER**DESCRIPTION OF IMMOVABLE PROPERTY**

The immovable known and described as being composed of a part of lot 3 931 541, lot 3 931 539 and part of lot 3 669 214, all of the cadastre of Québec, registration division of Sept-Îles, such lot and parts of lots being for purposes hereof particularly described as follows:

- a) Une partie du lot 3 931 541 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

Une partie du lot 3 931 541, de figure irrégulière, bornée vers le nord-est et le nord par les lots 3 708 360 et 3 708 361, chemin de la Pointe-Noire, vers le nord-est, l'est, le nord, l'ouest et le sud-ouest par le lot 3 931 533, vers le nord et l'est par le lot 3 708 360, chemin de la Pointe-Noire, vers le nord par la partie restante du lot 3 931 541, vers le nord est par le lot 3 708 376, vers le sud et le sud-est par un territoire non cadastré, vers le sud-ouest et le sud par la limite des hautes eaux (marées) de la Baie-des-Sept-Îles (Territoire non cadastré), vers l'ouest par le lot 3 669 046, par un territoire non cadastré et par les lots 3 669 047 et 4 711 908, vers le sud-ouest par le lot 4 711 908 et vers le nord-ouest par le lot 3 708 359, rue Alband-Banchard; mesurant successivement 505,92 mètres, 30,04 mètres, 150,00 mètres, 50,02 mètres, 657,10 mètres, 7,87 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 94,78 mètres, 49,86 mètres, 49,98 mètres, 148,10 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 394,80 mètres et 338,91 mètres de long d'une courbe ayant un rayon de 815,00 mètres vers le nord-est, 104,06 mètres, 60,01 mètres, 90,00 mètres, 30,33 mètres, 51,32 mètres; 92,25 mètres d'arc le long d'une courbe ayant un rayon de 615,00 mètres, 35,95 mètres, 25,76 mètres, 21,05 mètres, 31,26 et 25,82 mètres vers le nord, 6,83 mètres vers le nord-ouest, 20,63 mètres, 51,45 mètres et 29,29 mètres vers le nord, 48,07 mètres, 5,39 mètres et 430,00 mètres vers le nord-ouest, 7,07 mètres vers le nord-est, 67,89 mètres vers l'est, 51,05 mètres d'arc le long d'une courbe ayant un rayon de 45,00 mètres vers le nord-est, 32,02 mètres vers le nord, 37,34 mètres vers l'est, 22,02 mètres vers le sud, 77,00 mètres vers l'est, 57,00 mètres vers le nord, 44,00 mètres vers l'ouest, 55,00 mètres vers le nord, 25,00 mètres vers l'ouest, 41,82 mètres et 25,72 mètres d'arc le long d'une courbe ayant un rayon de 40,00 mètres vers le sud-ouest, 40,70 mètres vers le sud, 98,10 mètres vers l'ouest, 35,21 mètres et 38,89 mètres d'arc le long d'une courbe ayant un rayon de 782,00 mètres vers le nord, 14,99 mètres vers le nord-ouest, 29,76 mètres vers le nord, 24,96 mètres vers le nord-ouest, 19,63 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 24,55 mètres, 34,28 mètres d'arc le long d'une courbe ayant un rayon de 783,50 mètres, 29,45 mètres, 107,02 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 180,94 mètres, 50,00 mètres, 35,00 mètres et 15,04 mètres vers le nord, 35,33 mètres vers l'est, 20,00 mètres, 70,46 mètres, 25,96 mètres, 63,00 mètres, 64,57 mètres, 61,30 mètres, 81,51 mètres d'arc le long d'une courbe ayant un rayon de 917,00 mètres vers le nord, 5,47 mètres vers le nord-ouest, 159,48 mètres d'arc le long d'une courbe ayant un rayon de 915,00 mètres, 193,99 mètres et 313,53 mètres vers le nord, 617,36 mètres vers le nord-est, 2111,36 mètres, 936,11 mètres et 232,24 mètres vers le sud, 265,84 mètres vers le sud-est, 1694,70 mètres mesurée en suivant une ligne sinueuse vers le sud-ouest et le sud, 135,90 mètres mesurée en suivant une ligne sinueuse vers le sud, 94,29 mètres, 1056,76 mètres et 389,82 mètres vers l'ouest, 78,00 mètres vers le sud-ouest et 89,56 mètres d'arc le long d'une courbe ayant un rayon de 522,92 mètres, 22,33 mètres d'arc le long d'une courbe ayant un rayon de 50,53 mètres et 30,67 mètres vers le nord-ouest; contenant une superficie de 3 321 872 mètres carrés.

Approval and Vesting Order with respect to the Sale of Certain Assets (Block Z), February 1, 2016

- 2 -

- b) Le lot 3 931 539 du cadastre du Québec, circonscription foncière de Sept-Îles, lequel est plus particulièrement décrit comme suit:

De figure irrégulière, borné vers le nord-est par le lot 3 708 384, vers le sud-est et le nord-est par le lot 3 669 214, vers le sud, le sud-est, le sud-ouest et le sud par le lot 3 708 360, chemin de la Pointe-Noire, vers l'ouest, le sud et l'est par le lot 3 931 537 et vers le sud et le sud-ouest par le lot 3 708 361, chemin de la Pointe-Noire; mesurant successivement 235,54 mètres d'arc le long d'une courbe ayant un rayon de 813,35 mètres, 1535,40 mètres, 186,61 mètres d'arc le long d'une courbe ayant un rayon de 1796,57 mètres et 331,60 mètres vers le nord-est, 72,09 mètres vers le sud-est, 877,32 mètres vers le nord-est, 151,85 mètres, 31,62 mètres et 19,37 mètres vers le sud, 30,53 mètres vers le sud-est, 48,54 mètres et 19,57 mètres vers le sud, 6,62 mètres vers le sud-ouest, 72,62 mètres, 24,33 mètres, 34,11 mètres, 87,75 mètres d'arc le long d'une courbe ayant un rayon de 585,00 mètres, 48,70 mètres, 29,68 mètres, 90,00 mètres, 60,01 mètres et 45,00 mètres vers le sud, 45,00 mètres vers l'ouest, 40,00 mètres vers le sud, 45,00 mètres vers l'est, 19,06 mètres vers le sud, 326,43 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 394,80 mètres, 148,84 mètres d'arc le long d'une courbe ayant un rayon de 6 015,00 mètres, 50,26 mètres, 50,16 mètres, 95,29 mètres, 7,91 mètres d'arc le long d'une courbe ayant un rayon de 6 015,00 mètres, 657,10 mètres, 50,02 mètres, 150,00 mètres, 30,04 mètres et 522,35 mètres vers le sud-ouest ; contenant une superficie de 662 919,9 mètres carrés.

- c) Une partie du lot 3 669 214 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés.

For purpose of clarity, the Block Z is identified in the attached land survey plan as being delimited by the red colored borders.

SCHEDULE "D" TO APPROVAL AND VESTING ORDER**REGISTRATIONS PUBLISHED AT THE REGISTRY OFFICE FOR THE REGISTRATION DIVISION OF SEPT-ÎLES**

- Legal Hypothec (construction) in favour of Axor Experts-Conseil Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 306 859**;
- Legal Hypothec (construction) in favour of Kilotech Contrôle (1995) Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 231 306**;
- Prior Notice of the exercise of a sale by judicial authority in favour of Kilotech Contrôle (1995) Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 540 652**;
- Legal Hypothec (construction) in favour of Kilotech Contrôle (1995) Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 231 351**;
- Prior Notice of the exercise of a sale by judicial authority in favour of Kilotech Contrôle (1995) Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 540 654**;
- Legal Hypothec (construction) in favour of 3887952 Canada Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 269 941**;
- Prior Notice of the exercise of a sale by judicial authority in favour of 3887952 Canada Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 503 424**.

SUPERIOR COURT
(Commercial Division)

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N^o: 500-11-048114-157

DATE: February 1, 2016

PRESIDING: THE HONOURABLE STEPHEN W. HAMILTON J.S.C.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED:

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

ARNAUD RAILWAY COMPANY

Petitioners

-and-

INVESTISSEMENT QUÉBEC

-and-

SOCIÉTÉ FERROVIAIRE ET PORTUAIRE DE POINTE-NOIRE S.E.C.

Mises-en-cause

-and-

**THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION DIVISION
OF SEPT-ÎLES**

**THE REGISTRAR OF THE REGISTER OF PERSONAL AND MOVABLE REAL RIGHTS
(QUÉBEC)**

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

APPROVAL AND VESTING ORDER

- [1] **ON READING** the Petitioners' *Motion for the Issuance of an Approval and Vesting Order with respect to the sale of certain assets* as amended and re-amended (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the 17th and 18th Reports of the Monitor dated January 22 and 27, 2016, (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of the Petitioners' and the Monitor's attorneys;
- [4] **SEEING** that it is appropriate to issue an order approving the transaction (the "**Transaction**") contemplated by the agreement entitled Asset Purchase Agreement (the "**Purchase Agreement**") dated as of December 23, 2015 by and among Cliffs Québec Iron Mining ULC ("**CQIM**"), Wabush Iron Co. Limited, Wabush Resources Inc. and Arnaud Railway Company, as vendors (collectively, the "**Vendors**") and Investissement Québec, as purchaser, as assigned to the *Mise-en-cause Société ferroviaire et portuaire de Pointe-Noire s.e.c.* (the "**Purchaser**"), as assignee pursuant to an Assignment and Assumption Agreement dated as of January 29, 2016, and executed on February 1st, 2016, among Investissement Québec, the Purchaser and the Vendors (the "**Assignment and Assumption Agreement**"), a copy of the Purchase Agreement and the Assignment and Assumption Agreement were filed respectively as Exhibits R-10 and R-23 to the Motion, and vesting in the Purchaser all of the Vendors' right, title and interest in and to all of the Purchased Assets (as defined in the Purchase Agreement).

FOR THESE REASONS, THE COURT HEREBY:

- [5] **GRANTS** the Motion.
- [6] **ORDERS** that all capitalized terms in this Order shall have the meaning given to them in the Purchase Agreement unless otherwise indicated herein.

SERVICE

- [7] **ORDERS** that any prior time period for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
- [8] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

- [9] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Vendors is hereby authorized and approved, *nunc pro tunc*, without prejudice to the rights of creditors to object to the allocation of proceeds as among them and as among the Vendors, in each case for distribution purposes only.

- [10] **AUTHORIZES AND DIRECTS** the Monitor to hold the Deposit, *nunc pro tunc*, and to apply, disburse and/or deliver the Deposit or the applicable portions thereof in accordance with the provisions of the Purchase Agreement and this Order.

EXECUTION OF DOCUMENTATION

- [11] **AUTHORIZES AND DIRECTS** the Vendors, the Purchaser and the Monitor to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in or contemplated by the Purchase Agreement (Exhibit R-10), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Monitor, and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

- [12] **ORDERS and DECLARES** that this Order shall constitute the only authorization required by the Vendors to proceed with the Transaction and that no shareholder approval, if applicable, shall be required in connection therewith.

VESTING OF THE PURCHASED ASSETS

- [13] **ORDERS and DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear from any and all right, title, benefits, priorities, claims (including claims provable in bankruptcy in the event that the Vendors should be adjudged bankrupt), liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, trusts, deemed trusts (whether contractual, statutory, or otherwise), assignments, judgments, executions, writs of seizure or execution, notices of sale, options, agreements, rights of distress, legal, equitable or contractual setoff, adverse claims, levies, taxes, disputes, debts, charges, options to purchase, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, the permitted encumbrances, easements and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [14] **ORDERS and DIRECTS** the Vendors to serve a copy of this Order to every party to the Assigned Agreements.
- [15] **ORDERS and DIRECTS** the Monitor, upon receipt of payment in full of the Cash Purchase Price, applicable Transfer Taxes payable by the Purchaser on Closing and the

Cure Costs payable by the Purchaser on Closing or evidence that such Cure Costs have been paid directly to the applicable counterparty, and of each of the Conditions Certificates, to (i) issue forthwith its Certificate concurrently to the Vendors and the Purchaser; and (ii) file forthwith after issuance thereof a copy of the Certificate with the Court.

- [16] **DECLARES** that the Monitor shall be at liberty to rely exclusively on the Conditions Certificates in issuing the Certificate, without any obligation to independently confirm or verify the waiver or satisfaction of the applicable conditions.
- [17] **AUTHORIZES and DIRECTS** the Monitor to receive and hold the Cash Purchase Price and to remit the Cash Purchase Price in accordance with the provisions of this Order.

CANCELLATION OF SECURITY REGISTRATIONS

- [18] **ORDERS** the Land Registrar of the Registry Office for the Registration Division of Sept-Îles, upon presentation of the Certificate in the form appended as Schedule "A" and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the immovable property identified in **Schedule "C"** hereto (the "**Immovable Property**") and (ii) to cancel any and all Encumbrances on the Immovable Property (other than Permitted Encumbrances), including, without limitation, the registrations published at the said Registry Office listed on **Schedule "D"** hereto.

NET PROCEEDS

- [19] **ORDERS** that any amounts payable to the Vendors in accordance with the Purchase Agreement (the "**Proceeds**") shall be remitted to the Monitor and shall, subject to the provisions of this Order, be held by the Monitor on behalf of the Vendors pending further order of the Court.
- [20] **AUTHORIZES AND DIRECTS** the Monitor, as soon as practicable after Closing, to remit (i) to the applicable counterparty(ies) to each Assigned Contract, the Cure Costs received by the Monitor from the Purchaser on Closing, and (ii) to the Vendors for remittance to the applicable taxing authorities in accordance with Applicable Law, the Transfer Taxes received by the Monitor from the Purchaser on Closing, in the case of clause (i), in the amounts and to the persons as directed by the Purchaser and Vendor in writing to the Monitor on Closing.
- [21] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the balance of the Proceeds remaining following deduction for applicable Cure Costs (if any) and Transfer Taxes (if any is payable) that are remitted by the Monitor pursuant to Paragraph 20 of this Order (the "**Net Proceeds**") shall stand in the place and stead of the Purchased Assets, and that upon the issuance of the Certificate, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Closing.

- [22] **ORDERS** that the Purchaser shall have no recourse or claim of any kind against the Net Proceeds.

INTERIM DISTRIBUTION FROM NET PROCEEDS

- [23] **AUTHORIZES and DIRECTS** the Monitor, as soon as practicable after the Closing of the Transaction, to remit from the Net Proceeds attributable to the Wabush CCAA Parties to Cliffs Mining Company (the "**Interim Lender**") on behalf of the Wabush CCAA Parties the amount necessary to repay the Interim Lender in full the total amount outstanding under the Interim Financing Documents, including the Interim Lender Expenses (as each term is defined in the order of this Court dated May 20, 2015) (collectively, the "**Interim Lender Repayment**"), as such amounts were approved by the order of this Court granted on May 20, 2015 and as rectified by an order granted on May 28, 2015.

REMITTANCE OF SALE ADVISOR FEE

- [24] **AUTHORIZES and DIRECTS** the Monitor as soon as practicable after the Closing of the Transaction, to remit from the applicable Net Proceeds of each of the CCAA Parties to Moelis & Company LLC (the "**Sales Advisor**") amounts owing by each of the CCAA Parties, if any, in respect of the Transaction Fees (as that term is defined in the Engagement Letter) due and payable in accordance with the engagement letter (the "**Engagement Letter**") dated March 23, 2015 and secured by the Sale Advisor Charge (the "**Sale Advisor Fee**"), both as approved by the Order of this Court on April 17, 2015.

RELEASE OF FUNDS TO FUND COSTS AND EXPENSES OF THE WABUSH CCAA PARTIES

- [25] **AUTHORIZES and DIRECTS** the Monitor to fund the costs and expenses of the Wabush CCAA Parties (the "**Expense Payments**") out of the Net Proceeds (after the Interim Lender Repayment and payment of Sale Advisor Fee in accordance with this Order) by way of weekly draws by the Wabush CCAA Parties against cash flow projections to be prepared by the Wabush CCAA Parties from time to time and as approved by the Monitor and subject to the Monitor holding such reserves as it considers necessary to secure the CCAA Charges (as defined in the Initial Order).

- [26] **ORDERS** that notwithstanding:

- a) the pendency of these proceedings;
- b) any assignment in bankruptcy;
- c) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (the "**BIA**") or otherwise and any order issued pursuant to any such application; or
- d) the provisions of any federal or provincial legislation;

The remittance of the Interim Lender Repayment and the Sales Advisor Fee and the Expense Payments in accordance with this Order is to be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance,

transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendors, the Purchaser or the Monitor, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- [27] **AUTHORIZES** the Monitor to take any and all steps which the Monitor, in its sole discretion and in consultation with the Vendors, may deem necessary in order to give effect to the above orders for the Interim Lender Repayment, the Sales Advisor Fee or the Expense Payments. Any such remittances made by the Monitor will be made without prejudice to any arguments concerning the allocation of such remittances amongst the CCAA Parties and the CCAA Parties will subsequently bring a motion on notice to the service list for an order allocating the remittances amongst the CCAA Parties.

PROTECTION OF PERSONAL INFORMATION

- [28] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Vendors are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendors' records pertaining to the Vendors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendors.

VALIDITY OF THE TRANSACTION

- [29] **ORDERS** that notwithstanding:
- a) the pendency of these proceedings;
 - b) any assignment in bankruptcy;
 - c) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the BIA or otherwise and any order issued pursuant to any such application; or
 - d) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendors, the Purchaser or the Monitor, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

LIMITATION OF LIABILITY

- [30] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to take control, or to otherwise manage all or any part of the

Purchased Assets. The Monitor shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.

- [31] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.

CONFIDENTIALITY

- [32] **ORDERS** that the summary of Qualified Bids filed with the Court as Exhibit R-17 shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened prior to the Closing of the Transaction on further Order of the Court.

GENERAL

- [33] **DECLARES** that the Vendors and the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [34] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [35] **DECLARES** that the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.
- [36] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.
- [37] **ORDERS** the provisional execution of the present Order, including without limiting the general application of the foregoing, the Interim Lender Repayment and the Sales Advisor Fee, notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS, save in case of contestation.


STEPHEN W. HAMILTON J.S.C.

Approval and Vesting Order with respect to the Sale of Certain Assets (Port Assets), February 1, 2016

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M^{re} Bernard Boucher
(Blake, Cassels & Graydon LLP)
Attorneys for the Petitioners

Hearing date: February 1, 2016

SCHEDULE "A" TO THE APPROVAL AND VESTING ORDER

FORM OF CERTIFICATE OF THE MONITOR

SUPERIOR COURT

(Commercial Division)

C A N A D A

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

File: No: 500-11-048114-157

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED:

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

INVESTISSEMENT QUÉBEC

Mise-en-cause

-and-

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-and-

SOCIÉTÉ FERROVIAIRE ET PORTUAIRE DE POINTE-NOIRE S.E.C.

-and-

THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION DIVISION OF SEPT-ÎLES

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

CERTIFICATE OF THE MONITOR**RECITALS**

- A.** Pursuant to an initial order rendered by the Honourable Mr. Justice Martin Catouguay, J.S.C., of the Superior Court of Québec, Commercial Division (the "**Court**") on January 27, 2015 (as amended on February 20, 2015 and as may be further amended from time to time, the "**Initial Order**"), FTI Consulting Canada Inc. (the "**Monitor**") was appointed to monitor the business and financial affairs of Cliffs Québec Iron Mining ULC, Quinto Mining Corporation, 8568391 Canada Limited, Bloom Lake General Partner Limited, the Bloom Lake Railway Company Limited and The Bloom Lake Iron Ore Mine Limited Partnership (collectively, the "**Bloom Lake CCAA Parties**").
- B.** Pursuant to an order of the Court granted May 20, 2015, the Monitor was appointed to monitor the business and financial affairs of Wabush Iron Co. Limited, Wabush Resources Inc., Arnaud Railway Company, Wabush Lake Railway Company Limited and Wabush Mines (collectively, the "**Wabush CCAA Parties**"). The Wabush CCAA Parties and the Bloom Lake CCAA parties are referred to herein collectively as the "**CCAA Parties**".
- C.** Pursuant to an order (the "**Approval and Vesting Order**") rendered by the Court on February 1, 2016, the transaction contemplated by the Asset Purchase Agreement dated as of December 23, 2015 (the "**Purchase Agreement**") by and among the Petitioners Cliffs Québec Iron Mining ULC, Wabush Iron Co. Limited and Wabush Resources Inc., and the Mise-en-cause Arnaud Railway Company, as vendors (the "**Vendors**"), and Investissement Québec, as purchaser, as assigned to the Mise-en-cause Société ferroviaire et portuaire de Pointe-Noire s.e.c. (the "**Purchaser**"), as assignee pursuant to an Assignment and Assumption Agreement dated as of January 29, 2016, and executed on February 1st, 2016, among Investissement Québec, the Purchaser and the Vendors, was authorized and approved, with a view, *inter alia*, to vest in and to the Purchaser, all of the Vendors' right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement).

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- D. Each capitalized term used and not defined herein has the meaning given to such term in the Purchase Agreement.
- E. The Approval and Vesting Order provides for the vesting of all of the Vendors' right, title and interest in and to the Purchased Assets in the Purchaser, in accordance with the terms of the Approval and Vesting Order and upon the delivery of a certificate (the "**Certificate**") issued by the Monitor confirming that the Vendors and the Purchaser have each delivered Conditions Certificates to the Monitor.
- F. In accordance with the Approval and Vesting Order, the Monitor has the power to authorize, execute and deliver this Certificate.
- G. The Approval and Vesting Order also directed the Monitor to file with the Court, a copy of this Certificate forthwith after issuance thereof.

THEREFORE, IN RELIANCE UPON THE CONDITIONS CERTIFICATES ADDRESSED AND DELIVERED TO THE MONITOR BY EACH OF THE VENDORS AND THE PURCHASER, THE MONITOR CERTIFIES THE FOLLOWING:

1. The Monitor has received payment in full of the Cash Purchase Price, applicable Transfer Taxes payable by the Purchaser on Closing and the Cure Costs payable by the Purchaser on Closing or evidence that such Cure Costs have been paid directly to the applicable counterparty, in accordance with the Purchase Agreement.
2. The Vendors and the Purchaser have each delivered to the Monitor the Conditions Certificates evidencing that all applicable conditions under the Purchase Agreement have been satisfied and/or waived, as applicable.
3. The Closing Time is deemed to have occurred on at <TIME> on <*>, 2016.

THIS CERTIFICATE was issued by the Monitor at <TIME> on <*>, 2016.

***FTI Consulting Canada Inc., in its capacity as
Monitor of the CCAA Parties, and not in its
personal or corporate capacity.***

By: _____

Name: Nigel Meakin

SCHEDULE "B" TO APPROVAL AND VESTING ORDER**PERMITTED ENCUMBRANCES**

1. Servitudes or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Owned Real Property, provided such servitudes or rights-of-way are registered on title to the Owned Real Property;
2. Servitudes for the supply of utilities to the Owned Real Property and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, provided such servitudes are registered on title to the Owned Real Property;
3. Any unregistered servitudes or rights of way by Hydro-Québec to occupy a part of the Owned Real Property to install any circuits, poles and necessary equipment required for the connection or the network, in accordance to its by-law number 634 relating to the supply of electricity and any servitudes granted prior to January 1, 1917 which affect the Owned Real Property;
4. Restrictive covenants, private deed restrictions and other similar land use control agreements, provided they are registered on title to the Owned Real Property;
5. Any minor encroachments by any structure located on the Owned Real Property onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Owned Real Property;
6. Any title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Owned Real Property;
7. The provisions of Applicable Laws, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning; and
8. Any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

SCHEDULE "C" TO APPROVAL AND VESTING ORDER

IMMOVABLE PROPERTY

**1) CLIFFS QUÉBEC IRON MINING ULC / CLIFFS QUÉBEC MINE DE FER ULC
formerly known as CONSOLIDATED THOMPSON IRON MINES LIMITED
("Consolidated")**

(a) Superficies created under the terms of the unregistered lease agreement number 474-109 between Administration Portuaire de Sept-Iles (the "**Lessor**") and Consolidated (the "**Lessee**") executed on October 29, 2009, with respect to all structures, buildings, work, infrastructure or equipment used to handle, transport and store, erected or placed by the Lessee on the leased premises which are composed of the following lots:

Lot FOUR MILLION SEVEN HUNDRED EIGHTY-SEVEN THOUSAND ONE HUNDRED AND FIFTY-SIX (4 787 156) of the Cadastre of Québec, in the Land Registration Division of Sept-Iles;

2) WABUSH IRON CO. LIMITED (for an undivided interest of 26.83%) and WABUSH RESOURCES INC., (for an undivided interest of 73.17%)

(a) LAND ADJACENT TO THE PORT OF SEPT-ÎLES: All rights, title and interest in the following immovable properties known and designated as:

i) Lot number THREE MILLION SIX HUNDRED AND SIXTY-NINE THOUSAND AND FIFTY-EIGHT (3 669 058) of the Cadastre of Québec, Registration Division of Sept-Îles;

ii) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND THIRTY-FOUR (3 708 334) of the Cadastre of Québec, Registration Division of Sept-Îles;

iii) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND TWELVE (3 931 512) of the Cadastre of Québec, Registration Division of Sept-Îles;

iv) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND EIGHT (3 931 508) of the Cadastre of Québec, Registration Division of Sept-Îles;

v) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-THREE (3 708 383) of the Cadastre of Québec, Registration Division of Sept-Îles;

vi) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-FOUR (3 708 384) of the Cadastre of Québec, Registration Division of Sept-Îles;

vii) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-FIVE (3 708 385) of the Cadastre of Québec, Registration Division of Sept-Îles;

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viii) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND THIRTY-FIVE (3 931 535) of the Cadastre of Québec, Registration Division of Sept-Îles;

ix) A part of lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND FORTY-ONE (3 931 541) of the Cadastre of Québec, Registration Division of Sept-Îles, excluding the following:

Une partie du lot 3 931 541, de figure irrégulière, bornée vers le nord-est et le nord par les lots 3 708 360 et 3 708 361, chemin de la Pointe-Noire, vers le nord-est, l'est, le nord, l'ouest et le sud-ouest par le lot 3 931 533, vers le nord et l'est par le lot 3 708 360, chemin de la Pointe-Noire, vers le nord par la partie restante du lot 3 931 541, vers le nord est par le lot 3 708 376, vers le sud et le sud-est par un territoire non cadastré, vers le sud-ouest et le sud par la limite des hautes eaux (marées) de la Baie-des-Sept-Îles (Territoire non cadastré), vers l'ouest par le lot 3 669 046, par un territoire non cadastré et par les lots 3 669 047 et 4 711 908, vers le sud-ouest par le lot 4 711 908 et vers le nord-ouest par le lot 3 708 359, rue Alband-Blanchard; mesurant successivement 505,92 mètres, 30,04 mètres, 150,00 mètres, 50,02 mètres, 657,10 mètres, 7,87 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 94,78 mètres, 49,86 mètres, 49,98 mètres, 148,10 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 394,80 mètres et 338,91 mètres de long d'une courbe ayant un rayon de 815,00 mètres vers le nord-est, 104,06 mètres, 60,01 mètres, 90,00 mètres, 30,33 mètres, 51,32 mètres; 92,25 mètres d'arc le long d'une courbe ayant un rayon de 615,00 mètres, 35,95 mètres, 25,76 mètres, 21,05 mètres, 31,26 et 25,82 mètres vers le nord, 6,83 mètres vers le nord-ouest, 20,63 mètres, 51,45 mètres et 29,29 mètres vers le nord, 48,07 mètres, 5,39 mètres et 430,00 mètres vers le nord-ouest, 7,07 mètres vers le nord-est, 67,89 mètres vers l'est, 51,05 mètres d'arc le long d'une courbe ayant un rayon de 45,00 mètres vers le nord-est, 32,02 mètres vers le nord, 37,34 mètres vers l'est, 22,02 mètres vers le sud, 77,00 mètres vers l'est, 57,00 mètres vers le nord, 44,00 mètres vers l'ouest, 55,00 mètres vers le nord, 25,00 mètres vers l'ouest, 41,82 mètres et 25,72 mètres d'arc le long d'une courbe ayant un rayon de 40,00 mètres vers le sud-ouest, 40,70 mètres vers le sud, 98,10 mètres vers l'ouest, 35,21 mètres et 38,89 mètres d'arc le long d'une courbe ayant un rayon de 782,00 mètres vers le nord, 14,99 mètres vers le nord-ouest, 29,76 mètres vers le nord, 24,96 mètres vers le nord-ouest, 19,63 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 24,55 mètres, 34,28 mètres d'arc le long d'une courbe ayant un rayon de 783,50 mètres, 29,45 mètres, 107,02 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 180,94 mètres, 50,00 mètres, 35,00 mètres et 15,04 mètres vers le nord, 35,33 mètres vers l'est, 20,00 mètres, 70,46 mètres, 25,96 mètres, 63,00 mètres, 64,57 mètres, 61,30 mètres, 81,51 mètres d'arc le long d'une courbe ayant un rayon de 917,00 mètres vers le nord, 5,47 mètres vers le nord-ouest, 159,48 mètres d'arc le long d'une courbe ayant un rayon de 915,00 mètres, 193,99 mètres et 313,53 mètres vers le nord, 617,36 mètres vers le nord-est, 2111,36 mètres, 936,11 mètres et 232,24 mètres vers le sud, 265,84 mètres vers le sud-est, 1694,70 mètres mesurée en suivant une ligne sinueuse vers le sud-ouest et le sud, 135,90 mètres mesurée en suivant une ligne sinueuse vers le sud, 94,29 mètres, 1056,76 mètres et 389,82 mètres vers l'ouest, 78,00 mètres vers le sud-ouest et 89,56 mètres d'arc le long d'une courbe ayant un rayon de 522,92 mètres, 22,33 mètres d'arc le long d'une courbe ayant un rayon de 50,53

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mètres et 30,67 mètres vers le nord-ouest; contenant une superficie de 3 321 872 mètres carrés.

- i) A part of lot number THREE MILLION SIX HUNDRED AND SIXTY-NINE THOUSAND TWO HUNDRED FOURTEEN (3 669 214) of the Cadastre of Québec, Registration Division of Sept-Îles, excluding the following:

De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés.;

- xi) Lot number FOUR MILLION EIGHT HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED AND EIGHTY-ONE (4 873 981) of the Cadastre of Québec, Registration Division of Sept-Îles.

- xii) Lot number FOUR MILLION EIGHT HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED AND EIGHTY-THREE (4 873 983) of the Cadastre of Québec, Registration Division of Sept-Îles.

With all constructions erected thereon, including the building bearing civic number 1505 Chemin de la Pointe-Noire, in the City of Sept-Îles, Province of Québec.

3) ARNAUD RAILWAY COMPANY/COMPAGNIE DE CHEMIN DE FER ARNAUD

- (a) All rights, title and interest in the immovable properties located in the City of Sept-Îles forming a railway known and designated as being composed of the following lots:

- i) Lot number THREE MILLION SIX HUNDRED SIXTY-NINE THOUSAND TWO HUNDRED AND EIGHTY-NINE (3 669 289) of the Cadastre of Québec, Registration Division of Sept-Îles.

- ii) Lot number THREE MILLION SIX HUNDRED SIXTY-NINE THOUSAND THREE HUNDRED AND TEN (3 669 310) of the Cadastre of Québec, Registration Division of Sept-Îles.

- iii) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND TWO HUNDRED AND TWENTY-THREE (3 708 223) of the Cadastre of Québec, Registration Division of Sept-Îles.

iv) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND THIRTEEN (3 708 313) of the Cadastre of Québec, Registration division of Sept-Îles.

v) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND SIXTEEN (3 708 316) of the Cadastre of Québec, Registration division of Sept-Îles.

vi) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND EIGHTEEN (3 708 318) of the Cadastre of Québec, Registration division of Sept-Îles.

vii) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND NINETEEN (3 708 319) of the Cadastre of Québec, Registration division of Sept-Îles.

viii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED TWO (3 931 502) of the Cadastre of Québec, Registration division of Sept-Îles.

ix) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FOUR (3 931 504) of the Cadastre of Québec, Registration division of Sept-Îles.

x) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED AND FIVE (3 931 505) of the Cadastre of Québec, Registration Division of Sept-Îles.

xi) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SIX (3 931 506) of the Cadastre of Québec, Registration division of Sept-Îles.

xii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SEVEN (3 931 507) of the Cadastre of Québec, Registration division of Sept-Îles.

xiii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED NINE (3 931 509) of the Cadastre of Québec, Registration division of Sept-Îles.

xiv) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED AND THIRTY (3 931 530) of the Cadastre of Québec, Registration Division of Sept-Îles.

xv) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY (3 931 540) of the Cadastre of Québec, Registration division of Sept-Îles.

xvi) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY-TWO (3 931 542) of the Cadastre of Québec, Registration division of Sept-Îles.

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xvii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY-FOUR (3 931 544) of the Cadastre of Québec, Registration division of Sept-Îles.

xviii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FIFTY-TWO (3 931 552) of the Cadastre of Québec, Registration division of Sept-Îles.

xix) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND SIX HUNDRED AND TWENTY-THREE (3 931 623) of the Cadastre of Québec, Registration Division of Sept-Îles.

xx) Lot number THREE MILLION NINE HUNDRED FORTY THOUSAND NINE HUNDRED EIGHTY-ONE (3 940 981) of the Cadastre of Québec, Registration division of Sept-Îles.

xxi) Lot number FOUR MILLION EIGHTY-FIVE THOUSAND SEVEN HUNDRED NINETY-FOUR (4 085 794) of the Cadastre of Québec, Registration division of Sept-Îles.

(b) Superficies created under the terms of the unregistered lease agreement (File 919352 00 000) between Le Ministre des Ressources Naturelles et de la Faune (the "**Lessor**") and Consolidated and subsequently transferred to Arnaud Railway Company (the "**Lessee**") executed by the Lessor on March 18, 2010 and by the Lessee on March 22, 2010, with respect to all constructions to be erected or installed by the Lessee on the leased premises being four (4) parcels of land situated in a territory without a cadastral survey, in the Township of Letellier, containing 115 hectares, without being more fully described.

SCHEDULE "D" TO APPROVAL AND VESTING ORDER**ENCUMBRANCES ON IMMOVABLE PROPERTY TO BE DISCHARGED**

1. Legal hypothec against Wabush Resources in favour of 3887952 Canada Inc. registered at the Land Registry, registration division of Sept-Îles under registration number 21 269 941 and related notice of exercise of hypothecary rights registered at the Land Registry, registration division of Sept-Îles under registration number 21 503 424;
2. Legal hypothec against Wabush Resources in favour of AXOR Experts-Conseil Inc. registered at the Land Registry, registration division of Sept-Îles under registration number 21 306 859;
3. Legal hypothec against Wabush Resources in favour of Kilotech Contrôle (1995) Inc. registered at the Land Registry, registration division of Sept-Îles under registration number 21 231 333 and related notice of exercise of hypothecary rights registered at the Land Registry, registration division of Sept-Îles under registration number 21 540 648;
4. Legal hypothec against Wabush Resources in favour of Kilotech Contrôle (1995) Inc. registered at the Land Registry, registration division of Sept-Îles under registration number 21 231 351 and related notice of exercise of hypothecary rights registered at the Land Registry, registration division of Sept-Îles under registration number 21 540 654;
5. Legal hypothec against Wabush Resources in favour of Kilotech Contrôle (1995) Inc. registered at the Land Registry under registration numbers 21 231 345 and 21 231 306 and related notice of exercise of hypothecary rights respectively registered at the Land Registry, registration division of Sept-Îles under registration number 21 540 646 and 21 540 652; and
6. Legal hypothec against Cliffs Québec Mine de Fer Ltée in favour of Kilotech Contrôle (1995) Inc. registered at the Land Registry, registration division of Sept Îles under registration number 21 231 484 and related notice of exercise of hypothecary rights registered at the Land Registry, registration division of Sept Îles under registration number 21 540 644.

SUPERIOR COURT
(Commercial Division)

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N^o: 500-11-048114-157

DATE: November 16, 2015

PRESIDING: THE HONOURABLE STEPHEN W. HAMILTON J.S.C.

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED:

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUEBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

AMENDED CLAIMS PROCEDURE ORDER

HAVING READ the *Motion for the Issuance of a Claims Procedure Order* brought by the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Québec Iron Mining ULC, Wabush Iron Co. Limited, and Wabush Resources Inc. and the Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership, Bloom Lake Railway Company Limited, Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the Eleventh Report of the Monitor dated October 27, 2015;

HAVING READ the Notices of Objection filed by Quebec North Shore and Labrador Railway Company Inc. and by the Syndicat des métallos, section locale 6254, 6285 et 9996;

SEEING the service of the Motion and the Notices of Objection;

SEEING the submissions of the CCAA Parties' and the Monitor's attorneys and the submissions of the attorneys for the objecting parties and other interested parties during the hearing held on November 5, 2015;

SEEING the issuance by this Court of the Claims Procedure dated November 5, 2015;

SEEING the *Motion for the Issuance of an Amended Claims Procedure Order* dated November 13, 2015 brought by the Monitor (the "**Motion for Amendment**"), the affidavit and exhibits in support thereof;

SEEING the nature of the proposed amendments to the Claims Procedure Order and the consent of the CCAA Parties and the USW thereto;

SEEING that it is appropriate to issue an order approving the proposed amendments to the claims procedure, as requested by the Monitor in the Motion for Amendment;

FOR THESE REASONS, THE COURT HEREBY:

1. **GRANTS** the Motion for Amendment and issues the present Amended Claims Procedure Order.

Service

2. **DECLARES** that the CCAA Parties have given sufficient prior notice of the presentation of the Motion to interested parties.
3. **DECLARES** that any prior delay for the presentation of the Motion is hereby abridged and validated so that the Motion was properly returnable on November 5, 2015 and hereby dispenses with further service thereof.
- 3.1 **DECLARES** that any prior delay for the presentation of the Motion for Amendment is hereby abridged and validated so that the Motion for Amendment is properly returnable today, and hereby dispenses with further service thereof.

Definitions

4. **DECLARES** that the following terms in this Claims Procedure Order shall, unless otherwise indicated, have the following meanings ascribed thereto:

4.1 **"Allowed Claim"** means the amount, status and/or validity of the Claim of a Creditor finally determined in accordance with this Claims Procedure Order which shall be final and binding for voting and/or distribution purposes under the Plan or otherwise. Any Claim will be "finally determined" if and when:

- (a) a Creditor files a Proof of Claim by the Claims Bar Date or the Restructuring Claims Bar Date, as applicable, and the Monitor has issued a Notice of Allowance as set out in paragraph 35 of this Claims Procedure Order;
- (b) the Monitor has sent the Creditor a Notice of Revision or Disallowance in accordance with the Claims Procedure, and the Creditor has not sent a Notice of Dispute in response thereto by the deadline set out in paragraph 36 of this Claims Procedure Order;
- (c) the Claim is deemed to be an Allowed Claim pursuant to paragraphs 30, 30.1, 38, 38.1 or 38.2 hereof;
- (d) the Creditor, Representative Counsel, the USW, the Plan Administrator, the Pension Regulator or the CCAA Parties, in each case as applicable, has sent a Notice of Dispute by the deadline set out in this Claims Procedure Order, and the Claim has been consensually resolved;
- (e) a Claims Officer has been appointed with respect to the Claim, the Claims Officer has issued a Claims Officer's Determination with respect to the Claim as set out in paragraph 46 hereto, and the time within which any party may file an appeal of such Claims Officer's Determination has expired without any such appeal being filed, or such an appeal has been filed but subsequently withdrawn; or
- (f) the Court has made a determination with respect to the Claim and no appeal or application for leave to appeal therefrom has been brought or served on either party, or if any appeal(s) or application(s) for leave to appeal or further appeal therefrom have been made or served on either party, any (and all) such appeal(s) or application(s) have been dismissed or withdrawn, or have led to a final non-appealable ruling;

and such Claim shall become an Allowed Claim only to the extent determined as per the above, provided that the filing of a Proof Claim is not required with respect to Claims recorded in the Wabush Represented Employee Claimants List pursuant and subject to paragraphs 28, 29 and 30 hereof nor with respect to Claims recorded in the USW Employee Claimants List pursuant and subject to paragraphs 28.1, 29.1 and 30.1 hereof;

4.2 **"Allowed D&O Claim"** means the amount of the D&O Claim of a D&O Claimant finally determined in accordance with this Claims Procedure Order;

- 4.3 “**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- 4.4 “**Bloom Lake CCAA Parties**” means Cliffs Québec Iron Mining ULC, Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Bloom Lake Railway Company Limited, and The Bloom Lake Iron Ore Mine Limited Partnership;
- 4.5 “**Bloom Lake Initial Order**” means the Order of the Court issued on January 27, 2015 in respect of the Bloom Lake CCAA Parties, as amended, supplemented or varied from time to time;
- 4.6 “**Business Day**” means a day, other than a Saturday, a Sunday, or a non-judicial day (as defined in article 6 of the *Code of Civil Procedure*, R.S.Q., c. C-25, as amended);
- 4.7 “**CCAA**” means the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;
- 4.8 “**CCAA Charges**” means, collectively, the Administration Charges, the Directors’ Charges, the Interim Lender Charge, and the Sale Advisor Charges (as such terms are defined in the Bloom Lake Initial Order and the Wabush Initial Order, and as such charges may be amended, modified or varied by further Court Order), as well as any other charge over the CCAA Parties’ assets created by Court Order;
- 4.9 “**CCAA Parties**” means the Bloom Lake CCAA Parties and the Wabush CCAA Parties;
- 4.10 “**CCAA Proceedings**” means the CCAA proceedings commenced by the CCAA Parties before the Quebec Superior Court (Commercial Division) in File No. 500-11-048114-157;
- 4.11 “**Claim**” means:
- (a) any right or claim of any Person that may be asserted or made in whole or in part against the CCAA Parties (or any of them), whether or not asserted or made, in connection with any indebtedness, liability or obligation of any kind whatsoever, and any interest accrued thereon or costs payable in respect thereof, in existence on, or which is based on, an event, fact, act or omission which occurred in whole or in part prior to the applicable Determination Date, at law or in equity, by reason of the commission of a tort (intentional or unintentional), any breach of contract, lease or other agreement (oral or written), any breach of duty (including, without limitation, any legal, statutory, equitable or fiduciary duty), any breach of extra-contractual obligation, any right of ownership of or title to property, employment, contract or assets or right to a trust or deemed trust (statutory, express, implied, resulting, constructive or otherwise) or for any reason whatsoever against any of the CCAA Parties or any of their property or assets, and whether or not any such indebtedness, liability or obligation is reduced to judgment, liquidated, unliquidated,

fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured (by guarantee, surety or otherwise), unsecured, present, future, known or unknown, and whether or not any such right or claim is executory or anticipatory in nature, including any right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action, whether existing at present or commenced in the future, together with any other rights or claims not referred to above that are or would be claims provable under the BIA had the CCAA Parties (or any one of them) become bankrupt on the applicable Determination Date, including, for greater certainty, any Tax Claim and any monetary claim in connection with any indebtedness, liability or obligation by reason of a breach of a collective bargaining agreement, including grievances in relation thereto, or by reason of a breach of a legal or statutory duty under any employment legislation or pay equity legislation; or

(b) any Restructuring Claim;

provided, however, that "Claim" shall not include any Excluded Claim. For greater certainty, no "Claim" shall exist for interest or other amounts akin to interest accrued after the applicable Determination Date unless validly secured by a Lien;

- 4.12 "**Claims Bar Date**" means 5:00 p.m. (prevailing Eastern time) on December 18, 2015, or such other date as may be ordered by the Court;
- 4.13 "**Claims Officer**" means the individual or individuals appointed by the Monitor pursuant to paragraph 46 hereof which may include a grievance arbitrator if deemed appropriate by the Monitor;
- 4.14 "**Claims Officer's Determination**" has the meaning given to it in paragraph 48 hereof;
- 4.15 "**Claims Procedure**" means the call for Claims and D&O Claims to be administered by the Monitor, in consultation with the CCAA Parties or D&O Counsel as applicable, pursuant to the terms of this Claims Procedure Order;
- 4.16 "**Claims Procedure Order**" means the Claims Procedure Order establishing a claims procedure issued on November 5, 2015, as amended on November 16, 2015;
- 4.17 "**Court**" means the Quebec Superior Court;
- 4.18 "**Court Order**" means any order made by the Court in the CCAA Proceedings;
- 4.19 "**Creditor**" means any Person having or making a Claim and may, where the context requires, include the assignee of a Claim or trustee, interim receiver, receiver and manager, or any other Person acting on behalf of such Person, and includes a Known Creditor. A Creditor shall not, however, include an Excluded Creditor in respect of that Person's Excluded Claim;

- 4.20 “**Creditors’ Instructions**” means the document package which includes a copy of (i) the Instruction Letter; (ii) a blank Proof of Claim; (iii) this Claims Procedure Order; and (iv) such other materials as the Monitor, in consultation with the CCAA Parties and D&O Counsel, considers necessary or appropriate;
- 4.21 “**Creditors List**” means a list for each of the CCAA Parties showing the name of all Known Creditors of such CCAA Party and the amount owing to each Known Creditor, which list shall be prepared by the CCAA Parties;
- 4.22 “**Designated Newspapers**” means, for the English language version of the Newspaper Notice, the Globe and Mail (National Edition) and the Telegram (Newfoundland & Labrador); and, for the French language version of the Newspaper Notice, La Presse;
- 4.23 “**Determination Date**” means January 27, 2015 for the Bloom Lake CCAA Parties, and May 20, 2015 for the Wabush CCAA Parties;
- 4.24 “**Director**” means any Person who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, a director of any one or more of the CCAA Parties;
- 4.25 “**D&O Claim**” means any right or claim of any Person against one or more of the Directors and/or Officers howsoever arising, for which the Directors and/or Officers, or any of them, are by statute liable to pay in their capacity as Directors and/or Officers or which are secured by way of the Directors’ Charges (as defined in the Bloom Lake Initial Order and Wabush Initial Order);
- 4.26 “**D&O Claims Bar Date**” means 5:00 p.m. (prevailing Eastern time) on December 18, 2015, or such other date as may be ordered by the Court;
- 4.27 “**D&O Claimant**” means any Person having or making a D&O Claim and may, where the context requires, include the assignee of a D&O Claim or trustee, interim receiver, receiver and manager, or any other Person acting on behalf of such Person;
- 4.28 “**D&O Counsel**” means Lax O’Sullivan Scott Lisus LLP, 145 King Street, suite 2750, Toronto, Ontario M5H 1G8, c/o Andrew Winton (awinton@counsel-toronto.com) and Matthew Gottlieb (mgottlieb@counsel-toronto.com);
- 4.29 “**D&O Proof of Claim**” means the form of D&O Proof of Claim, substantially in the form of **Schedule “A”** hereto, or, as the context may require, such form as completed and filed with the Monitor, together with the appended relevant documents, if any;
- 4.30 “**D&O Notice of Allowance**” means a means a notice substantially in the form of **Schedule “J”** hereto advising a D&O Claimant that the Monitor has accepted such D&O Claimant’s D&O Claim as an Allowed D&O Claim;
- 4.31 “**D&O Notice of Revision or Disallowance**” means a notice substantially in the form of **Schedule “B”** hereto advising a D&O Claimant that the Monitor has revised or disallowed all or part of such D&O Claimants’ D&O Claim set out in its

D&O Proof of Claim and setting out the reasons for such revision or disallowance;

- 4.32 “**D&O Notice of Dispute**” means a notice substantially in the form attached hereto as **Schedule “C”** delivered by a D&O Claimant who has received a D&O Notice of Revision or Disallowance, disputing such D&O Notice of Revision or Disallowance;
- 4.33 “**D&O Dispute Package**” means with respect to any D&O Claim, a copy of the related D&O Proof of Claim, D&O Notice of Revision or Disallowance, and D&O Notice of Dispute;
- 4.34 “**Dispute Package**” means, with respect to any Claim, a copy of the related Proof of Claim, Notice of Revision or Disallowance, and Notice of Dispute;
- 4.35 “**Employee**” means any current or former employee of the CCAA Parties;
- 4.36 “**Excluded Claim**” means, subject to further order of this Court, any right or claim of any Person that may be asserted or made in whole or in part against the CCAA Parties (or any one of them) in connection with any indebtedness, liability or obligation of any kind which arose in respect of obligations first incurred on or after the Determination Date (other than Restructuring Claims and D&O Claims), and any interest thereon, including any obligation of the CCAA Parties toward creditors who have supplied or shall supply services, utilities, goods or materials, or who have or shall have advanced funds to the CCAA Parties on or after the Determination Date, but only to the extent of their claims in respect of the supply or advance of such services, utilities, goods, materials or funds on or after the Determination Date, and:
- (a) any claim secured by any CCAA Charge; and
 - (b) any claim with respect to fees and disbursements incurred by counsel for any CCAA Party, Director, the Monitor, a Claims Officer, any financial advisor retained by any of the foregoing, or Representatives’ Counsel as approved by the Court to the extent required;
- 4.37 “**Excluded Creditor**” means a Person having a Claim in respect of an Excluded Claim, but only in respect of such Excluded Claim;
- 4.38 “**Instruction Letter**” means the letter regarding completion of a Proof of Claim, which letter shall be substantially in the form attached hereto as **Schedule “D”**;
- 4.39 “**Known Creditor**” means a Creditor whose Claim is either included in the CCAA Parties’ books and records as of the Determination Date, or otherwise to the knowledge of the CCAA Parties;
- 4.40 “**Lien**” means any valid and enforceable mortgage, charge, pledge, assignment by way of security, lien, hypothec, security interest, deemed trust or other encumbrance granted or arising pursuant to a written agreement or statute or otherwise created by law;

- 4.41 “**Monitor**” means FTI Consulting Canada Inc. in its capacity as Court-appointed Monitor to the CCAA Parties pursuant to the Bloom Lake Initial Order and the Wabush Initial Order;
- 4.42 “**Monitor’s Website**” means the Monitor’s website located at <http://cfcanada.fticonsulting.com/bloomlake/>;
- 4.43 “**Newspaper Notice**” means the notice of this Claims Procedure Order to be published in the Designated Newspapers, being in substantially the form attached hereto as **Schedule “E”**;
- 4.44 “**Notice of Allowance**” means a means a notice substantially in the form of **Schedule “I”** hereto advising a Creditor that the Monitor has accepted such Creditor’s Claim as an Allowed Claim;
- 4.45 “**Notice of Disclaimer or Resiliation**” means a written notice issued, either pursuant to the provisions of an agreement, under Section 32 of the CCAA or otherwise, on or after the Determination Date by the CCAA Parties, and copied to the Monitor, advising a Person of the restructuring, disclaimer, resiliation, suspension or termination of any contract, employment agreement, lease or other agreement or arrangement of any nature whatsoever, whether written or oral, and whether such restructuring, disclaimer, resiliation, suspension or termination took place or takes place before or after the date of this Claims Procedure Order;
- 4.46 “**Notice of Dispute**” means a notice substantially in the form attached hereto as **Schedule “F”** delivered to the Monitor in accordance with the provisions of this Claims Procedure Order;
- 4.47 “**Notice of Revision or Disallowance**” means a notice substantially in the form of **Schedule “G”** hereto advising a Creditor that the Monitor has revised or disallowed all or part of such Creditor’s Claim set out in its Proof of Claim and setting out the reasons for such revision or disallowance, together with any relevant supporting documentation;
- 4.48 “**Officer**” means any Person who is or was, or may be deemed to be or have been, whether by statute, operation of law or otherwise, an officer of any one or more of the CCAA Parties;
- 4.49 “**Pension Claim**” means any Claim with respect to the administration, funding or termination of any Pension Plan, including any Claim for any wind up deficiency or unpaid special payments;
- 4.50 “**Pension Plan**” means any pension plan for Employees including the defined contribution schemes for all Employees of the Bloom Lake CCAA Parties and those Employees of the Wabush CCAA Parties’ Employees hired on or after January 1, 2013, as well as the Salaried Pension Plan and the Union Pension Plan;
- 4.51 “**Pension Regulator**” means the government regulator(s) with authority over the Salaried Pension Plan or the Union Pension Plan as applicable

- 4.52 “**Person**” means any individual, corporation, limited or unlimited liability company, general or limited partnership, association, trust, unincorporated organization without legal personality, joint venture, governmental body or agency, or any other entity;
- 4.53 “**Plan**” means a plan of compromise or arrangement that may be filed by some or all of the CCAA Parties pursuant to the CCAA, as such plan may be amended or supplemented from time to time;
- 4.54 “**Plan Administrator**” in relation to the Pension Plans, the duly appointed plan administrator;
- 4.55 “**Proof of Claim**” means the form of Proof of Claim, substantially in the form of **Schedule “H”** hereto, or, as the context may require, such form as completed and filed with the Monitor, together with the appended relevant documents, if any;
- 4.56 “**Representative Court Order**” means the Order of the Court dated June 22, 2015 as may be amended, supplemented or varied from time to time;
- 4.57 “**Represented Employee**” means any person represented by the Representatives;
- 4.58 “**Representatives**” means Michael Keeper, Terence Watt, Damian Lebel and Neil Johnson in their capacity as Court-appointed representatives of all salaried/non-union Employees and retirees of the Wabush CCAA Parties or any person claiming an interest under or on behalf of such employees or pensioners and surviving spouses, or group or class of them, the whole pursuant and subject to the terms of the Representative Court Order;
- 4.59 “**Representatives’ Counsel**” means Koskie Minsky LLP, 20 Queen Street West, suite 900, Toronto Ontario M5H 3R3, c/o Andrey J. Hatnay (ahatnay@kmlaw.ca) and Ary N. Kaplan akaplan@kmlaw.ca) and Scheib Legal, 600 de Maisonneuve Boulevard West, suite 1700, Montreal, Quebec H3A 3J2, c/o Nick Scheib (nick@scheib.ca);
- 4.60 “**Restructuring Claim**” means any right or claim of any Person against the CCAA Parties (or any one of them) in connection with any indebtedness, liability or obligation of any kind whatsoever owed by the CCAA Parties (or any one of them) to such Person, arising out of the restructuring, disclaimer, resiliation, termination or breach or suspension, on or after the Determination Date, of any contract, employment agreement, lease or other agreement or arrangement, whether written or oral, and whether such restructuring, disclaimer, resiliation, termination or breach took place or takes place before or after the date of this Claims Procedure Order, and, for greater certainty, includes any right or claim of an Employee of any of the CCAA Parties arising from a termination of its employment after the Determination Date, *provided, however*, that “Restructuring Claim” shall not include an Excluded Claim;
- 4.61 “**Restructuring Claims Bar Date**” means the later of (a) the Claims Bar Date; (b) 5:00 p.m. on the day that is twenty-one (21) days after either of (i) the date

that the applicable Notice of Disclaimer or Resiliation becomes effective, (ii) the Court Order settling a contestation against such Notice of Disclaimer or Resiliation brought pursuant to Section 32(5)(b) CCAA, or (iii) the date of the event giving rise to the Restructuring Claim, or (c) such other date as may be ordered by the Court;

- 4.62 “**Salaried Pension Plan**” means the defined benefit plan known as the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (Canada Revenue Agency registration number 0343558);
- 4.63 “**Tax Claim**” means any Claim against the CCAA Parties (or any one of them) for any Taxes in respect of any taxation year or period ending on or prior to the Determination Date, and in any case where a taxation year or period commences on or prior to the Determination Date, for any Taxes in respect of or attributable to the portion of the taxation period commencing prior to the Determination Date and up to and including the Determination Date. For greater certainty, a Tax Claim shall include, without limitation, any and all Claims of any Taxing Authority in respect of transfer pricing adjustments and any Canadian or non-resident Tax related thereto;
- 4.64 “**Taxing Authorities**” means Her Majesty the Queen, Her Majesty the Queen in right of Canada, Her Majesty the Queen in right of any province or territory of Canada, the Canada Revenue Agency, any similar revenue or taxing authority of each and every province or territory of Canada and any political subdivision thereof, and/or any Canadian or foreign governmental authority;
- 4.65 “**Union Pension Plan**” means the defined benefit plan known as the the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (Canada Revenue Agency registration number 0555201);
- 4.66 “**USW**” means the United Steelworkers, Locals 6254, 6285 and 9996;
- 4.67 “**USW Counsel**” means Philion Leblanc Beaudry avocats, 5000 des Gradins Boulevard, suite 280, Quebec, Quebec G2J 1N3, c/o Daniel Boudreault (dboudreault@plba.ca) and Jean-François Beaudry (jfbeaudry@plba.ca);
- 4.68 “**USW Employee**” means any employee, former employee or retiree that is or was a member of the USW or any successor of such employees, former employees or retirees;
- 4.69 “**USW Employee Claimants List**” means a list prepared by the CCAA Parties showing the USW Employees having a Claim related to or arising from employment, the name of the CCAA Party against which such Claim exists, the amount of each such USW Employee’s Claim and each USW Employee’s last known address;
- 4.70 “**Wabush CCAA Parties**” means Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited;

- 4.71 **“Wabush Initial Order”** means the Order of the Court issued on May 20, 2015 as amended, supplemented or varied from time to time;
- 4.72 **“Wabush Represented Employee Claimants List”** means a list prepared by the Wabush CCAA Parties showing those Persons represented by the Representatives pursuant to the Representative Court Order having a Claim, the name of the Wabush CCAA Party against which the Claim exists, the amount of each Represented Employee’s Claim and each Represented Employee’s last known address.
5. **ORDERS** that all references herein as to time shall mean prevailing Eastern time in Montreal, Quebec, Canada, and any reference to an event occurring on a Business Day shall mean prior to 5:00 p.m. (prevailing Eastern time) on such Business Day, unless otherwise indicated herein, and any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.
6. **ORDERS** that all references to the word “including” shall mean “including, without limitation”.
7. **ORDERS** that all references to the singular herein include the plural, the plural include the singular, and any gender includes the other gender.

Monitor’s Role

8. **ORDERS** that the Monitor, in addition to its prescribed rights, duties, responsibilities and obligations pursuant to the CCAA and/or any Court Order, is hereby directed and empowered to take such other actions and fulfill such other roles as are authorized by this Claims Procedure Order, including in connection with the implementation and administration of the Claims Procedure, the determination of Claims of Creditors, the determination of D&O Claims of D&O Creditors, and the referral of any Claim or D&O Claim to a Claims Officer or to the Court.
9. **ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of compliance, completion and execution of any notice or other document completed and executed pursuant to this Claims Procedure Order, including with respect to the manner in which Proofs of Claim, Notices of Dispute D&O Proofs of Claims and D&O Notices of Dispute are completed and executed, and may waive strict compliance with the requirements provided herein.
10. **ORDERS** that the Monitor shall be entitled to rely on the books and records of the CCAA Parties, and any information provided by the CCAA Parties, all without independent investigations and shall not be liable for any claims or damages resulting from any errors or omissions in such books, records, or information.
11. **ORDERS** that the Monitor, in carrying out the terms of this Claims Procedure Order, shall have all of the protections given it by the CCAA and any Orders of the Court or as an officer of this Court, including the stay of proceedings in its favour, and shall incur no liability or obligation as a result of the carrying out of

its obligations under this Claims Procedure Order other than as results from gross negligence or willful misconduct.

Notification Procedure and Notices

12. **ORDERS** that each of the CCAA Parties shall provide to the Monitor by no later than 5:00 pm on the sixth Business Day following the date of this Claims Procedure Order the Creditors List, together with addresses, contact details and amounts owing for each Known Creditor.
13. **ORDERS** that the Monitor shall publish on the Monitor's Website, within three (3) Business Days of the receipt of the Creditors List pursuant to paragraph 12 hereof, a copy of each of the Creditors List, the Creditors' Instructions, the form of Notice of Dispute, the form of D&O Proof of Claim and the form of D&O Notice of Dispute.
14. **ORDERS** that, within three (3) Business Days of the receipt of the Creditors List pursuant to paragraph 12 hereof, the Monitor shall cause the Creditors' Instructions to be sent to: (a) each Known Creditor, except to those Persons represented by the Representatives and USW Employees, to the address of such Known Creditor set out in the applicable CCAA Party's records; (b) the Representatives' Counsel; and (c) the USW Counsel.
15. **ORDERS** that the form of Newspaper Notice shall be published by the Monitor in the Designated Newspapers as soon as possible following the issuance of this Claims Procedure Order, and in any event no later than within ten (10) Business Days following the date of this Claims Procedure Order.
16. **ORDERS** that to the extent that any Creditor requests documents relating to the Claims Procedure prior to the Claims Bar Date or the Restructuring Claims Bar Date, as applicable, the Monitor shall direct the Creditor to the documents posted on the Monitor's Website, provide a copy of the Creditors' Instructions if requested, and otherwise respond to the request relating to the Claims Procedure as may be appropriate in the circumstances.
17. **ORDERS** that to the extent that any D&O Claimant requests documents relating to the Claims Procedure prior to the D&O Claims Bar Date, the Monitor shall forthwith direct the Creditor to the documents posted on the Monitor's Website, provide a copy of the D&O Proof of Claim and D&O Notice of Dispute if requested and otherwise respond to the request relating to the Claims Procedure as may be appropriate in the circumstances.
18. **ORDERS** that the forms of D&O Proof of Claim, D&O Notice of Revision or Disallowance, D&O Notice of Dispute, Instruction Letter, Newspaper Notice, Notice of Dispute, Notice of Revision or Disallowance, Proof of Claim, Notice of Allowance and D&O Notice of Allowance, each substantially in the forms attached to this Claims Procedure Order as **Schedules "A", "B", "C", "D", "E", "F", "G", "H", "I" and "J"** respectively, are hereby approved. Despite the foregoing, the Monitor may, from time to time and in consultation with the CCAA Parties or D&O Counsel as applicable, make such minor changes to such forms as the Monitor considers necessary or desirable.

19. **ORDERS** that the publication of the Newspaper Notice, the sending to the Creditors of Creditors' Instructions in accordance with this Claims Procedure Order, and the completion of the other requirements of this Claims Procedure Order shall constitute good and sufficient service and delivery of notice of this Claims Procedure Order, the Claims Bar Date, the Restructuring Claims Bar Date and the D&O Claims Bar Date on all Persons who may be entitled to receive such notice and who may wish to assert a Claim or a D&O Claim, and that no other notice or service need be given or made and no other document or material need be sent to or served upon any Person in respect of this Claims Procedure Order.
20. **ORDERS** that neither: (i) the reference to a purported Claim as a "Claim" or a purported Creditor as a "Creditor" in this Claims Procedure Order, (ii) the delivery of the Creditors' Instructions by the Monitor to a Person, (iii) the reference to a purported D&O Claim as a "D&O Claim" or a purported D&O Claimant as a "D&O Claimant" in this Claims Procedure Order, nor (iv) the delivery of a D&O Proof of Claim form by the Monitor to a Person shall constitute an admission of any liability toward any Person.

Claims Bar Date

21. **ORDERS** that any Creditor who wishes to assert a Claim (other than in respect of any Claim included in the Wabush Represented Employee Claimants List, the USW Employee Claimants List or a Restructuring Claim) against any of the CCAA Parties shall file a Proof of Claim with the Monitor in the manner set out in paragraph 57 hereof so that the Proof of Claim is received by the Monitor by no later than the Claims Bar Date.
22. **ORDERS** that any Person that fails to file a Proof of Claim as provided for in paragraph 21 hereof, such that no Proof of Claim is received from such Person by the Monitor on or before the Claims Bar Date, shall:
 - (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any Claim against any of the CCAA Parties and all such Claims shall be forever extinguished;
 - (b) not be permitted to vote on any Plan on account of such Claim(s);
 - (c) not be permitted to participate in any distribution under any Plan, from the proceeds of any sale of the CCAA Parties' assets or otherwise, on account of such Claim(s); and
 - (d) not be entitled to receive further notice in respect of the Claims Procedure or these CCAA Proceedings generally, in relation to such Claim(s).

Restructuring Claims Bar Date

23. **ORDERS** that as soon as reasonably practical upon the Monitor being advised by the CCAA Parties of a circumstance giving rise to a Restructuring Claim, the Monitor shall send Creditors' Instructions to the Creditor in respect to such Restructuring Claim.

24. **ORDERS** that notwithstanding paragraphs 21 and 22 hereof, any Creditor who wishes to assert a Restructuring Claim against any of the CCAA Parties, other than in respect of any Restructuring Claim included in the Wabush Represented Employee Claimants List or in the USW Employee Claimants List, shall file a Proof of Claim with the Monitor in the manner set out in paragraph 57 hereof so that the Proof of Claim is received by the Monitor by no later than the Restructuring Claims Bar Date. All other dates contained herein (other than the Claims Bar Date), shall apply equally to any Restructuring Claims.
25. **ORDERS** that any Person that fails to file a Proof of Claim in respect of a Restructuring Claim as provided for in paragraph 24 hereof, such that no Proof of Claim is received from such Person by the Monitor on or before the Restructuring Claims Bar Date shall:
- (a) be and is hereby forever barred, estopped and enjoined from asserting or enforcing any Restructuring Claim against any of the CCAA Parties and all such Restructuring Claims shall be forever extinguished;
 - (b) not be permitted to vote on any Plan on account of such Restructuring Claim(s);
 - (c) not be permitted to participate in any distribution under any Plan, from the proceeds of any sale of the CCAA Parties' assets or otherwise, on account of such Restructuring Claim(s); and
 - (d) not be entitled to receive further notice in respect of the Claims Procedure or these CCAA Proceedings generally, in relation to such Restructuring Claim(s).

D&O Claims Bar Date

26. **ORDERS** that any D&O Claimant who wishes to assert a D&O Claim against any of the Directors or Officers shall file a D&O Proof of Claim with the Monitor in the manner set out in paragraph 57 hereof so that the D&O Proof of Claim is received by the Monitor by no later than the D&O Claims Bar Date.
27. **ORDERS** that any Person that fails to file a D&O Proof of Claim as provided for in paragraph 26 hereof, such that no D&O Proof of Claim is received from such Person by the Monitor on or before the D&O Claims Bar Date, shall be and is hereby forever barred, estopped and enjoined from asserting or enforcing any D&O Claim against any of the Directors and/or Officers, and all such D&O Claims shall be forever extinguished.

Filing of Proofs of Claim by the Representatives' Counsel and USW Counsel

28. **ORDERS** that the Wabush CCAA Parties shall provide to the Monitor by no later than 5:00 pm on the sixth Business Day following the date of this Claims Procedure Order the Wabush Represented Employee Claimants List.

- 28.1 **ORDERS** that the CCAA Parties shall provide to the Monitor by no later than 5:00 pm on the sixth Business Day following the date of this Claims Procedure Order the USW Employee Claimants List.
29. **ORDERS** the Monitor to provide the Wabush Represented Employee Claimants List to Representatives' Counsel, within two (2) days following receipt of that list from the Wabush CCAA Parties in accordance with paragraph 28 hereof.
- 29.1 **ORDERS** the Monitor to provide the USW Employee Claimants List to USW Counsel, within two (2) days following receipt of that list from the CCAA Parties in accordance with paragraph 28.1 hereof.
30. **ORDERS** that unless Representatives' Counsel files the appropriate Notice(s) of Dispute on or before the Claims Bar Date, in which case paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi* to such disputed Claims, all Claims contained in the Wabush Represented Employee Claimants List shall be deemed Allowed Claims.
- 30.1 **ORDERS** that unless USW Counsel files the appropriate Notice(s) of Dispute on or before the Claims Bar Date, in which case paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi* to such disputed Claims, all Claims contained in the USW Employee Claimants List shall be deemed Allowed Claims.
31. **ORDERS** that the Representatives have the right to file, for and on behalf of any Represented Employee, one or more collective or individual Proofs of Claim for Claims not listed on the Wabush Represented Employee Claimants List, including with respect to Restructuring Claims or D&O Claims, if any.
- 31.1 **ORDERS** that the USW have the right to file, for and on behalf of any USW Employee, one or more collective or individual Proofs of Claim for Claims not listed on the USW Employee Claimants List, including with respect to Restructuring Claims or D&O Claims, if any.

Pension Claims

32. **ORDERS** that the Plan Administrator will have the sole authority to file Proofs of Claim with respect to any and all Pension Claims.
- 32.1 **ORDERS** that the Monitor shall provide to the Pension Regulator and the Representatives' Counsel a copy of each Proof of Claim filed in respect of the Salaried Pension Plan and details of any determination by the Monitor of a Pension Claim in respect of the Salaried Pension Plan.
- 32.2 **ORDERS** that the Monitor shall provide to the Pension Regulator and the USW a copy of each Proof of Claim filed in respect of the Union Pension Plan and details of any determination by the Monitor of a Pension Claim in respect of the Union Pension Plan.

Excluded Claims

33. **ORDERS** that any Person with an Excluded Claim shall not be required to file a Proof of Claim in respect of such Excluded Claim unless required to do so by Court Order.

Adjudication of Claims

34. **ORDERS** that the Monitor shall, upon request of the CCAA Parties and/or their counsel, provide copies of any Proof of Claim, Notice of Allowance, Notice of Revision or Disallowance or Notice of Dispute filed with, or issued by, the Monitor, as applicable, pursuant to this Claims Procedure Order. The Monitor shall, upon request of the CCAA Parties and/or their counsel, provide a copy of the claims register maintained by the Monitor.
35. **ORDERS** that, subject to paragraph 38.5 hereof, the Monitor, in consultation with the CCAA Parties, shall review all Proofs of Claim, received on or before the Claims Bar Date or the Restructuring Claims Bar Date, as applicable, and shall accept, revise or disallow each Claim as set out herein. If the Monitor, in consultation with the CCAA Parties, determines it necessary to revise or disallow a Claim, the Monitor shall send such Creditor a Notice of Revision or Disallowance advising that, and to what extent, the Claim as set out in its Proof of Claim has been revised or disallowed, and stating the reasons therefor. If the Monitor, in consultation with the CCAA Parties, determines that the Claim should be allowed, it will issue a Notice of Allowance confirming that the Claim set out in the applicable Proof of Claim is the Allowed Claim.
36. **ORDERS** that any Creditor who is sent a Notice of Revision or Disallowance pursuant to paragraph 35 hereof and wishes to dispute such Notice of Revision or Disallowance shall deliver a completed Notice of Dispute to the Monitor by no later than 5:00 p.m. on the day which is fourteen (14) days after receipt of the applicable Notice of Revision or Disallowance or such other date as may be ordered by the Court. If a Creditor fails to deliver a Notice of Dispute by such date, the Claim set out in the applicable Notice of Revision or Disallowance, if any, shall be the Allowed Claim.
37. **ORDERS** that upon receipt of a Notice of Dispute, the Monitor, in consultation with the CCAA Parties, may: (i) request additional information; (ii) consensually resolve the disputed Claim; (iii) deliver a Dispute Package to a Claims Officer appointed in accordance with this Claims Procedure Order for such disputed Claim to be adjudicated by the Claims Officer; or (iv) bring a motion before the Court in these CCAA Proceedings to adjudicate the disputed Claim.
38. **ORDERS** that the CCAA Parties may file a Notice of Dispute with respect to any determination of a Claim by the Monitor and if no Notice of Dispute is filed within fourteen (14) days of the date of receipt of the Monitor's notice of its determination of such Claim such determination shall be deemed to be the Allowed Claim. If a Notice of Dispute is filed by the CCAA Parties within the time specified herein, paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi*.

- 38.1 **ORDERS** that the Pension Regulator and the Representatives' Counsel may file a Notice of Dispute with respect to any determination by the Monitor of a Pension Claim in respect of the Salaried Pension Plan, including for the purpose of asserting any trust claims in respect of the Salaried Pension Plan, and if no Notice of Dispute is filed within fourteen (14) days of the date of receipt of the Monitor's notice of its determination of a Pension Claim in respect of the Salaried Pension Plan such determination shall be deemed to be the Allowed Claim. If a Notice of Dispute is filed by the Pension Regulator or the Representatives' Counsel within the time specified herein, paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi*.
- 38.2 **ORDERS** that the Pension Regulator and the USW may file a Notice of Dispute with respect to any determination by the Monitor of a Pension Claim in respect of the Union Pension Plan, including for the purpose of asserting any trust claims in respect of the Union Pension Plan, and if no Notice of Dispute is filed within fourteen (14) days of the date of receipt of the Monitor's notice of its determination of a Pension Claim in respect of the Union Pension Plan such determination shall be deemed to be the Allowed Claim. If a Notice of Dispute is filed by the Pension Regulator or the USW within the time specified herein, paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi*.
- 38.3 **ORDERS** that the Pension Regulator and the Representatives' Counsel shall be given written notice by the Monitor of, and are entitled to participate in (i) any hearing before a Claims Officer concerning a Pension Claim in respect of the Salaried Pension Plan and (ii) any hearing before the Court concerning a Pension Claim in respect of the Salaried Pension Plan.
- 38.4 **ORDERS** that the Pension Regulator and the USW shall be given written notice by the Monitor of, and are entitled to participate in (i) any hearing before a Claims Officer concerning a Pension Claim in respect of the Union Pension Plan and (ii) any hearing before the Court concerning a Pension Claim in respect of the Union Pension Plan.
- 38.5 **ORDERS** that the Monitor shall not be obliged to consult with the CCAA Parties with respect to its review and adjudication of Claims of related parties to the CCAA Parties.

Adjudication of D&O Claims

39. **ORDERS** that the Monitor shall, upon request of D&O Counsel, provide to D&O Counsel copies of any D&O Proof of Claim, D&O Notice of Allowance, D&O Notice of Revision or Disallowance or D&O Notice of Dispute filed with, or issued by, the Monitor, as applicable, pursuant to this Claims Procedure Order. The Monitor shall, upon request of D&O Counsel, provide D&O Counsel a copy of the D&O Claims register maintained by the Monitor.
40. **ORDERS** that the Monitor, in consultation with D&O Counsel, shall review all D&O Proofs of Claim, received on or before the D&O Claims Bar Date and shall accept, revise or disallow each D&O Claim as set out herein. If the Monitor, in consultation with D&O Counsel, determines it necessary to revise or disallow a D&O Claim, the Monitor shall send such D&O Claimant a D&O

Notice of Revision or Disallowance advising that, and to what extent, the D&O Claim as set out in its D&O Proof of Claim has been revised or disallowed, and stating the reasons therefor. If the Monitor, in consultation with D&O Counsel, determines that the D&O Claim should be allowed, it will issue a D&O Notice of Allowance confirming that the D&O Claim set out in the applicable D&O Proof of Claim is the Allowed D&O Claim.

41. **ORDERS** that any D&O Claimant who is sent a D&O Notice of Revision or Disallowance pursuant to paragraph 40 hereof and wishes to dispute such D&O Notice of Revision or Disallowance shall deliver a completed D&O Notice of Dispute to the Monitor by no later than 5:00 p.m. on the day which is fourteen (14) days after receipt of the applicable D&O Notice of Revision or Disallowance or such other date as may be ordered by the Court. If a D&O Claimant fails to deliver a D&O Notice of Dispute by such date, the D&O Claim set out in the applicable D&O Notice of Revision or Disallowance, if any, shall be the Allowed D&O Claim.
42. **ORDERS** that upon receipt of a D&O Notice of Dispute, the Monitor, in consultation with D&O Counsel, may: (i) request additional information from the D&O Claimant; (ii) consensually resolve the disputed D&O Claim with the D&O Claimant; (iii) deliver a D&O Dispute Package to a Claims Officer appointed in accordance with this Claims Procedure Order for such disputed D&O Claim to be adjudicated by the Claims Officer; or (iv) bring a motion before the Court in these CCAA Proceedings to adjudicate the disputed D&O Claim.
43. **ORDERS** that notwithstanding any other provision hereof, the Monitor may agree with D&O Counsel that any D&O Claim may be adjudicated by way of an alternative process and not in accordance with the adjudication procedures set out herein. In such case, the Monitor shall notify the D&O Claimant of the decision to exclude the adjudication of the D&O Claim from the procedures set out in this Order.
44. **ORDERS** that the Directors and Officers may appeal any determination of a D&O Claim by the Monitor to a Claims Officer or the Court on notice to the Monitor and the D&O Claimant whose D&O Claim is being appealed.
45. **ORDERS** that nothing in this Claims Procedure Order shall prejudice the rights and remedies of any Directors or Officers under the Directors' Charge (as such term is defined in the Bloom Lake Initial Order and the Wabush Initial Order) or any applicable insurance policy or prevent or bar any Person from seeking recourse against or payment from any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers, whether such recourse or payment is sought directly by the D&O Claimant against the insurer or derivatively through the Director or Officer or any of the CCAA Parties; provided, however, that nothing in this Claims Procedure Order shall create any new rights in favor of such D&O Claimant under any policies of insurance nor shall anything in this Claims Procedure Order limit, remove, modify or alter any defense to such D&O Claim available to the insurer pursuant to the provisions of any insurance policy or at law; and further provided that any D&O Claim or portion thereof for which the D&O

Claimant receives payment directly from, or confirmation that its D&O Claim is covered by, any Director's or Officer's liability insurance policy or policies that exist to protect or indemnify the Directors or Officers, shall not be recoverable as against a CCAA Party or Director or Officer, as applicable.

Claims Officer

46. **ORDERS** that the Monitor, should it consider it necessary or desirable to do so, in consultation with the CCAA Parties or with D&O Counsel, as applicable, is authorized and empowered, but not obligated, to appoint one or more Claims Officers under such terms as may be agreed between the Monitor and the Claims Officer(s), including with regards to the reasonable remuneration of such Claims Officer(s). If the Monitor intends to appoint a Claims Officer it shall provide written notice of such intent to the service list in these CCAA Proceedings. Any party with an interest may object to such appointment by advising the Monitor and the service list of the objection and the grounds therefore within ten (10) days of receipt of the Monitor's notice. If no objection is received within the time specified, the Monitor may proceed with the appointment of the Claims Officer. If an objection is made within the time specified, the Monitor will attempt to consensually resolve the objection, failing which the Monitor may seek the appointment of the Claims Officer by the Court.
47. **ORDERS** that subject to the terms hereof, a Claims Officer shall be entitled to reasonable compensation for the performance of the obligations set out in this Claims Procedure Order and any disbursements incurred in connection therewith. The fees and expenses of the Claims Officer shall be borne by the applicable CCAA Party and shall be paid by the applicable CCAA Party forthwith upon receipt of each invoice tendered by a Claims Officer.
48. **ORDERS** that the Claims Officer, in consultation with the Monitor and the other relevant parties, may schedule, on a date to be set by the Claims Officer and on written notice to the relevant parties and counsel to the CCAA Parties and, in the case of a D&O Claim, D&O Counsel, a hearing before a Claims Officer to determine the nature and/or amount of a Creditor's Claim or a D&O Claimant's D&O Claim and the Claims Officer shall, as soon as practicable after the hearing, notify the Monitor and all parties appearing at such hearing of his or her determination (the "**Claims Officer's Determination**").
49. **ORDERS** that the Claims Officer shall determine the status, validity and amount of any disputed Claim or disputed D&O Claim which has been referred to it for determination in accordance with the Claims Procedure. A Claims Officer is hereby authorized to determine all procedural matters which may arise in respect of the determination of these matters, including the manner in which any evidence may be adduced.
50. **ORDERS** that the Monitor, the applicable CCAA Party, the Creditor whose Claim is subject to the Claims Officer's Determination and any other party that participated in the Claims Officer's hearing may, within ten (10) Business Days of receipt of the Claims Officer's Determination in respect of a Claim, appeal such determination to the Court by serving on the other parties and filing with

the Court a notice of motion, together with supporting material, in accordance with the provisions of the Bloom Lake Initial Order or the Wabush Initial Order as applicable. Such appeal shall be an appeal based on the record before the Claims Officer and not a hearing *de novo*. If no party appeals the Claims Officer's Determination within such time, the Claims Officer's Determination shall be final and binding upon all Persons and said Creditor's Claim, to the extent recognized under the Claims Officer's Determination, shall be an Allowed Claim. There shall be no further right of appeal, review or recourse to the Court from a Claims Officer's Determination in respect of a Claim.

51. **ORDERS** that the Monitor, D&O Counsel or the D&O Claimant whose D&O Claim is subject to the Claims Officer's Determination may, within ten (10) Business Days of notification of the Claims Officer's Determination in respect of a D&O Claim, appeal such determination to the Court by serving on the other parties and filing with the Court a notice of motion, together with supporting material, in accordance with the provisions of the Bloom Lake Initial Order or the Wabush Initial Order as applicable. Such appeal shall be an appeal based on the record before the Claims Officer and not a hearing *de novo*. If no party appeals the Claims Officer's Determination within such time, the Claims Officer's Determination shall be final and binding upon all Persons and said D&O Claimant's D&O Claim, to the extent recognized under the Claims Officer's Determination, shall be an Allowed D&O Claim. There shall be no further right of appeal, review or recourse to the Court from a Claims Officer's Determination in respect of a D&O Claim.

Notice of Transfers

52. **ORDERS** that, for the purposes of any distribution to be effected in the CCAA Proceedings, whether pursuant to a Plan or otherwise, if a Creditor transfers or assigns the whole of its Claim to another Person, neither the CCAA Parties nor the Monitor shall be obligated to recognize such transferee or assignee of the Claim as the Creditor in respect thereof, unless and until notice of such transfer or assignment by either the transferor, assignor, transferee or assignee, together with evidence of such transfer's or assignment's was validity at law, has been received by the Monitor. Such notice of transfer or assignment shall be received in any event at least ten (10) Business Days prior to any distribution. Upon delivery of such notice to the Monitor, the transferor or assignor shall have no further right to enforce or assert the Claim thus transferred or assigned against any of the CCAA Parties.
53. **ORDERS** that if the holder of a Claim, or any subsequent holder of the whole of a Claim who has been acknowledged by the Monitor as the Creditor in respect of such Claim, transfers or assigns the whole of such Claim to more than one Person, or part of such Claim to one or more Person(s), such transfer(s) or assignment(s) shall not create separate Claim(s), and the Claim as a whole shall continue to constitute and be dealt with as a single Claim notwithstanding such transfer or assignment. In each such case, the Monitor and the CCAA Parties shall not be bound to recognize or acknowledge any such transfer or assignment and shall be entitled to give notices to and otherwise deal with such Claim only as a whole, and only to and with the Person last holding such Claim in whole as the Creditor in respect of such

Claim, provided that such Creditor may by notice in writing to the Monitor direct that subsequent dealings in respect of such Claim, but only as a whole, shall be carried out with a specified Person other than itself, and, in such event, such Person last holding the Claim in whole shall be bound by any notices given or steps taken in respect of such Claim with such other Person it designated.

54. **ORDERS** that reference to a transfer in this Claims Procedure Order shall include a transfer or assignment, whether absolute or intended as security.
55. **ORDERS** that a transferee or assignee of a Claim is not entitled to set-off, apply, merge, consolidate or combine any such Claim assigned or transferred to it by a Creditor against or on account or in reduction of any amounts owing by such transferee or assignee to any of the CCAA Parties.

Notices and Communications

56. **ORDERS** that any document sent pursuant to this Claims Procedure Order may be sent by e-mail, ordinary mail, registered mail, courier or facsimile transmission. Any document sent pursuant to this Claims Procedure Order shall be deemed to have been received three (3) Business Days after the document is sent by mail and one (1) Business Day after the document is sent by courier, e-mail or facsimile transmission. Documents shall not be sent by ordinary or registered mail during a postal strike or work stoppage of general application.
57. **ORDERS** that any form, notice or communication required to be provided or delivered to the Monitor under this Claims Procedure Order shall be in writing in substantially the form, where applicable, provided for herein, and will be deemed properly delivered only if transmitted by email at the following address:

Bloom Lake CCAA Parties
bloomlake@fticonsulting.com

Wabush CCAA Parties
wabush@fticonsulting.com

provided that any Person that is unwilling or unable to communicate by email may instead deliver any such communication to the Monitor by prepaid registered mail, courier or personal delivery at the following address:

FTI Consulting Canada Inc., in its capacity as Monitor of the CCAA Parties
79 Wellington Street West
TD Waterhouse Tower, Suite 2010
PO Box 104
Toronto, Ontario M5K 1G8

Attention: Steven Bissell

Any such notice or communication delivered to the Monitor shall be deemed to be received upon actual receipt thereof by the Monitor before 5:00 p.m. on a Business Day or, if delivered after 5:00 p.m., on the next Business Day.

58. **ORDERS** that if, during any period during which notices or other communications are being given pursuant to this Claims Procedure Order, a postal strike or postal work stoppage of general application should occur, said notices and other communications sent by ordinary mail and then not received shall not be effective, and that notices and other communications given hereunder during the course of any such postal strike or work stoppage of general application shall then only be effective if given by courier, personal delivery, facsimile transmission or email.

General Provisions

59. **ORDERS** that for the purposes of this Claims Procedure Order, all Claims and D&O Claims that are denominated in a foreign currency shall be converted to Canadian dollars at the Bank of Canada noon spot rate of exchange for exchanging currency to Canadian dollars on the applicable Determination Date.
60. **ORDERS** that the Monitor shall use reasonable discretion as to the adequacy of completion and execution of any document completed and executed pursuant to this Claims Procedure Order and, where the Monitor is satisfied that any matter to be proven under this Claims Procedure Order has been adequately proven, the Monitor may waive strict compliance with the requirements of this Claims Procedure Order as to the completion and execution of documents.
61. **DECLARES** that the Monitor may apply to this Court for advice and direction in connection with the discharge or variation of its powers and duties under this Claims Procedure Order.
62. **ORDERS** that physical or electronic copies of all forms delivered by or to a Creditor or D&O Claimant hereunder, as applicable, and determinations of Claims or D&O Claims by the Monitor, a Claims Officer or the Court, as the case may be, shall be maintained by the Monitor, and that, subject to paragraph 63 of this Claims Procedure Order, Creditors and D&O Claimants shall be entitled to have access thereto by appointment during normal business hours on written request to the Monitor.
63. **ORDERS** that, subject to further Order of the Court, any document submitted to the Monitor in support of a Claim and that is contained in a separate electronic or physical file marked "Confidential" shall not be made available to Creditors or D&O Claimants by the Monitor and shall only be filed with a Claims Officer or the Court under seal.

Miscellaneous

64. **ORDERS** that notwithstanding any other provisions of this Claims Procedure Order, the solicitation by the Monitor of Proofs of Claim, and the filing by any Creditor of any Proof of Claim shall not, in and of itself, grant any Person standing in these CCAA Proceedings or rights under any proposed Plan.

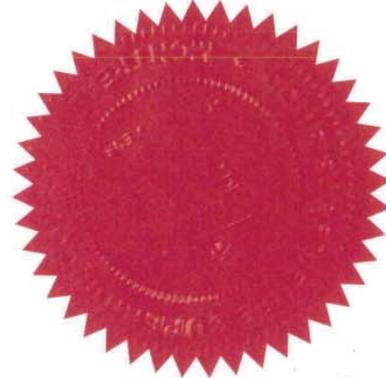
65. **ORDERS** that nothing in this Claims Procedure Order shall constitute or be deemed to constitute an allocation or recognition of Claims or Excluded Claims by the CCAA Parties into particular affected or unaffected classes for the purpose of any Plan.
66. **ORDERS** that the Claims Bar Date, the D&O Claims Bar Date and the Restructuring Claims Bar Date, and the amount and status of every Allowed Claim and every Allowed D&O Claim, as determined under the Claims Procedure, shall continue in full force and effect and be final for all purposes including in respect of any Plan and voting thereon (unless provided for otherwise in any Court Order), and including, for the purposes of any distribution made to Creditors of any of the CCAA Parties, whether in these CCAA Proceedings or in any of the proceedings authorized by this Court or permitted by statute, under the BIA or otherwise, in respect of any of the CCAA Parties.
67. **REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province or any court or any judicial, regulatory or administrative body of the United States and of any other nation or state to act in aid of and to be complementary to this Court in carrying out the terms of this Claims Procedure Order;
68. **ORDERS** that notwithstanding the terms of this Claims Procedure Order, the CCAA Parties and the Monitor may apply to this Court from time to time for directions with respect to this Claims Procedure Order, including the schedules hereto, or to obtain further Court Order(s) as either of them may consider necessary or desirable in order to amend, supplement or replace this Claims Procedure Order, including the schedules hereto.
69. **DECLARES** that this Claims Procedure Order shall have full force and effect in all provinces and territories in Canada.
70. **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS.


STEPHEN W. HAMILTON J.S.C.

Comeback Order, June 9, 2015

SUPERIOR COURT



CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N^o: 500-11-048114-157

DATE: June 9, 2015

PRESIDING: THE HONOURABLE STEPHEN W. HAMILTON J.S.C.

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

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

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-and-

MOELIS & COMPANY LLC

Mise-en-cause

ORDER

[1] **THE COURT**, upon reading the Wabush CCAA Parties' *Motion for the issuance of an order in respect of the Wabush CCAA Parties (1) granting priority to certain CCAA Charges, (2) approving a sale and investor solicitation process nunc pro tunc, (3) authorizing the engagement of a sale advisor nunc pro tunc, (4) granting a sale advisor charge, (5) amending the sale and investor solicitation process, (6) suspending the payment of certain pension amortization payments and post-retirement employee benefits, (7) extending the stay of proceedings, and (8) amending the Wabush Initial Order accordingly* (the "**Motion**"), having examined the affidavit and the exhibits;

[2] **CONSIDERING** the report of the Monitor dated May 29, 2015 and the submissions of counsel for the Wabush CCAA Parties;

[3] **GIVEN** the terms of the *Initial Order* of this Court (the "**Wabush Initial Order**") dated May 20, 2015 (the "**Wabush Filing Date**") and the provisions of the *Companies' Creditors Arrangement Act*;

FOR THESE REASONS, THE COURT HEREBY:

[4] **GRANTS** the present Motion;

PRIORITIES FOR WABUSH CCAA CHARGES:

[5] **ORDERS** that paragraph 47 of the Wabush Initial Order shall be amended as follows:

47. **DECLARES** that each of the CCAA Charges shall rank ahead of all hypothecs, mortgages, liens, security interests, priorities, trusts, deemed trusts (statutory or otherwise), charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") [...] affecting the Property of the Wabush CCAA Parties whether or not charged by such Encumbrances [...], with the exception of the Crown deemed trusts for sources deductions described in Section 37(2) CCAA and the sums that could be subject to a claim under Section 38(3) CCAA. For greater certainty, the CCAA Charges only extend to assets or rights against assets over which the Wabush CCAA Parties hold or acquire title, and the Interim Lender's Charge is subject to the Permitted Priority Liens (as defined in the Interim Financing Term Sheet).

[6] **RESERVES** the rights of Her Majesty in right of Newfoundland and Labrador, as represented by the Superintendent of Pensions, the Syndicat des Métallos, Section Locale 6254, the Syndicat des Métallos, Section 6285 and the Attorney General of Canada to contest the priority of the Interim Lender Charge over the deemed trust(s) as

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set out in the Notices of Objection filed by each of those parties in response to the Motion, which shall be heard and determined at the hearing scheduled on June 22, 2015

SISP

- [7] **APPROVES** the sale and investor solicitation procedures ("**Initial SISP**") (Exhibit R-6) as it relates to the Wabush CCAA Parties, *nunc pro tunc* to the Wabush Filing Date.
- [8] **AUTHORIZES** the amendment and restatement of the Initial SISP to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings, and **APPROVES** the amended and restated sale and investor solicitation procedures (the "**SISP**") (Exhibit R-9) attached hereto as Schedule "**A**";
- [9] **AUTHORIZES and DIRECTS** the Wabush CCAA Parties, the Monitor and the Sale Advisor (as defined in the SISP) to take such steps as they consider necessary or desirable in carrying out the SISP in accordance with its terms as relates to the Wabush CCAA Parties, *nunc pro tunc* to the Wabush Filing Date;
- [10] **DECLARES** that this Order approving the SISP as it relates to the Wabush CCAA Parties *nunc pro tunc* is without prejudice to the rights, if any, of the Administration Portuaire de Sept-Îles/Sept-Îles Port Authority (hereinafter the "**SIPA**"), vis à vis the Wabush CCAA Parties, including: (i) the rights of the SIPA, acting as successor in the rights of the National Harbours Board, pursuant to the agreement referred to and communicated as Exhibit O-1 in support of SIPA's Notice of objection dated April 13, 2015; and (ii) the rights of SIPA, acting as successor in the rights of the Canada Ports Corporation, pursuant to the agreement referred to and communicated as Exhibit O-7 in support of SIPA's Notice of objection already filed in the Court record and dated April 13, 2015;
- [11] **DECLARES** that this Order approving the SISP as it relates to the Wabush CCAA Parties *nunc pro tunc* is without prejudice to the rights, if any, of the Iron Ore Company of Canada or its related companies (hereinafter the "**IOC**"), vis-à-vis the Wabush CCAA Parties, including, but not limited to, the rights pursuant to the Subscription Agreement dated August 3, 1959 referred to in IOC' s Notice of objection already filed in the Court record and dated April 13, 2015;
- [12] **DECLARES** that this Order approving the SISP as it relates to the Wabush CCAA Parties *nunc pro tunc* is without prejudice to the rights, if any, of MFC Industrial Ltd. ("**MFC**") if any, vis-à-vis the Wabush CCAA Parties, including pursuant to an Amendment and Consolidation of Mining Leases dated September 2, 1959 and related sub-leases (as amended from time to time) as it relates to the property of Wabush CCAA Parties;
- [13] **RESERVES** the right of IOC, SIPA and of MFC to raise any such rights at a later stage if need be;
- [14] **RESERVES** the right of the Wabush CCAA Parties to contest the validity and/or enforceability of these contractual rights, if any, at any moment they may see fit.

SALE ADVISOR

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[15] **APPROVES** the Engagement Letter dated March 23, 2015 (Exhibit R-4A) (under seal) as relates to the Wabush CCAA Parties, nunc pro tunc to the Wabush Filing Date, which Engagement Letter by its terms is effective from and after January 27, 2015;

[16] **ORDERS** that the Wabush Initial Order shall be amended to add the following title and paragraph after paragraph 32:

Sale Advisor Charge

32.1 **ORDERS** that Moelis & Company LLC (the "**Sale Advisor**") shall be entitled to the benefit of and is hereby granted a charge and security be secured by charge over the property of each Wabush CCAA Party on a several basis securing only those fees and expenses payable by each such Wabush CCAA Party, to a maximum of USD \$5 million (the "**Sale Advisor Charge**") as security for the Monthly Retainer Fee, Transaction Fees (each as defined therein) and expenses reimbursable pursuant to the Engagement Letter dated March 23, 2015. The Sale Advisor Charge shall have the priority set out in paragraph 47.1 of this Order.

[17] **ORDERS** that the title appearing before paragraph 46 of the Wabush Initial Order shall be amended as follows:

Priorities and General Provisions Relating to CCAA Charges and the Sale Advisor Charge

[18] **ORDERS** that the Wabush Initial Order shall be amended to add the following paragraph after paragraph 47:

47.1 **DECLARES** that the Sale Advisor Charge shall have priority over all claims of unsecured creditors of such Wabush CCAA Parties, but to be subordinated to the CCAA Charges and all secured claims.

[19] **ORDERS** that paragraphs 49 through 52 of Wabush Initial Order shall be amended as follows:

49. **DECLARES** that each of the CCAA Charges and the Sale Advisor Charge shall attach (subject to the limitations set out in paragraph 32.1 hereof), as of the Effective Time, to all present and future Property of the Wabush CCAA Parties, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.

50. **DECLARES** that the CCAA Charges, the Sale Advisor Charge, the Interim Financing Term Sheet and the Interim Financing Documents and the rights and remedies of the beneficiaries of the CCAA Charges and the Sale Advisor Charge and the rights and remedies of the Interim Lender under the Interim Financing Term Sheet and the Interim Financing Documents, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) filed pursuant to the BIA or any bankruptcy order made pursuant to such applications or any assignments in bankruptcy made or deemed to be

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made in respect of any of the Wabush CCAA Parties; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Wabush CCAA Parties (a "**Third Party Agreement**"), and notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) neither the creation of any of the CCAA Charges and the Sale Advisor Charge nor the execution, delivery, perfection, registration or performance of the Interim Financing Term Sheet or the Interim Financing Documents shall create or be deemed to constitute a breach by the CCAA Parties of any Third Party Agreement to which any CCAA Party is a party; and
 - (b) the beneficiaries of the CCAA Charges and the Sale Advisor Charge shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges or the Wabush CCAA Parties entering into or performing their obligations under the Interim Financing Term Sheet and the Interim Financing Documents.
51. **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein, (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA or any bankruptcy order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Wabush CCAA Party, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Wabush CCAA Parties pursuant to this Order and the granting of the CCAA Charges and the Sale Advisor Charge, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
52. **DECLARES** that the CCAA Charges and the Sale Advisor Charge shall be valid and enforceable as against all Property of the Wabush CCAA Parties and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Wabush CCAA Parties.

[20] **ORDERS** that the unredacted copy of the Engagement Letter (Exhibit R-4A) shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court;

SUSPENSION OF PENSION SPECIAL PAYMENTS

[21] **ORDERS** the request by the Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush

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Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015;

- [22] **ORDERS** the request by the Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA Parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015;
- [23] **ORDERS** the Wabush CCAA Parties' request for an order for the suspension of payment by the Wabush CCAA Parties of other post-retirement benefits to former hourly and salaried employees of their Canadian subsidiaries hired before January 1, 2013, including without limitation payments for life insurance, health care and a supplemental retirement arrangement plan, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015;

EXTENSION OF THE STAY PERIOD

- [24] **EXTENDS** the Stay Period ordered in the Wabush Initial Order until July 31, 2015;
- [25] **ORDERS** that paragraph 7 of the Wabush Initial Order shall be amended as follows:
7. **ORDERS** that, until and including July 31, 2015, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Wabush CCAA Parties, or affecting the business operations and activities of the Wabush CCAA Parties (the "**Business**") or the Property (as defined herein below), including as provided in paragraph 11 hereinbelow except with leave of this Court. Any and all Proceedings currently under way against or in respect of the CCAA Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.
- [26] **ISSUES** and **SIGNS** an Amended Initial Order to reflect the amendments to the Initial Order ordered herein;
- [27] **ORDERS** the provisional execution of this Order notwithstanding any appeal and without the necessity of furnishing any security;
- [28] **WITHOUT COSTS**, save in the case of contestation.

COPIE CONFORME

Jodie Cook
Greffier adjoint

Stephen W. Hamilton

STEPHEN W. HAMILTON J.S.C.

Initial Order, May 20, 2015, as rectified on May 28, 2015

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

File: No: 500-11-048114-157

SUPERIOR COURT
Commercial Division

Montreal, May 28, 2015

Present: The Honourable
Mr. Justice Stephen W. Hamilton, J.S.C.

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUÉBEC IRON MINING
ULC, WABUSH IRON CO. LIMITED AND
WABUSH RESOURCES INC.**

Petitioners

- and -

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED, WABUSH
MINES, ARNAUD RAILWAY COMPANY
AND WABUSH LAKE RAILWAY COMPANY
LIMITED**

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

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RECTIFIED INITIAL ORDER

ON READING Petitioners Wabush Iron Co. Limited and Wabush Resources Inc. (the “**Wabush Petitioners**”)’s Motion for an Initial Order pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, C-36 (as amended the “**CCAA**”) and the exhibits, the affidavit of Clifford Smith sworn on May 19, 2015 filed in support thereof (the “**Petition**”), the consent of FTI Consulting Canada Inc. to act as monitor of the Wabush CCAA Parties as hereinafter defined (the “**Monitor**”), relying upon the submissions of counsel for the Petitioners and the Mises-en-cause and the Monitor and being advised that the Interim Lender (as defined herein), the Directors (as defined herein) and the Monitor have received service of the Petition;

GIVEN the provisions of the CCAA;

WHEREFORE, THE COURT:

1. **GRANTS** the Petition.
2. **ISSUES** an order pursuant to the CCAA (the “**Order**”), divided under the following headings:
 - Application of the CCAA
 - Effective Time
 - Plan of Arrangement
 - Procedural Consolidation
 - Stay of Proceedings against Wabush CCAA Parties and the Property
 - Stay of Proceedings against the Directors and Officers
 - Possession of Property and Operations
 - No Exercise of Rights or Remedies;
 - No Interference with Rights
 - Continuation of Services
 - Non-Derogation of Rights
 - Interim Financing (DIP)
 - Directors’ Indemnification and Charge

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- Restructuring
- Powers of the Monitor
- Priorities and General Provisions Relating to CCAA Charges
- General

Application of the CCAA

3. **DECLARES** that the Wabush Petitioners are debtor companies to which the CCAA applies and although not Petitioners, the Mises-en-cause Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the “**Wabush Mises-en-cause**”) shall enjoy the protections and authorizations provided by this Order.

Effective time

4. **DECLARES** that this Order and all of its provisions are effective as of 12:01 a.m. Montreal time, province of Quebec, on May 20, 2015 (the “**Effective Time**”).

Plan of Arrangement

5. **DECLARES** that the Wabush Petitioners and the Wabush Mises-en-cause (collectively hereinafter referred to as the “**Wabush CCAA Parties**”) shall have the authority to file with this Court and to submit to their creditors one or more plans of compromise or arrangement (collectively, the “**Plan**”) in accordance with the CCAA.

Procedural Consolidation

6. **ORDERS** that the consolidation of these CCAA proceedings in respect of the Wabush CCAA Parties subject to this Order and the Bloom Lake CCAA Parties subject to the Initial Order of January 27, 2015 (as amended) (collectively, the “**CCAA Parties**”) shall be for administrative purposes only and shall not effect a consolidation of the assets and property of each of the CCAA Parties, without limitation, for the purposes of any Plan or Plans that may be hereafter proposed.

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Stay of Proceedings against the Wabush CCAA Parties and the Property

7. **ORDERS** that, until and including June 19, 2015, or such later date as the Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of Wabush CCAA Parties or affecting the business operations and activities of the Wabush CCAA Parties (the “**Business**”) or the Property (as defined below), including as provided in paragraph 11 hereinbelow except with leave of this Court. Any and all Proceedings currently under way against or in respect of the Wabush CCAA Parties or affecting the Business or the Property of the Wabush CCAA Parties are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.
- 8.1 The rights of Her Majesty in right of Canada and Her Majesty in right of a Province are suspended in accordance with the terms and conditions of subsection 11.09 CCAA.

Stay of Proceedings against the Directors and Officers

8. **ORDERS** that during the Wabush Stay Period and except as permitted under subsection 11.03(2) of the CCAA, no Proceeding may be commenced, or continued against any former, present or future director or officer of the Wabush CCAA Parties nor against any person deemed to be a director or an officer of any of the Wabush CCAA Parties under subsection 11.03(3) CCAA (each, a “**Director**”, and collectively the “**Directors**”) in respect of any claim against such Director which arose prior to the Effective Time and which relates to any obligation of the Wabush CCAA Parties where it is alleged that any of the Directors is under any law liable in such capacity for the payment of such obligation.

Possession of Property and Operations

9. **ORDERS** that the Wabush CCAA Parties shall remain in possession and control of their present and future assets, rights, undertakings and properties of every nature and kind whatsoever, and wherever situated, including all proceeds thereof (collectively the “**Property**”), the whole in accordance with the terms and conditions of this order including, but not limited, to paragraph 15 hereof.

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10. **ORDERS** that the Wabush CCAA Parties shall be entitled to continue to utilize the central cash management system currently in place as described in the Petition or replace it with another substantially similar central cash management system (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Wabush CCAA Parties of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as defined herein below) other than the Wabush CCAA Parties, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.
11. **ORDERS** that each of the Wabush CCAA Parties are authorized to complete outstanding transactions and engage in new transactions with other Wabush CCAA Parties or their affiliates, and to continue, on and after the date of this Order, to buy and sell goods and services, including, without limitation head office and shared services, and allocate, collect and pay costs, expenses and other amounts from and to the other Wabush CCAA Parties or their affiliates, or any of them (collectively, together with the Cash Management System and all transactions, inter-company funding and other processes and services among any of the Wabush CCAA Parties or their affiliates, the “**Intercompany Transactions**”) in the ordinary course of business. All ordinary course Intercompany Transactions among the Wabush CCAA Parties or their affiliates shall continue on terms consistent with existing arrangements or past practice, subject to such changes thereto, or to such governing principles, policies or procedures as the Monitor may require, or subject to further Order of this Court.
12. **ORDERS** that the Wabush CCAA Parties shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

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- (a) all outstanding and future wages, salaries, bonuses, employee and current service pension contributions, expenses, benefits, vacation pay and termination and severance obligations payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; and
 - (b) the fees and disbursements of any agents retained or employed by the Wabush CCAA Parties in respect of these proceedings, at their standard rates and charges.
- 13. **ORDERS** that, except as otherwise provided to the contrary herein, the Wabush CCAA Parties shall be entitled but not required to pay all reasonable expenses incurred by the Wabush CCAA Parties in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:
 - (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including Directors and Officers insurance), maintenance and security services; and
 - (b) payment for goods or services actually supplied to the Wabush CCAA Parties following the date of this Order.
- 14. **ORDERS** that the Wabush CCAA Parties shall remit, in accordance with legal requirements, or pay:
 - (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Québec Pension Plan, and (iv) income taxes; and
 - (b) all goods and services, harmonized sales or other applicable sales taxes

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(collectively, “**Sales Taxes**”) required to be remitted by the Wabush CCAA Parties and in connection with the sale of goods and services by the Wabush CCAA Parties, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order.

No Exercise of Rights or Remedies

15. **ORDERS** that during the Stay Period, and subject to, *inter alia*, subsection 11.1 CCAA, all rights and remedies, including, but not limited to modifications of existing rights and events deemed to occur pursuant to any agreement to which any of the Wabush CCAA Parties is a party as a result of the insolvency of the Wabush CCAA Parties and/or these CCAA proceedings, any events of default or non-performance by the Wabush CCAA Parties or any admissions or evidence in these CCAA proceedings, of any individual, natural person, firm, corporation, partnership, limited liability company, trust, joint venture, association, organization, governmental body or agency, or any other entity (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Wabush CCAA Parties, or affecting the Business, the Property or any part thereof are hereby stayed and suspended except with leave of this Court.

16. **DECLARES** that, to the extent any rights, obligations, or prescription, time or limitation periods, including, without limitation, to file grievances, relating to the Wabush CCAA Parties, or any of the Property or the Business may expire (other than pursuant to the terms of any contracts, agreements or arrangements of any nature whatsoever), the term of such rights, obligations, or prescription, time or limitation periods shall hereby be deemed to be extended by a period equal to the Stay Period. Without limitation to the foregoing, in the event that the Wabush CCAA Parties, or any of them become(s) bankrupt or a receiver as defined in subsection 243(2) of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”) is appointed in respect of the Wabush CCAA Parties, the period between the date of the Order and the day on which the Stay Period ends shall not be calculated in respect of the Wabush CCAA Parties in determining the 30 day periods

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referred to in Sections 81.1 and 81.2 of the BIA.

No Interference with Rights

17. **ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, resiliate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Wabush CCAA Parties, except with the written consent of the Wabush CCAA Parties, as applicable, and the Monitor, or with leave of this Court.

Continuation of Services

18. **ORDERS** that during the Stay Period and subject to paragraph 20 hereof and subsection 11.01 CCAA, all Persons having verbal or written agreements with the Wabush CCAA Parties or statutory or regulatory mandates for the supply of goods or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, utility, fuel or other goods or services made available to the Wabush CCAA Parties, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Wabush CCAA Parties, and that the Wabush CCAA Parties shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses, domain names or other services, provided in each case that the normal prices or charges for all such goods or services received after the date of the Order are paid by the Wabush CCAA Parties, without having to provide any security deposit or any other security, in accordance with normal payment practices of the Wabush CCAA Parties or such other practices as may be agreed upon by the supplier or service provider and the Wabush CCAA Parties, as applicable, with the consent of the Monitor, or as may be ordered by this Court.
19. **ORDERS** that, notwithstanding anything else contained herein and subject to subsection 11.01 CCAA, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration

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provided to the Wabush CCAA Parties on or after the date of this Order, nor shall any Person be under any obligation on or after the date of the Order to make further advance of money or otherwise extend any credit to the Wabush CCAA Parties.

20. **ORDERS** that, without limiting the generality of the foregoing and subject to Section 21 of the CCAA, if applicable, cash or cash equivalents placed on deposit by any Wabush CCAA Parties with any Person during the Stay Period, whether in an operating account or otherwise for itself or for another entity, shall not be applied by such Person in reduction or repayment of amounts owing or accruing to such Person or in satisfaction of any interest or charges accruing in respect thereof; however, this provision shall not prevent any financial institution from: (i) reimbursing itself for the amount of any cheques drawn by any of the Wabush CCAA Parties and properly honoured by such institution, or (ii) holding the amount of any cheques or other instruments deposited into a Wabush CCAA Party's account or the account of any of the Wabush CCAA Parties until those cheques or other instruments have been honoured by the financial institution on which they have been drawn.

Non-Derogation of Rights

21. **ORDERS** that, notwithstanding the foregoing, any Person who provided any kind of letter of credit, guarantee or bond (the "**Issuing Party**") at the request of the Wabush CCAA Parties shall be required to continue honouring any and all such letters, guarantees and bonds, issued on or before the date of the Order, provided that all conditions under such letters, guarantees and bonds are met save and except for defaults resulting from this Order; however, the Issuing Party shall be entitled, where applicable, to retain the bills of lading or shipping or other documents relating thereto until paid.

Interim Financing (DIP)

22. **ORDERS** that the Wabush Petitioners be and are hereby authorized to borrow, repay and reborrow from Cliffs Mining Company (the "**Interim Lender**") such amounts from time to time as the Wabush Petitioners may consider necessary or desirable, up to a maximum principal amount of USD \$10 million outstanding at any time, on the terms and

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conditions as set forth in the Interim Financing Term Sheet attached hereto as Schedule A (the “**Interim Financing Term Sheet**”) and in the Interim Financing Documents (as defined hereinafter), to fund the ongoing expenditures of the Wabush CCAA Parties and to pay such other amounts as are permitted by the terms of this Order and the Interim Financing Documents (as defined hereinafter) (the “**Interim Facility**”).

23. **ORDERS** that the Wabush CCAA Parties are hereby authorized to execute and deliver such credit agreements, security documents and other definitive documents (collectively the “**Interim Financing Documents**”) as may be required by the Interim Lender in connection with the Interim Facility and the Interim Financing Term Sheet, and the Wabush CCAA Parties are hereby authorized to perform all of their obligations under the Interim Financing Documents.
24. **ORDERS** that the Wabush CCAA Parties shall pay to the Interim Lender, when due, all amounts owing under the Interim Financing Documents (including principal, interest, fees and expenses, including without limitation, all reasonable fees and disbursements of counsel and all other reasonably required advisers to or agents of the Interim Lender on a full indemnity basis (the “**Interim Lender Expenses**”)) and shall perform all of their other obligations to the Interim Lender pursuant to the Interim Financing Term Sheet, the Interim Financing Documents and this Order.
25. **DECLARES** that all of the Property of the Wabush CCAA Parties is hereby subject to a charge and security for an aggregate amount of CAD \$15 million (such charge and security is referred to herein as the “**Interim Lender Charge**”) in favour of the Interim Lender as security for all obligations of the Wabush CCAA Parties to the Interim Lender with respect to all amounts owing (including principal, interest and the Interim Lender Expenses) under or in connection with the Interim Financing Term Sheet and the Interim Financing Documents. The Interim Lender Charge shall have the priority established by paragraphs 46 and 47 of this Order.
26. **ORDERS** that the claims of the Interim Lender pursuant to the Interim Financing Documents shall not be compromised or arranged pursuant to the Plan or these proceedings and the Interim Lender, in that capacity, shall be, subject to the terms of this

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Order, treated as an unaffected creditor in these proceedings and in any Plan.

27. **ORDERS** that the Interim Lender may:
- (a) notwithstanding any other provision of the Order, take such steps from time to time as it may deem necessary or appropriate to register, record or perfect the Interim Lender Charge and the Interim Financing Documents in all jurisdictions where it deems it is appropriate; and
 - (b) notwithstanding the terms of the paragraph to follow, refuse in accordance with the provisions of the Interim Financing Term Sheet and the Interim Financing Documents to make any advance to the Wabush Petitioners.
28. **ORDERS** that the Interim Lender shall not take any enforcement steps under the Interim Financing Documents or the Interim Lender Charge without providing at least 5 business days written notice (the “**Notice Period**”) of a default thereunder to the Wabush Petitioners, the Monitor and to creditors whose rights are registered or published at the appropriate registers or who have requested a copy of such notice prior to delivery of any such written notice to the Wabush Petitioners and without further order of this Court. Upon expiry of such Notice Period, the Interim Lender shall be entitled to take any and all steps under the Interim Financing Documents and the Interim Lender Charge and otherwise permitted at law, but without having to send any demands under Section 244 of the BIA.
29. **ORDERS** that, subject to further order of this Court, no order shall be made varying, rescinding, or otherwise affecting paragraphs 22 to 28 hereof unless either (a) notice of a motion for such order is served on the Interim Lender by the moving party within seven (7) days after that party was served with the Order or (b) the Interim Lender applies for or consents to such order.

Directors’ and Officers’ Indemnification and Charge

30. **ORDERS** that the Wabush CCAA Parties shall indemnify their Directors from all claims relating to any obligations or liabilities they may incur and which have accrued by reason

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of or in relation to their respective capacities as directors or officers of the Wabush CCAA Parties after the Effective Time, except where such obligations or liabilities were incurred as a result of such directors' or officers' gross negligence, wilful misconduct or gross or intentional fault as further detailed in Section 11.51 CCAA

31. **ORDERS** that the Directors of the Wabush CCAA Parties shall be entitled to the benefit of and are hereby granted a charge and security in the Property of the Wabush CCAA Parties to the extent of the aggregate amount of \$2 million (the "**Directors' Charge**"), as security for the indemnity provided in paragraph 30 of this Order as it relates to obligations and liabilities that the Directors of the Wabush CCAA Parties may incur in such capacity after the Effective Time. The Directors' Charge shall have the priority set out in paragraphs 46 and 47 of this Order.
32. **ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Directors shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts for which the Directors are entitled to be indemnified in accordance with paragraph 30 of this Order.

Restructuring

33. **DECLARES** that, to facilitate the orderly restructuring of their business and financial affairs (the "**Restructuring**") but subject to such requirements as are imposed by the CCAA, the Wabush CCAA Parties shall have the right, subject to approval of the Monitor or further order of the Court, to:
 - (a) permanently or temporarily cease, downsize or shut down any of their operations or locations as they deem appropriate and make provision for the consequences thereof in the Plan;
 - (b) pursue all avenues to finance or refinance, market, convey, transfer, assign or in any other manner dispose of the Business or Property, in whole or part, subject

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to further order of the Court and sections 11.3 and 36 CCAA, and under reserve of subparagraph (c);

- (c) convey, transfer, assign, lease, or in any other manner dispose of the Property, outside of the ordinary course of business, in whole or in part, provided that the price in each case does not exceed \$100,000 or \$1,000,000 in the aggregate except that this amount shall not include amounts with respect to the sale or other disposition of employee homes by the Wabush CCAA Parties and any employee homes may be sold or otherwise disposed of by the Wabush CCAA Parties upon approval of the Monitor;
 - (d) terminate the employment of such of their employees or temporarily or permanently lay off such of their employees as they deem appropriate and, to the extent any amounts in lieu of notice, termination or severance pay or other amounts in respect thereof are not paid in the ordinary course, make provision, on such terms as may be agreed upon between the Wabush CCAA Parties, as applicable, and such employee, or failing such agreement, make provision to deal with, any consequences thereof in the Plan, as the Wabush CCAA Parties may determine;
 - (e) subject to the provisions of section 32 CCAA, disclaim or resiliate, any of their agreements, contracts or arrangements of any nature whatsoever, with such disclaimers or resiliation to be on such terms as may be agreed between the Wabush CCAA Parties, as applicable, and the relevant party, or failing such agreement, to make provision for the consequences thereof in the Plan; and
 - (f) subject to section 11.3 CCAA, assign any rights and obligations of Wabush CCAA Parties.
34. **DECLARES** that, if a notice of disclaimer or resiliation is given to a landlord of any of the Wabush CCAA Parties pursuant to section 33 of the CCAA and subsection 33(e) of this Order, then (a) during the notice period prior to the effective time of the disclaimer or resiliation, the landlord may show the affected leased premises to prospective tenants

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during normal business hours by giving such Wabush CCAA Party and the Monitor 24 hours prior written notice and (b) at the effective time of the disclaimer or resiliation, the landlord shall be entitled to take possession of any such leased premises and re-lease any such leased premises to third parties on such terms as any such landlord may determine without waiver of, or prejudice to, any claims or rights of the landlord against the Wabush CCAA Party, provided nothing herein shall relieve such landlord of their obligation to mitigate any damages claimed in connection therewith.

35. **ORDERS** that the Wabush CCAA Parties, as applicable, shall provide to any relevant landlord notice of the intention of any of the Wabush CCAA Parties to remove any fittings, fixtures, installations or leasehold improvements at least seven (7) days in advance. If a Wabush CCAA Party has already vacated the leased premises, it shall not be considered to be in occupation of such location pending the resolution of any dispute between such Wabush CCAA Party and the landlord.
36. **DECLARES** that, in order to facilitate the Restructuring, the Wabush CCAA Parties may, subject to the approval of the Monitor, or further order of the Court, settle claims of customers and suppliers that are in dispute.
37. **DECLARES** that, pursuant to sub-paragraph 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5, the Wabush CCAA Parties are permitted, in the course of these proceedings, to disclose personal information of identifiable individuals in their possession or control to stakeholders or prospective investors, financiers, buyers or strategic partners and to their advisers (individually, a “**Third Party**”), but only to the extent desirable or required to negotiate and complete the Restructuring or the preparation and implementation of the Plan or a transaction for the sale of Property, provided that the Persons to whom such personal information is disclosed enter into confidentiality agreements with the Wabush CCAA Parties binding them to maintain and protect the privacy of such information and to limit the use of such information to the extent necessary to complete the transaction or Restructuring then under negotiation. Upon the completion of the use of personal information for the limited purpose set out herein, the personal information shall be returned to the Wabush CCAA

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Parties or destroyed. In the event that a Third Party acquires personal information as part of the Restructuring or the preparation or implementation of the Plan or a transaction, such Third Party may continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Wabush CCAA Parties.

38. **ORDERS** that pursuant to clause 3(c)(i) of the *Electronic Commerce Protection Regulations*, made under *An Act to Promote the Efficiency and Adaptability of the Canadian Economy by Regulating Certain Activities that Discourage Reliance on Electronic Means of Carrying Out Commercial Activities, and to Amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23, the Wabush CCAA Parties and the Monitor are authorized and permitted to send, or cause or permit to be sent, commercial electronic messages to an electronic address of prospective purchasers or bidders and to their advisors but only to the extent desirable or required to provide information with respect to any sales process in these CCAA proceedings.

Powers of the Monitor

39. **ORDERS** that FTI Consulting Canada Inc. is hereby appointed to monitor the business and financial affairs of the Wabush CCAA Parties as an officer of this Court (the “**Monitor**”) and that the Monitor, in addition to the prescribed powers and obligations, referred to in Section 23 of the CCAA:
- (a) shall, as soon as practicable, (i) publish once a week for two (2) consecutive weeks, or as otherwise directed by the Court, in *La Presse* and the *Globe & Mail* National Edition and (ii) within five (5) business days after the date of this Order (A) post on the Monitor’s website (the “**Website**”) a notice containing the information prescribed under the CCAA, (B) make this Order publicly available in the manner prescribed under the CCAA, (C) send, in the prescribed manner, a notice to all known creditors having a claim against the Wabush CCAA Parties of more than \$1,000, advising them that the Order is publicly available, and (D) prepare a list showing the names and addresses of such creditors and the

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- estimated amounts of their respective claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder;
- (b) shall monitor the receipts and disbursements of the Wabush CCAA Parties;
 - (c) shall assist the Wabush CCAA Parties, to the extent required by the Wabush CCAA Parties, in dealing with their creditors and other interested Persons during the Stay Period;
 - (d) shall assist the Wabush CCAA Parties, to the extent required by the Wabush CCAA Parties, with the preparation of their cash flow projections and any other projections or reports and the development, negotiation and implementation of the Plan;
 - (e) shall assist the Wabush CCAA Parties, to the extent required by the Wabush CCAA Parties, to review the Wabush CCAA Parties' businesses and assess opportunities for cost reduction, revenue enhancement and operating efficiencies;
 - (f) shall assist the Wabush CCAA Parties, to the extent required by the Wabush CCAA Parties, with the Restructuring and in their negotiations with their creditors and other interested Persons and with the holding and administering of any meetings held to consider the Plan;
 - (g) shall report to the Court on the state of the business and financial affairs of the Wabush CCAA Parties or developments in these proceedings or any related proceedings within the time limits set forth in the CCAA and at such time as considered appropriate by the Monitor or as the Court may order and may file consolidated Reports for the Wabush CCAA Parties;
 - (h) shall report to this Court and interested parties, including but not limited to creditors affected by the Plan, with respect to the Monitor's assessment of, and recommendations with respect to, the Plan;

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- (i) may retain and employ such agents, advisers and other assistants as are reasonably necessary for the purpose of carrying out the terms of this Order, including, without limitation, one or more entities related to or affiliated with the Monitor;
- (j) may engage legal counsel to the extent the Monitor considers necessary in connection with the exercise of its powers or the discharge of its obligations in these proceedings and any related proceeding, under the Order or under the CCAA;
- (k) may act as a “foreign representative” of any of the Wabush CCAA Parties or in any other similar capacity in any insolvency, bankruptcy or reorganisation proceedings outside of Canada;
- (l) may give any consent or approval as may be contemplated by the Order or the CCAA;
- (m) may hold and administer funds in connection with arrangements made among the Wabush CCAA Parties, any counter-parties and the Monitor, or by Order of this Court;
- (n) may, to the extent to which the Monitor considers it necessary or desirable to do so, develop, in consultation with the Wabush CCAA Parties, such principles, policies and procedures as are satisfactory to the Monitor to govern any or all category of Intercompany Transactions (the “**Intercompany Transaction Policies**”);
- (o) may review and monitor all Intercompany Transactions, including compliance with any Intercompany Transaction Policies that are applicable in the circumstances, in such manner as the Monitor, in consultation with the Wabush CCAA Parties, considers appropriate;
- (p) may have direct discussions and communications with the Interim Lender from time to time in accordance with the Interim Financing Documents and in

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relation to the Interim Facility; and

- (q) may perform such other duties as are required by the Order or the CCAA or by this Court from time to time.

Unless expressly authorized to do so by this Court, the Monitor shall not otherwise interfere with the business and financial affairs carried on by the Wabush CCAA Parties, and the Monitor is not empowered to take possession of the Property nor to manage any of the business and financial affairs of the Wabush CCAA Parties nor shall the Monitor be deemed to have done so.

40. **ORDERS** that the Wabush CCAA Parties and their Directors, officers, employees and agents, accountants, auditors and all other Persons having notice of the Order shall forthwith provide the Monitor with unrestricted access to all of the Business and Property, including, without limitation, the premises, books, records, data, including data in electronic form, and all other documents of the Wabush CCAA Parties in connection with the Monitor's duties and responsibilities hereunder.
41. **DECLARES** that the Monitor may provide creditors and other relevant stakeholders of the Wabush CCAA Parties with information in response to requests made by them in writing addressed to the Monitor and copied to the counsel for the Wabush CCAA Parties. In the case of information that the Monitor has been advised by the Wabush CCAA Parties is confidential, proprietary or competitive, the Monitor shall not provide such information to any Person without the consent of the Wabush CCAA Parties unless otherwise directed by this Court.
42. **DECLARES** that if the Monitor, in its capacity as Monitor, carries on the business of the Wabush CCAA Parties or continues the employment of employees of the Wabush CCAA Parties, the Monitor shall benefit from the provisions of section 11.8 of the CCAA.
43. **DECLARES** that no action or other proceedings shall be commenced against the Monitor relating to its appointment, its conduct as Monitor or the carrying out the provisions of any order of this Court, except with prior leave of this Court, on at least seven days' notice to the Monitor and its counsel. The entities related to or affiliated

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with the Monitor referred to in subparagraph 39(i) hereof shall also be entitled to the protection, benefits and privileges afforded to the Monitor pursuant to this paragraph.

44. **ORDERS** that the Wabush CCAA Parties shall pay weekly the reasonable fees and disbursements of the Monitor, the Monitor's legal counsel, counsel for the Wabush CCAA Parties, independent counsel to the Directors, and other advisers directly related to these proceedings, the Plan and the Restructuring, whether incurred before or after the Order, and shall provide each with a reasonable retainer in advance on account of such fees and disbursements, if so requested.
45. **DECLARES** that the Monitor, the Monitor's legal counsel, legal counsel for the Wabush CCAA Parties, independent counsel to the Directors, and the Monitor and the Wabush Wabush CCAA Parties' respective advisers, as security for the professional fees and disbursements incurred both before and after the making of this Order and directly related to these proceedings, the Plan and the Restructuring, be entitled to the benefit of and are hereby granted a charge and security in the Property of the Wabush CCAA Parties to the extent of the aggregate amount of \$1,750,000 (the "**Administration Charge**"), having the priority established by paragraphs 46 and 47 hereof.

Priorities and General Provisions Relating to CCAA Charges

46. **DECLARES** that the priorities of the Administration Charge, the Directors' Charge and the Interim Lender Charge (collectively, the "**CCAA Charges**"), as between them with respect to any Property to which they apply, shall be as follows
- (a) first, the Administration Charge;
 - (b) second, the Directors' Charge; and
 - (c) third, the Interim Lender Charge.
47. **DECLARES** that each of the CCAA Charges shall rank ahead of all hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") in favour of Cliffs Mining Company and behind any and all other existing Encumbrances affecting the Property of

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the Wabush CCAA Parties charged by such Encumbrances, in favour of any Persons that have not been served with notice of this Motion. The Wabush CCAA Parties and the beneficiaries of the CCAA Charges shall be entitled to seek priority for the CCAA Charges ahead of the Encumbrances in favour of parties other than Cliffs Mining Company affecting the Property of the Wabush CCAA Parties on notice to those parties likely to be affected by such priority (it being the intention of the Wabush CCAA Parties to seek priority for the CCAA Charges ahead of all Encumbrances at the Comeback Hearing (as defined below)).

48. **ORDERS** that, except as otherwise expressly provided for herein, the Wabush CCAA Parties shall not grant any Encumbrances in or against any Property that rank in priority to, or *pari passu* with, any of the CCAA Charges unless the Wabush CCAA Parties, as applicable, obtain the prior written consent of the Monitor, the Interim Lender and the prior approval of the Court.
49. **DECLARES** that each of the CCAA Charges shall attach, as of the Effective Time, to all present and future Property of the Wabush CCAA Parties, notwithstanding any requirement for the consent of any party to any such charge or to comply with any condition precedent.
50. **DECLARES** that the CCAA Charges, the Interim Financing Term Sheet and the Interim Financing Documents and the rights and remedies of the beneficiaries of the CCAA Charges and the rights and remedies of the Interim Lender under the Interim Financing Term Sheet and the Interim Financing Documents, as applicable, shall be valid and enforceable and shall not otherwise be limited or impaired in any way by: (i) these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) filed pursuant to the BIA or any bankruptcy order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any of the Wabush CCAA Parties; or (iii) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any agreement, lease, sub-lease, offer to lease or other arrangement which binds the Wabush CCAA Parties (a “**Third Party Agreement**”), and

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notwithstanding any provision to the contrary in any Third Party Agreement:

- (a) neither the creation of any of the CCAA Charges nor the execution, delivery, perfection, registration or performance of the Interim Financing Term Sheet or the Interim Financing Documents shall create or be deemed to constitute a breach by the CCAA Parties of any Third Party Agreement to which any CCAA Party is a party; and
- (b) the beneficiaries of the CCAA Charges shall not have any liability to any Person whatsoever as a result of any breach of any Third Party Agreement caused by or resulting from the creation of the CCAA Charges or the Wabush CCAA Parties entering into or performing their obligations under the Interim Financing Term Sheet and the Interim Financing Documents.

51. **DECLARES** that notwithstanding: (i) these proceedings and the declarations of insolvency made herein, (ii) any application(s) for bankruptcy order(s) issued pursuant to the BIA or any bankruptcy order made pursuant to such applications or any assignments in bankruptcy made or deemed to be made in respect of any Wabush CCAA Party, and (iii) the provisions of any federal or provincial statute, the payments or disposition of Property made by the Wabush CCAA Parties pursuant to this Order, the Interim Financing Term Sheet and the Interim Financing Documents and the granting of the CCAA Charges, do not and will not constitute settlements, fraudulent preferences, fraudulent conveyances or other challengeable or reviewable transactions or conduct meriting an oppression remedy under any applicable law.
52. **DECLARES** that the CCAA Charges shall be valid and enforceable as against all Property of the Wabush CCAA Parties and against all Persons, including, without limitation, any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Wabush CCAA Parties.
53. **ORDERS** that if the sale proceeds of assets charged by valid and enforceable security are used to satisfy in priority payment of amounts secured by any of the CCAA Charges, the secured creditor(s) holding such valid and enforceable security charging said assets

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(the “**Impaired Secured Creditor**”) shall be deemed to have paid the holder of the CCAA Charge and such Impaired Secured Creditor shall be subrogated in its rights to the extent of the lesser of i) the net realization proceeds of the assets, charged in favor of the Impaired Secured Creditor, used to repay in priority amounts secured by the CCAA Charges; and (ii) the amounts otherwise owing to the Impaired Secured Creditor. In the event that more than one Impaired Secured Creditor is subrogated to the CCAA Charges as a result of a payment to the holder of the CCAA Charge, such Impaired Secured Creditors shall rank *pari passu* as subrogees, rateably in accordance with the extent to which each of them is subrogated to the holder of the CCAA Charge. The allocation of the burden of the CCAA Charges amongst the assets and creditors shall be determined by subsequent application to the Court if necessary.

54. **ORDERS** that no Impaired Secured Creditor shall be entitled to enforce any subrogation rights to the CCAA Charges before all the other claims subject to the CCAA Charges have been fully satisfied.

General

55. **ORDERS** that no Person shall commence, proceed with or enforce any Proceedings against any of the Directors, employees, legal counsel or financial advisers of the Wabush CCAA Parties or of the Monitor in relation to the Business or Property of the Wabush CCAA Parties, without first obtaining leave of this Court, upon ten (10) days’ written notice to counsel for the Wabush CCAA Parties, the Monitor’s counsel and to all those referred to in this paragraph whom it is proposed be named in such Proceedings.
56. **ORDERS** that, subject to further Order of this Court, all motions in these CCAA proceedings are to be brought on not less than ten (10) calendar days’ notice to all Persons on the service list. Each Motion shall specify a date (the “**Initial Return Date**”) and time (the “**Initial Return Time**”) for the hearing.
57. **ORDERS** that any Person wishing to object to the relief sought on a motion in these CCAA proceedings must serve responding motion materials or a notice stating the objection to the motion and the grounds for such objection (a “**Notice of Objection**”) in

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writing to the moving party, the Wabush CCAA Parties and the Monitor, with a copy to all Persons on the service list, no later than 5 p.m. Montreal Time on the date that is four (4) calendar days prior to the Initial Return Date (the “**Objection Deadline**”).

58. **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion (the “**Presiding Judge**”) may determine: (a) whether a hearing is necessary; (b) whether such hearing will be in person, by telephone or by written submissions only; and (c) the parties from whom submissions are required (collectively, the “**Hearing Details**”). In the absence of any such determination, a hearing will be held in the ordinary course.
59. **ORDERS** that, if no Notice of Objection is served by the Objection Deadline, the Monitor shall communicate with the Presiding Judge regarding whether a determination has been made by the Presiding Judge concerning the Hearing Details. The Monitor shall thereafter advise the service list of the Hearing Details and the Monitor shall report upon its dissemination of the Hearing Details to the Court in a timely manner, which may be contained in the Monitor’s next report in these proceedings.
60. **ORDERS** that, if a Notice of Objection is served by the Objection Deadline, the interested parties shall appear before the Presiding Judge on the Initial Return Date at the Initial Return Time, or such earlier or later time as may be directed by the Court, to, as the Court may direct: (a) proceed with the hearing on the Initial Return Date and at the Initial Return Time; or (b) establish a schedule for the delivery of materials and the hearing of the contested motion and such other matters, including interim relief, as the Court may direct.
61. **DECLARES** that the Order and any proceeding or affidavit leading to the Order, shall not, in and of themselves, constitute a default or failure to comply by the Wabush CCAA Parties under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.
62. **DECLARES** that, except as otherwise specified herein, the Wabush CCAA Parties and the Monitor are at liberty to serve any notice, proof of claim form, proxy, circular or

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other document in connection with these proceedings by forwarding copies by prepaid ordinary mail, courier, personal delivery or electronic transmission to Persons or other appropriate parties at their respective given addresses as last shown on the records of the Wabush CCAA Parties and that any such service shall be deemed to be received on the date of delivery if by personal delivery or electronic transmission, on the following business day if delivered by courier, or three business days after mailing if by ordinary mail.

63. **DECLARES** that the Wabush CCAA Parties and any party to these proceedings may serve any court materials in these proceedings on all represented parties electronically, by emailing a PDF or other electronic copy of such materials to counsels' email addresses, provided that the Wabush CCAA Parties shall deliver "hard copies" of such materials upon request to any party as soon as practicable thereafter.
64. **DECLARES** that, unless otherwise provided herein, under the CCAA, or ordered by this Court, no document, order or other material need be served on any Person in respect of these proceedings, unless such Person has served a Notice of Appearance on the solicitors for the Wabush CCAA Parties and the Monitor and has filed such notice with this Court, or appears on the service list prepared by the monitor or its attorneys, save and except when an order is sought against a Person not previously involved in these proceedings;
65. **DECLARES** that the Wabush CCAA Parties or the Monitor may, from time to time, apply to this Court for directions concerning the exercise of their respective powers, duties and rights hereunder or in respect of the proper execution of the Order on notice only to each other.
66. **DECLARES** that any interested Person may apply to this Court to vary or rescind this Order or seek other relief at the comeback hearing scheduled for June 9, 2015 (the "**Comeback Hearing**") upon five (5) days' notice to the Wabush CCAA Parties, the Monitor and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order;
67. **DECLARES** that the Order and all other orders in these proceedings shall have full force

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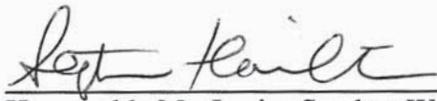
and effect in all provinces and territories in Canada.

68. **DECLARES** that the Monitor or an authorized representative of the Wabush CCAA Parties, and in the case of the Monitor, with the prior consent of the Wabush CCAA Parties, shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order and any subsequent orders of this Court and, without limitation to the foregoing, any orders under Chapter 15 of the *U.S. Bankruptcy Code*, including an order for recognition of these CCAA proceedings as “Foreign Main Proceedings” in the United States of America pursuant to Chapter 15 of the U.S. Bankruptcy Code, and for which the Monitor, or the authorized representative of the Wabush CCAA Parties, shall be the foreign representative of the Wabush CCAA Parties. All courts and administrative bodies of all such jurisdictions are hereby respectively requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.
69. **REQUESTS** the aid and recognition of any Court, tribunal, regulatory or administrative body in any Province of Canada and any Canadian federal court or in the United States of America and any court or administrative body elsewhere, to give effect to this Order and to assist the Wabush CCAA Parties, the Monitor and their respective agents in carrying out the terms of this Order. All Courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Wabush CCAA Parties and the Monitor as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor or the authorized representative of the Wabush CCAA Parties in any foreign proceeding, to assist the Wabush CCAA Parties and the Monitor, and to act in aid of and to be complementary to this Court, in carrying out the terms of this Order.

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70. **ORDERS** the provisional execution of the Order notwithstanding any appeal.

May 28, 2015



Honourable Mr. Justice Stephen W. Hamilton, J.S.C.

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

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

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

HER MAJESTY IN RIGHT OF NEWFOUNDLAND & LABRADOR, AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS

THE ATTORNEY GENERAL OF CANADA, ACTING ON BEHALF OF THE OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS

MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL AND NEIL JOHNSON

UNITED STEEL WORKERS, LOCALS 6254 AND 6285

RETRAITE QUÉBEC

MORNEAU SHEPELL LTD., IN ITS CAPACITY AS REPLACEMENT PENSION PLAN ADMINISTRATOR

Mis-en-cause

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-and-

FTI CONSULTING CANADA INC.

Monitor

**AMENDED MOTION BY THE MONITOR FOR DIRECTIONS
WITH RESPECT TO PENSION CLAIMS**
(Sections 11 and 23(k) of the *Companies' Creditors Arrangement Act*)

TO MR. JUSTICE STEPHEN W. HAMILTON, J.S.C. OR TO ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE MONITOR SUBMITS:

I. INTRODUCTION

1. On January 27, 2015, the Honourable Justice Martin Castonguay, J.S.C., issued an Order (as subsequently amended, rectified and/or restated, the **Bloom Lake Initial Order**) pursuant to the *Companies' Creditors Arrangement Act* (CCAA) in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, and Cliffs Québec Iron Mining ULC (CQIM), as well as Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (collectively, the **Bloom Lake CCAA Parties**), as appears from the Court record;
2. Pursuant to the Bloom Lake Initial Order, *inter alia*, FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the **Monitor**), and a stay of proceedings was granted in respect of the Bloom Lake CCAA Parties until February 26, 2015 (subsequently extended from time to time, and most recently until September 30, 2016 by Order dated April 20, 2016);
3. On May 20, 2015, the Honourable Justice Stephen W. Hamilton, J.S.C., issued an Order (as subsequently amended, rectified and/or restated, the **Wabush Initial Order**) extending the scope of these CCAA proceedings to the Petitioners Wabush Iron Co. Limited (**Wabush Iron**) and Wabush Resources Inc. (**Wabush Resources**), as well as Mises-en-cause Wabush Mines, an unincorporated contractual joint venture (**Wabush Mines**), Arnaud Railway Company (**Arnaud Railway**), and Wabush Lake Railway Company Limited (**Wabush Railway**) (collectively, the **Wabush CCAA Parties**, and together with the Bloom Lake CCAA Parties, the **CCAA Parties**), as appears from the Court record. For ease of reference a copy of the Wabush Initial Order dated May 20, 2015, as rectified on May 28, 2015, is communicated herewith as **Exhibit R-1**;
4. Pursuant to the Wabush Initial Order (R-1), *inter alia*, the Monitor was appointed as the monitor of the Wabush CCAA Parties, and a stay of proceedings was granted in respect of the Wabush CCAA Parties until June 19, 2015 (subsequently extended from time to time, and most recently until September 30, 2016 by Order dated April 20, 2016);
5. On November 5, 2015, the Honourable Justice Stephen W. Hamilton, J.S.C., issued an order (as amended on November 16, 2015, the **Claims Procedure Order**), which approved and established a procedure for the filing of creditors' claims against the CCAA Parties and their directors and officers (the **Claims Procedure**), as appears from the Claims Procedure Order, a copy of which is communicated in support herewith for ease of reference as **Exhibit R-2**;

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6. Capitalized terms not otherwise defined herein have the meaning ascribed thereto in the Claims Procedure Order (R-2);
7. Both the Bloom Lake Initial Order and the Wabush Initial Order provide that the Monitor assist the CCAA Parties in dealing with their creditors over the course of the Stay Period, and declare that the Monitor may apply to the Court for directions as becomes necessary in discharging its duties, the whole as appears from, *inter alia*, paragraphs 39 and 65 the Wabush Initial Order (R-1);
8. Moreover, paragraphs 61 and 68 of the Claims Procedure Order (R-2) entitle the Monitor to apply to the Court for advice and directions in connection with the discharge or variation of its powers and duties thereunder;
9. The Monitor hereby applies for directions with respect to the priority of Pension Claims filed by the Plan Administrator pursuant to the Claims Procedure Order (R-2), and the applicability and scope of deemed trusts, if any, under the *Pension Benefits Standards Act*, R.S.C. 1985, c. 32 (2nd Supp.) (**PBSA**) and the Newfoundland & Labrador *Pension Benefits Act*, S.N.L. 1996, c. P-4.01 (**PBA**) as well as the Québec Supplemental Pension Plans Act, R.L.R.Q., c. R-15.1 (**SPPA**), the whole as more fully set out below;
10. Specifically, the Monitor is asking the Court to issue an Order in the form of the draft Order communicated herewith as **Exhibit R-3** with respect to the priority of the various components of the Salaried DB Plan Claim and the Union DB Plan Claim (each as defined herein below);

II. OVERVIEW OF WABUSH CCAA PROCEEDINGS

11. As stated in paragraphs 16 to 19 and 21 of the *Motion for the Issuance of an Initial Order* of the Wabush CCAA Parties dated May 19, 2015 (the **Wabush Initial Motion**), a copy of which is communicated herewith as **Exhibit R-4**, there were no operations as of the date of the Wabush Initial Order at either the Wabush Pointe-Noire pellet plant (the **Pointe-Noire Plant**) or the Wabush Mine (as defined in the Wabush Initial Motion);
12. The Pointe-Noire Plant had been shut down in June 2013, while the Wabush Mine was shut down in the first quarter of 2014, and substantially all of the employees at both sites had been terminated or laid off prior to the issuance of the Wabush Initial Order, as stated in paragraphs 37 and 38 and 87 to 96 of the Wabush Initial Motion (R-4);
13. The Wabush Initial Order (R-1) provided for *inter alia*:
 - a) The creation of non-priming charges, including an Administration Charge for an aggregate amount of \$1,750,000, a Directors' Charge for an aggregate amount of \$2,000,000, and an Interim Lender Charge for an aggregate amount of \$15,000,000 (each as defined in the Wabush Initial Order, and collectively referred to as the **CCAA Charges**);
 - b) The permission, but no requirement, for the Wabush CCAA Parties to pay normal cost pension contributions payable on or after the date thereof as follows:

[12] **ORDERS** that the Wabush CCAA Parties shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

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(a) all outstanding and future wages, salaries, bonuses, employee and current service pension contributions, expenses, benefits, vacation pay and termination and severance obligations payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; [...] [Emphasis added]

14. On June 9, 2015, the Court issued an order with respect to the Wabush CCAA Parties (the **Wabush Comeback Order**), a copy of which is communicated herewith for ease of reference as **Exhibit R-5**, which provided for *inter alia*:

- a) The approval on a *nunc pro tunc* basis of the **SISP** (as defined therein) with respect to the Wabush CCAA Parties;
- b) The creation of the **Sale Advisor Charge** (as defined in paragraph 16 thereof);
- c) The priority status of the CCAA Charges and the Sale Advisor Charge, to rank ahead of all Encumbrances (as defined therein), subject to the rights of the various parties having objected to the priming of the Interim Lender Charge;
- d) The adjournment to June 22, 2015 of the debate as to both the proposed priority of the Interim Lender Charge and the suspension by the Wabush CCAA Parties of its special payments to the DB Plans (as defined below), as follows:

[5] **ORDERS** that paragraph 47 of the Wabush Initial Order shall be amended as follows:

[47] **DECLARES** that each of the CCAA Charges shall rank ahead of all hypothecs, mortgages, liens, security interests, priorities, trusts, deemed trusts (statutory or otherwise), charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") [...] affecting the Property of the Wabush CCAA Parties whether or not charged by such Encumbrances [...], with the exception of the Crown deemed trusts for sources deductions described in Section 37(2) CCAA and the sums that could be subject to a claim under Section 38(3) CCAA. For greater certainty, the CCAA Charges only extend to assets or rights against assets over which the Wabush CCAA Parties hold or acquire title and the Interim Lender's Charge is subject to the Permitted Priority Liens (as defined in the Interim Financing Term Sheet). [underlining in the original]

[6] **RESERVES** the rights of Her Majesty in right of Newfoundland and Labrador, as represented by the Superintendent of Pensions, the Syndicat des Métallos, Section Locale 6254, the Syndicat des Métallos, Section 6285 and the Attorney General of Canada to contest the priority of the Interim Lender Charge over the deemed trust(s) as set out in the Notices of Objection filed by each of those parties in response to the Motion, which shall be heard and determined at the hearing scheduled on June 22, 2015. [Emphasis added.]

[...]

[21] **ORDERS** the request by the Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015; [Emphasis added.]

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[22] **ORDERS** the request by the Wabush CCAA Parties for an order for the suspension of payment by the Wabush CCAA Parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date is adjourned to June 22, 2015; [Emphasis added.]

the whole as it appears from the Wabush Comeback Order (R-5);

15. A copy of the *Motion for the Issuance of an order in respect of the Wabush CCAA parties (1) granting priority to certain CCAA charges, (2) approving a Sale and Investor Solicitation Process nunc pro tunc, (3) authorizing the engagement of a Sale Advisor nunc pro tunc, (4) granting a Sale Advisor Charge, (5) amending the Sale and Investor Solicitation Process, (6) suspending the payment of certain pension amortization payments and post-retirement employee benefits, (7) extending the stay of proceedings, (8) amending the Wabush Initial Order accordingly* of the Wabush CCAA Parties dated May 29, 2015 (the **Wabush Comeback Motion**), which led to the Wabush Comeback Order (R-5), is also communicated herewith for ease of reference as **Exhibit R-6**;

16. By way of judgment dated June 26, 2015, the Court rendered Orders with respect to the priority of the Interim Lender Charge and the suspension of payment of monthly and annual lump sum "catch-up" payments (the **Pension Priority and Suspension Order**), as follows:

[143] [...] **CONFIRMS** the priority of the Interim Lender Charge over deemed trusts, as set out in paragraph 47 of the Wabush Initial Order, as amended on June 9, 2015;

[144] **ORDERS** the suspension of payment by the Wabush CCAA Parties of the monthly amortization payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date;

[145] **ORDERS** the suspension of payment by the Wabush CCAA parties of the annual lump sum "catch-up" payments coming due pursuant to the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company and the Pension Plan for Bargaining Unit Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, *nunc pro tunc* to the Wabush Filing Date; [Emphasis added.]

the whole as it appears from the Pension Priority and Suspension Order, a copy of which is communicated herewith as **Exhibit R-7**;

17. Motion for leave to appeal the Pension Priority and Suspension Order (R-7) was dismissed by the Court of Appeal on August 18, 2015, as appears from the judgment of the Honourable Nicholas Kasirer, J.C.A., a copy of which is communicated herewith as **Exhibit R-8**;

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18. On February 1, 2016, the Court issued Approval and Vesting Orders with respect to:
- a) An Asset Purchase Agreement dated as of December 23, 2015, a copy of which is communicated herewith as **Exhibit R-9**, whereby CQIM, Wabush Resources, Wabush Iron and Arnaud Railway (collectively, the **Port Vendors**) agreed to sell to Investissement Québec (together with Société ferroviaire et portuaire de Pointe-Noire s.e.c., its subsequent assignee pursuant to an agreement dated January 29, 2016, the **Port Purchaser**), substantially all of the assets, with the exception of certain excluded assets, of the Port Vendors relating to the Pointe-Noire Plant, the port facility located in the Bay of Sept-Îles (the **Pointe-Noire Port Facility**), and the Arnaud railway (collectively, the **Port Assets**), the whole as appears from the Approval and Vesting Order dated February 1, 2016 issued with respect to the Port Assets (the **Port Approval and Vesting Order**), communicated herewith as **Exhibit R-10**;
 - b) An Asset Purchase Agreement dated as of January 26, 2016, a copy of which is communicated herewith as **Exhibit R-11**, whereby Wabush Resources and Wabush Iron (the **Block Z Vendors**) agreed to sell to Administration Portuaire de Sept-Îles / Sept-Îles Port Authority (the **Block Z Purchaser**), the immovable property known as "Block Z" located near the Pointe-Noire Port Facility, the whole as appears from the Approval and Vesting Order dated February 1, 2016 issued with respect to Block Z (the **Block Z Approval and Vesting Order**), communicated herewith as **Exhibit R-12**;
19. The Port Approval and Vesting Order (R-10) and the Block Z Approval and Vesting Order (R-12) provided for the vesting of the assets on a free and clear basis, with the net proceeds from both transactions to stand in "the place and stead" of the Port Assets and the Block Z, respectively:
- ORDERS that for the purposes of determining the nature and priority of the Encumbrances, the balance of the Proceeds remaining following deduction for applicable Cure Costs (if any) and Transfer Taxes (if any is payable) that are remitted by the Monitor pursuant to Paragraph 10 of this Order (the "Net Proceeds") shall stand in the place and stead of the Purchased Assets, and that upon the issuance of the Certificate, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Closing.
- [Para. 21 of the Port Approval and Vesting Order and para. 19 of the Block Z Approval and Vesting Order. Emphasis added.]
20. The total outstanding amount owing to the Interim Lender under the Interim Financing Documents (as defined in the Port Approval and Vesting Order) was repaid by the Monitor using the proceeds of the sale of the Port Assets, as contemplated in the Port Approval and Vesting Order (R-10);

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III. DEFINED BENEFIT PENSION PLANS AND CONTRIBUTIONS

A. Defined Benefit Pension Plans

21. Two of the Pensions Plans in place for the CCAA Parties' Employees contained defined benefit schemes:

- a) A hybrid pension plan for salaried employees at the Wabush Mine and the Pointe-Noire Port hired before January 1, 2013, known as the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited, registered with the Newfoundland & Labrador Superintendent of Pensions (**the N&L Superintendent**) under member 021314 and the Canada Revenue Agency under number 0343558, as amended and restated effective as of January 1, 1997, together with subsequent amendments thereto¹, communicated herewith as **Exhibit R-23 (the Salaried DB Plan)**, which included both defined benefit and defined contribution components [...]; and
- b) A pension plan for unionized hourly employees at the Wabush Mine and the Pointe-Noire Port, known as the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, [...] Wabush Lake Railway Company, Limited, registered with the Newfoundland & Labrador Superintendent of Pensions under number 024699, the Office of the Superintendent of Financial Institutions of Canada (**OSFI**) under number 57777, and the Canada Revenue Agency under number 0555201, as amended and restated effective as of March 1, 1996, together with subsequent amendments thereto², communicated herewith as **Exhibit R-24 (the Union DB Plan)**, and together with the Salaried Pension Plan, the **DB Plans**);

both of which were administered by Wabush Mines (the **Plan Administrator**), until the DB Plans were terminated in December 2015. The Plan Administrator was subsequently replaced by Morneau Shepell Ltd. (the **Replacement Plan Administrator**), the whole as further detailed herein below;

22. [...]

23. [...]

24. On December 15, 2015, the Wabush CCAA Parties received two notices from the [...] **N&L Superintendent** announcing the termination, effective as of that date, of both DB Plans (the **N&L Termination Notices**), as appears from the copy of said notices, communicated herewith *en liasse* as **Exhibit R-13**;

¹ It would appear that the amendments were only received by the N&L Superintendent on July 30, 2015.

² It would appear that the amendments were only received by the N&L Superintendent on July 30, 2015.

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25. In the N&L Termination Notice (R-13), the N&L Superintendent noted the following:
- a) The Wabush CCAA Parties had discontinued or were in the process of discontinuing all of their business operations within the meaning of Section 59(1)(b) PBA; and
 - b) The N&L Superintendent was of the opinion that the DB Plans had failed to meet the solvency requirements prescribed by the applicable regulations within the meaning of Section 59(1)(d) PBA;
26. Also on December 15, 2015, the Wabush CCAA Parties received a notice from [...] OSFI, declaring the termination, effective as of that date, of the Union DB Plan (the **OSFI Termination Notice**, and collectively with the N&L Termination Notices, the **Termination Notices**), as appears from a copy of the OSFI Termination Notice, communicated herewith as **Exhibit R-14**;
27. In the OSFI Termination Notice (R-14), OSFI noted the following:
- a) Special payments had been suspended in the CCAA Proceedings;
 - b) The Wabush Mine had been shut down and substantially all the Wabush CCAA Parties' employees had been terminated;
 - c) OSFI was of the opinion that the DB Plans had failed to meet the prescribed tests and standards for solvency under the PBSA;
 - d) There had been a cessation of crediting of benefits to plan members;
28. In the Termination Notices (R-13 and R-14), both OSFI and the N&L Superintendent indicated that the Wabush CCAA Parties were required to pay into the pension funds all amounts that would have been required to be paid to meet the prescribed solvency requirements, as well as the amounts necessary to fund the benefits provided for in the DB Plans. Both OSFI and the N&L Superintendent of Pensions also took the position that a deemed trust had arisen in respect of such amounts;
29. On March 30, 2016, upon written requests by the Wabush CCAA Parties, OSFI and the N&L Superintendent appointed the Replacement Pension Plan Administrator in respect to both DB Plans, as appears from the three notices received from OSFI and the N&L Superintendent, communicated herewith *en liasse* as **Exhibit R-15**;

B. Employer Contributions

(i) Normal Costs

30. The normal cost payments were made to the [...] DB Plans by the Wabush CCAA Parties based on the actuarial reports prepared by Towers Watson Canada Inc. (as it then was, now Willis Towers Watson, hereinafter **Towers Watson**) in its capacity as consultant to the Plan Administrator [...] prior to the appointment of the Replacement Pension Plan Administrator;

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31. The normal cost payments with respect to the Salaried DB Plan were fully paid as of the Wabush Initial Order, and were in fact overpaid in the amount of \$169,961 as of December 15, 2015, the date of the termination of the Salaried DB Plan, as appears from the summary table with respect to the Salaried DB Plan prepared by the Replacement Pension Plan Administrator (the **Salaried DB Plan Summary**), a copy of which is communicated herewith as **Exhibit R-16**;
32. The normal cost payments with respect to the Union DB Plan were fully paid as of the Wabush Initial Order and continued to be paid up until December 15, 2015, the date of the termination of the Union DB Plan, (including a payment of \$ 22,893 for December 2015 being the amount for the month prorated to the Union DB Plan termination date), as appears from the summary table with respect to the Union DB Plan prepared by the Replacement Pension Plan Administrator (the **Union DB Plan Summary**), communicated herewith as **Exhibit R-17**. It is noted that the Salaried DB Plan Summary and the Union DB Plan Summary appear to have rounding errors in the some of the totals shown thereon;

(ii) **Special Payments**

33. As appears from Section 2 of the Salaried DB Plan Summary (R-16):
- a) The special payments with respect to the Salaried DB Plan required to be paid prior to the date of the Wabush Initial Order were paid in full except for \$3;
 - b) One special payment in the amount of \$273,218 was paid after the date of the Wabush Initial Order and before the granting of the Pension Priority and Suspension Order (R-7), which payment constituted an underpayment of \$1;
 - c) The special payments required to be paid after the date of the Pension Priority and Suspension Order (R-7), and which, in conformity with the Pension Priority and Suspension Order (R-7), were not paid, amount to \$ 2,185,752;

the whole based on a Towers Watson actuarial report dated September 12, 2014 for actuarial valuation as at January 1, 2014;

34. As appears from Section 2 of the Union DB Plan Summary (R-17):
- a) The special payments with respect to the Union DB Plan required to be paid prior to the date of the Wabush Initial Order were underpaid in the amount of \$146,776;
 - b) One special payment in the amount of \$393,337 was paid after the date of the Wabush Initial Order and before the granting of the Pension Priority and Suspension Order (R-7), which payment constituted an overpayment of \$16,308;
 - c) The special payments required to be paid after the date of the Pension Priority and Suspension Order (R-7), and which, in conformity with the Pension Priority and Suspension Order (R-7), were not paid, amount to \$3,016,232;

the whole based on a Towers Watson actuarial report dated September 12, 2014 for actuarial valuation as at January 1, 2014;

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(iii) Catch-Up Special Payments

35. In the Wabush Comeback Motion (R-6), the Wabush CCAA Parties indicated that lump sum "catch up" special payments (each, a **Catch-Up Payment**) were estimated to be approximately \$5.5 million for both DB Plans and would become payable as of July 2015 (at paragraph 88);
36. Subsequently, the Wabush CCAA Parties determined that no such Catch-Up Payment was due in respect of the Salaried DB Plan;
37. The Catch-Up Payment in respect of the Union DB Plan for its part was revised and estimated to be approximately \$1.9 million;
38. In fact, pursuant to a Towers Watson actuarial report dated July 1, 2015 for an actuarial valuation as of January 1, 2015, which only became available after the issuance of the Wabush Initial Order, additional special payments in the aggregate amount of \$3,525,120 were required with respect to the Union DB Plan, as appears from the Union DB Plan Summary (R-17);
39. As also appears from Section 3 thereof (R-17), these additional special payments with respect to the Union DB Plan were payable by way of a Catch-Up Payment of \$1,762,560 due August 26, 2015, and thereafter in additional special payments payable in six monthly instalments of \$293,760 starting August 30, 2015;
40. None of these monthly additional special payments were paid or kept separate and apart from their own moneys by the Wabush CCAA Parties, nor was any Catch-Up Payment made (or kept separate and apart by the Wabush CCAA Parties from their own moneys) with respect to the Union DB Plan, the whole as contemplated and authorized by the Pension Priority and Suspension Order (R-7);

(iv) Wind-Up Deficiencies

41. In the Wabush Comeback Motion (at paragraph 83), based on estimates received from Towers Watson, the Wabush CCAA Parties estimated the wind-up deficits to be approximately \$18.2 million for the Salaried DB Plan and \$23.3 million for the Union DB Plan;
42. [...] The Replacement Pension Plan Administrator [...] later informed the Monitor that it [...] expected the wind-up deficits as at December 16, 2015, to be approximately \$26.7 million for the Salaried DB Plan and \$27.7 million for the Union DB Plan;
- 42.1 In December 2016, Morneau Shepell filed a report titled "Wind-Up Actual Valuation as at December 16, 2015" in respect of the Salaried DB Plan (the **Salaried DB Plan Wind-Up Report**), a copy of which is communicated herewith as **Exhibit R-25**;
- 42.2 Based on the Salaried DB Plan Wind-Up Report (R-25), the financial position of the Salaried DB Plan as of December 16, 2015 presented a wind-up deficit of \$27.45 million, as appears from page 3 thereof;

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- 42.3 On December 14, 2016, Towers Watson filed a report titled "Plan Termination as at December 16, 2015" in respect of the Union DB Plan (the **Union DB Plan Wind-Up Report** and together with the Salaried DB Plan Wind-Up Report, the **Wind-Up Reports**)³, a copy of which is communicated herewith as **Exhibit R-26**;
- 42.4 Based on the Union DB Plan Wind-Up Report (R-26), the financial position of the Union DB Plan as of December 16, 2015 presented a wind-up deficit of \$27,486,548, as appears from pages 8 and 9 thereof. This calculation does not account for the benefits covered by Section 17 PBSA, which is qualified as "Priority no. 2" ranking after the wind-up deficit and would represent an additional wind-up liability of \$2,349,912, as appears from pages 4 and 10 of the Union DB Plan Wind-Up Report;

(v) Summary of Amounts Owing

43. In summary and based on the foregoing, the amounts owing to the [...] DB Plans based on payment due date are as follows:

	Salaried DB Plan	Union DB Plan
Normal Cost Payments		
Pre-filing	\$0	\$0
Post-Filing	\$0	\$0
Total	\$0	\$0
Special Payments		
Pre-filing	\$3	\$146,776
Post-Filing	\$2,185,753	\$2,999,924
Total	\$2,185,756	\$3,146,700
Catch-up Special Payments		
Pre-filing	\$0	\$0
Post-Filing	\$0	\$3,525,120
Total	\$0	\$3,525,120
[...] Wind-Up Deficits	\$27,450,000	\$27,486,548⁴

³ Both Wind-up Reports remain subject to review and approval by the pension regulators.

⁴ Excluding the additional wind-up deficit in the amount of \$ 2,349,912 (see para. 42.4 above).

IV. PENSION CLAIMS

44. The Claims Procedure Order (R-2) provides for specific procedures with respect to Pension Claims, as follows:

[32] **ORDERS** that the Plan Administrator will have the sole authority to file Proofs of Claim with respect to any and all Pension Claims.

[32.1] **ORDERS** that the Monitor shall provide to the Pension Regulator and the Representatives' Counsel a copy of each Proof of Claim filed in respect of the Salaried Pension Plan and details of any determination by the Monitor of a Pension Claim in respect of the Salaried Pension Plan.

[32.2] **ORDERS** that the Monitor shall provide to the Pension Regulator and the USW a copy of each Proof of Claim filed in respect of the Union Pension Plan and details of any determination by the Monitor of a Pension Claim in respect of the Union Pension Plan.

[...]

[38.1] **ORDERS** that the Pension Regulator and the Representatives' Counsel may file a Notice of Dispute with respect to any determination by the Monitor of a Pension Claim in respect of the Salaried Pension Plan, including for the purpose of asserting any trust claims in respect of the Salaried Pension Plan, and if no Notice of Dispute is filed within fourteen (14) days of the date of receipt of the Monitor's notice of its determination of a Pension Claim in respect of the Salaried Pension Plan such determination shall be deemed to be the Allowed Claim. If a Notice of Dispute is filed by the Pension Regulator or the Representatives' Counsel within the time specified herein, paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi*.

[38.2] **ORDERS** that the Pension Regulator and the USW may file a Notice of Dispute with respect to any determination by the Monitor of a Pension Claim in respect of the Union Pension Plan, including for the purpose of asserting any trust claims in respect of the Union Pension Plan, and if no Notice of Dispute is filed within fourteen (14) days of the date of receipt of the Monitor's notice of its determination of a Pension Claim in respect of the Union Pension Plan such determination shall be deemed to be the Allowed Claim. If a Notice of Dispute is filed by the Pension Regulator or the USW within the time specified herein, paragraphs 37 and 46 to 51 hereof shall apply *mutatis mutandi*.

[38.3] **ORDERS** that the Pension Regulator and the Representatives' Counsel shall be given written notice by the Monitor of, and are entitled to participate in (i) any hearing before a Claims Officer concerning a Pension Claim in respect of the Salaried Pension Plan and (ii) any hearing before the Court concerning a Pension Claim in respect of the Salaried Pension Plan.

[38.4] **ORDERS** that the Pension Regulator and the USW shall be given written notice by the Monitor of, and are entitled to participate in (i) any hearing before a Claims Officer concerning a Pension Claim in respect of the Union Pension Plan and (ii) any hearing before the Court concerning a Pension Claim in respect of the Union Pension Plan. [Emphasis added]

45. On December 18, 2015, the Plan Administrator filed, in accordance with the Claims Procedure Order (R-2), Proofs of Claim with respect to each of the DB Plans, as follows:
- a) With respect to the Salaried DB Plan, (i) a secured Claim in the amount of \$24,000,000 against Wabush Mines, Arnaud Railway and Wabush Railway (for

the wind-up deficit), and (ii) a Restructuring Claim in the amount of \$1,932,940 against Wabush Mines, Arnaud Railway and Wabush Railway (for unpaid special payments), the whole as appears from said Proof of Claim (in the amount finally determined in accordance with the Claims Procedure Order, the **Salaried DB Plan Claim**), a copy of which is communicated herewith as **Exhibit R-18**; and

- b) With respect to the Union DB Plan, (i) a secured Claim in the amount of \$29,000,000 against Wabush Mines, Arnaud Railway and Wabush Railway (for the wind-up deficit), and (ii) a Restructuring Claim in the amount of \$6,059,238 against Wabush Mines, Arnaud Railway and Wabush Railway (for unpaid special payments), the whole as appears from said Proof of Claim (in the amount finally determined in accordance with the Claims Procedure Order, the **Union DB Plan Claim**), a copy of which is communicated herewith as **Exhibit R-19**;

V. APPLICABLE STATUTORY REGIME

46. [...]

46.1 As noted above, the DB Plans are registered with OSFI and/or the N&L Superintendent;

46.2 The PBSA applies to pension plans providing benefits to employees and retirees employed in "included employment", which in turn is defined as work, undertaking of business that falls within the legislative authority of the Parliament of Canada, including navigation and shipping and extra-provincial railways, the whole as provided for in Section 4 PBSA:

4 (1) This Act applies in respect of pension plans.

(2) In this Act, pension plan means a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees) and to which the employer is required under or in accordance with the plan to contribute [...]

(4) In this Act, included employment means employment, other than excepted employment, on or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including, without restricting the generality of the foregoing,

(a) any work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of a ship and transportation by ship anywhere in Canada;

(b) any railway, canal, telegraph or other work or undertaking connecting a province with another province or extending beyond the limits of a province [...]

(6) The Governor in Council may make regulations excepting from included employment [...]

(b) any other employment if the Governor in Council, on a report of the Minister, is satisfied that

(i) provision has been made for the coverage of employees employed in that employment under the terms of a pension plan that is organized and administered for the benefit primarily of employees employed in other than included employment and that is required to be registered under the law of a designated province [...] [Emphasis added.]

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- 46.3 No regulation exempting the DB Plans from the application of the PBSA were adopted pursuant to Subsection 4(6)(b) above;
- 46.4 The PBA applies to pension plans for persons employed in Newfoundland & Labrador, except those to which an Act of the Parliament of Canada applies, as provided for in Section 5 PBA:
5. This Act applies to all pension plans for persons employed in the province [of Newfoundland & Labrador], except those pension plans to which an Act of the Parliament of Canada applies.
- 46.5 Subsection 2(ee) PBA defines "province of employment" as "the province where an employee reports for work, but if the employee is not required to report for work, the province where an employer's establishment is located from which an employee's remuneration is paid";
- 46.6 The SPPA applies to pension plans provided for employees who report for work at an establishment of their employer located in Québec, as provided for in Section 1 thereof:
1. This Act applies to pension plans provided
- (1) for employees who report for work at an establishment of their employer located in Québec or, if not, who receive their remuneration from such an establishment, provided, in the latter case, they do not report for work at any other establishment of their employer;
- (2) for employees not referred to in paragraph 1 who, while residing in Québec and being employed by an employer whose main establishment is located in Québec, work outside Québec, provided the plans are not governed by an Act of a legislative body other than the Parliament of Québec which provides for a deferred pension.
- 46.7 The Salaried DB Plan is comprised of 656 members, approximately half of which were employed in the province of Québec, with the other half in Newfoundland & Labrador⁵;
- 46.8 The Union DB Plan is comprised of 1732 members, the majority of which are in the province of Newfoundland & Labrador;
- 46.9 Following the termination of the Salaried DB Plan, 14 of its members were found to be subject to federal legislation as a result of the nature of their functions, as explained at page 4 of the Salaried DB Plan Wind-Up Report (R-25)⁶;
- 46.10 As for the Union DB Plan, it would appear that 55 of its 1732 members are governed by federal jurisdiction as a result of the nature of their functions;
- 46.11 Based on the foregoing and the information found in the Wind-Up Reports (R-25 and R-26), the members of both DB Plans appear to be subject to the following jurisdictions:

⁵ As noted in Appendix C of the Salaried DB Plan Wind-Up Report (R-25, at page 19), the membership data is currently under review and remains subject to change.

⁶ See note 3 above with respect to membership data.

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	Salaried DB Plan ⁷	Union DB Plan	TOTAL
Newfoundland & Labrador PBA	313	1005	1318
Québec SPPA	329	661	990
Federal PBSA	14	66	80
TOTAL	656	1732	2388

46.12 Sections 6.1 PBSA, 8(2) PBA and 249 SPPA each provide for the entering into of multilateral agreements as between the federal government and that of provinces with a view to determine, *inter alia*, the legislative regime applicable to multi-jurisdictional pension plans;

V.1 DEEMED TRUSTS

46.13 The PBSA, the PBA and the SPPA all include provisions with respect to deemed trusts applicable under certain circumstances with respect to unpaid pension contributions;

A. PBSA

47. Section 8(1) of the PBSA requires an employer to segregate funds from its own moneys, including for certain types of payments owing to the pension fund, and further provides that a trust is deemed to have arisen with respect to said funds for the benefit of the pension members:

8 (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:

(a) the moneys in the pension fund,

(b) an amount equal to the aggregate of the following payments that have accrued to date:

(i) the prescribed payments, and

(ii) the payments that are required to be made under a workout agreement; and

(c) all of the following amounts that have not been remitted to the pension fund:

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

[Emphasis added.]

⁷ See note 3 above with respect to membership data.

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48. Section 8(2) PBSA provides that the amounts deemed to be held in trust pursuant to Section 8(1) shall not form part of the estate of the employer upon in the event of its liquidation, assignment or bankruptcy:

(2) In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

[Emphasis added.]

49. Section 29 PBSA permits OSFI to declare the whole or part of a pension plan terminated in certain circumstances, and further provides for payments by the employer into the pension fund upon termination:

29 [...] (2) The Superintendent may declare the whole or part of a pension plan terminated where

(a) there is any suspension or cessation of employer contributions in respect of all or part of the plan members;

(b) the employer has discontinued or is in the process of discontinuing all of its business operations or a part thereof in which a substantial portion of its employees who are members of the pension plan are employed; or

(c) the Superintendent is of the opinion that the pension plan has failed to meet the prescribed tests and standards for solvency in respect of funding referred to in subsection 9(1).

(2.1) The Superintendent may also declare the whole of a pension plan terminated if there is a cessation of crediting of benefits to the plan members.

(3) In a declaration made under subsection (2) or (2.1), the Superintendent shall declare a pension plan or part of a pension plan, as the case may be, to be terminated as of the date that the Superintendent considers appropriate in the circumstances.

[...]

(6) If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the pension fund

(a) an amount equal to the normal cost that has accrued to the date of the termination;

(b) the amounts of any prescribed special payments that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(c) the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(d) all of the following amounts that have not been remitted to the pension fund

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at the date of the termination:

- (i) the amounts deducted by the employer from members' remuneration, and
- (ii) other amounts due to the pension fund from the employer; and
- (e) the amounts of all of the payments that are required to be made under subsection 9.14(2).

[...]

(6.4) On the winding-up of the pension plan or the liquidation, assignment or bankruptcy of the employer, the amount required to permit the plan to satisfy any obligations with respect to pension benefits as they are determined on the date of termination is payable immediately.

(6.5) Subsection 8(1) does not apply in respect of the amount that the employer is required to pay into the pension fund under subsection (6.4). However, it applies in respect of any payments that have accrued before the date of the winding-up, liquidation, assignment or bankruptcy and that have not been remitted to the fund in accordance with the regulations made for the purposes of subsection (6.1). [...]

B. PBA

50. The PBA contains similar provisions to those described above in respect of the PBSA. Section 32 PBA deems a trust to come into existence under certain circumstances:

32 (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

- (a) the money in the pension fund;
- (b) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) any special payments prescribed by the regulations, that have accrued to date; and

(c) all

- (i) amounts deducted by the employer from the member's remuneration, and
- (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.

(3) Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.

(4) An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust

Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

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under subsections (1) and (3).

51. Sections 59 PBA sets out the circumstances in which the N&L Superintendent may declare a plan to be terminated;

59 (1) The superintendent may declare the whole or part of a pension plan terminated where

(a) there is a suspension or cessation of employer contributions in respect of all or part of the plan membership, except where surplus is used to meet funding requirements;

(b) the employer has discontinued or is in the process of discontinuing all of its business operation or a part in which a substantial portion of its employees who are members of the plan are employed;

(c) the employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada);

(d) the superintendent is of the opinion that the plan has failed to meet the requirements prescribed by the regulations for solvency in respect of funding; or

(e) all or part of the business or assets of a predecessor employer's business are sold, assigned or otherwise disposed of and the successor employer who acquired the business or assets does not provide a pension plan for the members of the predecessor employer's plan who become employees of the successor employer.

(2) A declaration made under subsection (1) shall declare the whole or part of a pension plan to be terminated as of a date determined by the superintendent.

52. The wind-up of a pension plan commences immediately after the termination of the plan unless the N&L Superintendent postpones the wind-up by giving written approval, pursuant to Section 60(3) PBA;

53. Section 61 PBA provides for certain termination payments as follows:

61 (1) On termination of a pension plan, the employer shall pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the regulations for solvency, including

(a) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) special payments prescribed by the regulations, that have accrued to the date of termination; and

(b) all

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer

that have not been remitted to the pension fund at the date of termination.

(2) Where, on the termination, after April 1, 2008, of a pension plan, other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan, the employer shall, as prescribed by the regulations, make the payments into the pension fund, in addition to the payments required under subsection (1), that are necessary to fund the benefits provided under the plan.

C. SPPA

53.1 The only deemed trust provided for under the SPPA is that found in Section 49 thereof with respect to unpaid contributions and accrued interest:

49. Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.

53.2 In addition, Section 264 SPPA provides that contributions payable into the pension fund are unassignable and unseizable:

264. Unless otherwise provided by law, the following amounts or contributions are unassignable and unseizable:

(1) all contributions paid or payable into the pension fund or to the insurer, with accrued interest; [...]

53.3 With respect to the employer's obligations upon termination of a pension plan, Sections 228-230 SPPA provides:

§4 – Debts of the employer

228. The amount to be funded to ensure full payment of the benefits of the members or beneficiaries affected by the withdrawal of an employer from a multi-employer pension plan or the termination of a pension plan shall constitute a debt of the employer. The amount to be funded shall be established at the date of termination.

If, at the date of termination, the employer has failed to pay contributions into the pension fund or to the insurer, as the case may be, the debt shall be the amount by which the amount to be funded exceeds such contributions. [...]

229. Any amount owed by an employer under section 228 must, upon its determination, be paid into the pension fund or to the insurer, as the case may be. However, Retraite Québec may, on the conditions it determines, allow any employer to spread the payment of such amount over a period of not more than five years.

Any amount not paid into the pension fund or to the insurer shall bear interest from the date of default, at the rate determined pursuant to section 61 that was applicable at the date of termination.

230. Any amount paid by an employer under this subdivision, including any amount recovered after the date of termination, particularly in respect of contributions outstanding and unpaid at the date of termination, shall be applied to the payment of benefits of members or beneficiaries in the order of priority established under this Act.

such that the termination deficit, if any, is a debt of the employer and not a "contribution" subject to a deemed trust;

D. SUMMARY OF AVAILABLE DEEMED TRUSTS

54. The [...] PBSA and PBA provisions set out above provide for two types of deemed trust:
- (1) a trust that is deemed to exist while the employer continues in business and that covers amounts that the employer is required to keep separate and apart from its own moneys (Sections 8(1) PBSA and 32(1) PBA, hereinafter referred to as **limited deemed trusts**); and
- (2) a trust that arises in the event of any liquidation, assignment or bankruptcy of an employer and that covers amounts that the employer is required to keep separate and apart from its own moneys, whether or not the amounts have in fact been kept separate and apart from the employer's own moneys or assets (Sections 8(2) PBSA and 32(2) PBA, hereinafter referred to as **liquidation deemed trusts**);
55. In the case at hand, OSFI and the N&L Superintendent issued the Termination Notices (R-13 and R-14) with respect to the DB Plans after the CCAA Proceedings had commenced;

V.2 MULTI-JURISDICTIONAL AGREEMENTS AND CONFLICT OF LAWS

56. While the assets of the Wabush CCAA Parties have not been fully realized to date, the Court may need to consider whether any eventual shortfall between the sale proceeds of the Wabush CCAA Parties' assets in Newfoundland and the amounts potentially duly secured by a pension deemed trust created under the PBA could possibly extend to the sale proceeds of the Wabush CCAA Parties' assets formerly located in Quebec;
57. Should it determine that the amounts potentially duly secured by a pension deemed trust created under the PBA exceed the value of sale proceeds generated from assets located in Newfoundland, this Court will need to consider applicable conflict rules so as to determine whether the applicable pension deemed trust under the PBA could extend to the sale proceeds of assets formally located in Quebec;
58. Under the general conflict rules in Quebec, real rights and by extension priority disputes over property are governed by the laws where the property is located, subject to an exception for property in transit (3097 C.c.Q.);
59. The Province of Quebec is also party to certain multi-jurisdictional agreements in relation to pension matters that may provide in certain circumstances for the application of laws of another jurisdiction by way of incorporation where the Quebec government has agreed to do so and its supervisory authority has delegated its authority to the supervisory authority of another jurisdiction;
60. In 2011, the Canadian Association of Pension Supervisory Authorities (**CAPSA**) developed an Agreement Respecting Multi-Jurisdictional Pension Plans (the **2011 Agreement**), which was adopted by the Provinces of Ontario and Quebec, a copy of which is communicated herewith as **Exhibit R-20**;

Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

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61. CAPSA also developed in 2016 a revised version thereof (the **2016 Agreement**), which was adopted by the Provinces of British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan, a copy of which is communicated herewith as **Exhibit R-21**;

62. These 2011 and 2016 Agreements (R-20 and R-21) provide *inter alia* that:

6 (1) While a pension supervisory authority is the major authority for a pension plan in accordance with this Agreement:

(a) the provisions of the pension legislation of the major authority's jurisdiction in respect of matters referred to in Schedule B¹ apply to the plan instead of those of the corresponding provisions of the pension legislation of any minor authority's jurisdiction that would apply to the plan if this Agreement did not exist; and

(b) subject to the provisions of this Agreement, the provisions of the pension legislation of each jurisdiction that are applicable to the plan under the terms of such legislation apply to the plan in respect of matters not referred to in Schedule B.¹

¹ Schedule B states: "8. Legislative provisions respecting: [...] (c) requirements that the pension fund be held separate and apart from the employer's assets and deeming the pension fund to be held in trust for the active members or other persons; (d) an administrator's lien and charge on the employer's assets equal to the amounts deemed held in trust [...]".

63. However, Newfoundland & Labrador is not a party to the 2011 and 2016 Agreements (R-20 and R-21);

64. The only applicable multi-jurisdictional agreement between the governments of Quebec and Newfoundland & Labrador is a Memorandum of Agreement⁸, to which the government of Newfoundland & Labrador became a party in 1986, communicated herewith as **Exhibit R-22**;

65. The Memorandum of Agreement (R-22) does not provide for the incorporation and application of legislative provisions and administrative powers by the participating pension supervisory authorities, but merely provides for a certain delegation of powers as follows:

2. The major authority¹ for each plan shall exercise both its own statutory functions and powers and the statutory functions and powers of each minor authority for such plan.

[...]

9. Where a major authority is unable to exercise a particular power of enforcement available to one of the minor authorities, it shall so advise that minor authority.

¹ According to the Memorandum of Agreement (R-22), "major authority" means, with respect to a plan, the participating authority of the province where the plurality of the plan members are employed, excluding members employed in a province not having a participating authority.

⁸ The Memorandum of Agreement (R-22) remains effective, as provided by Section 284 SPPA.

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66. As such, the Memorandum of Agreement (R-22) could not serve as the basis for the application of the PBA in relation to property located in Quebec;
67. In view of the foregoing and absent a multi-jurisdictional agreement providing for the application in Quebec of the laws of Newfoundland & Labrador, it is submitted that this Court is bound to apply the laws applicable in the Province of Quebec to adjudicate a dispute with respect to tangible assets located in Québec (or the proceeds standing in their stead);
68. The Monitor notes Article 3079 of the *Civil Code of Québec*:

3079. Where legitimate and manifestly preponderant interests so require, effect may be given to a mandatory provision of the law of another State with which the situation is closely connected.

In deciding whether to do so, consideration is given to the purpose of the provision and the consequences of its application.

but is of the view that this exception is not applicable in the circumstances as the possible application of the PBA could have been properly achieved by way of a multi-jurisdictional agreement and absent the execution of the 2011 and 2016 Agreements (R-20 and R-21) by Newfoundland & Labrador it could not justify why its legislation should override Quebec law in the present circumstances, including Articles 2644 and 2647 C.c.Q.;

VI. DIRECTIONS WITH RESPECT TO PENSION CLAIMS

69. Based on its review of the relevant statutes and applicable case-law, the Monitor is of the view that:
- a) Unpaid and accrued normal costs or special costs owing at the date of the Wabush Initial Order would be subject to a limited deemed trust pursuant to subsections 8(1) of the PBSA and 32(1) of the PBA;
 - b) A liquidation deemed trust did not arise prior to or since the Wabush Initial Order pursuant to subsections 8(2) PBSA or 32(2) PBA, as none of the applicable triggering events, including a "liquidation", have occurred, either before or since the date of the Wabush Initial Order;
 - c) In any event, any liquidation deemed trust triggered after the Wabush Initial Order with respect to unpaid amortization payments as a result of a "liquidation" would be ineffective given the terms of the Wabush Initial Order and applicable stay thereunder, the terms of the Pension Priority and Suspension Order, the fact that the special costs were assessed on the basis of a deficit which existed as of the Wabush Initial Order and were calculated for past services rendered as of a pre-filing reference date, the treatment of special costs under the CCAA generally, and legislative choices made with respect to same;
 - d) As a matter of statutory interpretation of the applicable pension legislation alone, the full amount of the wind-up deficit of the DB Plans would not be subject to a pension deemed trust pursuant to the PBSA or the PBA;

Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

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- e) Even if the wind-up deficits of the DB Plans were to be subject to a pension deemed trust pursuant to the terms of PBSA or the PBA, such deemed trust would be ineffective considering the Wabush Initial Order and applicable stay thereunder, the pre-filing nature of deficits of the DB Plans even if crystallized post-filing upon termination of the DB Plans, the treatment of pension deficits under the CCAA and legislative choices made with respect to same;
 - f) Even if the deemed trusts under the PBA were to cover assets located outside of Newfoundland & Labrador, this Court should not recognize and enforce it to the extent applicable the PBA deemed trust against assets located in this Province or the sale proceeds thereof;
70. The Monitor accordingly seeks an Order determining the priority of the various components of the Salaried DB Plan Claim (R-18) and the Union DB Plan Claim (R-19) to be as follows:
- a) normal costs and special payments outstanding as at the date of the Wabush Initial Order to be subject to a limited deemed trust;
 - b) normal costs and special payments payable after the date of the Wabush Initial Order, including additional special payments and Catch Up Payments established on the basis of actuarial reports issued after the Wabush Initial Order to constitute an unsecured Claim;
 - c) wind-up deficiency to constitute an unsecured Claim;
 - d) any trust created pursuant to the PBA may only charge property located in Newfoundland & Labrador;
71. Pursuant to paragraphs 38.1 and following of the Claims Procedure Order (R-2), reproduced above, the Pension Regulators, Representatives' Counsel and well as USW are all entitled to challenge the adjudication of Pension Claims by the Monitor;
72. The Monitor fully expects that various other stakeholders will have an interest in the determination of these priority issues;
73. The Monitor submits that it is proper to seek and obtain directions at this stage in respect of questions outlined above. [...] The amounts and the membership data included herein, including the wind-up deficits, are based on the information appearing in the Wind-Up Reports and are provided solely as information, as it is not necessary to know the actual quantum of the Pension Claims in order to determine their relative priority in these CCAA Proceedings;
74. In any event, should a dispute over the quantum of the wind-up deficits or any other factual information affecting the quantum of the Pension Claims arise, that issue could easily (and efficiently) be bifurcated and resolved independently from the directions sought herein;
75. The Monitor further submits that any proposed distribution of proceeds to creditors, including the choice of the mechanism to effect same, will be impacted by the issues set out herein above;

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76. Based on the foregoing, the Monitor hereby submits that the Court will need to deal with the following questions:

Liquidation giving rise to a liquidation deemed trust

- a) What is the proper meaning of "liquidation" pursuant to subsections 8(2) PBSA and 32(2) PBA?
- b) Did a "liquidation" within the meaning of subsections 8(2) PBSA and 32(2) PBA occur prior or since the Wabush Initial Order?
- c) Would such a liquidation deemed trust (...) be effective if triggered by a "liquidation" occurring after the Wabush Initial Order?

Deficit upon termination

- d) Absent CCAA or BIA proceedings with respect to an employer, could the full amount of the deficit upon termination of a defined benefit pension plan be subject to a deemed trust pursuant to either of the PBSA or the PBA?
- e) Would such a wind-up deficit deemed trust be effective if triggered by a termination occurring after the Wabush Initial Order?

Enforcement or recognition of a PBA deemed trust charging assets located in Québec

- f) Is the deemed trust arising under the PBA specifically or implicitly limited to assets of the employer located in Newfoundland & Labrador?
- g) Could this Court nonetheless recognize and enforce a PBA deemed trust against assets located in this Province (or the sale proceeds standing in their stead)?

VII. CONCLUSIONS AND PROCEDURAL MATTERS

77. The Monitor submits that the notices given of the presentation of the present Amended Motion, the initial iteration of which was originally notified to all Persons on the Service List on September 20, 2016, are proper and sufficient;

78. Pursuant to paragraph 56 of the Wabush Initial Order (R-1), all motions in these CCAA Proceedings are to be brought on no less than ten (10) calendar days' notice to all Persons on the Service List;

- 78.1 Following discussions amongst the Monitor and various interested parties, the Motion was first made returnable on a pro forma basis on October 28, 2016;

- 78.2 Prior to the October 28, 2016 hearing, the following Notices of Objection were filed:

- a) Notice of Objection dated October 7, 2016 filed by the USW;
- b) Notice of Objection dated October 7, 2016 filed by the Representatives; and
- c) Notice of Objection dated October 7, 2016 filed by the Replacement Plan Administrator;

the whole as appears from the Court record;

Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

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79. [...] Both before and after the October 28, 2016, the Monitor has made efforts in order [...] to agree to a timetable for the filing of materials and the presentation of the Motion with the CCAA Parties, Representative Counsel, the USW, the Replacement Plan Administrator and the relevant regulators that would allow relevant parties sufficient opportunity to respond and ensure the efficient hearing of the present Motion [...];
- 79.1 The N&L Superintendent went on to file a Notice of Objection on December 15, 2016, as appears from the Court record. While they have not filed a formal Notice of Objection, the Monitor also understands that OSFI and Retraite Québec intend to take position with respect to the issues raised in the Motion;
- 79.2 A hearing was held on December 20, 2016 to debate the preliminary issues raised in the Notices of Objection, mainly the jurisdictional argument raised by the Representatives as to whether the Court should refer parts or all of the questions arising in the Motion to the Supreme Court of Newfoundland & Labrador;
- 79.3 On January 30, 2017, the Court issued a ruling whereby it determined that it had jurisdiction to deal with all issues stemming from this Motion, including the interpretation of the PBA in the context of the CCAA Proceedings and therefore refused to refer the matter to the Supreme Court of Newfoundland & Labrador;
- 79.4 During a case management hearing held on April 5, 2017, hearing dates on the merits were set (June 28 and 29, 2017), with the Court reserving the right of all parties to submit their position concerning the legal issues this Court needed or ought to rule on to resolve the issues raised by the present Motion;
- 79.5 The service of the present Amended Motion serves as notice pursuant to [...] paragraph 56 of the Wabush Initial Order (R-1);
80. [...];
81. The CCAA Parties have been consulted by the Monitor and support the conclusions sought herein;
82. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Amended Motion;

ISSUE an Order [...] determining the various priority disputes and issues raised by the present Amended Motion;

Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

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WITHOUT COST, save and except in case of contestation.

Montréal, April 13, 2017



NORTON ROSE FULBRIGHT CANADA, LLP
Mtre Sylvain Rigaud and Mtre Chrystal Ashby
Attorneys of the Monitor FTI Consulting Canada Inc.

Suite 2500 - 1 Place Ville Marie
Montreal, Quebec H3B 1R1
Telephone : (514) 847-4702 and (514) 847-6076
Fax : (514) 514-286-5474
notifications-mtl@nortonrosefulbright.com
Our reference : 01028478-0001

Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

NOTICE OF PRESENTATION

TO: SERVICE LIST

TAKE NOTICE that the present *Amended Motion by the Monitor for Directions with Respect to Pension Claims* will be presented for adjudication before the Honourable Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on a date, at a time and in a room to be determined by the Court.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, April 13, 2017



NORTON ROSE FULBRIGHT CANADA, LLP
Mtre Sylvain Rigaud and Mtre Chrystal Ashby
Attorneys of the Monitor FTI Canada Consulting Inc.

Suite 2500 - 1 Place Ville Marie
Montreal, Quebec H3B 1R1
Telephone : (514) 847-4702 and (514) 847-6076
Fax : (514) 514-286-5474
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Our reference : 01028478-0001

Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

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

BLOOM LAKE GENERAL PARTNER LIMITED *et al*

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP *et al*

Mises-en-cause

-and-

HER MAJESTY IN RIGHT OF NEWFOUNDLAND & LABRADOR, AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS

THE ATTORNEY GENERAL OF CANADA, ACTING ON BEHALF OF THE OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS

MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL AND NEIL JOHNSON

UNITED STEEL WORKERS, LOCALS 6254 AND 6285

RÉGIE DES RENTES DU QUÉBEC

MORNEAU SHEPELL LTD., IN ITS CAPACITY AS REPLACEMENT PENSION PLAN ADMINISTRATOR

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**AMENDED LIST OF EXHIBITS IN SUPPORT OF THE
AMENDED MOTION BY THE MONITOR FOR DIRECTIONS
WITH RESPECT TO PENSION CLAIMS**

Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

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- Exhibit R-1** Wabush Initial Order dated May 20, 2015, as rectified on May 28, 2015;
- Exhibit R-2** Claims Procedure Order dated November 5, 2015, as amended on November 16, 2015;
- Exhibit R-3** Draft Order;
- Exhibit R-4** Wabush Initial Motion dated May 19, 2015;
- Exhibit R-5** Wabush Comeback Order dated June 9, 2015;
- Exhibit R-6** Wabush Comeback Motion dated May 29, 2015;
- Exhibit R-7** Pension Priority and Suspension Order dated June 26, 2015;
- Exhibit R-8** Decision of Justice Kasirer, J.C.A. dated August 18, 2015;
- Exhibit R-9** Asset Purchase Agreement (Port Assets) dated December 23, 2015;
- Exhibit R-10** Port Approval and Vesting Order dated February 1, 2016;
- Exhibit R-11** Asset Purchase Agreement (Block Z) dated January 26, 2016;
- Exhibit R-12** Block Z Approval and Vesting Order dated February 1, 2016;
- Exhibit R-13** N&L Termination Notices dated December 15, 2015;
- Exhibit R-14** OSFI Termination Notice dated December 15, 2015;
- Exhibit R-15** Notices with respect to the Replacement of the Pension Plan Administrator dated March 30, 2016;
- Exhibit R-16** Salaried DB Plan Summary Table;
- Exhibit R-17** Union DB Plan Summary Table;
- Exhibit R-18** Salaried DB Plan Proof of Claim dated December 18, 2015;
- Exhibit R-19** Union DB Plan Proof of Claim dated December 18, 2015;
- Exhibit R-20** 2011 CAPSA Agreement Respecting Multi-Jurisdictional Pension Plans;
- Exhibit R-21** 2016 CAPSA Agreement Respecting Multi-Jurisdictional Pension Plans;
- Exhibit R-22** Memorandum of Agreement entered into by Newfoundland & Labrador in 1986;
- Exhibit R-23** Salaried DB Plan, together with Amendments;
- Exhibit R-24** Union DB Plan, together with Amendments;

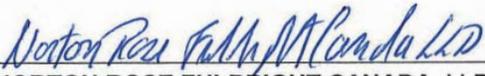
Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

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Exhibit R-25 Salaried DB Plan Wind-Up Report;

Exhibit R-26 Union DB Plan Wind-Up Report.

Montréal, April 13, 2017



NORTON ROSE FULBRIGHT CANADA, LLP
Mtre Sylvain Rigaud and Mtre Chrystal Ashby
Attorneys of the Monitor
Suite 2500 - 1 Place Ville Marie
Montreal, Quebec H3B 1R1
Telephone : (514) 847-4702 and (514) 847-6076
Telecopieur : (514) 514-286-5474
Notifications-mtl@nortonrosefulbright.com
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Amended Motion for Directions with Respect to Pension Claims, April 13, 2017

NO: 500-11-048114-157	
SUPERIOR COURT DISTRICT OF MONTREAL	
IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:	
BLOOM LAKE GENERAL PARTNER LIMITED ET AL	Petitioners
-and-	
THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP ET AL.	Mises-en-cause
-and-	
HER MAJESTY IN RIGHT OF NEWFOUNDLAND & LABRADOR, AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS ET AL.	Mis-en-cause
-and-	
FTI CONSULTING CANADA INC.	Monitor
AMENDED MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS (Sections 11 and 23(k) of the <i>Companies' Creditors Arrangement Act</i>)	
ORIGINAL	
BO-0042	# 01028478-0001
Mtre. Sylvain Rigaud and Mtre. Chrystal Ashby NORTON ROSE FULBRIGHT CANADA LLP BARRISTERS & SOLICITORS 1 Place Ville Marie, Suite 2500 Montréal, Quebec H3B 1R1 CANADA Telephone: 514-847-4702 Telephone: 514-847-6076 Fax: +1 514.286.5474 Notifications-mtl@nortonrosefulbright.com	

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL

No: **500-11-048114-157**

SUPERIOR COURT

(Commercial Division)

(Sitting as a court designated pursuant to
the *Companies' Creditors Arrangement Act*,
R.S.C., c. 36, as amended)

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

**BLOOM LAKE GENERAL PARTNER
LIMITED,
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED, CLIFFS
QUEBEC IRON MINING ULC, WABUSH
IRON CO. LIMITED AND WABUSH
RESOURCES INC.**

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED, WABUSH
MINES, ARNAUD RAILWAY COMPANY
AND WABUSH LAKE RAILWAY
COMPANY, LIMITED**

Mises-en-cause

-and-

**HER MAJESTY IN RIGHT OF
NEWFOUNDLAND & LABRADOR, AS
REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**THE ATTORNEY GENERAL OF CANADA,
ACTING ON BEHALF OF THE OFFICE OF
THE SUPERINTENDENT OF FINANCIAL
INSTITUTIONS**

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON**

**UNITED STEEL WORKERS, LOCALS
6254 AND 6285**

RÉGIE DES RENTES DU QUÉBEC

**MORNEAU SHEPELL LTD., IN ITS
CAPACITY AS REPLACEMENT PENSION
PLAN ADMINISTRATOR**

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**NOTICE OF OBJECTION BY THE SUPERINTENDENT OF PENSIONS
OF NEWFOUNDLAND & LABRADOR TO THE MOTION BY THE MONITOR
FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS**

(Sections 11 and 23(k), *Companies' Creditors Arrangement Act*, RSC 1985, c C-36)

**TO MR. JUSTICE STEPHEN W. HAMILTON, J.S.C., OR TO ONE OF THE
HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE
COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE
SUPERINTENDENT OF PENSIONS OF NEWFOUNDLAND & LABRADOR
RESPECTFULLY SUBMITS AS FOLLOWS:**

1. The Superintendent of Pensions of Newfoundland & Labrador objects to the Motion by the Monitor for Directions with Respect to Pension Claims dated September 20, 2016 ("Motion for Directions").
2. The Superintendent of Pensions first objects to a number of the Monitor's conclusions on questions of law. Having reviewed the relevant statutes and applicable case-law, the Superintendent of Pensions is of the view that:
 - a. A liquidation deemed trust did arise pursuant to subsection 32(2) of the *Pension Benefits Act*, SNL 1996, c. P-4.01 ("PBA"), and that it is inconsequential that the triggering event – in this case, a "liquidation" – would have occurred after the Wabush Initial Order;
 - b. As such, all unpaid and accrued normal costs and special costs up to the date the pension plans were terminated are subject to a deemed trust, in priority to all other claims against the Wabush CCAA Parties (excepting the CCAA-ordered charges);

- c. Interpreting the relevant provisions of the *PBA*, the full amount of the wind-up deficit would either be subject to a deemed trust, in priority to all other claims against the Wabush CCAA Parties (excepting the CCAA-ordered charges), or subject to a lien and charge held by the Plan Administrator;
 - d. The deemed trusts and liens created pursuant to Newfoundland & Labrador's *PBA* charge the sale proceeds of assets formerly located in Quebec and currently held by the Monitor; or,
 - e. In the alternative, this Court ought to give effect, in Quebec, to the provisions of Newfoundland & Labrador's *PBA* pursuant to article 3079 of the *Civil Code of Quebec*, CQLR c. CCQ-1991.
3. The Superintendent notes that these objections have all been previously raised with the Monitor, with the Wabush CCAA parties, and with various counsel representing the pension interests at this Court's *pro forma* hearing on October 28th, 2016.
4. Furthermore, the Superintendent of Pensions objects to two assertions relating to issues of fact, or mixed fact and law, set out in the Monitor's Motion for Directions.
5. First, in the Superintendent of Pensions' view, the Monitor has erred in calculating the catch-up special payments that accrued pre-filing. A number of catch-up special payments were created by a January 1, 2015 actuarial report that was not filed until after the CCAA filing date. These catch-up payments covered, *inter alia*, the months of January, February, March and April 2015, the period before the CCAA filing date. While the amounts due for these months only became known with certainty when the actuarial report was completed and filed in July 2015, these payments "accrued" at the point at which they were completely constituted, before the CCAA filing date: on this point, see e.g. *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, at paras. 34-36.
6. For the Union Plan, the catch-up special payments that accrued pre-filing for the months of January, February, March and April 2015 amount to \$1,175,040. This would reduce the amount of catch-up special payments currently classified as "post-filing" in the Monitor's Motion for Directions from \$3,525,120 to \$2,350,080.
7. Second, there is an additional amount of \$21,462 of normal costs for December 2015 that was never contributed to the Union Plan. Based on the terms of the Union Plan, members who worked the partial month of December, up until the termination date of December 16th, 2015, must receive credited service for the entire month. Therefore, the normal costs

Newfoundland & Labrador Superintendent of Pensions' Notice of Objection, December 15, 2016

for December 2015 should not have been pro-rated, as the Monitor suggests in paragraph 32 of its Motion for Directions.

8. Finally, for the reasons detailed in a Plan of Argument dated December 15th, 2016, the Superintendent of Pensions is also of the view that certain questions that relate solely to the interpretation and application of Newfoundland & Labrador law ought to be determined by the Supreme Court of Newfoundland & Labrador, pursuant to section 17 of the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36.
9. The Superintendent of Pension reserves its right to raise all other grounds for opposition to the matters raised in the Motion for Directions.
10. At the appropriate time, the Superintendent of Pensions will outline its substantive arguments in further detail.
11. This Notice of Objection is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Notice of Objection;

DISMISS the Motion for Directions in Respect of the Pension Claims;

ORDER that the adjudication of the aforementioned issues be referred to the Supreme Court of Newfoundland & Labrador for determination.

THE WHOLE WITHOUT COSTS, EXCEPT IN CASE OF CONTESTATION

MONTREAL, December 15, 2016

Irving Mitchell Kalichman.

M^e Doug Mitchell

dmitchell@imk.ca

M^e Edward Bécharde-Torres

ebecharde@imk.ca

IRVING MITCHELL KALICHMAN LLP

3500 De Maisonneuve Boulevard West

Suite 1400

Montréal, Québec H3Z 3C1

T: 514 935-2725 | F: 514 935-2999

Lawyers for the Mis-en-cause

SUPERINTENDENT OF PENSIONS OF

NEWFOUNDLAND & LABRADOR

Our file: 1606-4 | BI0080

Newfoundland & Labrador Superintendent of Pensions' Notice of Objection, December 15, 2016

NOTICE OF PRESENTATION

TO: *Service List*

TAKE NOTICE that the present *Notice of Objection to the Monitor's Motion for Directions* will be presented for adjudication before The Honourable Mr. Justice Stephen W. Hamilton, J.C.S., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, at the Montréal Courthouse located at 1, Notre-Dame Street, East, Montréal, Québec, on **December 20th, 2016, at room 15.09 at 9:30am** (a room and at a time to be determined).

GOVERN YOURSELF ACCORDINGLY.

MONTREAL, December 15, 2016

Irving Mitchell Kalichman

M^e Doug Mitchell
dmitchell@imk.ca

M^e Edward Béchard-Torres
ebechardtorres@imk.ca

IRVING MITCHELL KALICHMAN LLP
3500 De Maisonneuve Boulevard West
Suite 1400

Montréal, Québec H3Z 3C1
T: 514 935-2725 | F: 514 935-2999

Lawyers for the Mis-en-cause
SUPERINTENDENT OF PENSIONS OF
NEWFOUNDLAND & LABRADOR
Our file: 1606-4 | BI0080

N° 500-11-048114-157

**SUPERIOR COURT
DISTRICT OF MONTRÉAL
PROVINCE OF QUÉBEC**

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

BLOOM LAKE GENERAL PARTNER LIMITED, *et al.*

Petitioners

and

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP, *et al.***

Mises-en-cause

and

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND &
LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS**

**THE ATTORNEY GENERAL OF CANADA, ACTING ON
BEHALF OF THE OFFICE OF THE SUPERINTENDENT OF
FINANCIAL INSTITUTIONS *et al.***

Mis-en-cause

ET AL.

**NOTICE OF OBJECTION BY THE SUPERINTENDENT OF
PENSIONS OF NEWFOUNDLAND & LABRADOR TO THE
MOTION BY THE MONITOR FOR DIRECTIONS WITH
RESPECT TO PENSION CLAIMS**

ORIGINAL

IMK | IRVING
MITCHELL
KALICHMAN

BI0080

IRVING MITCHELL KALICHMAN S.E.N.C.R.L./LLP
Place Alexis Nihon | Tour 2
3500, boulevard De Maisonneuve Ouest | bureau 1400
Montréal (Québec) H3Z 3C1
☎ 514 935-4460 📠 514 935-2999
M^e Doug Mitchell 📧 1606-1
dmitchell@imk.ca
☎ 514 935-2725

Representatives of Salaried/Non-Union Employees & Retirees' Notice of Objection, October 7, 2016

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

No: 500-11-048114-157

SUPERIOR COURT
(Commercial Division)

IN THE MATTER OF THE
COMPANIES' *CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-
36, AS AMENDED

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

BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING CORPORATION,
8568391 CANADA LIMITED, CLIFFS QUEBEC
IRON MINING ULC, WABUSH IRON CO.
LIMITED, WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY, WABUSH LAKE RAILWAY
COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON

OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

-and-

MORNEAU SHEPELL
Mise-en-cause

**NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED
EMPLOYEES AND RETIREES TO THE MOTION BY THE MONITOR FOR
DIRECTIONS WITH RESPECT TO PENSION CLAIMS**
(Sections 11 and 23(k) of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36)

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

The court-appointed Representatives to the non-union employees and retirees (the "**Salaried Members**") of the Wabush CCAA Parties object to the Motion by the Monitor for Directions with respect to Pension Claims dated September 20, 2016 ("**Motion for Directions**") on the following basis:

Background

1. The Wabush CCAA Entities are under CCAA protection but are not restructuring. The Wabush CCAA Entities have shut down operations, terminated the vast majority of the employees, and are selling their assets in a sales process in the CCAA proceedings. The shutdown of Wabush Mines is part of the disengagement by Cliffs Natural Resources based in Cleveland, Ohio, the parent company of Wabush Mines (and Bloom Lake), from its mining operations in Eastern Canada.
2. The Wabush Salaried Plan (and Union plans) are registered in Newfoundland and regulated under the Newfoundland *Pension Benefits Act*, S.N.L. 1996 c. P-4.01 ("**Newfoundland PBA**"). The Plans are significantly underfunded. They are in the process of being wound up by Morneau Shepell who was appointed as the replacement pension plan administrator by the Newfoundland Superintendent of Pensions.
3. As a result of the underfunding of the pension plans, the monthly pension benefits of the Salaried Members have been significantly reduced by 25%. Coupled with the loss of their earned health and life insurance benefits that occurred in June, 2015 at the

commencement of the Wabush CCAA proceedings, the Salaried Members are suffering significant financial losses and hardship in the course of this CCAA proceeding. The Salaried Members are a very significant creditor group.

The Newfoundland PBA deemed trust priority for pension plan beneficiaries

4. On August 14, 2015, Representative Counsel wrote to the company and other parties asserting that the deemed trust priority provisions in the Newfoundland PBA (the "**Newfoundland PBA Deemed Trust**") apply as a priority claim in favour of the beneficiaries of the Wabush Salaried Plan. A copy of the letter is communicated herewith as **Exhibit OP-1**.
5. On November 16, 2015, at the hearing of the motion by the Monitor for approval of the Claims Procedure Order, Representative Counsel advised the Monitor and this Honourable Court that it is the Representatives' position that any issue(s) regarding the interpretation of the Newfoundland PBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication.
6. Despite the previously communicated position of Representative Counsel, the Motion for Directions seeks to have such questions put before by this Court. Further, Representative Counsel does not agree with the relevance and/or the formulation of certain of the Monitor's proposed questions in its Motion for Directions.
7. In the event of dispute on the issue of transferring the Newfoundland PBA Deemed Trust question to the Newfoundland Court, that issue should be addressed first and scheduled for a hearing. There are a number of reasons that support such a transfer, including, but not limited to, the following:
 - a) The Wabush pension plans are registered in Newfoundland and Labrador and have been funded, administered and regulated in accordance with the Newfoundland PBA since their inception. The pension plans have been,

- 3 -

and continue to be, regulated by the Newfoundland Superintendent of Pensions pursuant to the provisions of Newfoundland PBA;

- b) The Québec Superior Court is a court of civil jurisdiction. The Newfoundland court is a court of common law jurisdiction. The Newfoundland PBA is a statute of a common law jurisdiction. It is respectfully submitted that it is more appropriate for a common law court to interpret a common law statute than a civil court interpreting a common law statute;
- c) It is more efficient and cost-effective for the Newfoundland Court to interpret the Newfoundland PBA Deemed Trust rather than the Québec CCAA court. Respectfully, this court does not have expertise in interpreting the Newfoundland PBA Deemed Trust. The adjudication of the Newfoundland PBA Deemed Trust will therefore require expert evidence to be adduced before the Québec court. That process involves the identification, retainer, and payment of suitable expert(s) by the adversarial parties who will be required to prepare expert affidavits on the interpretation of the Newfoundland PBA. The process to retain such expert(s) is time-consuming and costly and will contribute to delay and costs to the estate. Such delay and costs can be avoided by transferring the issue to a Newfoundland court which, as a court of competent jurisdiction to interpret Newfoundland statute law, does not require expert evidence;
- d) There is precedent authority directly on point supporting the transfer of a pension issue to the jurisdiction where the pension plan is registered and has been administered, where that jurisdiction is different from the jurisdiction of the court where the company filed for CCAA protection. For example, in the CCAA proceeding of *Timminco*, the company obtained CCAA protection in the Ontario Superior Court of Justice (Commercial List). An issue arose in the course of that proceeding on the

interpretation of the deemed trust priority provisions in the Québec *Supplemental Pension Plan Act*, chapter R-15.1 ("**SPPA**") which regulated one of the Timminco pension plans. The CCAA judge supervising Timminco ordered adjudication of those issues to be transferred to the Québec Superior Court. The monitor of Timminco (FTI Consulting), and counsel to the company (Blakes LLP) did not oppose the transfer in that case. A decision was ultimately released by Mr. Justice Mongeon of the Quebec court interpreting the provisions of the deemed trust provisions of the Quebec SPPA to the Québec Timminco Plan. A copy of the order of Mr. Justice Morawetz dated October 18, 2012 ordering the transfer is communicated herewith as **Exhibit OP-2**;

- e) Section 17 of the CCAA contemplates the possibility of a transfer of an issue that arises in a CCAA proceeding to another Canadian court from the CCAA court to "act in aid of and be auxiliary to each other". Accordingly, the transfer of the Newfoundland PBA Deemed Trust to the Newfoundland court is readily permissible by the CCAA;
 - f) The Monitor states in its Motion for Directions that it believes another issue on which it needs direction is whether the proceeds derived from the sale of assets located in Quebec could be used toward the payment of a valid Newfoundland PBA Deemed Trust claim, should the court hold that the Newfoundland PBA Deemed Trust priority is valid. As a Québec *property* issue, that is not a factor to consider in transferring the Newfoundland PBA Deemed Trust *priority* issue to the Newfoundland court. The issue of whether Quebec property laws apply in the manner suggested by the Monitor may only arise, if at all, if the Newfoundland PBA Deemed Trust priority applies in favour of the pension plan beneficiaries. The Québec property issue may not arise at all.
8. The process to determine disputed claims in the Claims Process was extensively negotiated by Representative Counsel and USW and other affected parties and

culminated in the Claims Procedure Order of November 5, 2015. The Motion for Directions proposes an alternate process – a motion for directions – without prior consultation or agreement of Representative Counsel (nor other parties). Moreover, the Motion for Directions is in substance largely an advocacy piece and not a neutral document. Representative Counsel requests the opportunity to consult with the Monitor as to the appropriateness of a motion for directions instead of the Claims Process and on the questions to be proposed to the applicable court prior to the Motion for Directions proceeding further.

9. Representative Counsel agrees with the Objection of Morneau Shepell, concurrently filed herein.

Disagreement as to substance of questions and arguments in the Motion for Directions and reservation of rights

10. The Representatives disagree with the position adopted by the Monitor.
11. At the appropriate time, Representative Counsel will submit substantive arguments to such effect that all of the deficits in the Salaried Pension Plan should benefit from the priority deemed trust provisions set out in the Newfoundland PBA, in priority to all other claims against the Wabush CCAA Parties (other than the CCAA-ordered charges).
12. Representative Counsel reserve their rights to raise all other grounds for opposition of the matters raised in the Motion for Directions.
13. This Notice of Objection is well founded in fact and in law.

FOR THESE REASONS THE OBJECTING PARTIES-MISES-EN-CAUSE ASKS THAT THIS HONOURABLE COURT:

- [A] **GRANT** the present Notice of Objection;
- [B] **DISMISS** the Motion for Directions in respect of the Pension Claims;

- 6 -

- [C] **REQUIRE:** (1) the Monitor to consult with the affected parties and make best efforts to reach agreement on a procedure for the adjudication of the Newfoundland PBA Deemed Trust claims, including: the issues to be adjudicated, the appropriate forum for adjudication, the evidence on which the issues are to be adjudicated or the manner in which such evidence is to be tendered, and an appropriate timeline for adjudication; and (2) a motion be brought to amend the Amended Claims Procedure Order;

IN THE ALTERNATIVE:

- [D] **RESERVE** the rights of the Representatives to file a further Notice of Objection as to the specific issues raised in the Motion for Directions in respect of the Pension Claims no later than ten (10) business days after final adjudication of their present Notice of Objection;

IN THE FURTHER ALTERNATIVE

- [E] **DECLARE** the deemed trusts provided in section 52 of the Newfoundland PBA is applicable to the entirety of the deficits in the Wabush Salaried Plan in favour of the pension plan beneficiaries.

THE WHOLE WITHOUT COSTS, EXCEPT IN THE CASE OF CONTESTATION.

Toronto, October 7, 2016



KOSKIE MINSKY LLP

*Court-appointed Representative Counsel for the
OBJECTING PARTIES-Mises-en-cause Michael Keeper,
Terence Watt, Damien Lebel and Neil Johnson*



NICHOLAS SCHEIB

*Court-appointed Representative Counsel for the
OBJECTING PARTIES-Mises-en-cause Michael Keeper,
Terence Watt, Damien Lebel and Neil Johnson*

Representatives of Salaried/Non-Union Employees & Retirees' Notice of Objection, October 7, 2016

NOTICE OF PRESENTATION

IN SUPPORT OF NOTICE OF OBJECTION BY THE REPRESENTATIVES OF THE SALARIED EMPLOYEES AND RETIREES TO THE MOTION BY THE MONITOR FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS

TO: **Me Bernard Boucher** (bernard.boucher@blakes.com)
Me Sébastien Guy (sebastien.guy@blakes.com)
BLAKE, CASSELS & GRAYDON LLP
600 de Maisonneuve West, Suite 2200
Montreal, Quebec H3A 3J2
Counsel for the Petitioners and the Mises-en-cause (i.e., Wabush CCAA Parties)

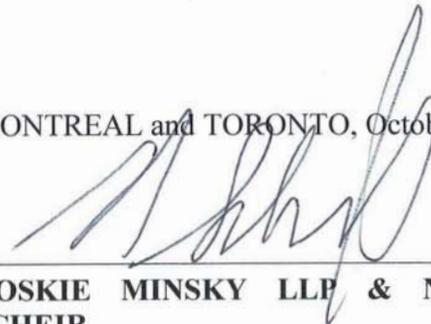
AND TO: **Me Sylvain Rigaud** (sylvain.rigaud@nortonrosefulbright.com)
NORTON ROSE FULBRIGHT CANADA LLP
1 Place Ville Marie, Suite #2500
Montreal, Quebec H3B 1R1
Counsel for the Monitor

AND TO: SERVICE LIST

TAKE NOTICE that the present *Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims* will be presented for adjudication before The Honourable Mr. Justice Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montreal, at the Montreal Courthouse located at 1 Notre-Dame Street East, Montreal, Québec, on **October 12, 2016** at a room and at a time to be determined (or such other date to be determined by the Court for hearing of the *Motion by the Monitor for Directions with Respect to Pension Claims*).

GOVERN YOURSELF ACCORDINGLY.

MONTREAL and TORONTO, October 7, 2016



KOSKIE MINSKY LLP & NICHOLAS SCHEIB

Attorneys for the OBJECTING PARTIES-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
(Commercial Division)

No.: 500-11-048114-157

IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

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

BLOOM LAKE GENERAL
PARTNER LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUEBEC IRON
MINING ULC, WABUSH IRON CO.
LIMITED, WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE
MINE LIMITED PARTNERSHIP,
BLOOM LAKE RAILWAY
COMPANY LIMITED, WABUSH MINES,
ARNAUD RAILWAY COMPANY,
WABUSH LAKE RAILWAY
COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MICHAEL KEEPER, TERENCE WATT,
DAMIEN LABEL AND NEIL JOHNSON

OBJECTING PARTIES-Mises-en-cause

-and-

UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285

Mises-en-cause

-and-

MORNEAU SHEPELL
Mise-en-cause

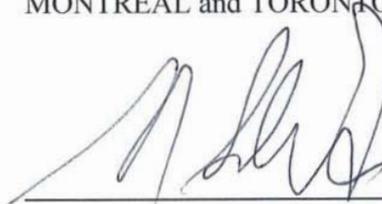
Representatives of Salaried/Non-Union Employees & Retirees' Notice of Objection, October 7, 2016

LIST OF EXHIBITS

(In support of the *Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims*)

Exhibit OP-1	Letter dated August 24, 2015 from Representative Counsel to counsel for the Wabush CCAA Parties
Exhibit OP-2	Copy of the Order (Approval of Priority Claim Adjudication Protocol) of Mr Justice Morawetz, J.S.C., of the Ontario Superior Court of Justice (Commercial List) dated October 18, 2015 in The Matter of the Plan of Compromise or Arrangement of Timminco Limited <i>et al</i>

MONTREAL and TORONTO, October 7, 2016



KOSKIE MINSKY LLP & NICHOLAS SCHEIB
Attorneys for the OBJECTING PARTIES-Mises-en-cause Michael Keeper, Terence Watt, Damien Lebel and Neil Johnson

N° / No.:	500-11-048114-157
<p style="text-align: center;">SUPERIOR COURT (COMMERCIAL DIVISION)</p> <p>IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED</p> <p>IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:</p> <p>BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO MINING CORPORATION, 8568391 CANADA LIMITED, CLIFFS QUÉBEC IRON MINING ULC, WABUSH IRON CO. LIMITED, WABUSH RESOURCES INC.,</p> <p style="text-align: right;">Petitioners</p> <p>THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP, BLOOM LAKE RAILWAY COMPANY LIMITED, WABUSH MINES, ARNAUD RAILWAY COMPANY, WABUSH LAKE RAILWAY COMPANY LIMITED</p> <p style="text-align: right;">Mises-en-cause</p> <p>- and -</p> <p>FTI CONSULTING CANADA INC.</p> <p style="text-align: right;">Monitor</p> <p>- and -</p> <p>MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL & NEIL JOHNSON</p> <p style="text-align: right;"><u>OBJECTING PARTIES-Mises-en-cause</u></p> <p>- and -</p> <p>UNITED STEELWORKERS, LOCAL 6254, UNITED STEEL WORKERS, LOCAL 6285</p> <p style="text-align: right;">Mises-en-cause</p> <p>- and -</p> <p>MORNEAU SHEPELL</p> <p style="text-align: right;">Mises-en-cause</p>	<p style="text-align: center;"><i>“Notice of Objection by the Representatives of the Salaried Employees and Retirees to the Motion by the Monitor for Directions with Respect to Pension Claims”, Notice of Presentation, List of Exhibits and Exhibits OP-1 and OP-2</i></p> <p>Co-Attorneys for the Objecting Parties-Mises-en-cause Michael Keeper, Terence Watt, Damien Label and Neil Johnson</p> <p>AS-0G41</p> <p style="text-align: center;"><i>Scheib Legal / Étude Légale</i> 600 de Maisonneuve O. W., #1700 Montréal, Québec H3A 3J2 T:514.297.2631 F:514.360.2790 nick@scheib.ca</p> <p style="text-align: center;"><i>Kostie Minsky LLP/ SENCRL</i> 20 Queen O. W., #900 Toronto, Ontario M5H3R3 T:416-595-2083 + 416-595-2087 F:416-542-6288 athatnay@kmlaw.ca bwalancik@kmlaw.ca</p>

ORIGINAL

C A N A D A

PROVINCE DE QUÉBEC
District de Montréal

N° : 500-11-048114-157

C O U R S U P É R I E U R E
(Chambre commerciale)

**DANS L'AFFAIRE DE LA LOI SUR LES
ARRANGEMENTS AVEC LES
CRÉANCIERS DES COMPAGNIES,
L.R.C. 1985, CH. C-36, TELLE
QU'AMENDÉE :**

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED ET CLIFFS QUÉBEC MINE DE
FER ULC, WABUSH IRON CO. LIMITED,
WABUSH RESOURCES INC.**

Débitrices

et

**SOCIÉTÉ EN COMMANDITE MINE DE
FER DU LAC BLOOM, BLOOM LAKE
RAILWAY COMPANY LIMITED, WABUSH
MINES, ARNAUD RAILWAY COMPANY,
WABUSH LAKE RAILWAY COMPANY
LIMITED**

Mises en cause

et

FTI CONSULTING CANADA INC.,

Contrôleur

et

**SYNDICAT DES MÉTALLOS, SECTION
LOCALE 6254, SYNDICAT DES
MÉTALLOS, SECTION LOCALE 6285,**

Opposants – Mis-en-cause

et

**SA MAJESTÉ DU CHEF DE TERRE-
NEUVE-LABRADOR, REPRÉSENTÉE
PAR LE SURINTENDANT DES
PENSIONS,**

PROCUREUR GÉNÉRAL DU CANADA,

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON,
AS REPRESENTATIVES**

RÉGIE DES RENTES DU QUÉBEC

MORNEAU SHEPELL

Mis-en-cause

**AVIS D'OBJECTION QUANT À LA *MOTION FOR
DIRECTIONS WITH RESPECT TO PENSION CLAIMS***

(Articles 11 et 23(k) de la *Loi sur les arrangements avec les
créanciers des compagnies* et paragraphe 57 de l'Ordonnance
initiale)

**À L'HONORABLE STEPHEN W. HAMILTON, J.C.S. OU À L'UN DES
HONORABLES JUGES DE LA COUR SUPÉRIEURE, SIÉGEANT EN
CHAMBRE COMMERCIALE POUR LE DISTRICT DE MONTRÉAL, LES
OPPOSANTS, LE SYNDICAT DES MÉTALLOS, SECTION LOCALE 6254
ET LE SYNDICAT DES MÉTALLOS, SECTION LOCALE 6285, EXPOSENT
CE QUI SUIT :**

I. L'OBJET DE L'AVIS D'OBJECTION

1. Par la présente, les Opposants souhaitent formuler leur objection quant à la requête intitulée *Motion for directions with respect to pension claims* (ci-après la « Requête »), qui leur a été signifiée le 21 septembre 2016 et qui doit être présentée pour la forme le 12 octobre 2016;
2. Les Opposants souhaitent ainsi formuler une objection quant aux aspects suivants de la requête déposée par le Contrôleur :

- a) La Requête court-circuite le processus d'adjudication des réclamations ordonné par la Cour;
- b) La Requête, qui se prétend être une requête pour instructions, est en fait une requête pour jugement déclaratoire qui nécessiterait un énoncé conjoint de faits;
- c) La Requête est prématurée;
- d) Les questions soulevées par la Requête sont beaucoup trop larges et nombreuses;
- e) Les Opposants sont en désaccord complet avec les prétentions soutenues par le Contrôleur dans sa Requête;

II. LES MOTIFS D'OBJECTION

A. Le processus de réclamations ordonné par la Cour

- 3. Les Opposants soumettent à la Cour que le Contrôleur ne procède pas convenablement en présentant la Requête puisqu'il existe un mécanisme mis en place par la Cour qui permettrait de traiter efficacement de la question;
- 4. En effet, le 5 novembre 2015, le juge Stephen W. Hamilton, j.c.s. ordonnait la mise en place d'un processus de réclamations pour établir les créances qui valent contre les Débitrices et le rang de priorité de chacune de ces créances;
- 5. Ce processus a été négocié avec de nombreuses parties qui avaient des représentations à faire sur la manière dont le traitement des réclamations devait être fait pour respecter leurs droits;
- 6. Le 16 novembre 2015, ce processus était amendé en lien avec une modification au rôle des Opposants dans le cadre de celui-ci;
- 7. Depuis cette date, le processus de réclamations n'a pas été altéré et est toujours en vigueur;
- 8. Tel que mentionné au paragraphe 45 de la Requête, des réclamations ont été déposées par l'administrateur des régimes de retraite de l'époque concernant les déficits accumulés;
- 9. De plus, des réclamations actualisées sont attendues suivant le rapport de terminaison des régimes de retraite qui viendra établir le déficit de terminaison des régimes;

10. Ces réclamations n'ont toujours pas fait l'objet d'une adjudication de la part du Contrôleur;
11. Les Opposants estiment que le Contrôleur aurait dû poursuivre le traitement des réclamations et émettre une adjudication conforme à sa position, ce qui permettrait ensuite aux parties intéressées de faire valoir une contestation si elles le désirent pour ensuite convenir de façon commune de la manière de procéder pour la détermination des questions en litige et des autres sujets accessoires;
12. D'ailleurs, les Opposants détiennent un moyen de contestation en vertu du paragraphe 38.2 de l'ordonnance instaurant le processus de réclamation amendé advenant une détermination par le Contrôleur quant à la réclamation concernant le régime de retraite des salariés syndiqués;
13. Ainsi, cette manière de procéder conformément au processus de réclamation aurait pour effet de diminuer les sources de contestation en plus de canaliser le tout conformément aux ordonnances de la Cour;
14. Également, ce fonctionnement permettrait de préserver l'équité procédurale pour chacune des parties, alors qu'elle apparaît fortement compromise par le choix procédural du Contrôleur;
15. Si le Contrôleur est d'avis que le processus de réclamations ne convient plus à cette question, il est libre d'en demander l'amendement, ce qui permettra à l'ensemble des parties concernées de faire valoir leur position sur les modifications recherchées;
16. Toutefois, les Opposants soumettent que la voie procédurale choisie par le Contrôleur en l'espèce n'est pas adéquate, ce qui devrait entraîner le rejet de la Requête pour cette seule raison;

B. Le jugement déclaratoire et l'énoncé conjoint de faits

17. Les Opposants soumettent à la Cour que la Requête présentée par le Contrôleur, plutôt que d'être une requête pour instructions, est en fait une requête pour jugement déclaratoire sur certaines questions de droit;
18. Ainsi, nous soumettons que les questions de fond ne pourront être débattues avant que les parties concernées en viennent à une entente sur l'énoncé conjoint des faits à produire au soutien de cette requête;
19. Sans cela, les faits ne sauraient être considérés par le tribunal sans avoir fait l'objet d'une preuve en bonne et due forme, ce qui n'apparaît pas avoir été envisagé à ce jour étant donné que l'on traite uniquement

de l'adjudication de questions de droits sur la base des représentations des parties;

C. Le caractère prématuré

20. Les Opposants soumettent à la Cour que les questions soulevées par le Contrôleur ne sont pas nées et actuelles, ce qui confère à la Requête un caractère théorique par sa prématurité;
21. En effet, le Contrôleur utilise lui-même certains termes qui laissent entendre que sa Requête se base sur certaines hypothèses pour exiger une détermination de la Cour, étant donné qu'il n'y a aucune certitude à l'heure actuelle qu'une détermination soit nécessaire dans le cadre d'une éventuelle distribution ou encore l'étendue de la détermination qui serait nécessaire;
22. Les Opposants sont d'avis qu'il faudrait attendre d'avoir une base factuelle certaine pour laquelle des questions de droit se posent avant de requérir une intervention de la Cour;
23. Le caractère prématuré est ainsi fortement lié à la poursuite du processus de réclamations;
24. De plus, les parties intéressées n'ont pas encore échangé sur leurs positions respectives puisque la position soutenue par le Contrôleur a été annoncé par le dépôt de la Requête;
25. Ainsi, les parties n'ont pas été en mesure de voir s'il y avait des points où une entente était possible pour restreindre ou éliminer le débat;
26. Ainsi, le caractère prématuré de la Requête est un autre motif pour lequel la Cour devrait rejeter la Requête;

D. Les questions choisies par le Contrôleur

27. Les Opposants soumettent qu'il n'est pas nécessaire que la Cour se prononce d'emblée sur l'ensemble des questions soulevées par le Contrôleur;
28. Les Opposants proposent plutôt un processus en plusieurs étapes permettant d'importantes économies pour l'ensemble des parties en concentrant le débat sur un point essentiel de façon préliminaire, qui pourrait bien mettre un terme au débat selon la réponse qui serait donnée par la Cour;

29. Cette solution a pour avantage d'éviter que de nombreuses questions soient abordées en profondeur par l'ensemble des parties pour finalement constater que l'exercice n'était peut-être pas nécessaire en raison d'une décision de la Cour ou d'un règlement;
30. Ainsi, les Opposants proposent plutôt que la Cour se prononce dans un premier temps quant à l'existence en l'espèce d'une fiducie réputée en vertu de la *Pension Benefits Act, S.N.L. 1996, c. P-4.01* ou encore de la *Loi de 1985 sur les normes de prestation de pension, L.R.C. (1985), ch. 32 (2e suppl.)*, portant sur l'ensemble ou une partie du déficit de terminaison des régimes de retraite, pour ensuite relayer à un deuxième temps les autres questions qui seraient toujours en litige;
31. Au surplus, advenant que la Cour juge nécessaire de se prononcer sur la totalité des questions soumises par le Contrôleur, les Opposants sont d'avis qu'il faudrait ajouter certaines questions, notamment quant à l'applicabilité des dispositions de la *Loi sur les régimes complémentaires de retraite, LRLQ, c. R-15.1* et leur impact sur les réclamations portant sur les biens situés au Québec;

E. Le désaccord sur le fond

32. Au surplus, les Opposants expriment leur désaccord sur l'ensemble de la position adoptée par le Contrôleur;
33. En effet, les Opposants estiment que la fiducie réputée doit trouver application en l'espèce pour la totalité des déficits associés aux régimes de retraite, et ce, sans les restrictions indiquées par le Contrôleur;
34. Les Opposants entendent contester plus amplement cette position du Contrôleur et exprimer plus en détails leur position dans le cadre des procédures qui suivront et qui mèneront à une audition sur le fond;
35. Ainsi, les Opposants se réservent le droit de soulever tout autre motif de contestation de la Requête;
36. La présente objection est bien fondée en faits et en droit.

POUR CES MOTIFS, PLAISE À LA COUR DE :

ACCUEILLIR l'avis d'objection formulé par les Opposants;

REJETER la requête du Contrôleur intitulée *Motion for directions with respect to pension claims*;

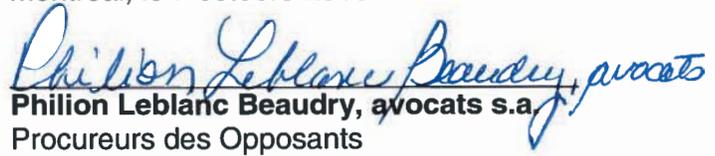
RENDRE toute autre ordonnance qu'elle pourrait juger nécessaire;

SUBSIDIAIREMENT :

DÉCLARER que la fiducie réputée prévue à l'article 52 de la *Pension Benefits Act, S.N.L. 1996, c. P-4.01* et à l'article 8 de la *Loi de 1985 sur les normes de prestation de pension, L.R.C. (1985), ch. 32 (2e suppl.)* est applicable pour l'ensemble du déficit de terminaison des régimes de retraite;

LE TOUT, avec frais de justice.

Montréal, le 7 octobre 2016

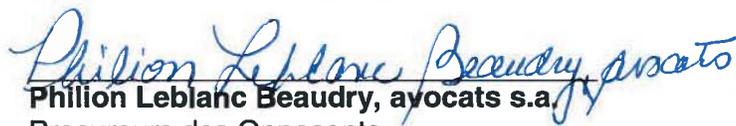

Philion Leblanc Beaudry, avocats s.a.
Procureurs des Opposants

AVIS DE PRÉSENTATIONDestinataires : **SERVICE LIST**

PRENEZ AVIS que l'*Avis d'objection quant à la Motion for directions with respect to pension claims* sera présentée pour adjudication devant l'honorable Stephen W. Hamilton, j.c.s. ou à l'un des honorables juges de la Cour Supérieure, du district de Montréal, siégeant en chambre commerciale au Palais de justice de Montréal situé au 1, rue Notre-Dame Est à Montréal, le 12 octobre 2016, en l'heure et en la salle qui seront déterminés.

VEUILLEZ AGIR EN CONSÉQUENCE.

Montréal, le 7 octobre 2016



Phillion Leblanc Beaudry, avocats s.a.
Procureurs des Opposants

N° : 500-11-048114-157

COUR SUPÉRIEURE
(chambre commerciale)
District de montréal

BLOOM LAKE GENERAL PARTNER LIMITED, QUINTO MINING CORPORATION, 8568391 CANADA LIMITED ET CLIFFS QUÉBEC MINE DE FER ULC, WABUSH IRON CO. LIMITED WABUSH RESOURCES INC.

Requérantes

c.

SOCIÉTÉ EN COMMANDITE MINE DE FER DU LAC BLOOM, BLOOM LAKE RAILWAY COMPANY LIMITED, WABUSH MINES, ARNAUD RAILWAY COMPANY, WABUSH LAKE RAILWAY COMPANY LIMITED

Mises en causes

ET ALS.

AVIS D'OBJECTION QUANT À LA MOTION FOR DIRECTIONS WITH RESPECT TO PENSION CLAIMS (ARTICLES 11 ET 23(K) DE LA LOI SUR LES ARRANGEMENTS AVEC LES CRÉANCIERS DES COMPAGNIES ET PARAGRAPHE 57 DE L'ORDONNANCE INITIALE ET AVIS DE PRÉSENTATION

ORIGINAL

N/d : 0026-8157/JFB Me Daniel Boudreault
dboudreault@plba.ca


PHILION LEBLANC BEAUDRY
AVOCATS s.a.

565, boul. Crémazie est
Bureau 5400

Montréal (Québec) H2M 2V6

Téléphone.: (514) 387-3538 Télécopieur.: (514) 387-7386

Code juridique : BM-2719

**CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL**

No: 500-11-048114-157

**SUPERIOR COURT
(Commercial Division)**

**IN THE MATTER OF THE
COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-
36, AS AMENDED**

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

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING CORPORATION,
8568391 CANADA LIMITED, CLIFFS QUEBEC
IRON MINING ULC, WABUSH IRON CO.
LIMITED, WABUSH RESOURCES INC.**

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY, WABUSH LAKE RAILWAY
COMPANY LIMITED**

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON**

Objecting Mises-en-cause

-and-

**UNITED STEELWORKERS, LOCAL 6254,
UNITED STEELWORKERS, LOCAL 6285**

Objecting Mises-en-cause

-and-

**MORNEAU SHEPELL
Objecting Mise-en-cause**

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

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

INTRODUCTION

- 1) The Monitor has made a Motion for Directions with respect to certain issues relating to the Pension Claims filed pursuant to the Claims Procedure established by an Order of this Court. The Motion is returnable on a *pro forma* basis on October 12, 2016.
- 2) In accordance with paragraph 32 of the Amended Claims Procedure Order dated November 16, 2015, the Pension Administrator filed Proofs of Claim with respect to the Claims of the Pension Plans.
- 3) Morneau Shepell, in its capacity as Replacement Pension Plan Administrator, has not yet received from the Monitor either a Notice of Revision or a Notice of Disallowance stating reasons for any revision or disallowance of the Pension Claims as required under paragraph 35 of the Amended Claims Procedure Order.
- 4) In turn, the Replacement Pension Plan Administrator has not filed a Notice of Dispute as required under paragraph 36 of the Amended Claims Procedure Order. That Order also authorizes the Pension Regulators, Representative Counsel, and the USW to file Notices

of Dispute in respect of any Notice of Revision or Notice of Disallowance affecting their interests.

- 5) Under paragraph 37 of the Amended Claims Procedure Order, the Monitor may, among other things, bring a motion before the Court to adjudicate a disputed Claim, but only after being in receipt of a Notice of Dispute. Under this procedure, the parties and the Court would have the benefit of the Monitor's Notice of Revision or Disallowance, setting out the reasons therefore, and the claimant's Notice of Dispute, all of which would frame the issues to be adjudicated.
- 6) The Motion for Directions was filed by the Monitor without any consultation with, or agreement by, the Replacement Pension Plan Administrator. There has been no Motion made by the Monitor to amend the procedure for adjudicating Claims authorized by this Court in the Amended Claims Procedure Order.

OBJECTION

- 7) The Replacement Pension Plan Administrator objects to the Motion for Directions on the ground that it seeks to adjudicate the Pension Claims by a procedure that is not in accordance with the Amended Claims Procedure Order, and which has not been consented to.
- 8) Prior to any motion being made to adjudicate any aspect of the Pension Claims, there should be a motion to amend the Amended Claims Procedure Order, with prior consultation with, and agreement by, the affected parties on: the issues to be adjudicated, the appropriate forum for adjudication, the evidence on which the issues are to be

adjudicated or the manner in which such evidence is to be tendered, and an appropriate timeline for adjudication.

- 9) The Replacement Pension Plan Administrator does not agree with all of the alleged facts set out in the Motion for Directions, or with the characterization of the issues in relation to the Pension Claims. In bringing the Motion for Directions outside the procedure established by the Amended Claims Procedure Notice, the Monitor has unilaterally identified and formulated issues to be adjudicated and the alleged evidence upon which it seeks to have the Court determine these issues. This is procedurally unfair.

FOR THESE REASONS THE PETITIONERS-MISES-EN-CAUSE ASKS THAT THIS HONOURABLE COURT:

DISMISS the Motion for Directions in respect of the Pension Claims and require: (1) the Monitor to consult with the affected parties and make best efforts to reach agreement on a procedure for the adjudication of the Pension Claims, including: the issues to be adjudicated, the appropriate forum for adjudication, the evidence on which the issues are to be adjudicated or the manner in which such evidence is to be tendered, and an appropriate timeline for adjudication; and (2) a motion be brought to amend the Amended Claims Procedure Order.

Replacement Plan Administrator's Notice of Objection, October 7, 2016

Halifax, Nova Scotia, October 7, 2016



PINK LARKIN

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

1463 South Park Street, Suite 201

Halifax, NS B3J 2L1

T. (902) 423-7777

F. (902) 423-9588

rpink@pinklarkin.com

bquistgaard@pinklarkin.com

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

Replacement Plan Administrator's Notice of Objection, October 7, 2016

NOTICE OF PRESENTATION

TO: Service List

TAKE NOTICE that the present Notice of Objection with respect to the Motion for Directions (Pension Claims) will be presented for adjudication before the Honourable Stephen W. Hamilton, J.S.C., or another of the Honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montreal, in the Montreal Courthouse located at 1 Notre-Dame Est, Montreal, Quebec, on a date and at a time and location to be determined by the Court.

DO GOVERN YOURSELVES ACCORDINGLY.

Halifax, Nova Scotia, October 7, 2016



Ronald A. Pink, Q.C. and Bettina Quistgaard
PINK LARKIN

1463 South Park Street, Suite 201

Halifax, NS B3J 2L1

T. (902) 423-7777

F. (902) 423-9588

rpink@pinklarkin.com

bquistgaard@pinklarkin.com

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

Replacement Plan Administrator's Notice of Objection, October 7, 2016

No. 500-11-048114-157
SUPERIOR COURT
(Commercial Division)
DISTRICT OF MONTREAL

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

BLOOM LAKE GENERAL PARTNER LIMITED ET AL.
Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP ET AL.**
Mises-en-cause

-and-

**HER MAJESTY IN THE RIGHT OF NEWFOUNDLAND &
LABRADOR, AS REPRESENTED BY THE
SUPERINTENDENT OF PENSIONS ET AL.**
Objecting Mises-en-cause

-and-

FTI CONSULTING CANADA INC.
Monitor

**NOTICE OF OBJECTION BY MORNEAU SHEPELL, IN
ITS CAPACITY AS REPLACEMENT PENSION PLAN
ADMINISTRATOR, TO A MOTION BY THE MONITOR
FOR DIRECTIONS WITH RESPECT TO PENSION
CLAIMS (Sections 11 and 23(k) of the *Companies' Creditors
Arrangement Act*)**

ORIGINAL

Ronald A. Pink, Q.C. and Bettina Quistgaard
PINK LARKIN
Lawyers/Advocats
1463 South Park Street, Suite 201
Halifax, NS B3J 2L1
T. (902) 423-7777
F. (902) 423-9588
rpink@pinklarkin.com
bquistgaard@pinklarkin.com

Motion for Approval of Allocation Methodology, May 19, 2017

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF **MONTREAL**

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, 1985 R.S.C., c. C-36, as amended)

N^o: **500-11-048114-157**

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

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP**

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**MOTION FOR THE ISSUANCE OF AN ORDER
APPROVING THE ALLOCATION METHODOLOGY AND OTHER RELIEF**
(Section 11 *ff.* of the *Companies' Creditors Arrangement Act*)

TO MR. JUSTICE STEPHEN W. HAMILTON, J.S.C. OR ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE CCAA PARTIES (AS DEFINED BELOW) SUBMIT:

1. BACKGROUND

1. On January 27, 2015, Mr. Justice Martin Castonguay, J.S.C., issued an Initial Order (as subsequently amended, rectified and/or restated, the "**Bloom Lake Initial Order**") commencing these proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC ("**CQIM**") and the Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership ("**Bloom Lake LP**") and Bloom Lake Railway Company Limited (collectively, the "**Bloom Lake CCAA Parties**"), as appears from the Initial Order dated January 27, 2015, which forms part of the Court record.
2. Pursuant to the Bloom Lake Initial Order, *inter alia*, FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the "**Monitor**") (para. 39 of the Bloom Lake Initial Order) and a stay of proceedings was ordered in respect of the Bloom Lake CCAA Parties until February 26, 2015 (the "**Bloom Lake Stay Period**") (para. 8 *ff.* of the Bloom Lake Initial Order).
3. On May 20, 2015, Mr. Justice Hamilton, issued an Initial Order (as subsequently amended, rectified and/or restated the "**Wabush Initial Order**") extending the scope of the CCAA Proceedings to the Petitioners Wabush Iron Co. Limited ("**Wabush Iron**") and Wabush Resources Inc. ("**Wabush Resources**") and the Mises-en-cause Wabush Mines, an unincorporated contractual joint venture (the "**Wabush Mines JV**"), Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**"; collectively with the Bloom Lake CCAA Parties, the "**CCAA Parties**"), as appears from the Initial Order dated May 20, 2015, which forms part of the Court record.
4. Pursuant to the Wabush Initial Order, *inter alia*, the Monitor was appointed as the monitor of the Wabush CCAA Parties (para. 39 of the Wabush Initial Order) and a stay of proceedings was granted until June 19, 2015 (the "**Wabush Stay Period**"; collectively with the Bloom Lake Stay Period, the "**Stay Period**") (para. 7 *ff.* of the Wabush Initial Order).
5. On November 5, 2015, Mr. Justice Hamilton issued an order (as amended on November 16, 2015, the "**Claims Procedure Order**"), *inter alia*, approving and setting out a Claims Procedure (as defined in the Claims Procedure Order) in respect of the CCAA Parties, as appears from the Claims Procedure Order, which forms part of the Court record.

Motion for Approval of Allocation Methodology, May 19, 2017

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6. The Stay Period has been extended by order of the Court from time to time, most recently on January 30, 2017, and currently expires on June 30, 2017, as appears from the Court record.

2. TRANSACTIONS APPROVED BY THE COURT

7. Through the course of CCAA Proceedings, the Court has approved several purchase and sale transactions, which provide for purchase price allocations as outlined below (collectively, the **"Purchase Price Allocations"**):

- a) On April 27, 2015, the Court issued an Approval and Vesting Order approving the transaction contemplated by a Share Purchase Agreement dated as of March 22, 2015, which sets out a purchase price allocation among various CCAA Parties under Exhibit D thereto, as appears from the Court record.
- b) On November 5, 2015, the Court issued an Approval and Vesting Order approving the transaction contemplated by a Sale of Goods Agreement dated as of September 30, 2015, as amended on October 7, 2015, which does not set out a purchase price allocation among various CCAA Parties, as appears from the Court record.
- c) On January 27, 2016, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of December 11, 2015, which sets out a purchase price allocation among various CCAA Parties under Schedule R thereto, and thereby reserving arguments as to the allocation of the purchase price among the CCAA Parties¹, as appears from the Court record.
- d) On February 1, 2016, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of December 23, 2015, which sets out a purchase price allocation among various CCAA Parties under Schedule O thereto, and thereby reserving arguments as to the allocation of the purchase price among the CCAA Parties², as appears from the Court record.
- e) On February 1, 2016, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of January 26, 2016, which sets out a purchase price allocation among various CCAA Parties under section 3.3 (2) therein, and thereby reserving arguments as to the allocation of the purchase price among the CCAA Parties³, as appears from the Court record.

¹ Para 29 of the Approval and Vesting Order dated January 27, 2016.

² Para 27 of the Approval and Vesting Order dated February 1, 2016.

³ Para 23 of the Approval and Vesting Order dated February 1, 2016 in relation to the Asset Purchase Agreement dated as of January 26, 2016.

Motion for Approval of Allocation Methodology, May 19, 2017

- 4 -

- f) On June 28, 2016, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of July 17, 2016, which involved CQIM as the only CCAA Party, as appears from the Court record.
- g) On July 20, 2016, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of June 30, 2016, which sets out a purchase price allocation among various CCAA Parties under Schedule B thereto, as appears from the Court record.
- h) On August 30, 2016, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of July 22, 2016, which involved CQIM as the only CCAA Party, as appears from the Court record.
- i) On September 23, 2016 and October 21, 2016, the Court issued two Approval and Vesting Orders partially approving the transaction contemplated by an Asset Purchase Agreement dated as of September 22, 2016, which sets out a purchase price allocation among various CCAA Parties under Schedule B thereto, as appears from the Court record.
- j) On October 28, 2016, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of October 11, 2016, which sets out a purchase price allocation among various CCAA Parties under Schedule R thereto, as appears from the Court record.
- k) On November 18, 2016, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of November 3, 2016, which sets out a purchase price allocation among various CCAA Parties under Schedule I thereto, as appears from the Court record.
- l) On November 18, 2016, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of November 7, 2016, which sets out a purchase price allocation among various CCAA Parties under Schedule C thereto, as appears from the Court record.
- m) On November 28, 2016, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of November 15, 2016, which involved CQIM as the only CCAA Party, as appears from the Court record.
- n) On May 16, 2017, the Court issued an Approval and Vesting Order approving the transaction contemplated by an Asset Purchase Agreement dated as of May 3, 2017, which involved CQIM as the only CCAA Party, as appears from the Court record.

Motion for Approval of Allocation Methodology, May 19, 2017

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3. ORDERS SOUGHT

8. On this Motion, the CCAA Parties hereby seek the approval of the Allocation Methodology (as defined below), the authorization of the repayment of the Bloom Lake Inter-Company Funding (as defined below) and the authorization of the payment of the Outstanding Property Taxes (as defined and to the extent set out below).

4. APPROVAL OF THE ALLOCATION METHODOLOGY

9. In order to determine the amounts available for distribution in each of the CCAA Parties' respective estates to each of the CCAA Parties' creditors, the Monitor has developed and recommended a proposed methodology to allocate proceeds and costs among the CCAA Parties (the "**Allocation Methodology**"), that is set out as follows (and that shall be more fully detailed in the Monitor's Report to be filed in respect of the present Motion):

- a) realizations from asset sale transactions are to be allocated amongst assets and CCAA Parties as set out in each respective Purchase Price Allocation;
- b) non-transaction realizations specifically attributable to a CCAA Party are to be applied to that CCAA Party, for example:
 - i) cash on hand at the commencement of the CCAA Proceedings;
 - ii) insurance proceeds;
 - iii) tax refunds; and
 - iv) collection of accounts receivable;
- c) non-transaction realizations not specifically attributable to a CCAA Party (such as interest on funds held in trust by the Monitor) are to be allocated pro-rata based on realizations;
- d) costs specifically attributable to an asset or asset category (such as railcar storage fees, for example) are to be applied to that asset or asset category;
- e) costs specifically attributable to a CCAA Party (such as the direct operating costs of the Bloom Lake Mine and the Wabush Mine, for example) are to be applied to that CCAA Party;
- f) costs not specifically attributable to a CCAA Party (such as the costs of management and legal and professional costs, for example) are to be allocated pro-rata based on net realizations after specifically attributable costs.
- g) due to its legal status as an unincorporated joint venture, any costs and realizations attributable to the Wabush Mines JV are to be allocated to Wabush Iron and Wabush Resources, in accordance with their ownership interests in Wabush Mines JV;

Motion for Approval of Allocation Methodology, May 19, 2017

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10. The Monitor has advised the CCAA Parties that it is of the view that the Allocation Methodology is appropriate, fair and reasonable in the circumstances and supports the CCAA Parties' request for approval of the Allocation Methodology.
11. The CCAA Parties understand that the Monitor will file a report regarding the Allocation Methodology.
12. The CCAA Parties submit that the Allocation Methodology is appropriate, fair and reasonable in the circumstances and seek its approval by this Court.

5. AUTHORIZATION OF REPAYMENT OF BLOOM LAKE INTER-COMPANY FUNDING

13. Pursuant to the Bloom Lake Initial Order, inter-company funding was permitted between the Bloom Lake CCAA Parties.
14. Approximately \$4.1 million had been advanced by Bloom Lake LP to CQIM since the start of the CCAA Proceedings (the "**Bloom Lake Inter-Company Funding**").
15. CQIM hereby seeks the authorization of the Court to repay the Bloom Lake Inter-Company Funding to Bloom Lake LP.

6. AUTHORIZATION OF PAYMENT OF UNDISPUTED OUTSTANDING PROPERTY TAXES

16. Pursuant to the Claims Procedure Order, secured claims have been or may be asserted against various CCAA Parties by certain municipalities, including the Municipality of Sept-Îles and the Municipality of Fermont, on account of accrued and outstanding real estate taxes (the "**Outstanding Property Taxes**");
17. The Municipalities of Sept-Îles and Fermont further claim that interest continue to accrue with respect to the Outstanding Property Taxes at an annual rate of 12%.
18. The CCAA Parties hereby seek the authorization of the Court to make payments on account of the Outstanding Property Taxes for any portion of the Outstanding Property Taxes that are not in dispute or otherwise contested, provided that:
 - a) there exists no competing claim which may rank equal or higher to the Outstanding Property Taxes pursuant to a security or priority (including the Pension Claims at stake in the Monitor's Motion for Directions with respect to Pension Claims); and
 - b) the proceeds of sale available further to the application of the Allocation Methodology are sufficient to do so.

7. PROCEDURAL MATTERS

19. The CCAA Parties submit that the notices given of the presentation of the present Motion are proper and sufficient.

Motion for Approval of Allocation Methodology, May 19, 2017

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20. Pursuant to paragraph 54 of the Bloom Lake Initial Order and paragraph 56 of the Wabush Initial Order, all motions in these CCAA Proceedings are to be brought on not less than ten (10) calendar days' notice to all Persons on the service list. Each motion must specify a date (the "**Initial Return Date**") and time for the hearing.
21. The service of the present Motion serves as notice pursuant to paragraphs 47 and 54 of the Bloom Lake Initial Order and paragraphs 47 and 56 of the Wabush Initial Order.
22. Paragraph 55 of the Bloom Lake Initial Order and paragraph 57 of the Wabush Initial Order require that any Person wishing to object to the relief sought on a motion in the CCAA Proceedings must serve responding motion materials or a notice stating the objection to the motion and grounds for such objection (a "**Notice of Objection**") in writing to the moving party and the Monitor, with a copy to all persons on the service list, no later than 5 p.m. Montréal time on the date that is four (4) calendar days prior to the Initial Return Date (the "**Objection Deadline**"). Accordingly, any parties wishing to object to the relief sought on this Motion must serve responding motion materials or a Notice of Objection by no later than 5 p.m. Montréal time on May 26, 2017.
23. Paragraph 56 of the Bloom Lake Initial Order and paragraph 58 of the Wabush Initial Order further provide that if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion may determine whether a hearing is necessary, whether such hearing will be in person, by telephone or in writing and the parties from whom submissions are required (collectively, the "**Hearing Details**").
24. Paragraph 57 of the Bloom Lake Initial Order and paragraph 59 of the Wabush Initial Order provide that the Monitor shall communicate with the Judge and the service list with respect to the Hearing Details.

8. CONCLUSIONS

25. In light of the foregoing, the CCAA Parties hereby seek the issuance of an Order substantially in the form of the draft Order communicated herewith as **Exhibit R-1**, which provides for the approval of the Allocation Methodology, the authorization for the repayment of the Bloom Lake Inter-Company Funding and for the payment of the Outstanding Property Taxes.
26. The present Motion is well founded in fact and in law.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Motion;

ISSUE an order in the form of the draft Order communicated in support hereof as Exhibit R-1;

WITHOUT COSTS, save and except in case of contestation.

Motion for Approval of Allocation Methodology, May 19, 2017

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Montréal, May 19, 2017

Blake, Cassels & Graydon LLP

BLAKE, CASSELS & GRAYDON LLP

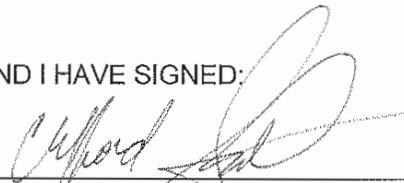
Attorneys for the CCAA Parties

Motion for Approval of Allocation Methodology, May 19, 2017

AFFIDAVIT

I, the undersigned, **CLIFFORD T. SMITH**, the Executive Vice-President and a director of Bloom Lake General Partner Limited, Quinto Mining Corporation and Cliffs Quebec Iron Mining ULC, the President and a director of Bloom Lake Railway Company Limited and 8568391 Canada Limited, the President of Wabush Resources Inc., the President and a director of Wabush Iron Co. Limited, the Vice- President and a director of Arnaud Railway Company and Wabush Lake Railway Company Limited, having a place of business at 1 Place Ville Marie, Bureau 3000, Montréal, Québec, H3B 4N8, solemnly affirm that all the facts alleged in the present *Motion for the Issuance of an Order Approving the Allocation Methodology and Other Relief* are true.

AND I HAVE SIGNED:



CLIFFORD T. SMITH

SOLEMNLY DECLARED before me at
Cleveland, Ohio, on this 19th day of May,
2017



Notary Public



ADAM D. MUNSON, Atty.
NOTARY PUBLIC
STATE OF OHIO
My Commission Has No
Expiration Date
Section 147.03 R.C.

Motion for Approval of Allocation Methodology, May 19, 2017

NOTICE OF PRESENTATION

TO: Service List

TAKE NOTICE that the present *Motion for the Issuance of an Order Approving the Allocation Methodology and Other Relief* will be presented for adjudication before the Honourable Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **May 31, 2017** at a time and in a room to be determined.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, May 19, 2017

Blake, Cassels & Graydon LLP

BLAKE, CASSELS & GRAYDON LLP
Attorneys for the CCAA Parties

Motion for Approval of Allocation Methodology, May 19, 2017

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended)

N^o: 500-11-048114-157

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

**BLOOM LAKE GENERAL PARTNER LIMITED,
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

Petitioners

and

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED**

Mises-en-cause

and

FTI CONSULTING CANADA INC.

Monitor

LIST OF EXHIBITS

(In support of the *Motion for the Issuance of an Order Approving the Allocation Methodology and Other Relief*)

R-1 Draft Order.

Montréal, May 19, 2017

Blake, Cassels & Graydon LLP

BLAKE, CASSELS & GRAYDON LLP

Attorneys for the CCAA Parties

Motion for Approval of Allocation Methodology, May 19, 2017

N°: 500-11-048114-157

**SUPERIOR COURT
DISTRICT OF MONTREAL
(Commercial Division)**

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

BLOOM LAKE GENERAL PARTNER LIMITED & AL.

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP & AL.**

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**MOTION FOR THE ISSUANCE OF AN ORDER
APPROVING THE ALLOCATION METHODOLOGY
AND OTHER RELIEF, AFFIDAVIT, NOTICE OF
PRESENTATION AND
EXHIBIT R-1**

(Sections 11 *ff.* of CCAA)

COPY FOR BAILIFF

The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script font.

M^{tre} Bernard Boucher

BB-8098

BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors

1 Place Ville Marie, Suite 3000

Montréal, Québec H3B 4N8

Telephone: 514-982-4006

Fax: 514-982-4099

Email: bernard.boucher@blakes.com

Our File: 11573-371

Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N^o: 500-11-048114-157

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. 36, as amended)

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

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP**

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

MOELIS & COMPANY LLC

Mise-en-cause

**MOTION FOR THE ISSUANCE OF AN ORDER
IN RESPECT OF THE WABUSH CCAA PARTIES**

**(1) GRANTING PRIORITY TO CERTAIN CCAA CHARGES,
(2) APPROVING A SALE AND INVESTOR SOLICITATION PROCESS *NUNC PRO TUNC*, (3)
AUTHORIZING THE ENGAGEMENT OF A SALE ADVISOR *NUNC PRO TUNC*,
(4) GRANTING A SALE ADVISOR CHARGE,
(5) AMENDING THE SALE AND INVESTOR SOLICITATION PROCESS, (6) SUSPENDING
THE PAYMENT OF CERTAIN PENSION AMORTIZATION PAYMENTS AND POST-
RETIREMENT EMPLOYEE BENEFITS,
(7) EXTENDING THE STAY OF PROCEEDINGS, AND
(8) AMENDING THE WABUSH INITIAL ORDER ACCORDINGLY
(Section 11 ff. of the *Companies' Creditors Arrangement Act*)**

TO THE HONORABLE STEPHEN W. HAMILTON, J.S.C. OR ONE OF THE HONORABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE WABUSH CCAA PARTIES (AS DEFINED BELOW) SUBMIT:

1. BACKGROUND

1. On January 27, 2015, Mr. Justice Martin Castonguay, J.S.C., issued an Initial Order (the "**Bloom Lake Initial Order**") commencing these proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Petitioners Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC and the Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited (collectively, the "**Bloom Lake CCAA Parties**"), as appears from a copy of the Bloom Lake Initial Order communicated herewith as **Exhibit R-1**.
2. Pursuant to the aforementioned Bloom Lake Initial Order, *inter alia*, FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the "**Monitor**") (para. 39 of the Bloom Lake Initial Order) and a stay of proceedings was ordered in respect of the Bloom Lake CCAA Parties until February 26, 2015 (the "**Bloom Lake Stay Period**") (para. 8 ff. of the Bloom Lake Initial Order).
3. On February 20, 2015, Mr. Justice Stephen W. Hamilton, J.S.C., issued an Amended Initial Order (the "**Bloom Lake Amended Initial Order**"), in which, *inter alia*, the Directors' Charge (as defined in the Bloom Lake Amended Initial Order, the "**Bloom Lake Directors' Charge**") and the Administration Charge (as defined in the Bloom Lake Amended Initial Order, the "**Bloom Lake Administration Charge**"; collectively with the Bloom Lake Directors' Charge, the "**Bloom Lake CCAA Charges**") were granted priority ahead of all hypothecs, mortgages, liens, security interests, priorities, charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the property of the Bloom Lake CCAA Parties (para. 47 of the Bloom Lake Amended Initial Order), the whole as appears from a copy of the Bloom Lake Amended Initial Order communicated herewith as **Exhibit R-2**.
4. On April 17, 2015, Mr. Justice Stephen W. Hamilton issued, *inter alia*, the following orders:

Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

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- a) an Order extending the Bloom Lake Stay Period to July 31, 2015 and amending the Bloom Lake Initial Order accordingly (the "**Stay Extension Order**"), as appears from a copy of the Stay Extension Order communicated herewith as **Exhibit R-3**;
 - b) an Order (the "**Sale Advisor Order**"), *inter alia*, (i) authorizing the engagement Moelis & Company LLC as the Bloom Lake CCAA Parties' mergers and acquisitions financial advisor (the "**Sale Advisor**"), pursuant to the terms of an engagement letter dated as of March 23, 2015 (the "**Engagement Letter**"), a redacted version of which is communicated herewith as **Exhibit R-4** and an unredacted copy thereof under confidential seal as **Exhibit R-4A**, and (ii) granting a charge to the Sale Advisor over the property of the Bloom Lake CCAA Parties in the maximum amount of USD \$8 million (the "**Bloom Lake Sale Advisor Charge**") with priority over unsecured creditors but subordinated to secured creditors of the Bloom Lake CCAA Parties, the whole as appears from a copy of the Sale Advisor Order which is communicated herewith as **Exhibit R-5**; and
 - c) an Order (the "**SISP Order**"), *inter alia*, approving sale and investor solicitation procedures (the "**Initial SISP**") in respect of the Bloom Lake CCAA Parties communicated herewith as **Exhibit R-6**, as appears from a copy of the SISP Order which is communicated herewith as **Exhibit R-7**.
5. On May 20, 2015 (the "**Wabush Filing Date**"), Mr. Justice Stephen W. Hamilton, issued an Initial Order (the "**Wabush Initial Order**") extending the scope of the CCAA Proceedings to the Petitioners Wabush Iron Co. Limited and Wabush Resources Inc. and the Mises-en-cause Wabush Mines, an unincorporated contractual joint venture (the "**Wabush Mines JV**"), Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**"; collectively with the Bloom Lake CCAA Parties, the "**CCAA Parties**"), as appears from a copy of the Wabush Initial Order communicated herewith as **Exhibit R-8**.
 6. Pursuant to the Wabush Initial Order, *inter alia*, the Monitor was appointed as the monitor of the Wabush CCAA Parties (para. 39 of the Wabush Initial Order) and a stay of proceedings was granted until June 19, 2015 (the "**Wabush Stay Period**") (para. 8 *ff.* of the Wabush Initial Order).
 7. The Wabush Initial Order also provided for the creation of certain charges over the property of the Wabush CCAA Parties (the "**Wabush Property**"), which, pursuant to paragraph 47 of the Wabush Initial Order, rank as follows:
 - a) first the, Administration Charge (as defined in the Wabush Initial Order, the "**Wabush Administration Charge**") for an aggregate amount of \$1,750,000;
 - b) second, the Directors' Charge (as defined in the Wabush Initial Order, the "**Wabush Directors' Charge**") for an aggregate amount of \$2,000,000;
 - c) third, the Interim Lender Charge (as defined in the Wabush Initial Order, the "**Wabush Interim Lender Charge**") for an aggregate amount of \$15,000,000.

(collectively, the "**Wabush CCAA Charges**").

Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

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8. Each of the Wabush CCAA Charges rank ahead of all Encumbrances in favour of Cliffs Mining Company and behind any and all other existing Encumbrances affecting the property of the Wabush CCAA Parties charged by such Encumbrances, in favour of any Persons that have not been served with notice of the motion seeking the Wabush Initial Order (para. 47 of the Wabush Initial Order).
9. Paragraph 47 of the Wabush Initial Order also provides that the Wabush CCAA Parties and the beneficiaries of the Wabush CCAA Charges are entitled to seek priority for the Wabush CCAA Charges ahead of all Encumbrances on notice to those parties likely to be affected by such priority. Paragraph 47 of the Wabush Initial Order states that it is the intention of the Wabush CCAA Parties to seek priority for the Wabush CCAA Charges ahead of all Encumbrances at the Comeback Hearing (which, pursuant to paragraph 66 of the Wabush Initial Order is scheduled for June 9, 2015).
10. Pursuant to paragraph 56 of the Wabush Initial Order, all motions in these CCAA Proceedings are to be brought on not less than ten (10) calendar days' notice to all Persons on the service list. Each motion must specify a date (the "**Initial Return Date**") and time for the hearing.
11. The service of the present Motion serves as notice pursuant to paragraphs 47 and 56 of the Wabush Initial Order.
12. Paragraph 57 of the Wabush Initial Order requires that any Person wishing to object to the relief sought on a motion in the CCAA Proceedings must serve responding motion materials or a notice stating the objection to the motion and grounds for such objection (a "**Notice of Objection**") in writing to the moving party and the Monitor, with a copy to all persons on the service list, no later than 5 p.m. Montréal time on the date that is four (4) calendar days prior to the Initial Return Date (the "**Objection Deadline**"). Accordingly, any parties wishing to object to the relief sought on this Motion must serve responding motion materials or a Notice of Objection by no later than 5 p.m. Montréal time on June 5, 2015.
13. Paragraph 58 of the Wabush Initial Order further provides that if no Notice of Objection is served by the Objection Deadline, the Judge having carriage of the motion may determine whether a hearing is necessary, whether such hearing will be in person, by telephone or in writing and the parties from whom submissions are required (collectively, the "**Hearing Details**"). Paragraph 59 provides that the Monitor shall communicate with the Judge and the service list with respect to the Hearing Details.

2. ORDERS SOUGHT

14. On this Motion, the Wabush CCAA Parties hereby seek:
 - a) priority for the Wabush CCAA Charges ahead of all Encumbrances affecting the Wabush Property, whether or not charged by such Encumbrances, and to clarify that the Encumbrances include trusts and deemed trusts (statutory or otherwise) against the Wabush Property;
 - b) *nunc pro tunc* approval of the Initial SISF as at the Wabush Filing Date as it applies to the Wabush CCAA Parties from and after the Wabush Filing Date;

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- c) *nunc pro tunc* authorization of the Wabush CCAA Parties, the Monitor and the Sale Advisor as at the Wabush Filing Date to take such steps as they consider necessary or desirable in carrying out the SISP (as defined herein) in accordance with its terms as relates to the Wabush CCAA Parties from and after the Wabush Filing Date;
- d) *nunc pro tunc* approval of the Wabush CCAA Parties' engagement of the Sale Advisor as at the Wabush Filing Date to assist, *inter alia*, with the conduct and implementation of the SISP as relates to the Wabush CCAA Parties from and after the Wabush Filing Date;
- e) an amendment and restatement of the Initial SISP to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings, in the form of the amended and restated sale and investor solicitation procedures (the "SISP") communicated herewith as **Exhibit R-9**. A blackline comparing the Initial SISP to the SISP is communicated herewith as **Exhibit R-10**;
- f) the creation of the Wabush Sale Advisor Charge (as defined herein) to have priority over all claims of unsecured creditors of the Wabush CCAA Parties, but to be subordinated to the existing Wabush CCAA Charges and Encumbrances;
- g) the suspension of the payment by the Wabush CCAA Parties' of Monthly Amortization Payments and Yearly Catch Up Amortization Payments (both as defined herein) and other post-retirement employee benefits (the "OPEBs"), as described in more details herein;
- h) the extension of the Wabush Stay Period in respect of the Wabush CCAA Parties until July 31, 2015, as set forth in the conclusions to this Motion; and
- i) the issuance of an Amended Initial Order in respect of the Wabush CCAA Parties, reflecting any amendments to the Wabush Initial Order to be ordered by the Court herein.

3. PRIORITY OF THE WABUSH CCAA CHARGES

3.1 Movable and Immovable Hypothecs in Québec

- 15. As of May 11, 2015, there were 5 movable hypothecs registered against moveable Wabush Property in Québec (the "**Movable Hypothecs**"), the whole as appears from the RPMRR (Québec) search results summary in respect of the movable Wabush Property, communicated herewith as **Exhibit R-11**. Copies of the raw search results will be available at the hearing of this Motion.
- 16. As of May 27, 2015, there were no immovable hypothecs registered against immovable Wabush Property in Québec (excluding legal hypothecs registered in favour of persons having taken part in the construction or renovation of an immovable to which reference is made below), the whole as appears from real estate search report (Québec) in respect of the immovable Wabush Property, communicated herewith as **Exhibit R-12**.

3.2 Québec Construction Liens

17. As of May 27, 2015, there were 6 legal hypothecs in favour of persons having taken part in the construction or renovation of an immovable registered against immovable Wabush Property, four of them being related to the same claim (collectively, the "**Existing Construction Liens**"), as more fully appears from: (i) a table summarizing the Existing Construction Liens communicated herewith as **Exhibit R-13**; (ii) a copy of the legal hypothecs in favour of persons having taken part in the construction or renovation of an immovable and registered against the immovable Wabush Property as of May 27, 2015, communicated herewith, *en liasse*, as **Exhibit R-14**; and (iii) the index of immovables for the relevant land files of the Land Register (Québec) communicated herewith, *en liasse*, as **Exhibit R-15**.
18. According to the foregoing exhibits, claims related to the Existing Construction Liens amount to approximately \$2,357,023.07, considering that four of the Existing Construction Liens relate to the same claim.
19. It is also possible that additional construction liens related to pre-filing claims (collectively with the Existing Construction Liens, the "**Construction Liens**") may be registered against immovable Wabush Property during the course of the CCAA Proceedings.

3.3 PPSA and UCC Registrations

20. As of May 6, 2015, there were 12 liens registered in Ontario, Newfoundland and Labrador and Ohio against movable Wabush Property located in Québec by certain creditors, as appears from a Personal Property Security Act (Ontario, Newfoundland and Labrador) and *Uniform Commercial Code* (Ohio) search results summary in respect of movable Wabush Property communicated herewith as **Exhibit R-16** (collectively, the "**PPSA Registrations**"). Copies of the raw search results will be available at the hearing of this Motion.

3.4 Registrations against Immovable Wabush Property in Newfoundland and Labrador

21. As of May 14, 2015, other than on registration of *lis pendens* in respect of litigation instituted by Royal Bank of Canada, there were no registrations against the Immovable Wabush Property in Newfoundland and Labrador.

3.5 Need for Priority CCAA Charges

22. As more fully described in the motion for the Wabush Initial Order, each of the Wabush CCAA Charges is essential to the Wabush CCAA Parties' goal of successful restructuring and the continuance of the CCAA Proceedings.
23. The Monitor supports this position, as appears from the Fifth Report of the Monitor filed with the Court of May 19, 2015, which forms part of the Court record.
24. The current directors and officers of the Wabush CCAA Parties have advised that they are not prepared to continue in their respective capacities unless the priority sought for the Wabush Directors' Charge on this Motion is granted. The continued support and

Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

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- service of the directors and officers of the Wabush CCAA Parties is beneficial to the Wabush CCAA Parties' efforts to preserve value and maximise recoveries.
25. Further, the beneficiaries of the Wabush Administration Charge are essential to the success of the CCAA Proceedings and the SISP.
 26. Finally, the Interim Facility is the only source of financing available to the Wabush CCAA Parties to continue in care and maintenance mode during the pendency of the CCAA Proceedings.
 27. The Interim Lender (as defined in the Wabush Initial Order) is only prepared to make advances of the Interim Facility (as defined in the Wabush Initial Order) pursuant to the Interim Financing Term Sheet (as defined in the Wabush Initial Order) and the Interim Financing Documents (as defined in the Wabush Initial Order) if the priority sought for the Wabush Interim Lender Charge on this Motion is granted.
 28. The factors to be considered by the Court pursuant to section 11.2 of the CCAA all militate in favour of granting the priority sought for the Interim Lender Charge:
 - a) The Wabush CCAA Parties are expected to be subject to the CCAA Proceedings until at least July 31, 2015 as they seek to conduct the SISP and without the Interim Facility, the Wabush CCAA Parties do not have sufficient liquidity to meet their post-filing liabilities during such period;
 - b) The Wabush CCAA Parties' business and financial affairs will be managed in basic care and maintenance mode by the existing management team, with the goal of preserving the value of the Wabush Property while seeking a purchaser pursuant to the SISP;
 - c) The Wabush CCAA Parties' management has the confidence of the major creditors, the vast majority of whom are related companies;
 - d) The Interim Facility will significantly enhance the prospects of a viable compromise or arrangement by way of a sale of the Wabush CCAA Parties' Property, as without the Interim Facility, the Wabush CCAA Parties would not have any cash to preserve the Wabush Property and/or conduct and implement the SISP;
 - e) The nature and value of the Wabush Property is not unusual and does not involve any special considerations;
 - f) Any prejudice that could be suffered by any creditors is outweighed by the prejudice that all stakeholders would suffer in the absence of the Interim Facility, which would leave the Wabush CCAA Parties without cash and without the ability to preserve the Wabush Property and conduct and implement the SISP; and
 - g) The report of the Monitor supports the granting of the priority sought for the Interim Lender Charge.
 29. The holders of Encumbrances will benefit from the pursuit of successful CCAA Proceedings and, in particular, the SISP. Specifically, equipment lessors and financiers

will benefit from the potential assignment of their respective agreements and/or the maximization of recoveries from their respective claims.

30. Parties with Construction Lien claims will benefit from the opportunity to maximize recoveries from the immoveable Wabush Property through the SISP.
31. For the purpose of this Motion the Wabush CCAA Parties and the Monitor have not yet had the opportunity to review the validity or the quantum of the Encumbrances that may be asserted and all rights are reserved in this regard.
32. The Monitor supports the granting of the priority sought for each of the Wabush CCAA Charges.

4. THE SISP¹

33. The CCAA Parties, in consultation with the Monitor and the Sale Advisor, prepared the SISP (Exhibit R-9) which established a process for the solicitation of bidders interested in acquiring the assets of the CCAA Parties or investing in one or more of the businesses of the CCAA Parties.
34. The Sale Advisor was engaged by all of the CCAA Parties to, among other things, assist in the conduct and implementation of the SISP.
35. Initially, the CCAA Parties contemplated that the SISP would be conducted in respect of the Bloom Lake CCAA Parties under the auspices of the CCAA Proceedings, with the Wabush CCAA Parties remaining outside of the CCAA Proceedings.
36. Therefore, the SISP Order that was obtained on April 17, 2015 approving the SISP, was obtained only in respect of the Bloom Lake CCAA Parties.
37. Since the date of the SISP Order, the CCAA Parties have conducted the SISP in accordance with its terms.
38. As the Wabush CCAA Parties are now subject to the CCAA Proceedings, they hereby seek the Court's approval of the SISP as relates to their participation in the SISP from and after the Wabush Filing Date and to amend the SISP to delete the defined term "Non-CCAA Parties" and all provisions related to Non- CCAA Parties therein.
39. The Wabush CCAA Parties are of the view that continuing the Wabush CCAA Parties in the process established by the SISP optimizes the chances of securing the best possible price for the assets for sale or the best possible investment in the businesses, all for the benefit of the Wabush CCAA Parties' stakeholders as a whole.

4.1 The Property and Business Subject to the SISP

40. The property that is available for sale pursuant to the SISP (collectively, the "**Property**") is comprised of substantially all the property, assets and undertaking of the CCAA

¹ Capitalized terms found in the discussion of the SISP in this section 4 and not otherwise defined herein shall have the meanings ascribed to them in the SISP (Exhibit R-9).

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Parties, which includes their interests in the Bloom Lake Mine, the Wabush Mine, the Wabush Railway, the Arnaud Railway, the Bloom Lake Railway, and the Pointe-Noire Port (each as defined below).

41. The Businesses in which an investment may be made pursuant to the SISP are:
- a) the business relating to the Bloom Lake Mine, the related port assets located in Pointe-Noire, Québec and the rail assets located in Newfoundland and Labrador (the "**Bloom Lake Business**");
 - b) the business relating to the Wabush Mine (the "**Wabush Mine Business**"); and
 - c) the port facilities and related rail assets located in the Provinces of Newfoundland and Labrador and Québec owned by Wabush Mines JV (the "**Port Business**").
42. The Businesses and the Property of the CCAA Parties included in the SISP are related and interdependent, and a number of expressions of interest received by the Phase I Bid Deadline related to the assets of both the Bloom Lake CCAA Parties and the Wabush CCAA Parties.
43. Accordingly, the Wabush CCAA Parties are of the view that interested parties may wish to acquire either the Bloom Lake Business, the Wabush Mine Business or the Port Business, or any combination thereof, *en bloc*, and that such sales may be the best way for the Wabush CCAA Parties to maximize the value of their Businesses and assets.
44. The SISP also provides the flexibility for interested parties to submit bids for parts of the Property or Businesses ("**Portion Bids**") which, taken together or separately, may be superior to *en bloc* bids. The SISP permits the Wabush CCAA Parties to pursue one or more of such Portion Bids in such circumstances in order to maximize value for their stakeholders.

4.2 The SISP Procedures

45. In summary, the SISP has three phases:
- a) The first phase, contemplating delivery of non-binding letters of intent, was completed on May 19, 2015.
 - b) Parties that submit letters of intent that meet certain criteria will be invited to submit binding offers in the second phase by 5:00 p.m. on July 16, 2015 (the "**Bid Deadline**"). A number of letters of intent have been received by the CCAA Parties. After review and consultation with the Monitor and the Sale Advisor, the CCAA Parties have invited or will invite qualified bidders to continue into the second phase of the SISP and to submit binding offers by the Bid Deadline.
 - c) Where there is more than one Qualified Bid with respect to one or more Businesses or parts thereof, parties that submit Qualified Bids in respect of a Business or parts thereof will be invited to participate in an Auction where each participating bidder will have the opportunity to submit an Overbid in each round of bidding.

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46. Ultimately, the SISP contemplates that one or more Successful Bids may be selected to be pursued by the Bloom Lake CCAA Parties and the Wabush CCAA Parties. Any Successful Bid which relates to any Property or Businesses of the Wabush CCAA Parties will be submitted to the Court for approval, as is the case for the Bloom Lake CCAA Parties. The SISP contemplates that any other entities, including the Wabush CCAA Parties, may be added from time to time as petitioners or mises-en-cause in the CCAA Proceedings and in such circumstances, any Successful Bid in respect of such entities would also be subject to Court approval.
47. As noted in the SISP (Exhibit R-9), the purpose of the SISP procedures set forth therein is to describe, *inter alia*:
- a) the Property or Businesses available for sale, as more particularly described in the Teaser Letter and the Summary of Businesses, and the manner in which the opportunity for an investment in the Businesses through a Plan sponsorship can be obtained;
 - b) the manner in which Prospective Bidders may gain access to or continue to have access to due diligence materials concerning the Property, the CCAA Parties and the Businesses and time lines applicable thereto;
 - c) the manner in which Prospective Bidders may submit an LOI for all or substantially all of the Businesses or any part thereof;
 - d) the manner in which Qualified Phase I Bidders may submit a binding offer for all or substantially all of the Property or Businesses or any part thereof;
 - e) the manner in which Qualified Phase I Bidders become Qualified Bidders and bids become Qualified Bids and the process for the receipt and negotiation of Qualified Bids and Qualified Portion Bids and the timelines applicable thereto;
 - f) the manner in which one or more Auctions may be held in the event that more than one Qualified Bid is received;
 - g) the process for the ultimate selection of one or more Successful Bids; and
 - h) the process for the CCAA Parties to seek the Court's approval of one or more Successful Bids.
48. The process set out by the SISP (Exhibit R-9) can be summarized as follows:²
- a) The CCAA Parties, with the assistance of the Sale Advisor and in consultation with the Monitor, compiled a listing of prospective purchasers and investors and then used reasonable efforts to contact the parties identified therein as well as any additional parties.

² For a complete view of this process, please see the SISP (Exhibit R-9).

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- b) Prospective Bidders had the opportunity to submit a Sale Proposal (to purchase some or all of the CCAA Parties' Property) or make a Plan Sponsorship Proposal, the whole on an "as is, where is" basis.
- c) The CCAA Parties, with the assistance of the Sale Advisor and in consultation with the Monitor, prepared a Teaser Letter and sent it to all Prospective Bidders. Prospective Bidders were required to sign a Confidentiality Agreement ("CA") in order to gain access to confidential information (including access to an electronic data room) for the purposes of performing due diligence.
- d) Prospective Bidders who had signed a CA were to provide the Sale Advisor with a non-binding LOI by 5:00 p.m. (Montréal time) on Tuesday, May 19, 2015.
- e) The CCAA Parties, in consultation with the Sale Advisor and the Monitor reviewed the LOIs and, following discussion and clarification (if any) of the terms thereof, determined which Prospective Bidders will be invited to submit binding offers. Any party so invited is considered a "Qualified Phase I Bidder". The Sale Proposal LOI Criteria and Plan Sponsorship Proposal LOI Criteria are meant to ensure that only reasonably certain, credible offers are eligible to advance as Qualified Phase I Bidders to the second phase of bidding.
- f) In order to preserve flexibility, the CCAA Parties may, at any time prior to the Bid Deadline, bring a motion to seek approval of a "stalking horse" in respect of some or all of the Property and related amendments to the SISP. If any purchase agreement is approved by the Court for use as a "stalking horse", the CCAA Parties or the Sale Advisor will provide written notice of same to all Qualified Phase I Bidders.
- g) Qualified Phase I Bidders must provide the Sale Advisor with a binding Sale Proposal or Investment Proposal by the Bid Deadline of 5:00 p.m. on July 16, 2015, which Bid Deadline was determined by the CCAA Parties, in consultation with the Sale Advisor and the Monitor. The Sale Advisor has provided written notice of the Bid Deadline to all Qualified Phase I Bidders and notice of the Bid Deadline has been posted on the Monitor's Website.
- h) Binding offers must be open for acceptance until closing of the transaction with the Successful Bidder and be accompanied by a cash deposit in an amount equal to 5% of the proposed cash purchase price (if a Sale Proposal) or consideration to be available for distribution to creditors (if a Plan Sponsorship Proposal). Deposits will be held by the Monitor and refunded to all bidders that are not deemed to be the Successful Bidder with respect to a particular Business following the closing of the transaction with the Successful Bidder.
- i) The CCAA Parties, in consultation with the Sale Advisor and the Monitor will review the binding offers and, following discussion and clarification (if any) of the terms thereof, determine whether it would be in the best interests of the applicable SISP Parties to pursue a transaction on the terms set out therein.
- j) If it is determined that only one Qualified Bid was received with respect to a Business that is in the best interests of the applicable CCAA Parties, the applicable CCAA Parties may accept such Qualified Bid as the Successful Bid

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and take the necessary steps to finalize an agreement with the Successful Bidder.

- k) If it is determined that more than one Qualified Bid was received with respect to a Business that are in the best interests of the applicable CCAA Parties, the applicable CCAA Parties will conduct one or more Auctions with respect to one or more Businesses to determine the highest and/or best Sale Proposal or Plan Sponsorship Proposal or combination thereof.
- l) If conducted, the Auction or Auctions will be held on a date to be determined by the applicable CCAA Parties, in consultation with the Sale Advisor and the Monitor, or as fixed by the Court. Notice of the place and date of any Auction will be delivered to all Auction Bidders by the Sale Advisor not less than three Business Days before the date of the Auction.
- m) If conducted, the Auction or Auctions will be conducted in accordance with the following procedures:
 - i) The applicable CCAA Parties and their advisors will direct and preside over the Auction. The only people permitted to attend the Auction will be the authorized representatives of the CCAA Parties, the Sale Advisor, the Monitor and each "Auction Bidder" (being a Qualified Bidder who was determined by the CCAA Parties, in consultation with the Sale Advisor and the Monitor, to be entitled to participate in the Auction);
 - ii) Bidding at the Auction will be conducted in rounds. All bids made at the Auction will be made on an open, non-confidential basis;
 - iii) The highest and/or best Qualified Bid received by the Bid Deadline (as determined by the applicable CCAA Parties, in consultation with the Sale Advisor, and the Monitor), will be the Opening Bid for the first round of the Auction;
 - iv) Each Auction Bidder will have the opportunity to submit an "Overbid," meaning that the proposed purchase price or consideration to be allocated to creditors must be at least a certain "Minimum Overbid Increment" higher than the purchase price or consideration to be allocated to creditors proposed in the Opening Bid;
 - v) Each subsequent round of bidding at the Auction will commence with the highest and/or best Overbid submitted in the prior round (as determined by the applicable CCAA Parties, in consultation with the Sale Advisor and the Monitor, following discussion and clarification (if any) of the terms thereof);
 - vi) Each Auction Bidder (other than a Qualified Portion Bidder) must participate in a round of the Auction in order to be entitled to participate in the next round; and
 - vii) In any round of the Auction, if no new Overbid is made, the Auction will be closed and the last Opening Bid will be accepted as the Successful Bid.

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- n) The CCAA Parties may treat a combination of non-overlapping Portion Bids as one "Opening Bid" or "Overbid" in the Auction, and may accept a combination of non-overlapping Portion Bids as a "Successful Bid".
 - o) Upon accepting a Successful Bid that is in respect of any of the CCAA Parties' Businesses or Property, the applicable CCAA Parties will apply to this Honourable Court, with at least ten (10) days' notice to the Service List, for an order approving such Successful Bid and authorizing the applicable CCAA Parties to consummate the transaction contemplated therein.
 - p) If at any point during the SISP process, any of the CCAA Parties (in consultation with the Sale Advisor and the Monitor) determine that it will not be in the best interests of all or any of the CCAA Parties to continue with the SISP, the applicable CCAA Parties will return to Court to seek advice and directions, on notice to the Service List.
49. The Wabush CCAA Parties are of the view that the SISP provides the best opportunity to protect the interests of the Wabush CCAA Parties' stakeholders and for the Wabush CCAA Parties to maximize recoveries for their stakeholders. The SISP requires consultation with the Monitor throughout the process.
50. In particular, the process set out by the SISP provides for, inter alia:
- a) fairness, transparency and integrity;
 - b) commercial efficacy;
 - c) the flexibility necessary to accommodate the broad range of possible bids, given the nature of the CCAA Parties' Businesses and Property;
 - d) maximization of the chances of securing the best possible value for the CCAA Parties' Property or the maximum possible investment in the CCAA Parties' Businesses.

4.3 Contractual Rights Relating to the SISP

51. Pursuant to various contracts, certain of the Wabush CCAA Parties' contractual counterparties (the "**Contractual Rights Holders**") hold contractual purchase options, rights of first refusal, rights of first offer, consent rights and/or transfer restrictions (collectively, the "**Contractual Rights**") in respect of various subsets of the Wabush Property.
52. The assets over which each Contractual Right was granted vary. In general, such assets are shares of partially-owned subsidiaries, certain immovable property, or certain equipment and other personal property.
53. The events that may trigger a Contractual Right also vary. For example, certain of the Contractual Rights are triggered only upon the receipt of an offer to purchase the relevant subset of the Wabush Property, or upon termination of a particular agreement.

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54. The Wabush CCAA Parties are of the view that fully honouring these Contractual Rights would impair their ability to maximize the value of their Businesses and the Wabush Property for the benefit of their stakeholders, as it would have a chilling effect on other potentially interested parties.
55. The Wabush CCAA Parties are of the view that the SISP reflects a reasonable accommodation of the Contractual Rights in the circumstances:
- a) All Contractual Rights Holders were on the list of Prospective Bidders developed for the purposes of the SISP. Each Contractual Rights Holder therefore had the opportunity to make an offer to purchase some or all of the CCAA Parties' Property or invest in their Businesses;
 - b) If a Contractual Rights Holder participates in the SISP and becomes qualified as an Auction Bidder, the Auction provides the opportunity for the Contractual Rights Holder to review the Opening Bid and to make an Overbid in each round; and
 - c) Depending on the outcome of the SISP and the terms of any Successful Bid, some or all Contractual Rights may not be triggered.

56. All Contractual Rights Holders will receive notice of this Motion.

5. THE SALE ADVISOR

5.1 Engagement of the Sale Advisor

57. As mentioned above, on April 17, 2015, the Court rendered the Sale Advisor Order (Exhibit R-5) approving the engagement of the Sale Advisor in respect of the Bloom Lake CCAA Parties and granted the Bloom Lake Sale Advisor Charge.
58. The Wabush CCAA Parties, then not subject to the CCAA Proceedings, also engaged the services of the Sale Advisor pursuant to the Engagement Letter (Exhibit R-4A).
59. The Wabush CCAA Parties hereby seek the Court's approval of the appointment of the Sale Advisor *nunc pro tunc* to the Wabush Filing Date as relates to the Wabush CCAA Parties, who will continue to provide, *inter alia*, consultation and assistance to the Wabush CCAA Parties pursuant to the terms of the SISP and the Engagement Letter.
60. It was and continues to be in the Wabush CCAA Parties' best interest to retain the services of the Sale Advisor, who has extensive background on the Businesses and Property of the Wabush CCAA Parties and the relevant expertise needed to execute the SISP, evaluate the Wabush CCAA Parties' Businesses and identify strategic partners, purchasers and potential investors.
61. In or about October 2014, the Sale Advisor, a global investment bank, was verbally engaged by Cliffs Natural Resources Inc., the Wabush CCAA Parties indirect parent ("**CNR**"), to assist with the solicitation of investment partners and/or purchasers for, among other things, the Eastern Canadian Iron Ore investments of CNR and the Ring of Fire projects (the "**Sales Process**").

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62. After the issuance of the Bloom Lake Initial Order, the CCAA Parties continued to seek the assistance of the Sale Advisor to locate investment and/or sale opportunities for their Businesses and Property as they had already been engaged by CNR for such purposes and had expended a great deal of time and effort up to the time of the CCAA filing by the Bloom Lake CCAA Parties. In addition, the Sale Advisor has extensive experience in acting as sales and investment advisor to significant companies in the mining industry (inside and outside of formal insolvency proceedings) as well as experience in Canadian court-supervised CCAA sales and investment solicitation processes as further described in the attached letter from Sale Advisor communicated herewith as **Exhibit R-17**.
63. Pursuant to the Engagement Letter (Exhibit R-4A), the Sale Advisor has already assisted and will continue to assist the Wabush CCAA Parties in:
- a) conducting a business and financial analysis of the Businesses of the Wabush CCAA Parties and related parties (including the mine, rail and port facilities);
 - b) developing and implementing the SISP;
 - c) identifying and evaluating potential acquirers (each, an "**Acquirer**") of all or a majority of the equity securities of one or more of the Wabush CCAA Parties or related parties, through acquisition or merger, or of a majority of the assets, properties or business of any of the Businesses (each, a "**Transaction**");
 - d) contacting potential Acquirers that the Sale Advisor and the Wabush CCAA Parties or related parties have agreed may be appropriate for a Transaction, and meeting with and providing them such information about the Businesses as may be appropriate and acceptable to the Wabush CCAA Parties, subject to customary business confidentiality;
 - e) preparing information materials describing the Businesses, which the Sale Advisor may distribute to potential Acquirers;
 - f) developing a strategy to effectuate one or more Transactions;
 - g) structuring and negotiating the Transactions and participating in such negotiations as requested;
 - h) meeting with the CCAA Parties' and related parties' Boards of Directors and/or the Monitor, as requested by the CCAA Parties, to discuss any proposed Transaction and its financial implications;
 - i) providing a written report or affidavit(s) as may be reasonably requested by the CCAA Parties and related parties or by the Monitor with respect to the sale process for each proposed Transaction in connection with obtaining Court approval of such Transaction;
 - j) if requested by the Wabush CCAA Parties, participating in hearings before the this Court, and providing relevant testimony with respect to the sale process for each of the Transactions; and

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- k) rendering such other financial advisory and investment banking services as customarily provided in connection with the marketing and negotiation of each Transaction, as requested by the Wabush CCAA Parties and as may be reasonably agreed to by Sale Advisor.
64. The Sale Advisor's role—which is essentially to assist in conducting the SISF and concluding a Transaction or Transactions—will be distinct from and complementary to the role of the Monitor—which is essentially to oversee the CCAA Proceedings and to assist the Wabush CCAA Parties with their Restructuring,³ and reporting to the Court.
65. As appears from the Engagement Letter (Exhibit R-4A), the Sale Advisor's fee structure negotiated by the Wabush CCAA Parties contemplates a monthly fee for a limited period of time (the "**Monthly Retainer Fee**") earned from the commencement date of the CCAA Proceedings, as well as fees payable upon the closing of any Transaction (the "**Transaction Fees**"). The Wabush CCAA Parties are of the view that this fee structure is reasonable in light of the prevailing market conditions.
66. Pursuant to the terms of the Engagement letter, the engagement of the Sale Advisor is retroactive to the date of the institution of the CCAA Proceedings, being January 27, 2015.
67. The Monitor has advised the Wabush CCAA Parties that it supports the Wabush CCAA Parties' engagement of the Sale Advisor pursuant to the terms set out in the Engagement Letter (Exhibit R-4A) subject to *nunc pro tunc* approval by this Court of the Engagement Letter as at the Wabush Filing Date as it relates to the Wabush CCAA Parties from and after the Wabush Filing Date, and that it will submit shortly a report with its recommendation that this engagement be approved by the Court.
68. The terms of the Engagement Letter as relates to the Wabush CCAA Parties are reasonable under the circumstances.

5.2 The Sale Advisor Charge

69. The Sale Advisor Order (Exhibit R-5) granted the Bloom Lake Sale Advisor Charge over the property of the Bloom Lake CCAA Parties securing the fees and expenses of the Sale Advisor payable by each Bloom Lake CCAA Party, to a maximum aggregate amount of USD \$8 million.
70. Similarly, the Wabush CCAA Parties hereby seek an equivalent charge in favour of the Sale Advisor over the Property of the Wabush CCAA Parties, on a several basis, securing only those fees and expenses payable by each Wabush CCAA Party, to a maximum aggregate amount of USD \$5 million as security for the Monthly Retainer Fee, Transaction Fees (as each such term is defined in the Engagement Letter) and expenses reimbursable pursuant to the Engagement Letter by the Wabush CCAA Parties (Exhibit R-4A) (the "**Wabush Sale Advisor Charge**").

³ Defined as the orderly restructuring of the business and financial affairs of the Wabush CCAA Parties (para. 33 of the Wabush Initial Order).

71. The Engagement Letter provides that the Wabush CCAA Parties, if they become party to the CCAA Proceedings, are required to use their reasonable best efforts to obtain a charge over the property of the Wabush CCAA Parties securing the Monthly Retainer Fee, Transaction Fees and expenses reimbursable pursuant to the Engagement Letter payable by each Wabush CCAA Party, on a several basis, with such charge having priority over all claims of unsecured creditors of such Wabush CCAA Parties, but to be subordinated to the CCAA Charges and all secured claims.
72. The Wabush Sale Advisor Charge, if granted, would be limited to a maximum of USD \$5 million, being the maximum amount of the Transaction Fees that could become payable by the Wabush CCAA Parties under the Engagement Letter.
73. In light of the Monthly Retainer Fee and the Transaction Fees provided for in the Engagement Letter (Exhibit R-4A), a Wabush Sale Advisor Charge of USD \$5 million is reasonable under the circumstances.
74. The Monitor has advised the Wabush CCAA Parties that it supports the creation of the Wabush Sale Advisor Charge.
75. The Court's *nunc pro tunc* approval of the Engagement Letter (Exhibit R-4A) as at the Wabush Filing Date in respect of the Wabush CCAA Parties from and after the Wabush Filing Date and creation of the Wabush Sale Advisor Charge are essential to allow the Wabush CCAA Parties to continue to work with the Sale Advisor to analyze and explore all available options and to successfully implement and execute the SISF in order to arrive at the best result for all interested parties.

6. SUSPENSION OF CERTAIN PENSION PAYMENTS AND OPEBs

6.1 Pension Plans

6.1.1 Defined Contribution Schemes

76. The pension plans for salaried employees at the Wabush Mine hired on or after January 1, 2013 are defined contribution schemes.
77. Wabush Mines JV is the administrator of these defined contribution schemes.
78. Contributions under the defined contribution scheme are paid with each payroll. The defined contribution schemes also includes an employer matching provision whereby the employer contributes up to 6% of each employee's eligible wages with each payroll.
79. All employee and employer contributions are paid current and future contribution amounts have been included in the Wabush CCAA Parties' weekly cash flow forecast to August 14, 2015, as filed in support of the motion for the Wabush Initial Order (as such cash flow forecast may be amended from time to time, the "**May 18 Forecast**") and communicated herewith as **Exhibit R-18**.

6.1.2 Defined Benefit Plans

80. As described in the motion for the Wabush Initial Order, the pension plan for salaried employees at the Wabush Mine and the Pointe-Noire Port hired before January 1, 2013

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is a defined benefit plan and is called the Contributory Pension Plan for Salaried Employees of Wabush Mines JV, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company (the "**Salaried DB Plan**").

81. The pension plan for unionized hourly employees at the Wabush Mine and Pointe-Noire Port is also a defined benefit plan and is called the Pension Plan for Bargaining Unit Employees of Wabush Mines JV, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company (the "**Hourly DB Plan**" and together with the Salaried DB Plan, the "**DB Plans**").
82. Wabush Mines JV is the administrator of the DB Plans.
83. Based on estimates received from the Wabush CCAA Parties' pension consultant, the Wabush CCAA Parties believe the estimated wind-up deficiencies for the DB Plans as at January 1, 2015 to be a total of approximately \$41.5 million, consisting of approximately \$18.2 million for the Salaried DB Plan and approximately \$23.3 million for the Hourly DB Plan.
84. The Interim Lender is only prepared to make advances under the Interim Facility pursuant to the Interim Financing Term Sheet if there is an order of the Court granting priority to the Interim Lender Charge over all Encumbrances other than Permitted Priority Liens (as defined in the Interim Financing Term Sheet), including over deemed trusts that may exist in respect of pension obligations under the *Pension Benefits Act, 1997* (Newfoundland and Labrador) or any other applicable legislation.
85. All monthly normal cost and amortization payments in respect of the DB Plans for January through April, 2015 have been paid in full.
86. The monthly normal cost payments for the DB Plans for 2015 based on a valuation as at January 1, 2014 (the "**2014 Valuation**") are approximately \$50,494.83 (Hourly DB Plan) and \$41,931.25 (Salaried DB Plan) for a total monthly normal cost payment of \$92,46.08 (the "**Normal Cost Payments**"). The Normal Cost Payments are included in the May 18 Forecast.
87. The Wabush CCAA Parties are also paying monthly amortization payments based on the 2014 Valuation of \$393,337.00 (Hourly DB Plan) and \$273,218.58 (Salaried DB Plan) for a total monthly amortization payment of \$666,555.58 (the "**Monthly Amortization Payments**").
88. In addition to the Monthly Amortization Payments, the Wabush CCAA Parties are also required to make a lump sum "catch-up" amortization payment (the "**Yearly Catch Up Amortization Payment**") for the DB Plans estimated to be approximately \$5.5 Million due in July 2015.
89. The Wabush CCAA Parties do not have any funding available to continue to pay the Monthly Amortization Payments or to pay the Yearly Catch-Up Amortization Payment due in July 2015 as the Interim Financing Term Sheet prohibits such payments post-filing.

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90. As a result, the Wabush CCAA Parties will not be making the Monthly Amortization Payments or the Yearly Catch Up Amortization Payment, as they had indicated in their motion for the Wabush Initial Order.

91. In light of the foregoing, the Wabush CCAA Parties hereby seek an order from the Court suspending the payment of the Monthly Amortization Payments and the Yearly Catch Up Amortization Payment *nunc pro tunc* to the Wabush Filing Date.

6.1.3 Other Post-Retirement Benefits

92. The Wabush CCAA Parties currently provide OPEBs, including life insurance and health care, to former hourly and salaried employees hired before January 1, 2013, which vary based on whether retirees were formerly members of a bargaining unit or were non-unionized salaried employees.

93. Approximately 933 retired employees and 16 active employees are currently fully eligible for retirement benefits.

94. As of December 31, 2014, accumulated benefits obligations for post-retirement benefits ("ABO") totaled approximately \$52.1 million.

95. The premiums required to fund the foregoing OPEBs are approximately \$182,000 a month.

96. In addition to the foregoing, there is a supplemental retirement arrangement plan (the "SRA") for certain current and former salaried employees of Wabush Mines JV. The obligations under the SRA are approximately \$1.01 million.

97. The Wabush CCAA Parties do not have any funding available to continue to pay any of the foregoing OPEBs, including the SRA obligations, as the Interim Financing Term Sheet prohibits such payments.

98. As a result, no payments on account of the OPEBs are included in the May 18 Forecast.

99. In light of the foregoing, the Wabush CCAA Parties hereby seek an order from the Court suspending the payment of the OPEBs *nunc pro tunc* to the Wabush Filing Date.

7. EXTENSION OF THE WABUSH STAY PERIOD

100. The issuance of the Wabush Initial Order brought the Wabush CCAA Parties into the CCAA Proceedings which were already ongoing in respect of the Bloom Lake CCAA Parties.

101. The extension of the Wabush Stay Period to July 31, 2015 will make the Wabush Stay Period concurrent with the Bloom Lake Stay Period, and will allow for better streamlining, coordination and efficiency of the CCAA Proceedings.

102. Since the issuance of the Wabush Initial Order, the Wabush CCAA Parties have acted and continue to act in good faith and with due diligence.

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103. Since the commencement of the CCAA Proceedings in respect of the Wabush CCAA Parties, the Wabush CCAA Parties have, with the assistance of and in consultation with the Monitor:
- a) met regularly with the Monitor and provided the Monitor with full co-operation and complete access to the Wabush CCAA Parties' Property, premises and books and records;
 - b) implemented procedures for the monitoring of the Wabush CCAA Parties' operations and financial circumstances, including receipts and disbursements;
 - c) held meetings and discussions with certain of the Wabush CCAA Parties' creditors, suppliers and other stakeholders;
 - d) in consultation with and with the assistance and consent of the Monitor delivered the following notices of disclaimer or:
 - i) Master Net Locomotive Lease dated February 26, 2010 between CIT Financial (Alberta) ULC and Arnaud Railway Company together with all riders and schedules thereto (as each may be amended, restated, supplemented or modified), including, without limitation, Schedule No. 02 dated March 4, 2011 (as amended by Amendment No. 01 to Lease Schedule No. 02 dated March 12, 2013, and as may be further amended, restated, supplemented or modified, together with the Memorandum of Locomotive Lease dated March 4, 2011) and Schedule No. 03 dated June 17, 2011 (as amended by Amendment No. 01 to Lease Schedule No. 03 dated August 5, 2013, and as may be further amended, restated, supplemented or modified, together with the Memorandum of Locomotive Lease dated June 17, 2011);
 - ii) Rental Agreement with reference number S75794 dated June 20, 2012 between Wabush Mines JV, and Groupe CLR (as may be amended, restated, supplemented or modified); and
 - iii) a rail transportation agreement which includes a provision to the effect that its terms shall be kept confidential;
 - e) communicated and will continue to communicate on an ongoing basis with employees of the Wabush CCAA Parties with respect to the CCAA Proceedings, providing written materials (in both French and English) and advising employees with respect to the Monitor's website, hotline and mailbox so that employees can obtain additional information and/or contact the Wabush CCAA Parties or the Monitor directly;
 - f) continued to carry out the SISP, in collaboration with the Bloom Lake CCAA Parties and with assistance of the Monitor and the Sale Advisor, and prepared the present Motion to, *inter alia*, obtain *nunc pro tunc* approval for SISP and the engagement of the Sale Advisor and to amend the SISP as at the Wabush Filing Date as relates to the Wabush CCAA Parties; and
 - g) responded to stakeholders' inquiries and various claims and correspondence.

Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

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104. It is respectfully submitted that the extension of the Wabush Stay Period to July 31, 2015 is required to provide all CCAA Parties with sufficient time to complete the next phase of the SISF and pursue their on-going Restructuring.
105. The deadline in the SISF for Qualified Phase I Bidders to submit a binding Sale Proposal or Investment Proposal has been set at 5:00 p.m. (Montréal Time) on July 16, 2015.
106. It is anticipated that the requested extension of the Stay Period until July 31, 2015, will afford the Wabush CCAA Parties sufficient time to achieve these objectives.
107. The Monitor has advised the Wabush CCAA Parties that its report will include, *inter alia*, the Monitor's support for the requested extension of the Wabush Stay Period, and for the suspension of the Monthly Amortization Payments, the Yearly Catch Up Amortization Payment or OPEBs.
108. The Monitor's report will also include the Wabush CCAA Parties' May 18 Forecast. Based on the May 18 Forecast and subject to the underlying assumptions therein, including in particular the suspension of Monthly Amortization Payments, the Yearly Catch Up Amortization Payment and OPEBs, the Wabush CCAA Parties believe that there is sufficient liquidity to fund their participation in these CCAA Proceedings until July 31, 2015.
109. The May 18 Forecast does not include payment of equipment financing or leases, the Monthly Amortization Payments, the Yearly Catch Up Amortization Payment or OPEBs.
110. It is the position of the Wabush CCAA Parties that no parties will be materially prejudiced by the extension of the Stay Period and that the extension sought is appropriate under the present circumstances.
111. In light of the foregoing, the Wabush CCAA Parties respectfully ask this Court to extend the Wabush Stay Period to July 31, 2015, the whole subject to all other terms of the Wabush Initial Order and the order to be rendered hereon.

8. CONCLUSIONS

112. In light of the foregoing, the Wabush CCAA Parties hereby seek the issuance of an Order substantially in the form of the draft Order communicated herewith as **Exhibit R-19**, which provides for, *inter alia*:
 - a) amending the Wabush Initial Order to grant priority to the Wabush CCAA Charges ahead of all Encumbrances affecting the Property of the Wabush CCAA Parties whether or not charged by said Encumbrances;
 - b) *nunc pro tunc* approval of the terms of the SISF as at the Wabush Filing Date as it relates to the Wabush CCAA Parties, and *nunc pro tunc* authorization and direction of the Wabush CCAA Parties, the Monitor and the Sale Advisor as at the Wabush Filing Date to take such steps as they consider necessary or desirable in carrying out the SISF as relates to the Wabush CCAA Parties in accordance with its terms;

Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

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- c) *nunc pro tunc* approval of the Engagement Letter (Exhibit R-4A) as at the Wabush Filing Date as relates to the Wabush CCAA Parties, which Engagement Letter by its terms is effective from and after January 27, 2015;
 - d) amending the Wabush Initial Order to create the Wabush Sale Advisor Charge;
 - e) amending and restating the Initial SISP to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings, in the form the SISP (as Exhibit R-9);
 - f) suspending the payment of the Monthly Amortization Payments, the Yearly Catch Up Amortization Payment and other OPEBs by the Wabush CCAA Parties *nunc pro tunc* to the Wabush Filing Date;
 - g) extending the Wabush Stay Period to July 31, 2015; and
 - h) the issuance of an Amended Initial Order in respect of the Wabush CCAA Parties, reflecting any amendments to the Wabush Initial Order to be ordered by the Court herein.
113. The Wabush CCAA Parties submit further that the notices given of the presentation of the present Motion are proper and sufficient.
114. The Monitor supports the present Motion.
115. The present Motion is well founded in fact and in law.

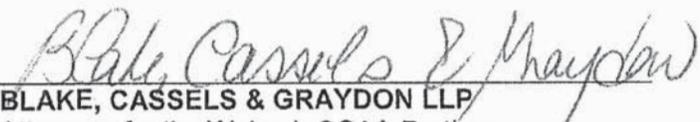
FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Motion;

ISSUE an order in the form of the draft Order communicated in support hereof as Exhibit R-19;

WITHOUT COSTS, save and except in case of contestation.

Montréal, May 29, 2015


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Wabush CCAA Parties

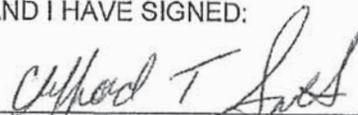
Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

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AFFIDAVIT

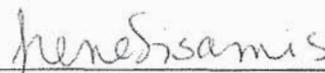
I, the undersigned, **CLIFFORD T. SMITH**, the President of the Wabush CCAA Parties Wabush Resources Inc. and Wabush Iron Co. Limited, and Vice-President of the Mises-en-Cause Arnaud Railway Company and Wabush Lake Railway Company Limited, each having a place of business at 1155 Rue University, Suite 508, in the city and district of Montréal, Québec, solemnly affirm that all the facts alleged in the present *Motion for the Issuance of an Order in Respect of the Wabush CCAA Parties (1) Granting Priority to Certain CCAA Charges, (2) Approving a Sale and Investor Solicitation Process Nunc Pro Tunc, (3) Authorizing the Engagement of a Sale Advisor Nunc Pro Tunc, (4) Granting a Sale Advisor Charge, (5) Amending the Sale and Investor Solicitation Process, (6) Suspending the Payment of Certain Pension Amortization Payments and Post-Retirement Employee Benefits, (7) Extending the Stay of Proceedings, and (8) Amending the Wabush Initial Order*, are true.

AND I HAVE SIGNED:



CLIFFORD T. SMITH

SOLEMNLY DECLARED before me
at Cleveland, Ohio,
this 29th day of May, 2015



Notary Public

Irene Sisamis
Notary Public
State of Ohio
My Commission Expires
September 14, 2019

Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

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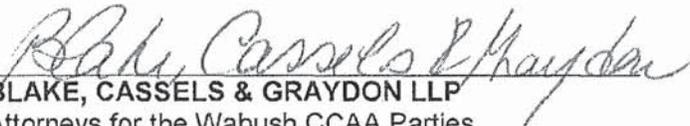
NOTICE OF PRESENTATION

TO: Service List

TAKE NOTICE that the present *Motion for the Issuance of an Order in Respect of the Wabush CCAA Parties (1) Granting Priority to Certain CCAA Charges, (2) Approving a Sale and Investor Solicitation Process Nunc Pro Tunc, (3) Authorizing the Engagement of a Sale Advisor Nunc Pro Tunc, (4) Granting a Sale Advisor Charge, (5) Amending the Sale and Investor Solicitation Process, (6) Suspending the Payment of Certain Pension Amortization Payments and Post-Retirement Employee Benefits, (7) Extending the Stay of Proceedings, and (8) Amending the Wabush Initial Order* will be presented for adjudication before the Honourable Stephen W. Hamilton, J.S.C., or another of the honourable judges of the Superior Court, Commercial Division, sitting in and for the district of Montréal, in the Montréal Courthouse located at 1, Notre-Dame Street East, Montréal, Québec, on **June 9, 2015 at 9:15 a.m.**, in a room to be determined.

DO GOVERN YOURSELF ACCORDINGLY.

Montréal, May 29, 2015


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Wabush CCAA Parties

Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**SUPERIOR COURT**

Commercial Division

(Sitting as a court designated pursuant to the *Companies'*
Creditors Arrangement Act, R.S.C., c. 36, as amended)

N°: 500-11-048114-157

**IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF:****BLOOM LAKE GENERAL PARTNER LIMITED,
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.**

Petitioners

and

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY LIMITED**

Mises-en-cause

and

FTI CONSULTING CANADA INC.

Monitor

and

MOELIS & COMPANY LLC

Mise-en-cause

LIST OF EXHIBITS

(In support of *Motion for the Issuance of an Order in Respect of the Wabush CCAA Parties (1) Granting Priority to Certain CCAA Charges, (2) Approving a Sale and Investor Solicitation Process Nunc Pro Tunc, (3) Authorizing the Engagement of a Sale Advisor Nunc Pro Tunc, (4) Granting a Sale Advisor Charge, (5) Amending the Sale and Investor Solicitation Process, (6) Extending the Stay of Proceedings, (7) Suspending the Payment of Certain Pension Amortization Payments and Post-Retirement Employee Benefits, and (8) Amending the Wabush Initial Order*)

R-1 Bloom Lake Initial Order rendered on January 27, 2015;

R-2 Bloom Lake Amended Initial Order rendered on February 20, 2015;

R-3 Stay Extension Order rendered on April 17, 2015;

Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

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- R-4 Redacted Sale Advisor Engagement Letter dated as of March 23, 2015;
- R-4A Unredacted Sale Advisor Engagement Letter dated as of March 23, 2015 (*under seal*);
- R-5 Sale Advisor Order rendered on April 17, 2015;
- R-6 Initial sale and investor solicitation procedures;
- R-7 SISP Order rendered on April 17, 2015;
- R-8 Wabush Initial Order rendered on May 20, 2015;
- R-9 Amended and restated sale and investor solicitation procedures;
- R-10 Blackline comparing Initial SISP against SISP;
- R-11 RPMRR (Québec) search results summary in respect of the movable Wabush Property;
- R-12 Real estate search report (Québec) in respect of the immovable Wabush Property;
- R-13 Table summarizing the Existing Construction Liens registered in Québec against the immovable Wabush Property;
- R-14 Legal hypothecs in favour of persons having taken part in the construction or renovation of an immovable registered against immovable Wabush Property as of May 27, 2015, *en liasse*;
- R-15 Index of immovables for the relevant land files of the Land Register (Québec), *en liasse*;
- R-16 Personal Property Security Act (Ontario, Newfoundland and Labrador) and *Uniform Commercial Code* (Ohio) search results summary in respect of movable Wabush Property;
- R-17 Letter from Sale Advisor;
- R-18 May 18 Forecast;
- R-19 Draft Order.

The exhibits are available at the following link:

<https://blakes.sharefile.com/d-s8a646e627ff44069>

Montréal, May 29, 2015


BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Wabush CCAA Parties

Motion to Amend the Initial Order (Comeback Motion), May 29, 2015

N°: 500-11-048114-157

**SUPERIOR COURT
DISTRICT OF MONTREAL
(Commercial Division)**

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

BLOOM LAKE GENERAL PARTNER LIMITED & ALS

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP & ALS**

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**MOTION FOR THE ISSUANCE OF AN ORDER IN
RESPECT OF THE WABUSH CCAA PARTIES (1)
GRANTING PRIORITY TO CERTAIN CCAA CHARGES,
(2) APPROVING A SALE AND INVESTOR
SOLICITATION PROCESS *NUNC PRO TUNC*, (3)
AUTHORIZING THE ENGAGEMENT OF A SALE
ADVISOR *NUNC PRO TUNC*, (4) GRANTING A SALE
ADVISOR CHARGE, (5) AMENDING THE SALE AND
INVESTOR SOLICITATION PROCESS, (6)
SUSPENDING THE PAYMENT OF CERTAIN PENSION
AMORTIZATION PAYMENTS AND POST-RETIREMENT
EMPLOYEE BENEFITS, (7) EXTENDING THE STAY OF
PROCEEDINGS, AND (8) AMENDING THE WABUSH
INITIAL ORDER ACCORDINGLY
AFFIDAVIT AND LIST OF EXHIBITS**

ORIGINAL



M^{re} Bernard Boucher

BB-8098

BLAKE, CASSELS & GRAYDON LLP

Barristers & Solicitors

600 de Maisonneuve Blvd. West, Suite 2200

Montréal, Québec H3A 3J2

Telephone: 514-982-4006

Fax: 514-982-4099

Email: bernard.boucher@blakes.com

Our File: 11573-365

Motion for the Issuance of an Initial Order, May 19, 2015

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

SUPERIOR COURT

Commercial Division

(Sitting as a court designated pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., c. 36, as amended)

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

BLOOM LAKE GENERAL PARTNER LIMITED

-and-

QUINTO MINING CORPORATION

-and-

8568391 CANADA LIMITED

-and-

CLIFFS QUÉBEC IRON MINING ULC

-and-

WABUSH IRON CO. LIMITED, a corporation incorporated pursuant to the laws of the State of Ohio, U.S.A., having its registered office at 200 Public Square, Suite 3300, Cleveland, Ohio, U.S.A.

-and-

WABUSH RESOURCES INC., a corporation incorporated pursuant to the laws of Canada, having its head office at 1155 Rue University, Suite 508, Montréal, Québec

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP**

-and-

BLOOM LAKE RAILWAY COMPANY LIMITED

-and-

WABUSH MINES, an unincorporated contractual joint

Motion for the Issuance of an Initial Order, May 19, 2015

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venture of Wabush Resources Inc. and Wabush Iron Co. Limited, governed by the laws of Newfoundland and Labrador, having its head office at 1505 Chemin Pointe-Noire, C.P. 878, Sept-Iles, Québec

-and-

ARNAUD RAILWAY COMPANY, a corporation incorporated pursuant to the laws of Québec, having its head office at 1155 Rue University, Suite 508, Montréal, Québec

-and-

WABUSH LAKE RAILWAY COMPANY, LIMITED, a corporation incorporated pursuant to the laws of Newfoundland, having its head office at 1155 Rue University, Suite 508, Montréal, Québec

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

MOTION FOR THE ISSUANCE OF AN INITIAL ORDER
(Sections 4, 5, 11 and *ff.* of the *Companies' Creditors Arrangement Act* ("CCAA"))

TO MR. JUSTICE STEPHEN W. HAMILTON OR ONE OF THE OTHER HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN THE COMMERCIAL DIVISION FOR THE DISTRICT OF MONTRÉAL, THE WABUSH CCAA PARTIES SUBMIT:

1. BACKGROUND

1. On January 27, 2015, Mr. Justice Martin Castonguay, J.S.C., issued an Initial order (as amended on February 20, 2015 and as further amended from time to time, the "**Bloom Initial Order**") commencing these proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act* (the "**CCAA**") in respect of the Petitioners Bloom Lake General Partner Limited ("**Bloom Lake GP**"), Quinto Mining Corporation ("**Quinto**"), 8568391 Canada Limited ("**8568391**") and Cliffs Québec Iron Mining ULC ("**CQIM**") (collectively, the "**Bloom Lake Petitioners**") and the Mises-en-cause The Bloom Lake Iron Ore Mine Limited Partnership ("**Bloom Lake LP**") and Bloom Lake Railway Company Limited ("**Bloom Lake Railway Company**") (collectively, the "**Bloom Lake Mises-en-cause**"; collectively with the Bloom Lake Petitioners, the "**Bloom Lake**

Motion for the Issuance of an Initial Order, May 19, 2015

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CCAA Parties"), as appears from the Initial Order communicated herewith as **Exhibit R-1**.

2. The Bloom Lake CCAA Parties are affiliated companies and their activities, together, comprise substantially all of the Canadian operations of, and related to, the mine located approximately 13 km north of Fermont, Québec in the Labrador Trough, a mature mining district located in Québec and Labrador, known as the Bloom Lake Mine (the "**Bloom Lake Mine**") and the Leased Port Premises (as defined in the Bloom Lake CCAA Parties' Motion for the Issuance of an Initial Order, communicated herewith as **Exhibit R-2** (the "**Motion for Bloom Initial Order**")).
3. Pursuant to the Bloom Initial Order (Exhibit R-1), *inter alia*:
 - a) FTI Consulting Canada Inc. was appointed as monitor of the Bloom Lake CCAA Parties (the "**Monitor**") (para. 39 *ff.* of the Bloom Initial Order);
 - b) a stay of proceedings was initially ordered for the Bloom Lake CCAA Parties until February 26, 2015, was extended by Order dated February 20, 2015 to April 30, 2015 and was further extended by way of an Order dated April 17, 2015 to July 31, 2015 (para. 8 *ff.* of the Bloom Initial Order, by way of para. 6 of the stay extension Order rendered on April 17, 2015 communicated herewith as **Exhibit R-3**);
 - c) procedural consolidation was ordered in respect of the Bloom Lake CCAA Parties (para. 7 of the Bloom Initial Order); and
 - d) the following priority charges were granted:
 - i) a Directors' Charge (as defined in the Bloom Initial Order) of \$2.5 million (para. 31 of the Bloom Initial Order), ranking ahead of all Encumbrances (as defined in the Bloom Initial Order) (para. 47 of the Bloom Initial Order);
 - ii) an Administration Charge (as defined in the Bloom Initial Order; collectively with the Directors' Charge, the "**CCAA Charges**") of \$2.5 million, ranking ahead of all Encumbrances (para. 47 of the Bloom Initial Order); and
 - iii) a Sale Advisor Charge (as defined in the Bloom Initial Order) of US\$8 million (para. 32.1 of the Bloom Initial Order, by way of para. 6 of the sale advisor appointment Order rendered on April 17, 2015 communicated herewith as **Exhibit R-4** (the "**Sale Advisor Order**")), with priority over all claims of the unsecured creditors of the Bloom Lake CCAA Parties, but subordinated to the CCAA Charges and all secured claims (para. 47.1 of the Bloom Initial Order, by way of para. 8 of the Sale Advisor Order (Exhibit R-4)).

Motion for the Issuance of an Initial Order, May 19, 2015

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4. Since the issuance of the Bloom Initial Order, the Bloom Lake CCAA Parties have, *inter alia*:
- a) obtained an order approving a sale and investor solicitation process (as it relates to the Bloom Lake CCAA Parties, the "**SISP**"), as appears from the Order dated April 17, 2015 communicated herewith as **Exhibit R-5** (the "**SISP Order**");
 - b) obtained Court approval of the engagement of Moelis & Company LLC (as it relates to the Bloom Lake CCAA Parties, "**Sale Advisor**"), as appears from the Sale Advisor Order (Exhibit R-4);
 - c) obtained Court approval for the lease of the ArcelorMittal Mining Camp (as defined in the Motion for Bloom Initial Order (Exhibit R-2)) by 8568391 to a third party, as appears from the Order dated April 17, 2015 communicated herewith as **Exhibit R-6** (the "**Mining Camp Lease Order**"); and
 - d) obtained the issuance of an Order dated April 27, 2015 and communicated herewith as **Exhibit R-7** (the "**Chromite Approval and Vesting Order**"), in respect of CQIM, approving the sale by CQIM of the entirety of its shares of companies operating the Ring of Fire, in the context of the divestiture by CQIM and other related parties of substantially all of CQIM and CNR's (as defined below) indirect investment in a mining district in northern Ontario known as the "**Ring of Fire**", which transaction closed on April 28, 2015.
5. This Motion is to extend the CCAA protection granted to the Bloom Lake CCAA Parties to five additional entities, as described below, to facilitate the reorganization of each of their businesses and operations. More specifically, the Wabush CCAA Parties (as described below) hereby seek the issuance of an Initial Order substantially in the form and substance of the Draft Wabush Initial Order communicated herewith as **Exhibit R-8** (the "**Draft Wabush Initial Order**").

2. THE WABUSH CCAA PARTIES

6. The Petitioners, Wabush Iron Co. Limited ("**Wabush Iron**") and Wabush Resources Inc. ("**Wabush Resources**") (collectively, the "**Wabush Petitioners**"; collectively with the Bloom Lake Petitioners, the "**Petitioners**"), are debtor companies under the CCAA.
7. Wabush Mines ("**Wabush Mines JV**") is an unincorporated contractual joint venture of Wabush Iron and Wabush Resources. Like the Bloom Lake Mises-en-cause, it is not a petitioner in these CCAA Proceedings but seeks to have the protections and authorizations of these CCAA Proceedings extended to it as it is intertwined with the Wabush Petitioners and forms an integral part of the business, operations and/or assets of certain of the Wabush Petitioners and more specifically, the iron ore mine and processing facility located near the Town of Wabush and Labrador City, Newfoundland and Labrador (the "**Wabush Mine**") and the Pointe-Noire Port (both as defined and described more fully below).

Motion for the Issuance of an Initial Order, May 19, 2015

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8. Each of Arnaud Railway Company ("**Arnaud**"), and Wabush Lake Railway Company, Limited ("**Wabush Lake Railway Company**"; collectively with Arnaud and Wabush Mines JV, the "**Wabush Mises-en-cause**"; collectively with the Bloom Lake Mises-en-cause, the "**Mises-en-cause**") provide essential transportation services (as more fully described below) to certain of the Wabush CCAA Parties (as defined below).
9. Arnaud and Wabush Lake Railway Company also seek to have the protections and authorizations of these CCAA Proceedings extended to them as they are also intertwined with the Wabush Petitioners and form an integral part of the business, operations and/or assets of the Wabush Mines JV and more specifically, the Wabush Mine and the Pointe-Noire Port.
10. The restructuring of the Wabush CCAA Parties and the prospects of finding potential investors and/or purchasers for some or all of the Wabush CCAA Parties or their assets would be significantly enhanced if the Wabush Mises-en-Cause are included as CCAA Parties in these CCAA Proceedings.
11. As described herein, the Wabush Petitioners and the Wabush Mises-en-cause (collectively, the "**Wabush CCAA Parties**") and the Bloom Lake CCAA Parties (collectively with the Wabush CCAA Parties, the "**CCAA Parties**") are affiliated companies and their activities, together, comprise substantially all of the Canadian operations of CQIM (as defined below), particularly, ownership and operation of the Bloom Lake Mine, the Wabush Mine, the Pointe-Noire Port and three railway operations: Arnaud Railway, Wabush Lake Railway and Bloom Lake Railway (each as defined below).
12. A chart illustrating the basic corporate structure of the CCAA Parties, including the Wabush CCAA Parties, is communicated herewith as **Exhibit R-9**.
13. All of the CCAA Parties, with the exception of Bloom Lake GP and Bloom Lake LP, are indirect wholly-owned subsidiaries of Cliffs Natural Resources Inc. ("**CNR**"), an international mining and natural resources company listed on the New York Stock Exchange under the symbol "CLF".
14. Neither CNR nor any of its non-Canadian subsidiaries (other than Wabush Iron) are petitioners or mises-en-cause in these CCAA Proceedings.
15. Various market and economic factors, such as the significant fall in global commodity prices, have affected the value and feasibility of the Wabush Mine assets similar to the effect on the Bloom Lake Mine as described in the Motion for Bloom Initial Order (Exhibit R-2).
16. In June 2013, the Wabush Mines JV idled Pointe-Noire Pellets (as defined below).
17. On February 11, 2014, in addition to announcing that CNR was exploring strategic alternatives for the Bloom Lake Mine, CNR announced plans to idle the Wabush Mine by the end of the first quarter of 2014. The idle was being driven by the unsustainable high cost structure, which resulted in operations that were not viable over time as appears

Motion for the Issuance of an Initial Order, May 19, 2015

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from a press release issued by CNR on February 11, 2014 communicated herewith as **Exhibit R-10**.

18. The Wabush Mines JV suspended operations at Wabush Mine in March 2014. In November 2014, Wabush Mines JV commenced the process of permanently idling the Wabush Mine which involved the permanent shutdown of the Wabush Mine. As described below, a Wabush Mine Closure Plan (as defined below) with respect to the reclamation of the Wabush Mine has been filed with and accepted by the Newfoundland and Labrador Department of Natural Resources, the implementation of which is subject to an environmental assessment review process.
19. Prior to and after the permanent idling of the Wabush Mine, the Wabush CCAA Parties have invested significant time and effort to finding buyers or investors for the operations and/or assets of the Wabush CCAA Parties.
20. The assets of the Wabush CCAA Parties are included in the SISP that is currently being conducted by the Sales Advisor.
21. None of the Wabush CCAA Parties have been generating any revenue since November 2014 and as a result of the permanent idling of the Wabush Mine and Pointe-Noire Pellets, are not expected to generate any revenue in the foreseeable future. However, the Wabush CCAA Parties continue to incur obligations in connection with the maintenance of the idled Wabush Mine, Pointe-Noire Pellets and the Pointe-Noire Port.
22. Although Cliffs Mining Company ("**CMC**"), the parent of Wabush Iron, had provided some funding to the Wabush CCAA Parties to fund their losses, CMC is no longer prepared in the circumstances to continue to fund further losses of the Wabush CCAA Parties except as may be required by the Wabush CCAA Parties to administer and execute the proposed CCAA proceedings described herein and in such case only on a priority secured basis.
23. As a result of this, the Wabush CCAA Parties are facing a liquidity crisis, in that they are no longer capable of meeting their obligations as they generally become due without outside financing, and the value of their assets appears to be less than their liabilities.
24. The Wabush CCAA Parties have become insolvent and therefore seek the protection of this Court from their creditors under the CCAA, as the Bloom Lake CCAA Parties have obtained.
25. CMC has agreed to finance the Wabush CCAA Parties execution and administration of these CCAA Proceedings by way of interim financing in accordance with the terms of an interim financing term sheet dated as of May 19, 2015 (the "**Interim Financing Term Sheet**") that has been presented to Wabush Iron and Wabush Resources, as borrowers, in an amount up to USD \$10 million (the "**Interim Facility**"). The whole of the Interim Financing Term Sheet is communicated herewith as **Exhibit R-11**.

26. The Interim Facility is to be guaranteed by Arnaud and Wabush Lake Railway Company and secured by a priority charge securing up to \$15 million over the assets of the Wabush CCAA Parties (the "**Interim Lender Charge**").
27. While the Wabush CCAA Parties had hoped that they would be able to address their financial challenges outside of a CCAA filing, circumstances that have developed over the last several months, including continued disputes with third parties arising from material contracts and on-going arbitration and other proceedings, and their inability to obtain funding to pay for their on-going obligations outside of a CCAA proceeding, have led them to seek creditor protection under the CCAA.
28. The inclusion of the Wabush CCAA Parties in these CCAA Proceedings will:
 - a) provide the Wabush CCAA Parties with a more efficient and streamlined process to attempt to preserve the value of their businesses and assets under the supervision of the Court;
 - b) provide the Wabush CCAA Parties with the stability and protection from their creditors to allow them to consider and review all restructuring and reorganization options for the benefit of all of their stakeholders and obtain the liquidity needed to fund their post-filing obligations as they become due and owing by way of the Interim Facility secured by the Interim Lender Charge; and
 - c) enhance the SISF prospects as it will provide interested bidders in the Wabush CCAA Parties' businesses and assets with a Court supervised process and the opportunity to obtain a vesting order with respect to the assets of the Wabush CCAA Parties as well as simplifying transactions with any party that may be interested in acquiring assets of both the Bloom Lake CCAA Parties and the Wabush CCAA Parties.
29. The need for extending the consolidation of these CCAA proceedings in respect of the Bloom Lake CCAA Parties to include the Wabush CCAA Parties is for administrative purposes only at this time and shall not effect a consolidation of the assets and property of the CCAA Parties, including for the purposes of any plan or plans of arrangement that may be hereafter proposed.
30. Unless expressly provided to the contrary, any reference herein to monetary amounts refers to Canadian dollars.

3. THE WABUSH CCAA PARTIES' CORPORATE STRUCTURE

31. As set out above, a chart setting out the corporate structure of the CCAA Parties is shown in Exhibit R-9.

3.1 Wabush Mines JV

32. The Wabush Mines JV is an unincorporated contractual joint venture of the Wabush Petitioners. CMC, the parent company of Wabush Iron, is the managing agent of the Wabush Mines JV.
33. Prior to 2010, CNR had an indirect minority interest in the Wabush Mines JV. In 2010, CNR, through its wholly-owned subsidiaries, purchased the shares of Wabush Resources from ArcelorMittal Dofasco Inc. and the general and limited partnership units of the HLE Mining Limited Partnership from U.S. Steel Canada Inc. for approximately USD \$90,000,000.
34. Following the acquisition of these interests and a series of corporate re-organizations, CNR indirectly became the sole owner of the Wabush Mines JV through Wabush Resources and Wabush Iron.
35. The Wabush Mines JV operated, through its managing agent CMC, the port facilities (the "**Pointe-Noire Port**") and a pellet production facility ("**Pointe-Noire Pellets**"), both located at Pointe-Noire, Québec on the Bay of Sept-Iles and the Wabush Mine.
36. As described below, the Wabush Mines JV owns Pointe-Noire Pellets and certain lands at the Pointe-Noire Port and has a servitude over a dock and adjacent lands managed by the Sept-Iles Port Authority (the "**Port Authority**").
37. In June 2013, the Wabush Mines JV idled Pointe-Noire Pellets.
38. In March 2014, the operations at Wabush Mine were suspended and were permanently idled in November 2014.

3.2 Wabush Resources

39. Wabush Resources is a corporation incorporated pursuant to the laws of Canada, having its head office located at 1155 Rue University, Suite 508, Montreal, Québec (the "**Montréal Head Office**") as it appears from page 5 of the CNR 2013 Annual Report communicated herewith as **Exhibit R-12**.
40. Wabush Resources is a wholly-owned subsidiary of CQIM.
41. Wabush Resources holds a 73.2% undivided interest in the assets of Wabush Mines JV, including the leases, freehold interests in real property located in Québec and Newfoundland and Labrador and a servitude over a dock managed by the Port Authority at the Pointe-Noire Port.
42. Wabush Resources, together with Wabush Iron, own 100% of Arnaud and Wabush Lake Railway Company, as detailed below.

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43. Wabush Resources also holds an interest in certain shares of the following entities: Twin Falls Power Corporation ("**Twin Falls**") (18.73% of the outstanding Class B Shares, carrying one vote per share) and Knoll Lake Minerals Limited ("**Knoll Lake**") (42.6%).
44. The remaining shareholders of Twin Falls are Wabush Iron (6.866% of the outstanding Class B Shares, carrying one vote per share), Iron Ore Company of Canada (74.404% of the outstanding Class B Shares, carrying one vote per share) and Churchill Falls (Labrador) Corporation Limited (100% of the outstanding Class A Shares, carrying four votes per share).
45. The remaining shareholders of Knoll Lake are Wabush Iron (15.6%) and MFC Industrial Ltd., now known as MFC Resource Partnership ("**MFC**"), and other minority shareholders (41.8%).
46. Wabush Resources' sole activity is its joint venture participation in the Wabush Mines JV.
47. Wabush Resources has no employees. As noted above, all employees at Wabush Mine and the Pointe-Noire Port are employees of Wabush Mines JV.

3.3 Wabush Iron

48. Wabush Iron is a corporation incorporated pursuant to the laws of the state of Ohio, U.S.A. with its office located at 200 Public Square, Suite 3300, Cleveland, Ohio, U.S.A., as appears from the company details search conducted with the Ohio Secretary of State, U.S.A. communicated herewith as **Exhibit R-13**.
49. Wabush Iron is a wholly-owned subsidiary of CMC, a Delaware corporation.
50. Wabush Iron's sole activity is its joint venture participation in the Wabush Mines JV.
51. Wabush Iron holds a 26.8% undivided interest in the assets of Wabush Mines JV, including leases, freehold interests in real property located in Québec and Newfoundland and Labrador and a servitude over a dock managed by the Port Authority at the Pointe-Noire Port.
52. Wabush Iron, together with Wabush Resources, own 100% of Arnaud and Wabush Lake Railway Company, as detailed below.
53. Wabush Iron also holds an interest in certain shares of the following entities: Twin Falls (6.866% of the outstanding Class B Shares, carrying one vote per share), Knoll Lake (15.6%) and Northern Land Railway Company (50%).
54. The other shareholders of Twin Falls and Knoll Lake are described above. Iron Ore Company of Canada is the remaining shareholder of Northern Land Railway Company (50%).

55. Wabush Iron has no employees. All employees at Wabush Mine and the Pointe-Noire Port are employees of Wabush Mines JV.

3.4 Arnaud

56. Arnaud is a federally regulated railway incorporated pursuant to the laws of Québec, having its head office located at the Montréal Head Office as appears from page 5 of the CNR 2013 Annual Report (Exhibit R-12).

57. Arnaud is owned by Wabush Resources (75%) and Wabush Iron (25%).

58. Arnaud's primary business is the operation of the Arnaud Railway running from Arnaud Junction, Québec to the Port of Sept-Iles ("**Arnaud Railway**"), for the delivery of iron ore concentrate from the Bloom Lake Mine and the Wabush Mine to the Pointe-Noire Port in the Port of Sept-Iles.

59. The last shipment of iron ore concentrate from Bloom Lake Mine was delivered to the Port of Sept-Iles for loading on a ship operated by a customer of Bloom Lake LP on December 24, 2014.

3.5 Wabush Lake Railway Company

60. Wabush Lake Railway Company is a federally regulated railway incorporated pursuant to the laws of Newfoundland and Labrador, having its head office at the Montréal Head Office as it appears from page 5 of the CNR 2013 Annual Report (Exhibit R-12).

61. Wabush Lake Railway Company is owned by Wabush Resources (73.2%) and Wabush Iron (26.8%).

62. The Wabush Lake Railway Company's primary business is the operation of a railway (the "**Wabush Lake Railway**"). The Wabush Lake Railway connects the Wabush Mine to the Northern Land Railway for the transport of iron ore concentrate from the Wabush Mine through the Québec North Shore and Labrador Railway (the "**QNS&L Railway**") and the Arnaud Railway to the Pointe-Noire Port at the Port of Sept-Iles.

63. As a result of the idling of the Wabush Mine, Wabush Lake Railway Company has not transported iron ore concentrate since September, 2014.

64. Wabush Lake Railway Company has no employees.

3.6 The CCAA Parties' activities are conducted on a consolidated basis

65. The head offices of each of the Bloom Lake CCAA Parties and Wabush Resources, Arnaud and Wabush Lake Railway Company are located at the Montréal Head Office, the whole as it appears from page 5 of the CNR 2013 Annual Report (Exhibit R-12).

66. CQIM provides management and administrative support to the entities which manage the Wabush Mine.

67. The Wabush CCAA Parties' activities are conducted on a consolidated basis with the Bloom Lake CCAA Parties, as more fully appears from pages 7, 32-33, 61-62 of the CNR 2013 Annual Report (Exhibit R-12).
68. The significant majority of the CCAA Parties' revenues and their liabilities have been derived from their operations in Québec.
69. The Bloom Lake Mine, Arnaud Railway and the Pointe-Noire Port, all of which are located in Québec, are expected to be the assets of the CCAA Parties with the highest values.
70. As at May 19, 2015, approximately 17 of the 23 active employees of the Wabush CCAA Parties were located in Québec.
71. In light of the above, the procedural consolidation of these CCAA Proceedings for administrative purposes in respect of the CCAA Parties is appropriate and necessary.

4. THE WABUSH CCAA PARTIES' BUSINESSES AND AFFAIRS

4.1 Wabush Mine

72. The Wabush Mine is an iron ore mine and processing facility located near Wabush City and Labrador City, Newfoundland and Labrador in the Labrador Trough. A map showing the geographical location of the Wabush Mine and the site is communicated herewith as **Exhibit R-14**.
73. The Wabush Mine had been in operation since 1965. Since 2009 until it was idled in 2014, the Wabush Mine had annual productions of between 2.7 million and 3.9 million metric tonnes of iron ore pellets and concentrate.
74. CNR has indirectly invested approximately USD \$221.2 million in the Wabush Mine since February 2010.
75. As a result of the depressed global market for steel, particularly in Asia, the corresponding significant decline in the price for iron ore, and the high cost structure of the Wabush Mine, operations at the Wabush Mine were not economically sustainable. Therefore, mining operations at the Wabush Mine were suspended in March 2014.
76. Subsequently, the Wabush Mines JV moved to permanently idle the Wabush Mine. This process was completed in November 2014 and a Wabush Mine Closure Plan (as defined below) has been filed with and accepted by the Newfoundland and Labrador Department of Natural Resources, the implementation of which is subject to an environmental assessment review process.
77. For 2014, the idling costs, employment related expenditures and other expenditures of the Wabush Mines JV related to the closure of the Wabush Mine were approximately USD \$105 million.

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78. The right of Wabush Mines JV to conduct mining operations at the Wabush Mine arises primarily under a mining sub-sublease with MFC. That sub-sublease is the September 2, 1959 Amendment and Consolidation of Mining Leases made between Canadian Javelin Limited, as lessor (now MFC) and Wabush Iron, as lessee, as amended (the "**Wabush Sublease**").
79. Operations at the Wabush Mine consisted of an open pit truck and shovel mine and a concentrator that utilizes single stage crushing, autogenous grinding mills and gravity separation to produce iron ore concentrate.
80. Similar to the Bloom Lake Mine, iron ore concentrate from the Wabush Mine was transported by rail by the Wabush Lake Railway, and then transferred to the Northern Land Railway, the QNS&L Railway and the Arnaud Railway for delivery to and shipment from the Pointe-Noire Port.

4.2 Pointe-Noire Port

81. The geographical location of the Pointe-Noire Port is as shown in **Exhibit R-14**.
82. Wabush Mines JV has a servitude over one dock and adjacent lands at the Pointe-Noire Port. Wabush Mines JV also owns certain real property and infrastructure at the Pointe-Noire Port, including Pointe-Noire Pellets. Wabush Mines had used its facilities at the Pointe-Noire Port for storage, laydown and transportation of iron ore produced at both the Wabush Mine and the Bloom Lake Mine. As described above, iron ore concentrate was transported by rail by the Wabush Lake Railway, and then transferred to the Northern Land Railway, the QNS&L Railway and the Arnaud Railway for shipment from the Pointe-Noire Port. Iron ore concentrate was then loaded onto transshipping vessels from Dock 31.
83. Transshipping was required because Dock 31 is limited in the size of ships which it can receive. Accordingly, iron ore for many customers must be loaded onto smaller "transshipping" ships which ferry multiple loads out to ocean-going vessels a short distance off-shore in the Bay of Sept-Iles for transport to overseas customers.
84. Wabush Mines JV requested and was refused authorization by the Port Authority to conduct dredging work and install a new loading system on the dock in order to permit the loading of larger ships at the dock and eliminate the need for transshipping in an effort to reduce operating costs.
85. The Port Authority's refusal to provide these work authorizations has been the subject of legal proceedings before the Québec Superior Court initiated by the Wabush CCAA Parties. Such legal proceedings have since been discontinued by the Wabush CCAA Parties.
86. As described below in section 6.13, proceedings involving Arnaud and the Port Authority before the Canadian Transportation Agency (the "**Agency**") are continuing before the Federal Court of Appeal.

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4.3 Employees

87. Prior to the permanent idling of the Wabush Mine, the Wabush Mines JV was a significant employer in the areas of the Towns of Wabush and Labrador City, Newfoundland and Labrador and Pointe-Noire, Québec.
88. Prior to the permanent idling of the Wabush Mine in November 2014 and the last shipment of iron ore from the Pointe-Noire Port, the Wabush Mines JV employed approximately 600 employees in its operations at the Wabush Mine and the Pointe-Noire Port.
89. Following the permanent idling of the Wabush Mine and the last shipment of iron ore from the Pointe-Noire Port, employment numbers for Wabush Mines JV have dropped significantly. As described in the following chart, as at May 19, 2015, the Wabush Mines JV employs approximately 23 active employees in its operations at the Wabush Mine and the Pointe-Noire Port and approximately 168 hourly employees on lay-off at the Pointe-Noire Port.

Employer / (Location)	Active – Salaried Employees	Active – Hourly Employees	Non-Active (Leave of Absence/ Leave with Pay)	Hourly Lay-off subject to recall rights	Total Employees (Salaried, Hourly, Leave, Lay-Off)
Wabush Mines JV / (Wabush Mine)	6	0	0	0	6
Wabush Mines JV / (Pointe-Noire Port)	11	6	0	168	185
TOTAL	17	6	0	168	191

4.3.1 Employees at Wabush Mine

90. There are presently approximately 6 salaried employees at Wabush Mine. As of December 31, 2014, all hourly employees for the Wabush Mine have been terminated as a result of the permanent idling of the Wabush Mine.

4.3.2 Employees at the Pointe-Noire Port

91. Hourly employees at the Pointe-Noire Port are represented by the United Steelworkers Local 6254. A new collective agreement was entered into effective March 2, 2014 which expires on February 29, 2020.

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92. Prior to December 2013, employees at the Pointe-Noire Port and employees of Arnaud were covered by the same bargaining certificate and collective bargaining agreement, and were on the payroll of the Wabush Mines JV. Arnaud employees remained on the Wabush Mines JV payroll until the termination of their employment.
93. Pursuant to a decision rendered by the Canadian Industrial Relations Board on December 18, 2013 on an application brought by Arnaud and the union, Arnaud is considered to be a federally regulated enterprise.
94. Operations at the Pointe-Noire Port were comprised of port operations, Pointe-Noire Pellets, railroad operation and related administrative functions. Certain employees of Pointe-Noire Pellets were laid off in 2013 prior to the permanent idling of the Wabush Mine in 2014 and the transition of the Bloom Lake Mine to care and maintenance mode. Additional lay-offs took place in November 2014 when the Wabush Mine was permanently idled.
95. Certain railroad and port operations and administrative functions continued at the Pointe-Noire Port after the closure of Pointe-Noire Pellets, the permanent idling of the Wabush Mine and the care and maintenance of the Bloom Lake Mine in order to deal with shipments of remaining iron ore from Bloom Lake Mine. On or about January 15, 2015, the last shipment of iron ore was dispatched from the Pointe-Noire Port and these remaining operations then ceased.
96. Unionized employees at the Pointe-Noire Port have a minimum of 36 months recall rights and up to a maximum of 5 years depending on the employee's years of service and subject to the terms of their collective bargaining agreement.

4.3.3 Employee Entitlements

97. Consistent with the treatment of employees of the Bloom Lake CCAA Parties, all salaried employees of the Wabush CCAA Parties who have been terminated on or before the date of this Motion have received their accrued and unpaid wages (including any bonuses), accrued and unpaid vacation indemnities (calculated as per company policies) and statutory severance and termination entitlements ("**Employee Entitlements**").
98. In order to treat all employees equally, the Wabush CCAA Parties intend to pay Employee Entitlements to all other salaried employees who are terminated without cause in the future.
99. With the exception of vacation pay indemnities described below, all hourly employees of the Wabush CCAA Parties who have been laid off have been provided with their Employee Entitlements. In order to treat all employees equally, the Wabush CCAA Parties intend to pay Employee Entitlements to all other hourly employees who are laid off in the future.
100. There is approximately \$1.6 million of obligations relating to accrued vacation pay indemnities, of which \$1.4 million relate to the hourly active and laid off employees. The

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amount of vacation pay indemnities for hourly employees is not included in the May 18 Forecast (as defined below) as the timing of the payment of a majority of this amount is uncertain.

101. All salaried and hourly employees of the Wabush CCAA Parties who have been terminated and all employees who are on lay-off have been provided with all regular group insurance coverage (with the exception of long and short-term disability coverage) for 16 weeks from their respective date of lay-off.
102. As with Employee Entitlements, the Wabush CCAA Parties intend to continue to pay and provide these benefits to all other salaried and hourly employees who are terminated without cause or laid-off in the future.
103. The estimated amounts in respect of the pre-filing and post-filing Employee Entitlements and continuation of benefits as set out above are included in the Wabush CCAA Parties' weekly cash flow forecast to August 14, 2015 discussed in more detail below (as such cash flow forecast may be amended from time to time, the "**May 18 Forecast**") and communicated herewith as **Exhibit R-15**.
104. All statutory employer remittances are current.

4.4 Pension Plans

4.4.1 Defined Contribution Schemes

105. The pension plans for salaried employees at the Wabush Mine hired on or after January 1, 2013 are defined contribution schemes. These are the same defined contribution schemes as are maintained for the employees at the Bloom Lake Mine and the Montréal Head Office, which are described in the Motion for Bloom Initial Order (Exhibit R-2).
106. Wabush Mines JV is the administrator of these defined contribution schemes.
107. Contributions under the defined contribution scheme are paid with each payroll. The defined contribution schemes also includes an employer matching provision whereby the employer contributes up to 6% of each employee's eligible wages with each payroll.
108. All employee and employer contributions are paid current and future contribution amounts have been included in the May 18 Forecast.

4.4.2 Defined Benefit Plans

109. The pension plan for salaried employees at the Wabush Mine and the Pointe-Noire Port hired before January 1, 2013 is a defined benefit plan and is called the Contributory Pension Plan for Salaried Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company (the "**Salaried DB Plan**").
110. The pension plan for unionized hourly employees at the Wabush Mine and Pointe-Noire Port is also a defined benefit plan and is called the Pension Plan for Bargaining Unit

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Employees of Wabush Mines, CMC, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company (the "**Hourly DB Plan**" and together with the Salaried DB Plan, the "**DB Plans**").

111. Wabush Mines JV is the administrator of the DB Plans.
112. Based on a valuation as at January 1, 2014 (the "**2014 Valuation**"), the wind-up deficiency for the DB Plans was estimated to be a total of \$26,522,582, consisting of \$10,718,471 for the Salaried DB Plan and \$15,804,111 for the Hourly DB Plan.
113. Based on estimates received from the Wabush CCAA Parties' pension consultant, the Wabush CCAA Parties believe the estimated wind-up deficiencies for the DB Plans as at January 1, 2015 to be a total of approximately \$41.5 million, consisting of approximately \$18.2 million for the Salaried DB Plan and approximately \$23.3 million for the Hourly DB Plan.
114. All monthly normal cost and amortization payments in respect of the DB Plans for January through April, 2015 have been paid in full.
115. The monthly normal cost payments for the DB Plans for 2015 based on the 2014 Valuation are approximately \$50,494.83 (Hourly DB Plan) and \$41,931.25 (Salaried DB Plan) for a total monthly normal cost payment of \$92,46.08 (the "**Normal Cost Payments**"). The Normal Cost Payments are included in the May 18 Forecast.
116. The Wabush CCAA Parties are also paying monthly amortization payments based on the 2014 Valuation of \$393,337.00 (Hourly DB Plan) and \$273,218.58 (Salaried DB Plan) for a total monthly amortization payment of \$666,555.58 (the "**Monthly Amortization Payments**").
117. In addition to the Monthly Amortization Payments, the Wabush CCAA Parties are also required to make a lump sum "catch-up" amortization payment (the "**Yearly Catch Up Amortization Payment**") for the DB Plans estimated to be approximately \$5.5 Million due in July 2015.
118. The Wabush CCAA Parties do not have any funding available to continue to pay the Monthly Amortization Payments or to pay the Yearly Catch-Up Amortization Payment due in July 2015 as the proposed Interim Financing Term Sheet prohibits such payments post-filing. As a result, the Monthly Amortization Payments and the Yearly Catch Up Amortization Payment, and any adjustments thereto as noted in paragraph 119 below, are not included in the May 18 Forecast.
119. Updated actuarial valuations as at January 1, 2015 will be completed, which may adjust the amount of the monthly normal cost and amortization payments set out above. However, these updated actuarial valuations are not required to be filed (or available) until June 30, 2015, and therefore no adjustments will be made to the amount of monthly normal cost and amortization payment liabilities until that time.

4.4.3 Other Post-Retirement Benefits

120. The CCAA Parties currently provide other post-retirement employee benefits (“OPEB”), including life insurance and health care, to former hourly and salaried employees of its Canadian subsidiaries hired before January 1, 2013, which vary based on whether retirees were formerly members of a bargaining unit or were non-unionized salaried employees.
121. Approximately 933 retired employees and 16 active employees are currently fully eligible for retirement benefits.
122. As of December 31, 2014, accumulated benefits obligations for post-retirement benefits (“ABO”) totaled approximately \$52.1 million.
123. The premiums required to fund the foregoing OPEBs are approximately \$182,000 a month.
124. In addition to the foregoing, there is a supplemental retirement arrangement plan (the “SRA”) for certain current and former salaried employees of Wabush Mines JV. The obligations under the SRA are approximately \$1.01 million.
125. The Wabush CCAA Parties do not have any funding available to continue to pay any of the foregoing OPEBs, including the SRA obligations, post-filing as the proposed Interim Financing Term Sheet prohibits such payments. As a result, no payments on account of the OPEBs are included in the May 18 Forecast.

4.5 Employee Housing Arrangements

126. CQIM and Wabush Mines JV own a number of houses in the Pointe-Noire Port area and in the Town of Wabush used by employees and former employees for their housing (collectively, the “Employee Houses”). These Employee Houses are subject to a number of arrangements with employees and former employees.
127. Certain employees at Wabush Mine have entered into purchase and sale agreements with Wabush Mines JV to purchase Employee Houses. These arrangements permit the employees to pay for the Employee Houses during their employment with Wabush Mines JV by having the monthly installments deducted from their pay. On termination of employment or upon the expiration of the relevant employee’s recall period under the Collective Bargaining Agreement, the employee is required to either complete the purchase of the Employee House if the Employee House has not already been fully paid for, or sell its interest in the Employee House to Wabush JV in accordance with the terms of the purchase and sale agreement.
128. A number of these Employee Houses have been purchased by employees pursuant to this arrangement and a number of these arrangements are scheduled to come to term post-CCAA filing.

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129. There are approximately 8 Employee Houses located in the Pointe-Noire Port area that are used by management employees. Title to these Employee Houses are held by CMC, as agent for the Wabush Mines JV. Only 4 of these 8 Employee Houses are currently occupied and it is expected that this will reduce to only 2 Employee Houses at the end of the school year.
130. Paragraph 33(c) of the Bloom Initial Order provides that the Bloom Lake CCAA Parties could sell or otherwise dispose of Employee Houses without the Court's approval but with the approval of the Monitor. The Wabush CCAA Parties are proposing that such provision be extended in the proposed Draft Wabush Initial Order to all of the Employee Houses owned by the Wabush CCAA Parties.

5. ASSETS

131. The approximate aggregate net book values of property, plant, equipment, cash, restricted cash, receivables, inventory, goodwill and intangibles of the Wabush CCAA Parties as of April 30, 2015 based on unaudited internal financial statements are shown in the chart set out below. As a result of the suspension of all mining operations, significant material impairment charges are pending which will result in a material adjustment to these numbers.
132. Subject to the qualifications above and below, the approximate net book value of the assets broken down by legal entity is provided in the chart communicated herewith as **Exhibit R-16**).

Nature	Net Book Value (USD)*
Property, plant and equipment	\$44,644,160
Cash and Equivalents	\$1,384,165
Restricted Cash	\$0
Trade and other receivables	\$2,336,630
Receivables from associated companies	\$7,270,199
Inventory	\$13,516,227
Goodwill and intangibles	\$0
TOTAL	\$69,151,381*

* The foregoing chart includes only select assets of the Wabush CCAA Parties. For example, the chart does not include other assets of the Wabush CCAA Parties such as deferred income taxes, investments in subsidiaries and other assets. In addition, the combined Net Book Value of the

assets of the Wabush CCAA Parties has not been adjusted to eliminate intercompany balances among the Wabush CCAA Parties.

133. As a result of significant and ongoing losses in November of 2014, the assets of the Wabush Mine were written down by approximately USD \$183 million due to the impairment and write-off charges associated with idling the Wabush Mine.
134. The Wabush CCAA Parties are anticipating receiving at some time during the CCAA proceedings, the following tax refunds:
- (a) Federal income tax refund for 2013 with respect to carry back of net operating losses for Wabush Resources in the amount of approximately \$3.3 million; and
 - (b) Income tax refund from the Province of Québec for overpayments in 2011 and 2012 and loss carry backs of net operating losses for 2012 and 2013 in the amount of approximately \$6.6 million.

6. INDEBTEDNESS

6.1 Overview

135. As described in greater detail in the financial statements of the Wabush CCAA Parties communicated herewith as **Exhibit R-17**, the Wabush CCAA Parties have estimated aggregate outstanding liabilities of USD\$ 593 million as of April 30, 2015 for accounting purposes. This amount reflects adjusted amounts for intercompany indebtedness which have been adjusted to take into account estimated fair value adjustments to the face value of the intercompany amounts set out in paragraph 136 below.

6.2 Intercompany Indebtedness

136. As of April 30, 2015, the face value of the outstanding indebtedness of the Wabush CCAA Parties to non-filing affiliated entities (before the accounting adjustments referenced in paragraph 135 above) is estimated to be approximately USD\$ 650 million as summarized in the chart communicated herewith as **Exhibit R-18**.
137. In addition to the amounts described above, there are also obligations which have been guaranteed and/or covered by the provision of bonds and/or letters of credit by affiliates of the Wabush CCAA Parties which may give rise to additional intercompany claims against the Wabush CCAA Parties if any of those bonds and letters of credit are called upon by the beneficiaries or holders thereof.

6.2.1 CMC Demand Credit Agreement

138. Pursuant to a demand credit agreement dated as of February 23, 2015 (the "**Demand Credit Agreement**") between CMC, as lender, and Wabush Resources and Wabush Iron, as borrowers on a joint and several basis, Wabush Resources and Wabush Iron are indebted to CMC in the amount of USD \$7 million.

139. Pursuant to an equipment security agreement and moveable hypothec dated the same date ("**Equipment Security Agreement**" and "**Moveable Hypothec**", respectively), the obligations of Wabush Resources and Wabush Iron to CMC under the Demand Credit Agreement are secured by any and all present and future right, title and interest of Wabush Resources and Wabush Iron in all equipment located in Newfoundland and Labrador (including any equipment set out in Schedule A to the Equipment Security Agreement and Moveable Hypothec), all accessions thereto, books and records and permits, and all proceeds of any of the foregoing, wherever located, all as more particularly defined and described in the Equipment Security Agreement and Moveable Hypothec.
140. Copies of the Demand Credit Agreement, Equipment Security Agreement and Moveable Hypothec are communicated herewith as **Exhibits R-19, R-20 and R-21**, respectively.

6.3 Equipment Financing

141. Given the idling of the Pointe-Noire Pellets in 2013 and the permanent idling of the Wabush Mine in November 2014, the Wabush CCAA Parties are no longer party to any material equipment financing arrangements.
142. With respect to the remaining miscellaneous equipment financing, the Wabush CCAA Parties are not intending post-filing to pay for any equipment that is subject to a financing arrangement for which they are not using. Similarly, the Wabush CCAA Parties do not intend to pay post-filing for equipment subject to lease arrangements for which they are no longer using.
143. The May 18 Forecast does not provide for payment in respect of these financing and lease arrangements. Therefore, if the relief sought on this Motion is granted, and subject to further Order of the Court, the Wabush CCAA Parties do not intend to make any payments pursuant to these financing or lease arrangements during these CCAA Proceedings.

6.4 Construction Liens

144. As of May 15, 2015, there were 5 legal hypothecs in the aggregate amount of approximately \$4,339,284.92 in favor of persons having taken part in the construction or renovation of an immovable, registered against property of each of Wabush Resources and Wabush Iron, respectively, located in Québec (collectively, the "**Legal Hypothecs**"), as more fully appears from a table summarizing the Legal Hypothecs and a copy of the Legal Hypothecs registered as of May 11, 2015, communicated herewith, en liasse, as **Exhibit R-22**.

6.5 Trade Creditors

145. As at April 30, 2015, the Wabush CCAA Parties have a total amount outstanding to trade creditors of approximately USD \$8 to 10 million.

6.6 Contracts

146. Due to the Wabush CCAA Parties' current circumstances, including the cessation of mining operations and these CCAA Proceedings, numerous contracts to which the Wabush CCAA Parties are parties have become redundant. Accordingly, if the relief sought on this Motion is granted, it is the intention of the Wabush CCAA Parties to serve notices of rescission and disclaimer of certain contracts pursuant to the CCAA as soon as practicable.
147. The Wabush Mines JV is also party to a "take or pay" contract. This "take or pay" contract provides for charges based on the usage of services related to the transportation of iron ore, with significant minimum monthly payments. As the Wabush Mine is permanently idled, these services are not being used. Therefore, if granted the relief sought on this Motion, and subject to further Order of the Court, Wabush Mines JV does not intend to make any payments pursuant to any such contract during these CCAA Proceedings.
148. Unless the Wabush CCAA Parties are using the goods or services provided under these kinds of contracts, the Wabush CCAA Parties intend to disclaim these contracts as soon as practicable if the relief sought by this Motion is granted.

6.7 Sandvik Mining and Construction

149. On or about March 4, 2015, Sandvik Mining and Construction Canada a Division of Sandvik Canada Inc. ("**Sandvik**") sent a demand letter to CMC, as managing agent of Wabush Mines JV. The letter demanded payment of approximately \$1,753,155.13 allegedly owing in relation to a supply, erection and commissioning agreement involving, among other things, the supply by Sandvik of a ship loader to Wabush Mines JV for the Pointe-Noire Port, and provided notice of termination of the Sandvik supply, erection and commissioning agreement, as appears from a copy of the letter from Sandvik dated March 4, 2015 communicated herewith as **Exhibit R-23**.
150. On or about April 9, 2015, Sandvik informed CMC, as managing agent of Wabush Mines, that Sandvik would be liquidating equipment owned by Wabush Iron and Wabush Resources to satisfy amounts allegedly owing to Sandvik and other losses allegedly suffered by Sandvik, the whole as appears from a copy of the letter from Sandvik dated April 9, 2015 communicated herewith as **Exhibit R-24**.

6.8 Northern Land Company Limited

151. There is approximately \$1 million owing by Wabush Iron to Northern Land Company Limited for its share of the capital expenses for the 2014 track replacement program undertaken by Northern Land Company Limited.

6.9 Carol Lake

152. Pursuant to a Maintenance and Operation Agreement dated January 1, 1980 and amended on June 10, 1985 (the "**Maintenance Agreement**"), Wabush Lake Railway

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Company is obliged to pay its share of joint costs in relation to the Northern Land Railway to Carol Lake Company. Since Wabush Lake Railway Company has not been running trains on the Northern Land Railway for some years, its share of the joint costs is capped at 20% pursuant to the Maintenance Agreement or approximately \$58,000 a month.

6.10 Twin Falls Power Corporation

153. Wabush Mines JV owes approximately \$800,000 to Twin Falls for annual maintenance of transmission lines for 2014 constituting its pro rata share of these expenses.

6.11 Municipal Property Taxes Owing

154. There is presently approximately \$2.5 million in taxes owed to the City of Sept-Iles.
155. The Town of Wabush is owed outstanding property taxes relating to certain Employee Houses in the amount of approximately \$500,000.

6.12 Environmental Matters

156. On September 23, 2014, the Newfoundland and Labrador Department of Natural Resources accepted the updated Rehabilitation and Closure Plan for the Wabush Mine (the "**Wabush Mine Closure Plan**"). Environmental bonds have been posted by an affiliate with respect to the Wabush Mine Closure Plan in the amount of \$49.7 million.
157. In February 2015, the Newfoundland and Labrador Department of Environment and Conservation (the "**DEC**") advised that the decommissioning and reclamation work under the Wabush Mine Closure Plan is subject to environmental assessment review pursuant to the Newfoundland and Labrador *Environmental Protection Act* (the "**EPA**"), and that the decommissioning and reclamation work set out in the Wabush Mine Closure Plan could not proceed unless and until the Wabush Mine Closure Plan was registered with the DEC and allowed to proceed by the Minister of the Environment and Conservation. The Wabush Mine Closure Plan has not yet been registered for the purposes of the environmental assessment review process pursuant to the EPA. The EPA does not impose a time limit for registration.

6.13 Litigation

6.13.1 Canadian Transportation Agency Proceedings

158. On April 2, 2014, the Port Authority filed an application with the Agency seeking a determination as to whether certain track on the Arnaud Railway is subject to the transfer and discontinuance process under the Canada Transportation Act ("**CTA**") (the "**Railway Application**"). This process would require Arnaud, Wabush Iron and Wabush Resources to take certain steps prior to transferring or discontinuing operation of this track. The Agency dismissed the Port Authority's application on October 16, 2014.

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159. On December 23, 2014, the Agency advised Arnaud, Wabush Iron and Wabush Resources that, at the request of the Minister of Transport, the Agency had appointed an Inquiry Officer pursuant to the CTA to conduct an inquiry with respect to the same track which was the subject of the Railway Application.
160. The inquiry considered, among other things, whether this track is a "railway" pursuant to the CTA; whether it is subject to CTA certificate of fitness requirements; and whether it should be included in Arnaud, Wabush Iron and Wabush Resources' three-year plans under the CTA.
161. On January 20, 2015, the inquiry officer submitted his report to the Agency and found that certain tracks identified as the Wabush Loop and the CQIM Spur Track were railway lines subject to some provisions of the CTA, that Arnaud was the operator of these tracks, and that these tracks were subject to the CTA certificate of fitness requirements; with the exception that the inquiry officer found that the CQIM Spur Track was a spur, and not considered as a railway line, and thus not subject to the three year plan provisions of the CTA.
162. On January 26, 2015, the Agency adopted the findings of the report of the inquiry officer. Arnaud, Wabush Iron and Wabush Resources petitioned the Federal Court of Appeal for leave to appeal CTA's decision of January 26, 2015, and such leave was granted on April 22, 2015.

6.13.2 On-Going Arbitrations and Other Matters

163. Wabush Mines JV is currently party to several ongoing, confidential arbitration proceedings related to disputes arising in connection with certain material contracts.
164. The approximate aggregate amount of claims against the Wabush CCAA Parties that are the subject matter of these arbitration proceedings is in excess of \$50 million.
165. These arbitration proceedings have consumed a significant amount of time and resources of Wabush Mines JV.

6.13.3 Royal Bank of Canada Litigation

166. Royal Bank of Canada commenced an action in Newfoundland and Labrador against CMC, as managing agent of Wabush Mines JV, for damages in the amount of approximately \$2,113,324 plus interest of approximately \$12,434,946 with respect to the alleged breach of a 1996 equipment lease related to the maintenance of two electric shovels. This litigation remains ongoing.

6.14 CMC Secured Funding

167. As set out in paragraph 138, CMC is owed approximately US\$7.0 million under the Demand Credit Agreement.

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6.15 Registrations in Québec, Ontario, Newfoundland and Labrador, New Brunswick and Ohio registries

168. For ease of reference, a copy of summaries of the search results in Québec, Ontario, Newfoundland and Labrador, New Brunswick, and Ohio in respect of the CCAA Parties are listed below:
- a) Real estate search report (Québec) on the Wabush CCAA Parties immovable property, communicated herewith as **Exhibit R-25**;
 - b) RPMRR (Québec) on the Wabush CCAA Parties movable property, communicated herewith as **Exhibit R-26**;
 - c) Personal Property Security Act (Ontario, Newfoundland and Labrador, New Brunswick and Ohio) search results summary on the Wabush CCAA Parties' movable property, communicated herewith as **Exhibit R-27**; and
 - d) Public register of real and immovable mining rights on Wabush Iron Co. Limited and Wabush Resources Inc.'s mining rights in Québec, communicated herewith as **Exhibit R-28** (no registrations).
169. Searches of the real property and mining claims registries in New Brunswick disclosed no registration. Searches of the real property and mining claims registries in Newfoundland and Labrador disclosed one registration in respect of *lis pendens* in respect of the litigation instituted by Royal Bank of Canada as described in paragraph 166 of this Motion.
170. Copies of the raw search results in respect of the foregoing will be available at the hearing of this Motion.

7. CASH MANAGEMENT SYSTEM

171. The Wabush CCAA Parties utilize a centralized cash management system for, among other things, the collection of customer receipts and the payment of suppliers, payroll, employee-related benefits and lease financing amounts. The cash management system is managed by CNR with support from CQIM at the Montréal Head Office with respect to payroll, vendor communications and accounts payable.
172. The majority of the Wabush CCAA Parties' bank accounts are held with the Bank of Montreal which provides for certain cash management services which do not provide for any overdraft or any payment risk credit lines.

8. FINANCIAL RESULTS AND LOSSES

173. For the four months ended April 30, 2015, the Wabush CCAA Parties recorded estimated cumulative net loss of approximately USD \$1.17 million before non-cash, accounting adjustments related to the deconsolidation of the Wabush CCAA Parties, as appears from the financial statements of the Wabush CCAA Parties (Exhibit R-17) which

financial statements have not been prepared in accordance with generally accepted principles, as more specifically set out in the notes in Exhibit R-17.

9. EVENTS LEADING TO THE COURT FILING

174. A combination of factors have caused liquidity demands for the Wabush CCAA Parties including, among other things:
- a) The depressed global market for steel, particularly in Asia, and the resulting decrease in the price of iron ore. Since 2011, the price of iron ore has fallen from USD \$190 per tonne to below USD \$67 per tonne;
 - b) The aforementioned depressed global steel market causing the production at the Wabush Mine to become unsustainable, resulting in significant costs and loss of revenues associated with the idling of the Wabush Mine;
 - c) Notices of default have been delivered under significant commercial contracts and demands for payment have been made on the Wabush CCAA Parties;
 - d) Inability to negotiate cost reductions in certain material logistics and other contracts; and
 - e) The Wabush CCAA Parties do not have sufficient resources or the ability to generate sufficient funds to satisfy their other outstanding obligations in the normal course.
175. The Wabush CCAA Parties responded to the liquidity challenges described above by, among other things:
- a) seeking investments, support and other financial contributions from its overseas customers;
 - b) seeking investment, support and other financial contributions from other potential customers and end users of iron ore;
 - c) seeking to reduce costs through re-negotiation of certain material contracts;
 - d) seeking buyer or buyers for the iron ore business or parts thereof;
 - e) seeking financing or other investment contributions from financial institutions and investment and pension funds; and
 - f) entering into negotiations with MFC for the sale of the Wabush Mine.
176. These efforts proved unsuccessful and losses relating to the operations of the Wabush CCAA Parties continued to escalate to unsustainable levels.
177. By November 2014, it became apparent to the CCAA Parties that efforts to sell the Wabush Mine and to find strategic partners for the Bloom Lake Mine would not be

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successful within a reasonable time frame. Accordingly, a decision was then made to minimize on-going hemorrhaging of capital by transitioning the Wabush Mine to a permanent idle and suspending mining operations at the Bloom Lake Mine and transitioning the Bloom Lake Mine into care and maintenance mode.

178. At this time, given the growing pressures that have been asserted by creditors on the Wabush CCAA Parties, including through pending and costly arbitration and other legal proceedings, the continued financial losses and the significant but unsuccessful efforts to consummate a solution to their financial issues outside of a CCAA filing, the Wabush CCAA Parties have no other alternative but to seek protection from their creditors under the CCAA so that they can continue to pursue restructuring and/or sale options under a court-supervised process for the benefit of all stakeholders.

10. 13 WEEK FORECAST

179. Based on the financial position of the Wabush CCAA Parties, it is the position of the Wabush CCAA Parties that the assumptions set out in the May 18 Forecast (Exhibit R-15) are reasonable.
180. The May 18 Forecast has been prepared by the Wabush CCAA Parties' management in consultation with FTI Consulting Canada Inc., the proposed Monitor for the Wabush CCAA Parties. The Monitor has advised that it will be filing a report on the May 18 Forecast.
181. Based on the May 18 Forecast, the CCAA Parties will require funding under the Interim Facility of approximately USD \$1.3 million commencing the week of May 18, 2015 until the Comeback Hearing (as defined below) in order to be able to pay their post-filing obligations in the ordinary course.
182. As described above, the Wabush CCAA Parties are not using equipment which is subject to the various financing arrangements and the May 18 Forecast does not provide for payments in respect of these arrangements. Similarly, the Wabush CCAA Parties are not intending to pay for any lease payments in respect of equipment that they are not using. Therefore, subject to further Order of the Court, the Wabush CCAA Parties do not intend to make any payments pursuant to these financing and lease arrangements during these CCAA Proceedings.
183. As described above, for similar reasons, the Wabush CCAA Parties also do not intend to make any payments with respect to "take or pay" agreements which provide for minimum payments.
184. As described above, the May 18 Forecast does not include provision for amortization payments or OPEBs.
185. Certain costs, such as insurance premiums, are paid by non-filing affiliates on behalf of the Wabush CCAA Parties. To the extent such payments are made after the date of the Wabush Initial Order, the Wabush CCAA Parties intend to reimburse the relevant non-filing affiliates for such amounts.

11. NEED FOR CREDITOR PROTECTION

11.1 The Wabush CCAA Parties are Insolvent

186. Notwithstanding significant efforts of management and the Board of Directors of the Wabush CCAA Parties, the Wabush CCAA Parties are currently insolvent.
187. On-going arbitrations and litigation have also been a significant drain on the Wabush CCAA Parties' time and resources.
188. The Wabush CCAA Parties are no longer generating any revenue and no further revenue is anticipated to be generated due to the permanent idling of the Wabush Mine and the idling of Pointe-Noire Pellets. No further funding is available to the Wabush CCAA Parties from any of its affiliates except under the court-approved interim financing which the Wabush CCAA Parties are seeking approval of on this Motion.
189. As of May 18, 2015, the Wabush CCAA Parties have less than approximately \$250,000 in available cash and such resources are insufficient to fund their ongoing obligations as they become due or pay their liabilities in the normal course.
190. The affiliates of the Wabush CCAA Parties have informed the Wabush CCAA Parties that no further funding will be provided to the Wabush CCAA Parties other than as may be required to fund these CCAA Proceedings, in which case, it must be in the form of court-approved interim financing.
191. The Wabush CCAA Parties have negotiated the Interim Facility from CMC in order to maintain their liquidity needs for the funding of these CCAA Proceedings and they hereby seek approval of the Interim Facility and the Interim Lender Charge, as more fully described in this Motion.
192. Based on the May 18 Forecast, and if the Interim Facility is approved by the Court, and the Interim Lender Charge is granted the priority sought at the Comeback Hearing, the Wabush CCAA Parties will have sufficient funding and liquidity to cover anticipated post-filing costs and expenses until August 14, 2015.
193. The Wabush CCAA Parties have businesses and assets which may have significant value and protection from creditors is required as the Wabush CCAA Parties address their current financial situation or seek financing or a sale of all or part of their businesses and assets.

12. PROPOSED RESTRUCTURING

194. The Wabush CCAA Parties require the benefit of the relief requested in this Motion, including a stay of proceedings, in order to allow them to explore further restructuring, refinancing and/or sales efforts, engage in further discussions with key stakeholders such as employees, suppliers, governmental authorities, financiers and affected communities under the stability and guidance of a court supervised process, and to generally pursue available options for the benefit of all stakeholders.

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195. With the protection from their creditors requested herein granted to the Wabush CCAA Parties, the Wabush CCAA Parties will focus their resources on:
- a. carrying out the SISF that has already been approved by this Court;
 - b. continuing care and maintenance efforts at the Wabush Mine to maintain the status quo during these CCAA Proceedings;
 - c. taking other steps to preserve and maintain the value of the Wabush CCAA Parties' assets and properties; and
 - d. such other matters that may arise throughout the process.
196. Given a reasonable period of time to further implement the SISF, the overall value of the Wabush CCAA Parties' businesses and assets will likely be maximized for the benefit of their stakeholders.
197. In the Wabush CCAA Parties' view, the prospects for these restructuring efforts are significantly enhanced if the Wabush CCAA Parties obtain the relief being sought on this Motion by the granting of protection under the CCAA by this Court on the terms of the Draft Wabush Initial Order (Exhibit R-8).

13. RELIEF SOUGHT

13.1 General

198. The Wabush CCAA Parties are deeply concerned that unless a stay of proceedings is granted to the Wabush CCAA Parties pursuant to the terms of the CCAA, certain suppliers, creditors and other stakeholders may attempt to take steps to try and improve their positions in comparison to other similarly situated stakeholders. This would jeopardize and potentially deplete the value of the Wabush CCAA Parties' estates to the detriment of all stakeholders and disrupt the ongoing restructuring efforts.
199. The granting of the CCAA stay will preserve the status quo and permit the Wabush CCAA Parties to continue with their restructuring efforts along with the rest of the CCAA Parties. This will also allow for the coordination of these CCAA Proceedings between the Bloom Lake CCAA Parties and Wabush CCAA Parties and the SISF and the ability to effect a global restructuring solution for all of the CCAA Parties under a single consolidated proceeding that avoids the potential of any duplication of costs that could occur if separate insolvency proceedings are initiated by or against the Wabush CCAA Parties.
200. It is the Wabush CCAA Parties' view that pursuing options under the CCAA will yield significantly better results for the diverse group of stakeholders than any conceivable liquidation scenario.
201. On this present Motion, the Wabush CCAA Parties seek an initial stay period of 30 days (the "**Stay Period**"). Before the expiry of the Stay Period, the Wabush CCAA Parties

intend to return to this Court for a comeback hearing anticipated to be on or about June 9, 2015, on notice to interested parties, for, among other things, the granting of priority for the court approved charges set out in the Draft Wabush Initial Order (Exhibit R-8), an extension of the Stay Period and other matters which may require the Court's attention at that time (the "**Comeback Hearing**").

13.2 Appointment of the Monitor as Monitor to the Wabush CCAA Parties

202. The Monitor already acting in these CCAA Proceedings in respect of the Bloom Lake CCAA Parties has agreed to act in respect of the Wabush CCAA Parties in the event that the relief sought herein is granted.
203. As CQIM is the parent company of Wabush Resources, the Monitor is familiar with its assets, businesses and personnel associated with the Wabush Mines JV.
204. The Monitor has therefore obtained significant information in respect of the businesses, operations and assets of the Wabush CCAA Parties, an understanding of the many issues faced by the Wabush CCAA Parties and relevant to their restructuring efforts and a familiarity with the management and personnel of the Wabush CCAA Parties. The Monitor is therefore best qualified to act as Monitor with respect to the Wabush CCAA Parties and it is appropriate that the Monitor be appointed as such.
205. The Monitor is prepared to act as Monitor of the Wabush CCAA Parties, pursuant to, and subject to, the terms of the Wabush Initial Order and the statutory provisions of the CCAA.
206. The Wabush CCAA Parties have been informed by the Monitor that it is a licensed trustee within the meaning of section 2 of the *Bankruptcy and Insolvency Act* (Canada). The Monitor is not subject to any of the restrictions on who may be appointed monitor as set out in section 11.7(2) of the CCAA.
207. At no time during the preceding two years has the Monitor been:
- a) a director, officer or employee of the Wabush CCAA Parties;
 - b) related to the Wabush CCAA Parties or to any former director or officer of the Wabush CCAA Parties; or
 - c) the Wabush CCAA Parties' auditor, accountant or legal counsel, or a partner or employee of the auditor, accountant or legal counsel of the Wabush CCAA Parties.
208. The Monitor is not a trustee under a trust indenture issued by the Wabush CCAA Parties or any person related to the Wabush CCAA Parties, and is not a holder of a power of attorney granted by the Wabush CCAA Parties or by any person related to the Wabush CCAA Parties. The Monitor is not related to a trustee or holder of a power of attorney noted above.

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209. Therefore, the Monitor is qualified to act as Monitor and there is no restriction on the Monitor being appointed Monitor of the Wabush CCAA Parties in these CCAA Proceedings.

13.3 Administration Charge

210. Counsel for the Wabush CCAA Parties, independent counsel for the Wabush CCAA Parties' Directors and Officers (as defined below), the Monitor, the Monitor's counsel and counsel to CMC, as the Interim lender, are essential to the restructuring and/or sale efforts contemplated in the CCAA proceedings.

211. They have each advised that they are prepared to provide or continue to provide professional services to the Wabush CCAA Parties only if they are protected by a charge over the assets of the Wabush CCAA Parties.

212. It is contemplated that the Wabush CCAA Parties will each be invoiced and pay fees and expenses of the beneficiaries of the Wabush Administration Charge on a weekly basis and a court ordered charge is sought as security for the fees and disbursements relating to services rendered up to a maximum amount of \$1.75 million with the priority set out in the Draft Wabush Initial Order.

213. The Wabush CCAA Parties seek an Administration Charge (the "**Wabush Administration Charge**") in the amount of \$1.75 million, to have such charge secure the professional fees and expenses payable by the Wabush CCAA Parties, and to have such charge apply to the assets of the Wabush CCAA Parties.

214. Pursuant to the Draft Wabush Initial Order (Exhibit R-8), the Wabush Administration Charge would rank ahead of the security granted under the Demand Credit Agreement and behind the security or other encumbrances over the property of the Wabush CCAA Parties in favour of any parties not served with notice of the presentation of this Motion. CMC has consented to the Wabush Administration Charge ranking ahead of the security granted under the Demand Credit Agreement.

215. However, as provided in the Draft Wabush Initial Order (Exhibit R-8), it is the intention of the Wabush CCAA Parties to seek priority over all creditors at the Comeback Hearing. Creditors with security interests who are likely to be affected by such priority will be served with notice of that motion.

216. The amount of the Wabush Administration Charge has been determined not on the basis of the total fees payable to these professionals during the CCAA proceedings but on an assessment of what could be an amount outstanding to these professionals at any given time in these CCAA Proceedings.

217. In order to ensure a reasonable allocation of the professional fees and expenses of the CCAA Parties among the CCAA Parties, a protocol will be established which provides for professional fees and expenses to be allocated (a) to the Bloom Lake CCAA Parties in respect of matters that relate exclusively to the Bloom Lake CCAA Parties, their businesses or their assets, (b) to the Wabush CCAA Parties in respect of matters that

relate exclusively to the Wabush CCAA Parties, their businesses or their assets, and (c) initially to the Bloom Lake CCAA Parties to be subsequently allocated among the CCAA Parties with the approval of the Court, in respect of matters that relate jointly to the Bloom Lake CCAA Parties and Wabush CCAA Parties, such as any subsequent claims procedure for the CCAA Parties.

13.4 Directors & Officers' Protection

218. The Wabush CCAA Parties are seeking a Directors' Charge (the "**Wabush Directors' Charge**") in the amount of \$2 million, to have such charge also be in favour of the Directors and Officers of the Wabush CCAA Parties, and to have such charge only apply to the assets of the Wabush CCAA Parties.
219. Pursuant to the Draft Wabush Initial Order (Exhibit R-8), the Wabush Directors Charge would rank behind the Wabush Administration Charge, ahead of the security granted under the Demand Credit Agreement and behind the security or other encumbrances over the property of the Wabush CCAA Parties in favour of any parties not served with notice of the presentation of this Motion. CMC has consented to the Wabush Directors Charge ranking ahead of the security granted under the Demand Credit Agreement.
220. However, it is the intention of the Wabush CCAA Parties to seek to have the full amount of the Wabush Directors' Charge rank in priority to all other Encumbrances against the Wabush CCAA Parties' assets at the Comeback Hearing. Creditors with security interests who are likely to be affected by such priority will be served with notice of that motion for the Comeback Hearing.
221. Restructuring efforts for the Wabush CCAA Parties will be significantly enhanced with continuity on the boards' of directors (collectively, the "**Directors**") as well as continuity in the make-up of their respective officers (collectively, the "**Officers**"), given the complexity of the Wabush CCAA Parties' businesses and assets and the historical and specialized expertise and knowledge they possess with respect to the Wabush CCAA Parties' businesses, assets and the mining industry as a whole.
222. CNR maintains primary and excess directors' and officers' liability insurance policies for the directors and officers of its subsidiaries which include the Directors and Officers of the Wabush CCAA Parties (together, the "**D&O Insurance**").
223. The D&O Insurance contain limits and exclusions that could potentially affect the total amount of insurance available to the Directors and Officers of the Wabush CCAA Parties. For example:
- a) The D&O Insurance has a limit of liability (inclusive of defence costs) of USD \$215 million and expires on July 15, 2015. Additionally, USD \$45 million of the D&O Insurance limit only applies in narrow circumstances and is only available to covered claims made during the policy period where CNR fails or refuses to indemnify insured Directors & Officers;

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- b) The aggregate limit of liability applies to all covered claims made during the policy period. All insureds (including the directors and officers of CNR and of CNR subsidiaries which are not Wabush CCAA Parties) share the limits available under the D&O Insurance, which could further reduce amounts available to satisfy claims of the Directors and Officers;
 - c) Certain insureds who are not Wabush CCAA Parties have already provided notice of claims unrelated to these CCAA Proceedings to the D&O Insurance carriers which is impairing the aggregate limits of liability under the relevant policies; and
 - d) Certain claims and certain types of losses are excluded under the D&O Insurance which may mean that not all post-filing claims which could be made against Directors and Officers would be covered. Some principal exclusions include:
 - i) Claims for actual or alleged bodily injury or property damage;
 - ii) Losses that constitute compensation earned by the claimant in the course of employment but unpaid by the insured, including salary, wages, commissions, bonuses or incentive compensation;
 - iii) Losses for any actual or alleged violation of the responsibilities or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974 (ERISA) or a similar Canadian statute;
 - iv) Losses that constitute fines, penalties or taxes imposed by law;
 - v) Losses that constitute costs associated in testing for, monitoring or cleaning up pollutants;
 - vi) Fines, penalties or taxes imposed by law other than penalties assessed against any insured person pursuant to the Foreign Corrupt Practices Act; and
 - vii) Any amount of Loss attributable to the cost of any non-monetary relief, including costs associated with complying with injunctive relief.
224. A number of the foregoing exclusions may preclude coverage for employee wages, pension contributions and other employment-related claims, taxes and/or penalties. These exclusions in the D&O Insurance could foreclose any recovery for such claims under the D&O Insurance. These claims account for approximately 80% of the estimated post-filing amounts outstanding from time to time that the Directors and Officers would be exposed to.
225. The Directors and Officers of the Wabush CCAA Parties have expressed significant concern with respect to potential personal liability if they continue in their current capacities through this restructuring process. In the Wabush CCAA Parties' view it is

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important that adequate protection be afforded to the Directors and Officers to provide incentive for them to remain as Directors and Officers, respectively, of the Wabush CCAA Parties.

226. In light of the potential for significant personal liability, all of the Directors and Officers of the Wabush CCAA Parties have advised that they will not continue their service and involvement in the proposed restructuring unless the Draft Wabush Initial Order (Exhibit R-8) grants a charge as security for the Wabush CCAA Parties' obligations to the Directors and Officers in the manner and with the priority as described above.
227. The Wabush CCAA Parties have made inquiries through an insurance broker who has advised that no additional directors' and officers' insurance is obtainable by the Wabush CCAA Parties.
228. With the assistance of the Monitor, a calculation has been performed to estimate the potential quantum of post-filing amounts outstanding from time to time for which Directors and Officers may have potential personal liability under various statutes.
229. This amount has been calculated as to approximately \$2 million, depending on certain assumptions.
230. The Wabush CCAA Parties thus propose that the Wabush Directors' Charge be granted in the amount of \$2 million to the extent such claims are not covered by the D&O Insurance, in order to provide a reasonable level of protection to the Directors and Officers.
231. The Wabush CCAA Parties believe that the amount of the Wabush Directors' Charge is fair and reasonable in the circumstances.

13.5 Terms of Interim Financing and Interim Lender Charge

232. As mentioned above, CMC has advised that it is only willing to fund the Wabush CCAA Parties' participation in these CCAA Proceedings by way of the Interim Facility if (a) the Interim Lender Charge in the amount of up to \$15 million, with the priority set out in the Interim Financing Term Sheet, is granted over the assets of the Wabush CCAA Parties, (b) the pricing, including the interest rate, as set out in the Interim Financing Term Sheet is agreed to by the Wabush CCAA Parties and approved by the Court, and (c) the covenants set out in the Interim Financing Term Sheet are agreed to by the Wabush CCAA Parties and approved by the Court.
233. The Wabush CCAA Parties are of the view that the Interim Lender Charge, Interim Facility pricing and covenants set out in the Interim Financing Term Sheet are reasonable and, taking into account the economic and operational status of the Wabush CCAA Parties, significantly superior to market standard for financing of a comparable amount. Accordingly, no other parties were approached about potentially providing interim financing.

234. The Wabush CCAA Parties have no revenue and minimal cash on hand; they accordingly have no liquidity and no ability to fund their participation in the CCAA Proceedings without financing.
235. This Interim Facility is essential to the successful restructuring of the Wabush CCAA Parties in these CCAA Proceedings. Under these circumstances, the Interim Facility, on the terms set out in the Interim Financing Term Sheet, is the most practical, affordable and accessible source for such financing.
236. Pending the Comeback Hearing, the Interim Facility will be in priority to the security granted under the Demand Credit Agreement, but it will be behind the Wabush Administration Charge, the Wabush Directors' Charge and any other secured creditors. It is the intention of the Wabush CCAA Parties to seek a priority charge for the Interim Facility and over all other Encumbrances at the Comeback Hearing. Creditors with security interests who are likely to be affected by such priority will be served with notice of that motion.

13.6 Execution Notwithstanding Appeal

237. In view of the urgency and severity of the circumstances confronting the Wabush CCAA Parties, it is essential that execution of the order requested be granted notwithstanding appeal.

14. CONCLUSIONS

238. The Draft Wabush Initial Order (Exhibit R-8) presented on this Motion is based on the form of standard CCAA Initial Order approved by the Superior Court of Québec, Commercial Division (the "**Model Order**"). A black-lined version comparing the Model Order to the Draft Wabush Initial Order is communicated as **Exhibit R-29**. A black-lined version comparing the Bloom Initial Order to the Draft Wabush Initial Order is communicated as **Exhibit R-30**.
239. For the reasons set forth above, the Wabush CCAA Parties believe that it is both appropriate and necessary that the relief being sought in the Draft Wabush Initial Order (Exhibit R-8) be granted for the purposes of maximizing the restructuring efforts of the Wabush CCAA Parties for the benefit of their stakeholders.
240. The Bloom Initial Order provides that all motions in these CCAA Proceedings are to be brought on not less than ten (10) calendar days' notice to all persons on the service list. The Wabush CCAA Parties have not complied with this requirement in connection with this Motion. Given that this Motion is to seek the issuance of an Initial Order, the Wabush CCAA Parties believe that it is critical in order to preserve and maintain the value of their assets not to provide the creditors and other stakeholders of the Wabush CCAA Parties with an opportunity to pursue the exercise of rights or remedies against the Wabush CCAA Parties, their businesses and/or their assets pending the Court's hearing of this Motion.

Motion for the Issuance of an Initial Order, May 19, 2015

- 35 -

241. The Wabush CCAA Parties respectfully submit that this motion should be granted in accordance with its conclusions.
242. The present motion is well-founded in fact and in law.

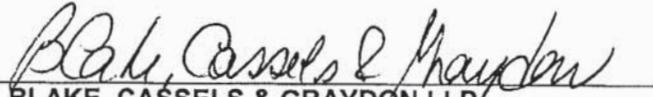
FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the present Motion for the Issuance of an Initial Order;

ISSUE an Initial Order in the form of the Draft Wabush Initial Order (Exhibit R-8) communicated in support hereof;

THE WHOLE WITHOUT COSTS, save and except in case of contestation.

Montréal, May 19, 2015

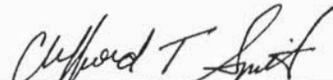

BLAKE, CASSELS & GRAYDON LLP
Attorneys for the Wabush CCAA Parties

Motion for the Issuance of an Initial Order, May 19, 2015

AFFIDAVIT

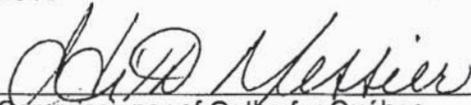
I, the undersigned, **CLIFFORD T. SMITH**, the President of the Petitioners, Wabush Resources Inc. and Wabush Iron Co. Limited, and Vice-President of the Mises-en-Cause, Arnaud Railway Company and Wabush Lake Railway Company, Limited, each having a place of business at 1155 Rue University, Suite 508, in the city and district of Montréal, Québec, solemnly that all the facts alleged in the present Motion for the Issuance of an Initial Order are true.

AND I HAVE SIGNED:



CLIFFORD T. SMITH

SOLEMNLY DECLARED before me
at Montréal, Québec, this 19th day of May,
2015

 80,049

Commissioner of Oaths for Québec



Motion for the Issuance of an Initial Order, May 19, 2015

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**SUPERIOR COURT**

Commercial Division

(Sitting as a court designated pursuant to the *Companies'*
Creditors Arrangement Act, R.S.C., c. 36, as amended)

N°: 500-11-048114-157

**IN THE MATTER OF THE PLAN OF COMPROMISE OR
ARRANGEMENT OF:****BLOOM LAKE GENERAL PARTNER LIMITED
and AL.**

and

**WABUSH IRON CO. LIMITED
AND
WABUSH RESOURCES INC.**

Petitioners

and

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP
and ALS**

Mises-en-cause

and

FTI CONSULTING CANADA INC.

Proposed Monitor

LIST OF EXHIBITS**(In support of the Motion for the issuance of an Initial Order)**

-
- R-1 Initial Order as amended on February 20, 2015;
 - R-2 CCAA Parties' Motion for the Issuance of an Initial Order (First Motion for an Initial Order);
 - R-3 Stay extension Order rendered on April 17, 2015;
 - R-4 Sale advisor appointment Order rendered on April 17, 2015;
 - R-5 SISP Order dated April 17, 2015;
 - R-6 Mining Camp Lease Order dated April 17, 2015;
 - R-7 Chromite Approval and Vesting Order dated April 27, 2015;

Motion for the Issuance of an Initial Order, May 19, 2015

- R-8 Draft Wasbush Initial Order;
- R-9 Chart illustrating the basic corporate structures of the CCAA Parties;
- R-10 Press release issued by CNR on February 11, 2014;
- R-11 Interim Financing Term Sheet dated May 19, 2015;
- R-12 CNR 2013 Annual Report;
- R-13 Company Profile regarding Wabush Iron Co. Limited;
- R-14 Map showing the geographical location of the Wabush Mine and the site and the Pointe-Noire Port;
- R-15 New CCAA Parties' weekly cash flow forecast to August 14, 2015 (May 18 Forecast);
- R-16 Chart showing net book value of the assets by legal entity;
- R-17 Financial statements of April 2015;
- R-18 Chart showing the outstanding indebtedness of the New CCAA Parties to other affiliated companies;
- R-19 Demand Credit Agreement dated February 23, 2015;
- R-20 Equipment Security Agreement dated February 23, 2015;
- R-21 Movable Hypothec dated February 23, 2015;
- R-22 *En liasse*, Table summarizing the Legal Hypothecs of construction and copy of the Legal Hypothecs of construction registered against property of the New CCAA Parties as of May 11, 2015;
- R-23 Demand letter from Sandvik Mining and Construction Canada a Division of Sandvik Canada Inc. dated March 4, 2015;
- R-24 Letter from Sandvik dated April 9, 2015;
- R-25 Real estate search report (Québec) on the New CCAA Parties immovable property;
- R-26 RPMRR (Québec) on the New CCAA Parties movable property;
- R-27 Personal Property Security Act (Ontario, New Brunswick, Newfoundland & Ohio) search results summary on the New CCAA Parties' movable property;
- R-28 Public register of real and immovable mining rights on Wabush Iron Co. Limited and Wabush Resources Inc.'s mining rights in Québec;
- R-29 A black-lined version comparing the Model Order to the Draft Wabush Initial Order;

Motion for the Issuance of an Initial Order, May 19, 2015

R-30 A black-lined version comparing the Initial Order to the Draft Wabush Initial Order.

Montréal, May 19, 2015


BLAKE, CASSELS & GRAYDON LLP
Attorneys for CCAA Parties

8455407.1

Motion for the Issuance of an Initial Order, May 19, 2015

N°: 500-11-048114-157

**SUPERIOR COURT
DISTRICT OF MONTREAL
(Commercial Division)**

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

BLOOM LAKE GENERAL PARTNER LIMITED & ALS

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP & ALS**

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**MOTION FOR THE ISSUANCE OF AN INITIAL
ORDER, AFFIDAVIT AND
LIST OF EXHIBITS**

ORIGINAL

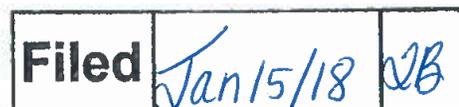
The logo for the law firm Blakes, featuring the word "Blakes" in a stylized, cursive script.

M^{tre} Bernard Boucher **BB-8098**
BLAKE, CASSELS & GRAYDON LLP
Barristers & Solicitors
600 de Maisonneuve Blvd. West
Suite 2200
Montréal, Québec H3A 3J2
Telephone: 514-982-4006
Fax: 514-982-4099
Email: bernard.boucher@blakes.com
Our File: 11573-365

Original

**IN THE COURT OF APPEAL OF NEWFOUNDLAND AND
LABRADOR****Citation:** *Reference re Section 32 of the
Pension Benefits Act, 1997*, 2018 NLCA 1**Date:** 20180115**Docket:** 201701H0029**IN THE MATTER OF** Section 13
of Part I of the *Judicature Act*,
RSNL 1990, c. J-4;**AND IN THE MATTER OF** Section 32
of the *Pension Benefits Act, 1997*,
SNL 1996, c. P-4.01;**AND IN THE MATTER OF** a Reference
of the Lieutenant-Governor in
Council to the Court of Appeal, for
its hearing, consideration and
opinion on the interpretation of the
scope of section 32 of the *Pension
Benefits Act, 1997*.**Coram:** Green C.J.N.L., Welsh and White JJ.A.**Reference Regarding Section 32 of the *Pension Benefits Act, 1997*.****Heard:** September 21 and 22, 2017**Opinion Rendered:** January 15, 2018**Reasons for Opinion on the Reference:** By the Court

* Green C.J.N.L. elected supernumerary status and resigned as Chief Justice
on December 1, 2017.



Counsel for the Superintendent of Pensions of Newfoundland and Labrador: Doug Mitchell and Edward Béchard-Torres
Counsel for the Attorney General of Newfoundland and Labrador: Rolf Pritchard Q.C. and Philip Osborne
Counsel for FTI Consulting Canada Inc.: Sylvain Rigaud and Terry Rowe Q.C.
Counsel for the Attorney General of Quebec: Louis Robillard and Natalie Faucher
Counsel for the Attorney General of Canada: Michelle Kellam
Counsel for Representative Members of the Wabush Salaried Pension Plans: Andrew Hatnay, Demetrios Yiokaris and Amy Tang
Counsel for Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Quebec Iron Mining ULC, Wabush Iron Co. Limited, and Wabush Resources Inc.: Stephen J. Weisz and Bernard Boucher
Counsel for Morneau Shepell Ltd.: No Appearance
Counsel for Ville Sept-Îles: Stephen F. Penney and Joseph Thorne
Counsel for Syndicat des Métallos, locaux 6254 and 6285: Daniel Boudreault

By the Court:

[1] The Lieutenant-Governor in Council for Newfoundland and Labrador referred questions regarding the interpretation of provisions of the *Pension Benefits Act, 1997*, SNL 1996, c. P-4.01, to this Court pursuant to sections 13 and 14 of the *Judicature Act*, RSNL 1990, c. J-4. Following are the decision and opinion of the Court, including an analysis of submissions made by intervenors regarding the appropriate context within which the questions should be considered.

The Questions

[2] By Orders-in-Council 2017-103 and 2017-137, the Lieutenant-Governor in Council for Newfoundland and Labrador referred the following questions to this Court (the “Questions”):

1. The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985, c. C-36. What is the scope of section 32

of the *Pension Benefits Act, 1997*, SNL 1996, c. P-4.01 deemed trusts in respect of:

- a) unpaid current service costs;
- b) unpaid special payments; and
- c) unpaid wind-up deficits?

2. The Salaried Plan is registered in Newfoundland and Labrador and regulated by the *Pension Benefits Act, 1997*.

a)

(i) Does the federal *Pension Benefits Standards Act*, RSC 1985, c. 32 deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?

(ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the *Pension Benefits Standards Act*? If so, how is the conflict resolved?

b)

(i) Does the Quebec *Supplemental Pension Plans Act*, CQLR, c. R-15.1 also apply to those members of the Salaried Plan who reported for work in Quebec?

(ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplemental Pension Plans Act*? If so, how is the conflict resolved?

(iii) Do the Quebec *Supplemental Pension Plans Act* deemed trusts also apply to Quebec Salaried Plan members?

3. Is the *Pension Benefits Act, 1997* lien and charge in favour of the pension plan administrator in section 32(4) of the *Pension Benefits Act, 1997* a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?

Context for the Questions

[3] In December 2015, the Superintendent of Pensions of Newfoundland and Labrador terminated pension plans covering employees of Wabush Mines, a company operating in Labrador. The employer had discontinued operations and was the subject of proceedings in the Quebec courts under

the *Companies' Creditors Arrangement Act* (the "Quebec Proceedings"). The Monitor in that action sought directions regarding priorities with respect to claims under the *Act*. A preliminary issue was raised as to whether the Quebec Superior Court "should request the aid" of the Newfoundland and Labrador courts regarding the "scope and priority of the deemed trust and other security" created by the Newfoundland and Labrador *Pension Benefits Act, 1997* (decision of the Quebec Court, 500-11-048114-157, January 30, 2017, at paragraph 2). The Court decided to proceed without referring any issues to the courts of this Province. On September 11, 2017, Hamilton J.S.C. issued his decision, concluding, among other things:

[218] ...

f) Nothing in the [*Pension Benefits Act, 1997* of Newfoundland and Labrador] limits the assets covered by the deemed trust to assets located in the province of Newfoundland and Labrador;

g) The Court would not recognize or enforce the deemed trust under the [*Pension Benefits Act, 1997* of Newfoundland and Labrador] against assets located in the province of Québec.

[219] Finally, with respect to the orders sought by the Representative Employees in their Argumentation Outline, the Court adds that the Plans are governed by the [federal pension legislation] for the railway employees, by the [Québec pension legislation] for the non-railway employees who reported for work in Québec, and by the [Newfoundland and Labrador pension legislation] for the non-railway employees who reported for work in NL.

[220] At the outset, the Court said it would reserve the rights of the parties to ask the Court to revise the conclusions of the present judgment if: (1) the [Newfoundland and Labrador Court of Appeal] decides that the interpretation of the [*Pension Benefits Act, 1997*] is different from the interpretation that the Court assumed, and (2) that difference is material to the Court's conclusions.

[221] However, based on its analysis and conclusions in the present judgment, the Court can now remove that reserve, because the interpretation of the [*Pension Benefits Act, 1997*] was not material to the Court's conclusions.

[4] In concluding that the *Pension Benefits Act, 1997* was not material, Hamilton J.S.C. explained:

[210] In light of all these circumstances, the Court concludes that it would frustrate the purpose of Parliament if the deemed trust under the [*Pension Benefits Act, 1997*] operated in the context of a CCAA proceeding. The doctrine of federal

paramountcy therefore renders the deemed trust under the [*Pension Benefits Act, 1997*] inoperable.

[5] In the meantime, in April 2017, proceedings were commenced to inscribe the Reference in which the Lieutenant-Governor in Council referred the Questions to this Court. Several of the parties and intervenors expressed concern that, in answering the Questions, the Court would interfere with the Quebec Proceedings. At the hearing, it became clear that references, if any, to the Wabush Mines' pension plans would be for the sole purpose of providing a context for considering the Questions insofar as an example may be helpful. The responses to the Questions would not determine rights as between the parties to the Quebec Proceedings except to the extent that the Court's interpretation of the legislation may subsequently be applied in those particular circumstances.

[6] While a Reference may have its roots in litigation between parties, in fact, it is designed to provide the Lieutenant-Governor in Council with the Court's opinion regarding issues of concern to the government such as the validity of proposed legislation or the interpretation and effect of legislative language. For example, in *Reference Re Sections 32 and 34 of the Workers' Compensation Act (Nfld.)* (1987), 67 Nfld. & P.E.I.R. 16 (Nfld. C.A.), the judge had expressed the view that two provisions of the legislation were of no force or effect. Since this was *obiter dictum*, which did not provide grounds for an appeal, the Lieutenant-Governor in Council referred the question of the validity of the legislation to the Court of Appeal. See also: *Re Upper Churchill Water Rights Reversion Act*, [1984] 1 S.C.R. 297, in which the Lieutenant-Governor in Council referred questions as to the constitutional validity of proposed legislation.

[7] In summary, the response by the Court to the Questions comprises an advisory opinion, with reasons, designed to assist government and persons having an interest with an interpretation of the legislation at issue. As a result of the Reference, the rights of parties to litigation may be affected, but this is an incidental effect that may flow from application of the Court's response to the Questions.

Paramountcy of Federal Legislation

[8] The Reference specifically exempts from consideration the question of whether the relevant provisions of the *Pension Benefits Act, 1997* are

rendered inoperative, based on the doctrine of paramountcy, where the *Companies' Creditors Arrangement Act* applies.

The Legislation

[9] Section 32 of the *Pension Benefits Act, 1997* provides for pension funds to be held in trust:

(1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

(a) the money in the pension fund;

(b) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) any special payments prescribed by the regulations, that have accrued to date; and

(c) all

(i) amounts deducted by the employer from the member's remuneration, and

(ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.

(3) Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.

Section 32(4) provides for a lien and charge on the employer's assets:

(4) An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).

[10] Section 61 of the *Act* provides for payment into a pension fund upon termination of the plan:

(1) On termination of a pension plan, the employer shall pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the regulations for solvency, including

(a) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) special payments prescribed by the regulations,

that have accrued to the date of termination; and

(b) all

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer

that have not been remitted to the pension fund at the date of termination.

(2) Where, on the termination, after April 1, 2008, of a pension plan, other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan, the employer shall, as prescribed by the regulations, make the payments into the pension fund, in addition to the payments required under subsection (1), that are necessary to fund the benefits provided under the plan.

Question One

[11] What is the scope of the deemed trusts in section 32 of the *Pension Benefits Act, 1997* (the "Newfoundland legislation") in respect of:

(a) unpaid current service costs;

(b) unpaid special payments; and

(c) unpaid wind-up deficits?

Unpaid Current Service Costs and Unpaid Special Payments

[12] In *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, Deschamps J., for the Court on the issue, concluded that, since 1983, the deemed trust set out in the Ontario legislation was intended to include current service costs and special payments. The legislation required an employer, upon terminating a pension plan, to pay to the administrator an amount equal to the current service cost and prescribed special payments that had accrued to the date of termination. (See also the concurring reasons of Cromwell J., at paragraphs 133 and 151.) The Newfoundland legislation has a similar effect.

[13] Section 32(1) requires an employer to ensure that an amount equal to “the normal actuarial cost” and prescribed special payments “that have accrued to date” is kept separate from the employer’s money. That amount is considered to be held in trust for pension beneficiaries. Section 32(3), which applies upon termination of a pension plan, requires an employer to hold in trust “an amount of money equal to employer contributions due under the plan to the date of termination”. Read together with subsection (1), this language clearly includes unpaid current service costs and special payments such that those amounts, due to the date of termination, are deemed to be held in trust for pension beneficiaries.

Unpaid Wind-up Deficits

[14] In *Sun Indalex*, Deschamps J., for the majority on the question of the wind-up deficiency, concluded:

[45] In sum, the relevant provisions, the legislative history and the purpose are all consistent with inclusion of the wind-up deficiency in the protection afforded to members with respect to employer contributions upon the wind up of their pension plan. I therefore find ... that Indalex was deemed to hold in trust the amount necessary to satisfy the wind-up deficiency.

[15] In reaching this conclusion, Deschamps J. explained:

[34] ... The wind-up deemed trust concerns “employer contributions accrued to the date of the wind up but not yet due under the plan or regulations”. Since the employees cease to accumulate entitlements when the plan is wound up, the entitlements that are used to calculate the contributions have all been accumulated before the wind-up date. Thus the liabilities of the employer are complete – have

accrued – before the wind up. The distinction between my approach and the one Cromwell J. takes is that he requires that it be possible to perform the calculation before the date of the wind up, whereas I am of the view that the time when the calculation is actually made is not relevant as long as the liabilities are assessed as of the date of the wind up. The date at which the liabilities are *reported* or the employer's *option* to spread its contributions as allowed by the regulations does not change the legal nature of the contributions.

(Italics in original; underlining added.)

[16] That conclusion follows from an interpretation of the language of the Ontario legislation which deems “an amount of money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations” to be held in trust for pension beneficiaries (*Sun Indalex*, at paragraph 26, underlining added). Rejecting a narrow definition of “accrued”, Deschamps J. determined that “a contribution has “accrued” when the liabilities are completely constituted, even if the payment itself will not fall due until a later date” (*Sun Indalex*, at paragraph 36). That is, under the legislation, liabilities for payments to the pension plan:

[36] ... are completely constituted at the time of the wind up, because no pension entitlements arise after that date. In other words, no new liabilities accrue at the time of or after the wind up. ...

[17] The legislative language addressed in *Sun Indalex* is somewhat different from that used in the Newfoundland legislation. In contrast to “contributions accrued to the date of the wind up but not yet due under the plan or regulations”, which is used in the Ontario legislation, the Newfoundland legislation refers to actuarial cost and special payments “accrued to the date of termination” together with “all other amounts due to the pension fund from the employer that have not been remitted to the pension fund at the date of termination” (section 61).

[18] In analyzing the Newfoundland legislation, it is important to apply a purposive interpretation to the relevant provisions, which must be read together. Section 61 addresses the employer's responsibilities on termination of a pension plan. Subsection (1) requires the employer to “pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the regulations for solvency”. Section 11 of the *Pension Benefits Act Regulations*, NLR 114/96, addresses determination of a solvency deficiency:

In the preparation of an actuarial valuation report to determine the existence of a solvency deficiency, a solvency valuation shall be performed in the following manner:

(a) the solvency liabilities of a pension plan shall be determined on the basis that the plan is terminated or on a basis that is certified by an actuary to be reasonably approximate to that, taking into account any significant increases or decreases in pension benefits to the plan members as a result of the termination; ...

[19] Payments that an employer is required or liable to make under section 61(1) must be made within thirty days of the date of termination of the pension plan (section 25 of the *Regulations*).

[20] Pursuant to section 61(2) of the *Act*, upon termination, where “the assets in the pension fund are less than the value of the benefits provided under the plan”, the employer is required to make payments, in addition to those under section 61(1), “that are necessary to fund the benefits provided under the plan”. However, section 25.1(1) of the *Regulations* allows for payment over time:

The amount required to be paid under subsection 61(2) of the *Act* shall be divided into equal payments that are calculated over a period of not more than 5 years commencing from the date of termination of the pension plan.

[21] The fact that an employer may make payments required under section 61(2) over time does not lead to the conclusion that the amounts are not, in fact, “due to the pension fund” at the date of termination. As explained by Deschamps J. in *Sun Indalex*, liabilities for payments under the pension plan “are completely constituted at the time of the wind up, because no pension entitlements arise after that date” (paragraph 36). While the language used in the Ontario legislation is slightly different from that used in the Newfoundland legislation, the explanation set out by Deschamps J. would apply equally to both.

[22] That interpretation is consistent with the legislative history of the Newfoundland legislation. Subsection (2) was added to section 61 by amendment in 2008 (SNL 2008, c. 16). The purpose of adding subsection (2) was explained by the Minister when the Bill was considered for second reading (Hansard, April 24, 2008, Vol. XLVI No. 16):

Before I get into the aspects of the bill, one of the most important aspects of a person’s life as they age is their benefit of having a pension that they would have

when they retire to get older and enjoy life to the fullest once their work life is over. So, it is very, very important, as the minister responsible for my department, to make sure that we protect the employees in regard to that pension plan, in its fullest, all the way along until their eventual retirement. That is what this amendment does, Mr. Speaker. It ensures the protection of pension plans for workers all over this Province.

There is a need to improve this protection by amending the Pension Benefits Act, and to ensure – and what this amendment does is ensure that funding of deficits in pension plan windups is fully funded; because, if it is not fully funded thus it decreases the benefits to the employee. The benefits that they expected in the front end when they started paying into the pension plan would not be there at the end, once they retire.

...

If there is a solvency deficit, the pension plan sponsor is now required to fund that deficit over a five year period. That is what this amendment will do, thus certainly ensuring that the employee is certainly protected over the lifetime of the pension and certainly at the end.

[23] In a similar vein, although in the context of the interplay between pension benefits and compensation for wrongful dismissal, in *IBM Canada Limited v. Waterman*, 2013 SCC 70, [2013] 3 S.C.R. 985, Cromwell J., for the majority, wrote:

[85] Pension benefits have consistently been viewed as an entitlement earned by the employee. As Lord Reid put it in *Parry [v. Cleaver]*, [1970] A.C. 1, at p. 16: “The products of the sums paid into the pension fund are in fact delayed remuneration for [the employee’s] current work. That is why pensions are regarded as earned income.” The pension is therefore a form of retirement savings earned over the years of employment to which the employee acquires specific and enforceable rights. ...

[24] The net effect of section 61 gleaned from the language, history and purpose of the legislation is that, upon termination of a pension plan, the employer must pay all amounts that are due to the pension fund or that are necessary to fund the benefits provided under the plan.

[25] Consistent with this purpose, section 32 of the *Act* imposes a trust on the monies required to be paid in respect of a pension plan. In the case of termination of a plan, section 32(3) requires the employer to hold in trust for the pension beneficiaries an amount equal to “employer contributions due

under the plan to the date of termination”. Those amounts are set out in section 61.

[26] In the result, under section 32, all amounts due under the plan to the date of termination are covered by the deemed trust (sections 32(1)(c)(ii) and 32(3)). The amounts due as of that time are set out in section 61, which includes all amounts necessary to make the plan actuarially sound going forward. No entitlements under the pension plan arise after its termination, but the plan must have sufficient funds so that the value of the benefits provided under the plan may be satisfied. It follows that, upon the termination of a pension plan, any unpaid wind-up deficiency falls within the scope of the deemed trusts under section 32 of the *Act*.

[27] Accordingly, the answer to Question One is: (a) unpaid current service costs, (b) unpaid special payments, and (c) unpaid wind-up deficits fall within the scope of the deemed trusts under section 32 of the *Act*.

Question Two

[28] Consistent with the purpose of a Reference, Question Two, while stated in terms of the Wabush Mines situation, will not determine issues as between the parties to litigation (paragraph 7, above). With this in mind, the essential question raised by the Reference is one of jurisdiction, that is, whether the Newfoundland legislation would apply to: (1) employees who work on a federal undertaking such as a railway; and (2) employees who report for work in another province.

[29] We begin with principles discussed in Hogg, *Constitutional Law of Canada*, fifth edition, supplemented (Toronto, ON: Thomson Reuters Canada, 2017), at 23.2, pages 23-8 and 23-9:

The power to regulate corporate activity is distributed in accordance with the classes of subject listed in the Constitution, especially in ss. 91 and 92. Once a company has been incorporated, its activity will be subject to the legislation of whichever order of government has validly enacted laws in respect of that activity. In ascertaining the appropriate regulatory jurisdiction, as opposed to the appropriate incorporating jurisdiction, the territorial extent of the company's objects is not decisive. The mere fact that a company's activity extends beyond the limits of any one province will not by itself bring the activity within federal regulatory jurisdiction. If the activity wears an aspect within provincial legislative jurisdiction such as “property and civil rights” – and most business activity does – then each province will have the power to regulate that part of the company's activity which occurs within the province's borders. Conversely, if

the activity wears an aspect which is within federal jurisdiction, then it will be under federal control even if it is local. Some examples may clarify the point. ... An interprovincial telephone company may be incorporated provincially, but its rates will be subject to federal regulation. A hotel may be owned and operated by a federally-incorporated company, but its labour relations will be subject to provincial regulation. The point is that the jurisdiction of incorporation has the power to confer on a company its legal personality, its organization, and its essential powers; but its business will be regulated by whichever jurisdiction possesses and exercises the power to regulate that kind of business.

Employees Who Work on a Federal Undertaking, in Particular, a Railway

[30] We reiterate that the purpose of a Reference is to interpret legislation, rather than to determine rights as between parties. To apply that principle here it is necessary to re-state the question, which refers specifically to the Wabush Mines situation in which employees worked on a railway. Re-stated, the question is whether the federal *Pension Benefits Standards Act*, RSC 1985, c. 32 (2nd Supp.) applies to employees of a company, operating in the Province, who work on a railway, and whether that legislation precludes the application of the Newfoundland legislation.

[31] The scope of application of the federal *Pension Benefits Standards Act* is addressed in section 4, which provides, in relevant parts:

(1) This Act applies in respect of pension plans.

(2) In this Act, “pension plan” means a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment

...

(4) In this Act, “included employment” means employment, other than excepted employment, on or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including, without restricting the generality of the foregoing,

...

(b) any railway, canal, telegraph or other work or undertaking connecting a province with another province or extending beyond the limits of a province;

...

(h) any work, undertaking or business that, although wholly situated within a province, is before or after its execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more provinces;

...

[32] Where, on the facts of a particular situation, employees fall within the scope of application of section 4, the federal pensions legislation would apply. However, as explained by Hogg in *Constitutional Law of Canada*, the particular circumstances must be considered. For example, at 22.9, page 22-19:

Legislative jurisdiction over transportation by land depends upon the principles explained in the previous sections of this chapter. Jurisdiction over trains, ... depends primarily on whether they are operated as part of an interprovincial (or international) undertaking, in which case jurisdiction is federal under s. 92(10)(a), or whether they are operated as part of an intraprovincial undertaking, in which case jurisdiction is provincial under s. 92(10). Some intraprovincial undertakings, including many local railways, have been brought under federal jurisdiction by exercise of the declaratory power under s. 92(10)(c).

[33] Another consideration that may apply in particular circumstances relates to the extent to which a company's operations may involve more than one undertaking, and the extent to which the undertakings are operated separately or as part of the core business (Hogg, *Constitutional Law of Canada*, at 22.7, pages 22-10 to 22-15).

[34] In addition, the extent to which the federal and provincial legislation may operate together, without conflict, may be relevant. The constitutional doctrines of interjurisdictional immunity and pith and substance are discussed in detail in *Constitutional Law of Canada*, at 15.8, pages 15-28 to 15-38.8. At page 15-38.5, Hogg refers to the decision in *Bell Canada v. Quebec*, [1988] 1 S.C.R. 749:

In *Bell 1988*, Beetz J. made an effort to define the boundary between the pith and substance doctrine, on the one hand, and the interjurisdictional immunity doctrine, on the other. ...

According to this formulation, provincial laws may validly extend to federal subjects unless the laws "bear upon those subjects in what makes them specifically of federal jurisdiction". The rule that emerged from this formulation was this: if the provincial law would affect the "basic, minimum and unassailable" core of the federal subject, then the interjurisdictional immunity

doctrine stipulated that the provincial law must be restricted in its application (read down) to exclude the federal subject. If, on the other hand, the provincial law did not affect the core of the federal subject, then the pith and substance doctrine stipulated that the provincial law validly applied to the federal subject.

... However, in *Canadian Western Bank [v. Alberta]*, 2007 SCC 22, [2007] 2 S.C.R. 3] the majority narrowed the doctrine by insisting that, if a provincial law merely affected (without having an adverse effect on) the core of a federal subject, then the doctrine did not apply. In that case, the pith and substance doctrine would prevail, enabling the provincial law to apply to the core of the federal subject. Only if the provincial law would “impair” the core of the federal subject, would interjurisdictional immunity apply. ...

[35] Counsel for the intervenor, the representative beneficiaries of the Wabush salaried pension plan, submits that a statutory benefit in provincial legislation that provides a benefit in addition to benefits under the federal legislation would not constitute a conflict engaging the doctrine of interjurisdictional immunity. Accordingly, it is submitted, the additional benefit should be available to the employees.

[36] The proposition that interjurisdictional immunity is not engaged does not lead to the conclusion that pension beneficiaries may gain additional benefits not included in the applicable legislation. The relevant principle in response to counsel’s submission is not which of federal or provincial legislation takes precedence. Where the legislation enacted by both levels of government deals with precisely the same matter, such as in the case of pension legislation, the question of conflict does not arise since either one legislative scheme or the other must apply on the particular facts. That is, it is not open to the pension beneficiaries to choose the provisions from both statutes that would provide the greater benefit. Similarly, it would not be open to the pension beneficiaries to take the benefit of a provision in another statute, that did not otherwise apply, on the assumption that the benefit in question should have been included in the applicable legislation. The essential principle is that, in the circumstances, in respect of a particular class of workers, the employer would be bound to comply with one pension scheme, not with portions of two schemes.

[37] In summary, the extent to which principles and doctrines such as the above may apply in a particular situation will depend on the facts at issue. For purposes of this Reference, it is not appropriate to conduct an analysis of the factual circumstances at play for the purpose of drawing conclusions regarding termination of the Wabush Mines pension plan.

Employees Who Report for Work in Another Province

[38] The generally applicable principle is that “each province will have the power to regulate that part of the company’s activity which occurs within the province’s borders” (Hogg, *Constitutional Law of Canada*, paragraph 29, above). For this reason, in general, where a company has operations in more than one province, the employment-related laws of the province where the employees work would apply.

[39] As set out above, it is not within the appropriate scope of this Reference to make determinations regarding termination of the Wabush Mines’ pension plan. Whether issues such as the residence of a company’s workers, as opposed to where the work is carried out, or the nature of a company’s business which may involve work being done in another province, may affect the application of the general rule cannot be determined in this Reference. Such issues are essentially factual in nature and do not rely on an interpretation of the legislation that was placed before this Court. Nor were such issues argued in submissions to the Court.

[40] In summary, it is not possible to answer Question Two as stated in the Reference. It is clear from the above principles that many factors may affect the answer to the issues posed. The use of the Wabush Mines scenario as a possible example provides insufficient information on which to test relevant principles. The jurisdictional questions, that is, whether the Newfoundland pension legislation would apply to employees who work on a federal undertaking such as a railway or to employees who report for work in another province, may be determined only by applying the relevant law to all the facts of a particular situation.

Question Three

[41] Is the lien and charge provided for in section 32(4) of the *Act* a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?

[42] Section 32(4) of the *Act* provides:

(4) An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).

[43] At the hearing, the Court invited counsel to provide further written submissions on this question. In particular, the Court identified the following issues:

1. When does the lien and charge arise, and what triggers its operation?
2. What is the nature of the lien and charge?
3. How do the lien and charge operate in the context of termination of a pension plan?
4. How does the lien in section 32(4) compare to other statutory liens?

[44] The amount which the lien and charge secures is determined by the operation of sections 61 and 32 of the *Act*, as discussed above. That is, with respect to a pension plan that is terminated, the amount to which the lien and charge would apply is the total of the accrued normal actuarial costs and special payments and all other amounts due to the pension fund from the employer that have not been remitted at the date of termination, together with any other payments necessary to fund the benefits provided under the plan.

[45] In determining the nature of the lien and charge, the legislation must be interpreted in a manner consistent with its purpose. As set out above, that purpose is to protect the benefits accrued to employees under a pension plan, recognizing that such benefits “have consistently been viewed as an entitlement earned by the employee” (paragraphs 22 and 23, above).

[46] Additional interpretive assistance may be gleaned from other legislative schemes that impose a lien and charge on assets. To that end, in his supplementary factum, the Attorney General of Newfoundland refers by example to taxing statutes as well as workers’ compensation and mechanics’ lien legislation. We agree with his explanation:

24. Depending on the statute, a lien may attach at different times, in different ways, and have different priorities, yet the ultimate effect is essentially the same. Each statute serves to create a legislative scheme in which a lien is created to offer additional protection to a beneficiary, a service provider, or even the Crown.
...

[47] In the case of pensions, consistent with the purpose of the legislation, the lien and charge is a fixed charge which is engaged upon creation of the

deemed trust under section 32. There is nothing in the language of the legislation that would make it only a floating charge, as was submitted in argument. Accordingly, the pension administrator has a lien and charge on the assets of the employer in an amount equal to the amount the employer is required to hold in trust but does not in fact hold.

[48] Whenever a deemed trust arises pursuant to subsections (1) or (3) of section 32, the lien and charge attach to the assets held by the employer regardless of their nature or location, in amounts that would satisfy the trust obligations as they exist from time to time. The effect is to provide additional protection for pension beneficiaries. That is, the lien and charge against the employer's assets would operate to give effect to the deemed trusts should the trusts fail due to a lack of funds.

[49] To impose a fixed lien and charge in this way is not inconsistent with appropriate business practice. The employer has an incentive to operate a solvent pension plan, maintaining the trust funds required to protect what has been earned by the employees. Further, the employer would not be encumbered from dealing with business assets since, where necessary, an estoppel certificate of compliance or, considering the nature and significance of the asset relative to any outstanding trust obligations, a waiver could be obtained from the pension administrator, which could be relied upon by any affected third party.

[50] Finally, the effect of section 32(4) of the *Act* in relation to the operation of the *Companies' Creditors Arrangement Act* is not addressed because that question was not included in the Reference. In any event, such a question, and particularly the question of priorities under that *Act*, would require an analysis based on a specific factual scenario such as arises in litigation between parties, a matter outside the scope of the Reference. Accordingly, it is not necessary to deal with the submissions by counsel for the intervenor, the representative beneficiaries of the Wabush salaried pension plan, as to the reasons why the decision in *Harbert Distressed Investment Fund, L.P. v. General Chemical Canada*, 2007 ONCA 600, which held that an administrative lien and charge was ineffective in a bankruptcy situation, should not apply because this case involves different statutory definitional language under the *Companies' Creditors Arrangements Act*.

[51] Accordingly, the answer to Question Three is: The lien and charge under section 32(4) of the *Act* create a valid secured claim in favour of the

plan administrator. The lien and charge would be engaged upon the creation of a deemed trust under section 32 and would attach to the assets held by the employer regardless of their location. The pension administrator has a lien and charge on the assets of the employer in an amount equal to the amount the employer is required to hold in trust under section 32 from time to time, as set out in section 61. In particular with respect to a pension plan that is terminated, the amount to which the lien and charge would apply is the total of the accrued normal actuarial costs and special payments and all other amounts due to the pension fund from the employer that have not been remitted at the date of termination, together with any other payments necessary to fund the benefits provided under the plan.

SUMMARY

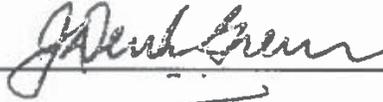
[52] The answers to the Questions posed in the Reference are:

(1) Question One: Unpaid current service costs, unpaid special payments, and unpaid wind-up deficits fall within the scope of the deemed trusts under section 32 of the *Act*.

(2) Question Two: It is not possible to answer Question Two as stated in the Reference. It is clear from the principles discussed above that many factors may affect the answer to the issues posed. The use of the Wabush Mines scenario as a possible example provides insufficient information on which to test relevant principles. The jurisdictional questions, that is, whether the Newfoundland pension legislation would apply to employees who work on a federal undertaking such as a railway or to employees who report for work in another province, may be determined only by applying the relevant law to all the facts of a particular situation.

(3) Question Three: The lien and charge under section 32(4) of the *Act* create a valid secured claim in favour of the plan administrator. The lien and charge would be engaged upon the creation of a deemed trust under section 32 and would attach to the assets held by the employer regardless of their location. The pension administrator has a lien and charge on the assets of the employer in an amount equal to the amount the employer is required to hold in trust under section 32 from time to time, as set out in section 61. In particular with respect to a pension plan that is terminated, the amount to which the lien and charge would apply is the total of the accrued normal actuarial costs and special payments and all other amounts due to the pension fund from the employer that have not been remitted at the date of

termination, together with any other payments necessary to fund the benefits provided under the plan.



J. D. Green C.J.N.L.



B. G. Welsh J.A.



C. W. White J.A.



File No. 2017 01H 0029

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

IN THE MATTER OF Section 13 of
Part 1 of the *Judicature Act*, RSNL
1990, c. J.-4

AND

IN THE MATTER OF Section 32 of
the *Pension Benefits Act*, 1997, SNL
1996, c. P-4.01

AND

IN THE MATTER OF a Reference
of The Lieutenant-Governor in
Council to the Court of Appeal for its
hearing, consideration and opinion on
the interpretation of the scope of s. 32
of the *Pension Benefits Act*, 1997

**RULING ON APPLICATION FOR DIRECTIONS
JUNE 9, 2017**

A handwritten signature in black ink, appearing to be "JTB", with a checkmark below it.

Filed	June 13/17	JTB
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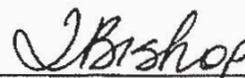
By the Court:

[1] Having heard the submissions of counsel, we are satisfied that the questions set out in the reference put by the Lieutenant-Governor in Council in Order-in-Council 2017-103, should be considered at the hearing in the language stipulated in the Order-in-Council. Whilst we are mindful of the importance of promoting judicial efficiency, we do not consider ourselves to be in a position today to determine the extent to which, if at all, we should decline to answer one or more of the questions posed or to interpret their scope.

[2] That said, we are cognizant of the concerns of some of the participants that the questions may invite the Court to opine in such a way as to impact the decisions of the Quebec CCAA Court that will determine the rights of the parties. Generally speaking, we subscribe to the view that questions posed on a reference should be treated as raising hypothetical questions and not directed at determining parties' rights.

[3] As recognized in case law, a reference is an advisory opinion provided by the Court at the request of the Lieutenant-Governor in Council. The CCAA Court in determining the matter before it may or may not advert to or apply the opinion provided by this Court. That said, the context of a reference is important. Accordingly, hypotheticals are useful to provide a context within which the questions can be considered. The record on the reference, therefore, should be limited to providing that context.

[4] The parties may, of course, make submissions as to whether the Court should decline to answer a question or part thereof, or narrow the scope of a question as part of the submissions made for purposes of the reference hearing.


COURT
OFFICER

REGISTRAR

Monitor's Notice of Intervention, May 15, 2017

File No.2017 01H 0029

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

IN THE MATTER OF Section 13
of Part I of the *Judicature Act*,
R.S.N.L. 1990, c.J-4, as amended

AND

IN THE MATTER OF Section 32
of the *Pension Benefits Act*,
S.N.L. 1997, c.P-4.01

AND

IN THE MATTER OF a Reference
of the Lieutenant Governor in Council
to the Court of Appeal, for its hearing,
consideration and opinion on the
interpretation of the scope of section 32
of the *Pension Benefits Act*

NOTICE OF INTERVENTION

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

AND THAT the grounds of the proposed Intervention are:

1. THAT the Intervenor acts as court-appointed monitor to Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**") in the context of proceedings instituted pursuant to the terms of the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the "**CCAA**") before the Quebec Superior Court for the district of Montreal ("**CCAA Court**") in the court record bearing number

Monitor's Notice of Intervention, May 15, 2017

500-11-048114-157 (the "CCAA Proceedings").

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

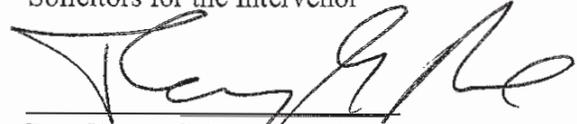
AND THAT the Intervenor intends to apply for relief in respect of the foregoing issues in advance of the status hearing on June 9, 2017 on the following grounds:

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

Monitor's Notice of Intervention, May 15, 2017

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

Martin Whalen Hennebury Stamp
Solicitors for the Intervenor



Per: Terry G. Rowe, Q.C.
Whose address for service is
P.O. Box 5910
15 Church Hill
St. John's, NL A1C 5X4

Norton Rose Fulbright Canada
Solicitors for the Intervenor

Per: Sylvain Rigaud
Whose address for service is
1 Place Ville Marie, Suite 2500
Montreal, Quebec, H3B 1R1

TO: Supreme Court of Newfoundland and Labrador
Court of Appeal
Duckworth Street
St. John's, NL

TO: Department of Justice and Public Safety
PO Box 8700
4th Floor, East Block
Confederation Building
St. John's, NL A1B 4J6
Canada
Attention: Rolf Pritchard, Q.C.

File No.2017 01H 0029

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

IN THE MATTER OF Section 13
of Part I of the *Judicature Act*,
R.S.N.L. 1990, c.J-4, as amended

AND

IN THE MATTER OF Section 32
of the *Pension Benefits Act*,
S.N.L. 1997, c.P-4.01

AND

IN THE MATTER OF a Reference
of the Lieutenant Governor in Council
to the Court of Appeal, for its hearing,
consideration and opinion on the
interpretation of the scope of section 32
of the *Pension Benefits Act*

APPLICATION TO THE COURT WITH SUPPORTING AFFIDAVIT

This is notice that the Applicant, FTI Consulting Canada Inc., in its capacity as court-appointed monitor of the Wabush CCAA Parties (as defined below), applies for an order granting the following relief:

1. That, pursuant to Rule 31(2) of the *Civil Appeal Rules*, the application and order dated 5 May 2017 (the "**May 5th Order**") in the within matter be reheard by a panel of this Honourable Court;
2. That Paragraph 5 of the May 5th Order be stayed until full argument can be heard with respect to the Applicant's position with respect to the timing and scope of the Reference.

Monitor's Application for Stay of the *Ex Parte* Order and Rehearing, May 15, 2017

Subject matter of the application:

1. The Applicant, FTI Consulting Canada Inc., is a body corporate incorporated under the laws of Canada and acts as court-appointed monitor ("**Monitor**") to Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**"). It is referred to in paragraph 2 of the May 5th Order as the "Monitor of the Quebec Proceeding". A copy of the May 5th Order is attached as **Schedule "A"** to this application.
2. The "Quebec Proceeding" refers to proceedings instituted pursuant to the terms of the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the "**CCAA**") before the Quebec Superior Court for the district of Montreal ("**CCAA Court**") in the court record bearing number 500-11-048114-157 (the "**CCAA Proceedings**").
3. On September 20, 2016, the Monitor filed a *Motion for Directions with respect to pension claims*, as amended on April 13, 2017 (the "**Motion for Directions**") with respect (a) to the priority of pensions claims filed by the plan administrator of two pension plans, the whole pursuant to the order issued by the CCAA Court on November 5, 2015, as amended on November 16, 2015, which approved and established a procedure for the filing of creditors' claims against, among others, the Wabush CCAA Parties and their directors and officers, as well as (b) the applicability and scope of deemed trusts, if any, under the *Pensions Benefits Standards Act*, R.S.C. 1985, c. 32 (2nd Supp.) (the "**PBSA**") and the Newfoundland & Labrador *Pensions Benefits Act*, S.N.L. 1996, c. P-4.01 (the "**PBA**") as well as the Québec *Supplemental Pension Plans Act*, R.L.R.Q., c. R-15.1 (the "**SPPA**"). A copy of the Motion for Directions is attached as **Schedule "B"** to this application.
4. On January 30, 2017, Justice Hamilton of the CCAA Court rendered a written decision (the "**January 30 Decision**") with respect to the request of some parties within the CCAA Proceedings to have certain questions respecting the scope of the PBA and its effect on the CCAA Proceedings referred instead to the Court in Newfoundland and Labrador prior to the hearing on the Motion for Directions. A copy of this decision is attached as **Schedule "C"** to this application.
5. The questions sought to be addressed in the Reference can be found at paragraph 25 of the January 30 Decision, and are as follows:
 1. The Supreme Court of Canada has confirmed in *Indalex* that provincial laws apply in CCAA proceedings, subject only to the doctrine of paramountcy. Assuming there is no issue of paramountcy, what is the scope of section 32 in the NPBA [NLPBA] deemed trusts in respect of:
 - a) unpaid current service costs;
 - b) unpaid special payments; and,

Monitor's Application for Stay of the *Ex Parte* Order and Rehearing, May 15, 2017

- c) unpaid wind-up liability.
2. The Salaried Plan is registered in Newfoundland and regulated by the NPBA.
 - a) (i) Does the PBSA deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?

(ii) If yes, is there a conflict with the NPBA and PBSA if so, how is the conflict resolved?
 - b) (i) Does the SPPA also apply to those members of the Salaried Plan who reported for work in Québec?

(ii) If yes, is there a conflict with the NPBA and SPPA and if so, how is the conflict resolved?

(iii) Do the Quebec SPPA deemed trusts also apply to Québec Salaried Plan members?
 3. Is the NPBA lien and charge in favour of the pension plan administrator in section 32(4) of the NPBA a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?
 6. The CCAA Court rejected the argument that these questions ought to be decided by Courts in Newfoundland and Labrador. These questions are identical to the ones forming the subject matter of the within Reference.
 7. One of the parties requesting that certain questions be referred to the Courts in Newfoundland and Labrador in the CCAA Proceedings was Her Majesty in Right of Newfoundland and Labrador.
 8. No appeal was taken of the January 30 Decision.
 9. Subsequent to the January 30 Decision in the CCAA Proceedings, but prior to the *ex parte* application leading to the May 5th Order, counsel for the Applicant made multiple attempts to enter into discussions with counsel for Her Majesty in Right of Newfoundland and Labrador to express concerns with the potential overlap between the intended Reference and the CCAA Proceedings, particularly in respect of those questions posed within the Reference that are not limited to abstract interpretation of section 32 PBA.
 10. The Applicant has concerns respecting the content of the Reference questions, which it desires to raise before this Honourable Court prior to the status hearing scheduled for June 9, 2017 and prior to the publication of notices (provided for at paragraph 5 of the May 5th Order, in the form of Appendix B thereto, hereinafter the “**Reference Notice**”) in relation to the Reference.

Monitor's Application for Stay of the *Ex Parte* Order and Rehearing, May 15, 2017

11. Of paramount importance at this time is paragraph 5 of the May 5th Order, which provides for publication of the Reference Notice twice before May 26, 2017. The Applicant is particularly concerned that the Reference Notice as it currently exists is likely to cause confusion amongst parties and stakeholders, and further cause the Reference process to run afoul of the current stay of proceedings against the Wabush CCAA Parties or disrupt the conduct of the hearing on the Motion for Directions before the CCAA Court.
12. The stay of proceedings in place in favour of the Wabush CCAA Parties in the CCAA Proceedings stands until June 30, 2017 and can be the subject of further extensions. The scope of the stay is broad enough to encompass the Reference proceeding, as appears from paragraph 7 of the initial order issued in the CCAA Proceedings in respect of the Wabush CCAA Parties, dated May 20, 2015 (as subsequently, amended, rectified or restated from time to time):

ORDERS that, until and including June 19, 2015, or such later date as the Court may order (the "**Stay Period**"), no proceeding or enforcement process in any Court or tribunal (each, a "Proceeding") shall be commenced or continued against or in respect of the CCAA Parties, or affecting the Business operations and activities of the CCAA Parties (the "Business") or the Property, including as provided hereinbelow except with the leave of this Court. Any and all proceedings currently under way against any or in respect of the CCAA Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

13. As to the whole of the Reference, the Applicant is concerned, even if the Reference is only consultative in nature and not binding or adjudicative of the issues between the parties (including more importantly the issues raised by the Motion for Directions pending in the CCAA Proceedings), that a duplicative and parallel process on inextricably related issues may give rise to an actual or perceived jurisdictional conflict, which may unduly undermine the legitimacy of the decisions of the CCAA Court.
14. Based on well-established precedents concerning the nature and scope of reference proceedings, the Applicant is of the view that the Reference should be limited to the matters relating exclusively to the interpretation of Section 32 of the PBA and that all other matters relating to the Wabush CCAA Parties or the CCAA Proceedings should be dealt with exclusively by the CCAA Court.
15. The Applicant is acutely aware that issues with respect to the scope of the Reference are the sorts of issues which this Honourable Court likely envisaged as being discussed at the upcoming status hearing, but submits that the timing of the public Reference Notices requires that some of these issues be addressed prior to that date.

Monitor's Application for Stay of the *Ex Parte* Order and Rehearing, May 15, 2017

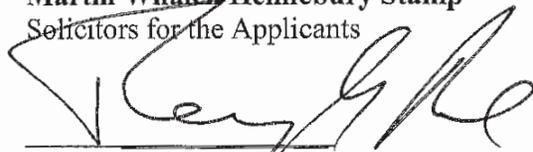
16. The balance of convenience favours delaying the sending of the Reference Notices until the scope of the Reference has been clarified. Clarification will enable the Reference hearing to be more streamlined, as the number of parties interested in an abstract question of Newfoundland law may likely be fewer than the number of parties who will wish to be heard on questions triggering jurisdictional questions across provinces, proceedings, and legislative levels.
17. If parties who might not be interested in a narrower Reference are forced to engage counsel and appear now to deal with a broader range of issues, then those parties will have expended time and resources, and engaged the resources of this Honourable Court, unnecessarily.
18. The Applicant therefore requests that the *ex parte* application giving rise to the May 5th Order be reheard as an *inter partes* matter before a panel of this Honourable Court. The Applicant also requests costs of this application as against Her Majesty in Right of Newfoundland and Labrador.

The affidavit that is necessary to support or provide the foundation for the application is attached.

The application is set to be heard on the 23rd day of May, 2017, at 10:00 a.m. or at such earlier date as may be set by this Court.

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

Martin Whalen Hennebury Stamp
Solicitors for the Applicants



Per: Terry G. Rowe, Q.C.
Whose address for service is
P.O. Box 5910
15 Church Hill
St. John's, NL A1C 5X4

Norton Rose Fulbright Canada
Solicitors for the Intervenor

Per: Sylvain Rigaud

Monitor's Application for Stay of the *Ex Parte* Order and Rehearing, May 15, 2017

Whose address for service is
1 Place Ville Marie, Suite 2500
Montreal, Quebec, H3B 1R1

TO: Supreme Court of Newfoundland and Labrador

Court of Appeal
Duckworth Street
St. John's, NL

TO: Department of Justice and Public Safety

PO Box 8700
4th Floor, East Block
Confederation Building
St. John's, NL A1B 4J6
Canada

Attention: Rolf Pritchard, Q.C.

AFFIDAVIT IN SUPPORT OF AN APPLICATION

I, Nigel Meakin, Senior Managing Director at FTI Consulting Canada Inc., of Toronto, Ontario, swear (affirm) that the following facts are true:

1. For ease of reference, the following capitalized terms used in this affidavit shall have the following meaning:
 - a) **CCAA** means *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended;
 - b) **CCAA Court** means Quebec Superior Court for the district of Montreal, sitting in commercial division;
 - c) **Wabush CCAA Parties** means collectively Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited;
 - d) **Wabush CCAA Proceedings** means the proceedings instituted before the CCAA Court pursuant to the CCAA in relation to the Wabush CCAA Parties in the court record bearing number 500-11-048114-157, which are presided and supervised by the Honourable Stephen W. Hamilton, J.C.S.;
 - e) **Wabush Initial Order** means order issued on May 20, 2015 by the CCAA Court (as subsequently amended, rectified and/or restated) pursuant to the CCAA;
 - f) **Claims Procedure Order** means order issued on November 5, 2015 CCAA Court (as amended on November 16, 2015) which approved and established a procedure for the filing of creditor's claims against, *inter alia*, the Wabush CCAA Parties and their directors and officers; and
 - g) **Monitor** means FTI Consulting Canada Inc., acting as court-appointed monitor in the Wabush CCAA Proceedings.
2. On September 20, 2016, the Monitor filed a *Motion for Directions with respect to pension claims*, as amended on April 13, 2017 (the "**Motion for Directions**") with respect to the priority of pensions claims filed by the plan administrator of certain pension plans pursuant to the Claims Procedure Order, and the applicability and scope of deemed trusts, if any, under the *Pensions Benefits Standards Act*, R.S.C. 1985, c. 32 (2nd Supp.) and the Newfoundland & Labrador *Pensions Benefits Act*, S.N.L. 1996, c. P-4.01 as well as the Québec *Supplemental Pension Plans Act*, R.L.R.Q., c. R-15.1.

Affidavit of Nigel Meakin in Support of Monitor's Application, May 15, 2017

3. On January 30, 2017, the CCAA Court issued its decision (the "**January 30th Order**") with respect to various jurisdictional issues and other preliminary objections raised with respect to the Motion for Directions by several parties, including Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions. Copy of the January 30th Order is attached as **Exhibit NM-1** to this Affidavit and is described more fully herein below.
4. On May 9, 2017, counsel to the Monitor sent a letter to Rolf Pritchard, Director Civil Division for the Office of the Attorney General of Newfoundland and Labrador (the "**May 9 Letter**"), copy of which is attached as **Exhibit NM-2** to this Affidavit, including the Motion for Directions, a list of relevant orders with respect to the Wabush CCAA Parties and the January 30th Order (Schedules A, B, and C).
5. The May 9 Letter (Exhibit NM-2), which describes the January 30th Order (Exhibit NM-1), reads in part as follows:

The May 5th Order and the three (3) questions to be submitted to the Newfoundland & Labrador Court of Appeal by way of the Reference (the **Reference Questions**), as currently drafted, appear to be inextricably related to the pending proceedings before the CCAA Court in the above-captioned matter, presided and supervised by the Honourable Justice Stephen W. Hamilton, J.S.C. more specifically as they concern the Wabush CCAA Parties (the **Wabush CCAA Proceedings**). As such, there exists in our view a significant risk that the Reference will be in part duplicative in light of the ongoing Wabush CCAA Proceedings, thereby potentially leading certain interested parties to mistakenly believe that issues relating to the Wabush CCAA Parties are open for adjudication before both the CCAA Court and the Newfoundland & Labrador Court of Appeal. We are concerned that the Reference could amount to a collateral attack of orders previously made by the CCAA Court.

[...] We have reached out on numerous occasions to you and your colleagues (Philip Osborne and Raylene Stokes) to share our views as to the importance of limiting the scope of the proposed Reference Questions to matters of statutory interpretation *in abstracto* as they relate to Section 32 of the *Pension Benefits Act, 1997*, S.N.L. 1996, c. P-4.01 (**PBA**), without overreaching and veering into the adjudication of the rights of parties already engaged in the Wabush CCAA Proceedings. We have specifically asked to be consulted with respect to the wording of the notices to be sent in connection with the Reference so as to avoid confusion amongst stakeholders and ensure that the Reference process does not run afoul of the current stay of proceedings against the Wabush CCAA Parties or disrupt the conduct of the Wabush CCAA Proceedings.

[...] The CCAA Court issued on January 30th, 2017, its decision (the **January 30th Order**) with respect to various jurisdictional issues and other preliminary objections raised with respect to the Motion for Directions by several parties, including Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions. We attach for your convenience copy of the January 30 Order as Schedule C. The position of the parties in relation to said jurisdictional issues is summarized at paragraphs 23 to 28 of the January 30th Order. In declining to refer any of the issues to the courts with jurisdiction in Newfoundland & Labrador, including specifically the questions as formulated by the representatives of the salaried employees and retirees (at paragraph 25) – which have since been adopted *verbatim* as the Reference Questions – the CCAA Court relied on well-established precedents that favour a single forum to hear all disputes relating to an insolvent debtor (at paragraphs 29 to 33) and properly exercised its discretion not to seek the assistance of another court on the basis of legal, factual and practical considerations (at paragraphs 39 to 89), including the position of the United Steel Workers representing the unionized pensioners of the Wabush CCAA Parties, which supported the jurisdiction of the CCAA Court and objected to the referral of certain issues before the courts with jurisdiction in Newfoundland & Labrador (at paragraph 80), as well as the fact that a plurality of non-unionized pensioners are residents in the Province of Quebec (at paragraph 77).

The January 30th Order was not appealed from, and all interested parties, including Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions, have since agreed to debate the merits of the Motion for Directions before the CCAA Court on June 26th and 27th, 2017.

As for the Reference Questions, we have already expressed concerns about the formulation of questions 1 and 3 and the extent to which the Newfoundland & Labrador Court of Appeal will be asked to determine the scope and dollar value of the deemed trusts, liens and charges, that may arise pursuant to Section 32 PBA, as this provision applies to the Pension Plans at stake in the Wabush CCAA Proceedings and more specifically the Motion for Directions. Further, the preamble to question 1 appears unduly argumentative and, in our view, obfuscates the interplay between Section 32 PBA and the applicable provisions of the CCAA and the terms of the orders issued to date in the Wabush CCAA Proceedings.

The foregoing was noted by Mr. Justice Hamilton in the January 30th Order (at paragraph 66), wherein he also pointed out that such a

Affidavit of Nigel Meakin in Support of Monitor's Application, May 15, 2017

question, inasmuch as the Wabush CCAA Parties are concerned, may well be moot:

Finally, as is typical in these cases, there is a close interplay between the NLPBA and the CCAA. The first question proposed by the representatives of the salaried employees and retirees is: "Assuming there is no issue of paramountcy, what is the scope of section 32 in the NLPBA deemed trusts". The scope of the NLPBA is not relevant if the NLPBA does not apply because of a conflict with the CCAA and federal paramountcy. In that sense, there may not even be a need to deal with the interpretation of the NLPBA.

As previously reported, we also seriously question the appropriateness of seeking the opinion of the courts of another forum than Québec with respect to question 2(b).

[...] We are of the view that the Reference Questions should be limited to the matters relating exclusively to the interpretation of Section 32 PBA and that all other matters relating to the Wabush CCAA Parties or the Wabush CCAA Proceedings should be dealt with exclusively by the CCAA Court.

6. Copy of the reply to the May 9 Letter, by way of email message dated May 11, 2017 and follow-up email from the Monitor's counsel dated May 12, 2017 is attached as **Exhibit NM-3** to this Affidavit.

I make this affidavit in support of the application of FTI Consulting Canada Inc.

Sworn before me in Toronto in the province
of Ontario

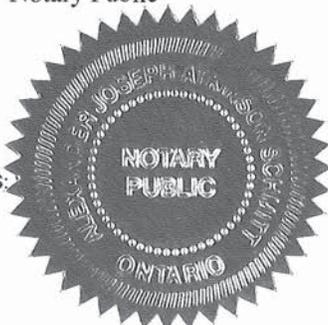
this 15th day of May, 2017



Nigel Meakin


ALEXANDER SCHMITT LSUC # 63860F
Notary Public

CAN_DMS:



Affidavit of Nigel Meakin in Support of Monitor's Application, May 15, 2017

This is **Exhibit "NM-2"** referred to in the
Affidavit of **Nigel Meakin**
sworn before me, this **15th day**
of **May, 2017**


A Commissioner for taking Affidavits

Affidavit of Nigel Meakin in Support of Monitor's Application, May 15, 2017

Rolf Pritchard, Q.C.
May 9, 2017

NORTON ROSE FULBRIGHT

statutory interpretation *in abstracto* as they relate to Section 32 of the *Pension Benefits Act*, 1997, S.N.L. 1996, c. P-4.01 (**PBA**), without overreaching and veering into the adjudication of the rights of parties already engaged in the Wabush CCAA Proceedings. We have specifically asked to be consulted with respect to the wording of the notices to be sent in connection with the Reference so as to avoid confusion amongst stakeholders and ensure that the Reference process does not run afoul of the current stay of proceedings against the Wabush CCAA Parties or disrupt the conduct of the Wabush CCAA Proceedings.

In this respect, we directed you to paragraph 7 of the Wabush Initial Order, which reads as follows:

ORDERS that, until and including June 19, 2015*, or such later date as the Court may order the (the "**Stay Period**"), no proceeding or enforcement process in any Court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the CCAA Parties, or affecting the Business operations and activities of the CCAA Parties (the "**Business**") or the Property, including as provided hereinbelow except with the leave of this Court. Any and all proceedings currently under way against any or in respect of the CCAA Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

*The current Stay Period has been extended and is set to expire on June 30, 2017, subject to further order of the CCAA Court.

The ability of the Monitor to seek directions and the CCAA Court's jurisdiction to hear the Motion for Directions are based on paragraph 68 of the Claims Procedure Order, paragraph 65 of the Wabush Initial Order as well as Sections 9(1) and 11 CCAA, which read as follows:

9.(1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

(...)

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

The CCAA Court issued on January 30th, 2017, its decision (the **January 30th Order**) with respect to various jurisdictional issues and other preliminary objections raised with respect to the Motion for Directions by several parties, including Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions. We attach for your convenience copy of the January 30 Order as Schedule C. The position of the parties in relation to said jurisdictional issues is summarized at paragraphs 23 to 28 of the January 30th Order. In declining to refer any of the issues to the courts with jurisdiction in Newfoundland & Labrador, including specifically the questions as formulated by the representatives of the salaried employees and retirees (at paragraph 25) – which have since been adopted *verbatim* as the Reference Questions – the CCAA Court relied on well-established precedents that favour a single forum to hear all disputes relating to an insolvent debtor (at paragraphs 29 to 33) and properly exercised its discretion not to seek the assistance of another court on the basis of legal, factual and practical considerations (at paragraphs 39 to 89), including the position of the United Steel Workers representing the unionized pensioners of the Wabush CCAA Parties, which supported the jurisdiction of the CCAA Court and objected to the referral of certain issues before the courts with jurisdiction in Newfoundland & Labrador (at paragraph 80), as well as the fact that a plurality of non-unionized pensioners are residents in the Province of Quebec (at paragraph 77).

Affidavit of Nigel Meakin in Support of Monitor's Application, May 15, 2017

Rolf Pritchard, Q.C.
May 9, 2017

 NORTON ROSE FULBRIGHT

The January 30th Order was not appealed from, and all interested parties, including Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions, have since agreed to debate the merits of the Motion for Directions before the CCAA Court on June 26th and 27th, 2017.

As for the Reference Questions, we have already expressed concerns about the formulation of questions 1 and 3 and the extent to which the Newfoundland & Labrador Court of Appeal will be asked to determine the scope and dollar value of the deemed trusts, liens and charges, that may arise pursuant to Section 32 PBA, as this provision applies to the Pension Plans at stake in the Wabush CCAA Proceedings and more specifically the Motion for Directions. Further, the preamble to question 1 appears unduly argumentative and, in our view, obfuscates the interplay between Section 32 PBA and the applicable provisions of the CCAA and the terms of the orders issued to date in the Wabush CCAA Proceedings.

The foregoing was noted by Mr. Justice Hamilton in the January 30th Order (at paragraph 66), wherein he also pointed out that such a question, inasmuch as the Wabush CCAA Parties are concerned, may well be moot:

Finally, as is typical in these cases, there is a close interplay between the NLPBA and the CCAA. The first question proposed by the representatives of the salaried employees and retirees is: "Assuming there is no issue of paramountcy, what is the scope of section 32 in the NLPBA deemed trusts". The scope of the NLPBA is not relevant if the NLPBA does not apply because of a conflict with the CCAA and federal paramountcy. In that sense, there may not even be a need to deal with the interpretation of the NLPBA.

As previously reported, we also seriously question the appropriateness of seeking the opinion of the courts of another forum than Québec with respect to question 2(b).

Before the issuance of the May 5th Order, we had specifically asked that you consider the possibility of coordinating the Reference with the ongoing Wabush CCAA Proceedings, and had asked to discuss the formulation of the Reference Questions and the wording of the notices, the whole in order to avoid any actual or perceived duplication, inconsistency or contradiction in the parallel processes, to no avail to date. We note that a status hearing is set to take place on June 9, 2017 before the Newfoundland & Labrador Court of Appeal, but are of the view that it will be too late at that point to properly address some of the concerns outlined above.

It is our view that the Monitor and its undersigned attorneys should have been consulted in connection with the May 5th Order and that same should not have been granted on an *ex parte* basis. We formally reiterate the invitation to discuss the foregoing with you at your earliest convenience, while we continue to contemplate the possibility to raise these issues directly before the CCAA Court and/or the Newfoundland & Labrador Court of Appeal.

We are of the view that the Reference Questions should be limited to the matters relating exclusively to the interpretation of Section 32 PBA and that all other matters relating to the Wabush CCAA Parties or the Wabush CCAA Proceedings should be dealt with exclusively by the CCAA Court.

We would greatly appreciate a reply with respect to the foregoing by the end of the week.

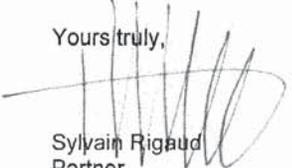
Affidavit of Nigel Meakin in Support of Monitor's Application, May 15, 2017

Rolf Pritchard, Q.C.
May 9, 2017

NORTON ROSE FULBRIGHT

Copy of this letter and of the May 5th Order will be circulated to the parties on the Service List in the Wabush CCAA Proceedings.

Yours truly,



Sylvain Rigaud
Partner

SAR/ch/jrl

Enclosures:

- Schedule A – Motion for Directions with Respect to Pension Claims;
- Schedule B – List of Relevant Orders with respect to the Wabuth CCAA Parties; and
- Schedule C – January 30th Order.

**SCHEDULE A : MONITOR'S MOTION
FOR DIRECTIONS**

**SCHEDULE B: LIST OF RELEVANT ORDERS
WITH RESPECT TO THE WABUSH CCAA
PARTIES**

**SCHEDULE B : LIST OF RELEVANT ORDERS WITH
RESPECT TO THE WABUSH CCAA PARTIES**

1. May 20, 2015, order (as subsequently amended, rectified and/or restated) granted by the Honourable Justice Stephen W. Hamilton, J.S.C., in respect of the Petitioners Wabush Iron Co. Limited and Wabush Resources Inc. as well as Mises-en-cause Wabush Mines, an unincorporated contractual joint venture, Arnaud Railway Company, and Wabush Lake Railway Company Limited (the **Wabush Initial Order**);
2. November 5, 2015, order (as amended on November 16, 2015) granted by the Honourable Justice Stephen W. Hamilton, J.S.C. (the **Claims Procedure Order**);
3. June 9, 2015 order granted by the Honourable Justice Stephen W. Hamilton, J.S.C. (the **Wabush Comeback Order**);
4. June 26, 2015 order granted by the Honourable Justice Stephen W. Hamilton, J.S.C. (the **Pension Priority and Suspension Order**);
5. August 18, 2015 order denying leave to appeal from the Pension Priority and Suspension Order issued by the Honourable Nicholas Kasirer, J.C.A. of the Quebec Court of Appeal;
6. February 1, 2016 order granted by the Honourable Justice Stephen W. Hamilton, J.S.C. approving an asset purchase agreement dated as of December 23, 2015, as amended with respect to Port Transaction (the **Port Transaction Approval and Vesting Order**);
7. February 1, 2016 order granted by the Honourable Justice Stephen W. Hamilton, J.S.C. approving an asset purchase agreement dated as of January 26, 2016 with respect to the Block Z Transaction (the **Block Z Approval and Vesting Order**);
8. January 30, 2017 Order rendered by the Honourable Justice Stephen W. Hamilton, J.S.C. with respect to preliminary jurisdictional issue (**January 30 Order**).

SCHEDULE C : JANUARY 30 ORDER

Affidavit of Nigel Meakin in Support of Monitor's Application, May 15, 2017

This is **Exhibit "NM-3"** referred to in the
Affidavit of **Nigel Meakin**
sworn before me, this **15th day**
of **May, 2017**


A Commissioner for taking Affidavits

Affidavit of Nigel Meakin in Support of Monitor's Application, May 15, 2017

Meakin, Nigel

From: Rigaud, Sylvain <sylvain.rigaud@nortonrosefulbright.com>
Sent: Monday, May 15, 2017 11:29 AM
To: Meakin, Nigel
Subject: In the matter of the Plan of Compromise or Arrangement of: Cliffs Québec Iron Mining ULC (500-11-048114-157)

NM-3.

Sylvain Rigaud
 Partner

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP
 1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada
 T: +1 514.847.4702 | F: +1 514.286.5474
sylvain.rigaud@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

De : Rigaud, Sylvain
Envoyé : 12 mai 2017 11:38
À : 'Pritchard, Rolf'
Cc : Osborne, Philip; Bernard Boucher (bernard.boucher@blakes.com); STEVEN.WEISZ@blakes.com; Terry Rowe; Kenneth Jerrett (kjerrett@mwhslaw.com); Fortin, AndréAnne
Objet : In the matter of the Plan of Compromise or Arrangement of: Cliffs Québec Iron Mining ULC (500-11-048114-157)

Dear confrère:

We already expressed our concerns about the scope of the reference questions and of the notices prior and since the May 5 Order.

In our May 9 letter, we explained why these issues needed to be addressed prior to the June 9 status hearing. Given the terms of the May 5 Order, we expect that your client will not proceed with the publication of notices over the week-end, as we intend to file early next a notice of appearance, and a notice of intervention to be heard on an expedited basis before the Newfoundland & Labrador Court of Appeal before May 26, 2017.

Best regards,

Sylvain Rigaud
 Partner

Norton Rose Fulbright Canada S.E.N.C.R.L., s.r.l. / LLP
 1, Place Ville Marie, Bureau 2500, Montréal, QC, H3B 1R1, Canada
 T: +1 514.847.4702 | F: +1 514.286.5474
sylvain.rigaud@nortonrosefulbright.com

NORTON ROSE FULBRIGHT

De : Pritchard, Rolf [<mailto:rolfpritchard@gov.nl.ca>]
Envoyé : 11 mai 2017 21:38
À : Rigaud, Sylvain
Cc : Osborne, Philip; Bernard Boucher (bernard.boucher@blakes.com); STEVEN.WEISZ@blakes.com; Terry Rowe

Affidavit of Nigel Meakin in Support of Monitor's Application, May 15, 2017

Objet : RE: In the matter of the Plan of Compromise or Arrangement of: Cliffs Québec Iron Mining ULC (500-11-048114-157)

Dear Mr. Rigaud,

Thank you for your correspondence of May 9, 2017 setting out your concerns and positions with respect to the Order we provided to you on May 8, 2017.

As you are aware the Reference Questions were formulated and referred to the Court of Appeal by the Lieutenant Governor in Council by Orders in Council 2017-103 and 2017-137. While we remain open to having further discussions with you, we note that the Reference Questions have already been formally inscribed by the Court of Appeal.

As we have indicated to you in our earlier teleconferences, we previously raised your concerns regarding your interpretation of the Stay Order and the formulation of Reference Questions with the Chief Justice of the Court of Appeal. With the greatest respect, we do not share your opinion; however, as we have previously noted, you may raise any issues you have, including your objection to the Order being granted *ex parte*, at the June 9, 2017 status hearing.

You have indicated that there are orders before the CCAA Court, which in your view could have an impact on or be relevant to the Reference Questions. As noted in the Order, you are at liberty to adduce evidence on the Reference by the filing of materials, subject to further direction and order of the Court of Appeal.

Kindest Regards,

Rolf Pritchard QC/Philip Osborne

Rolf Pritchard, Q.C.
Director – Civil Division
Office of the Attorney General
Department of Justice & Public Safety
Government of Newfoundland and Labrador

t (709) 729-2597, f (709) 729-2129

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From: Rigaud, Sylvain [<mailto:sylvain.rigaud@nortonrosefulbright.com>]

Sent: Tuesday, May 09, 2017 7:09 PM

To: Pritchard, Rolf

Cc: Osborne, Philip; Bernard Boucher (bernard.boucher@blakes.com); STEVEN.WEISZ@blakes.com; Terry Rowe

Subject: In the matter of the Plan of Compromise or Arrangement of: Cliffs Québec Iron Mining ULC (500-11-048114-157)

Importance: High

Dear Confrère,

See attached letter.

Affidavit of Nigel Meakin in Support of Monitor's Application, May 15, 2017

Best regards,

Sylvain Rigaud
Partner

Le droit à l'échelle mondiale
Law around the world
nortonrosefulbright.com

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Ex Parte Order by Justice Green, C.J.N.L., May 5, 2017

Original

File No. 2017 01H 0029

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

IN THE MATTER OF Section 13 of Part
I of the *Judicature Act*, RSNL 1990, c. J-4

AND

IN THE MATTER OF Section 32 of the
Pension Benefits Act, 1997, SNL 1996, c.
P-4.01

AND

IN THE MATTER OF a Reference of
The Lieutenant-Governor in Council to the
Court of Appeal for its hearing,
consideration and opinion on the
interpretation of the scope of s. 32 of the
Pension Benefits Act, 1997

ORDER

BEFORE: Green C.J.N.L.

WHEREAS the Attorney General of Newfoundland and Labrador has applied for an order that
the Reference be inscribed for hearing and for an order for directions;

AND UPON HEARING Rolf Pritchard Q.C. and Philip Osborne on behalf of the Attorney
General;

IT IS ORDERED AND DIRECTED THAT:

1. The Reference be inscribed for hearing;
2. The Attorney General shall give notice of the inscription of the Reference and of this
Order, in the attached form marked "A", to:

Filed	May 5/17	JB
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JB

Ex Parte Order by Justice Green, C.J.N.L., May 5, 2017

- (a) **The Attorney General of Canada;**
- (b) **The attorneys-general of each other province and territory of Canada;**
- (c) **FTI Consulting Canada Inc. (the “Monitor” in the Québec Proceeding);**
- (d) **Those persons named as petitioners in a proceeding in the Québec Superior Court (Commercial Division) identified as File No. 500-11-048114-157 (the “Québec Proceeding”), namely:**
 - (i) **Bloom Lake General Partner Limited;**
 - (ii) **Quinto Mining Corporation;**
 - (iii) **8568391 Canada Limited;**
 - (iv) **Cliffs Quebec Iron Mining ULC;**
 - (v) **Wabush Iron Co. Limited; and**
 - (vi) **Wabush Resources Inc.;****(collectively, the “Petitioners”);**
- (e) **Those persons representing non-unionized pensioners in the Québec Proceeding, namely, Michael Keeper, Terence Watt, Damien LeBel and Neil Johnson (the “Non-unionized Pensioners”);**
- (f) **The bodies representing unionized pensioners in the Québec Proceeding, namely, Syndicat des Métallos, Sections Locales 6254 et 6285 (the “Unionized Pensioners”);**
- (g) **Morneau Shepell Ltd., in its capacity as Replacement Plan Administrator, as named in the Québec Proceeding (the “Replacement Plan Administrator”);**
- (h) **Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions (the “NL Superintendent”);**

- (i) The Attorney General of Canada, acting on behalf of the Office of the Superintendent of Financial Institutions, as named in the Québec Proceeding (the “Canadian Superintendent”);
 - (j) Régime de rentes du Québec, as named in the Québec Proceeding (the “Québec Regulator”); and
 - (k) Ville de Sept-Îles (the “Town”).
3. The persons notified in paragraph 2 of this Order shall on or before May 31, 2017 file a Notice of Intention to Intervene with the Registry of the Court if they wish to intervene and be heard, either orally or in writing, in the Reference. Thereafter, such persons who file a Notice shall, unless otherwise ordered by the Court, have the right to be heard in the Reference.
4. Any other persons claiming to be interested parties to the Reference and wishing to intervene and be heard, either orally or in writing, shall on or before May 31, 2017 apply to the Court for leave to intervene, with the application returnable on June 9, 2017.
5. The Attorney General shall cause a notice, in the attached form marked “B”, to be published on at least two occasions before May 26, 2017 in each of the newspapers listed in the attached schedule marked “C” and provide proof of publication by filing an affidavit in the Court.
6. Every other party on the service list in the Québec Proceeding, attached as schedule “D”, who was not previously listed in paragraph 2 of this Order (collectively, the “Other Parties”), shall be given the notice published in the newspapers under paragraph 5 and they may apply for leave to intervene in the Reference under paragraph 4.

7. The Attorney General of Newfoundland and Labrador, the Attorney General of Canada the other Attorneys General and any person who has given Notice of Intention to Intervene under paragraph 3 or has applied to intervene and been granted intervenor status under paragraph 4 may be at liberty to adduce evidence on the Reference by the filing of materials, subject to further direction and order of the Court.
8. The timetable for the perfection of the Reference and the disposition of other preliminary matters shall, subject to further direction, amplification or modification by the Court, be as set forth in the attached schedule marked "E".
9. A status hearing shall be held on June 9, 2017 at 10:00 A.M. to address, amongst other things:
 - (a) Applications to intervene under paragraph 4 of this order;
 - (b) Whether any group of intervenors may be able to be treated as a class for the purpose of appointing a representative under section 19 of the *Judicature Act*;
 - (c) The nature of any evidence to be filed on the Reference and the manner and timing of its presentation;
 - (d) Any adjustments to the timetable for perfection of the Reference;
 - (e) The setting of dates and times for dealing with any other preliminary applications; and
 - (f) The giving of any further directions or making of such further orders as may be necessary or desirable to advance the hearing of the Reference.
10. The Attorney General of Newfoundland and Labrador, the Attorney General of Canada and any other person who has given Notice of Intention to Intervene under paragraph 3 or who has applied to intervene and been granted intervenor status under paragraph 4 have

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leave to apply for further directions and orders as may be appropriate and as their interests may appear.

DATED at St. John's, NL this 5th day of May 2017.



A handwritten signature in cursive script, appearing to read "V. Bishop", is written above a horizontal line.

**COURT
OFFICER**

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Schedule A

Handwritten signature or initials in black ink, appearing to be 'JAG' or similar, written over the printed text 'Schedule A'.

NOTICE

Be advised that

- 1 The Lieutenant-Governor in Council for the Province of Newfoundland and Labrador has referred several questions (the Reference) to the Supreme Court of Newfoundland and Labrador, Court of Appeal (the NLCA) by Orders in Council 2017-103 and 2017-137. These Orders in Council are attached as Appendix 1.**
- 2 Chief Justice Green ordered on April 27, 2017 that you be notified of the Reference and given an opportunity to apply to intervene. The order is attached as Appendix 2.**
- 3 If you wish to intervene in the Reference and be heard, orally or in writing, you must file a Notice of Intention to Intervene in the NLCA Registry by **May 31, 2017**.**
- 4 If you file a Notice of Intention to Intervene, you have the right to appear at and participate at a status hearing scheduled to be held on **June 9, 2017**.**
- 5 The contact information for the NLCA is**

**Supreme Court of Newfoundland and Labrador
Court of Appeal
287 Duckworth Street, P.O. Box 937
St. John's, NL A1C 5M3
COAregistry@supreme.court.nl.ca (709) 729-0066**

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Schedule B

A handwritten signature in black ink, appearing to be 'JAG', is written over the end of the word 'Schedule B'.

NOTICE

Be advised that by Orders in Council 2017-103 and 2017-137 the Lieutenant-Governor in Council for the Province of Newfoundland and Labrador has, pursuant to the *Judicature Act*, RSNL 1990, c. J-4 (the "Act"), referred to the Supreme Court of Newfoundland and Labrador, Court of Appeal (the "NLCA") the following questions:

1. The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies' Creditors Arrangement Act*, RSC 1985 c. C-36. What is the scope of section 32 of the *Pension Benefits Act, 1997*, SNL 1996 cP-4.01 deemed trusts in respect of:
 - a) unpaid current service costs;
 - b) unpaid special payments; and
 - c) unpaid wind-up deficits?

2. The Salaried Plan is registered in Newfoundland and Labrador and regulated by the *Pension Benefits Act, 1997*.
 - a)
 - (i) Does the federal *Pension Benefits Standards Act*, RSC 1985, c-32 deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?
 - (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*? If so, how is the conflict resolved?
 - b)
 - (i) Does the Quebec *Supplemental Pension Plans Act*, CQLR, c. R-15.1 also apply to those members of the Salaried Plan who reported for work in Quebec?
 - (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplement Pension Plans Act*. If so, how is the conflict resolved?
 - (iii) Do the Quebec *Supplemental Pension Plans Act* deemed trusts also apply to Quebec Salaried Plan members?

3. Is the *Pension Benefits Act, 1997* lien and charge in favour of the pension plan administrator in section 32(4) of the *Pension Benefits Act, 1997* a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass? (The reference as a whole being hereinafter referred to as the "Reference")

Pursuant to the Order of Chief Justice Green dated April 27, 2017, the Reference has been inscribed and the following procedure, unless amended by further Order or direction of the NLCA, shall govern the Reference:

1. All persons claiming to be interested parties to the Reference and wishing to intervene and be heard, either orally or in writing, shall on or before May 31, 2017

- apply to the NLCA for leave to intervene, with the application returnable on June 9, 2017.
2. A status hearing shall be held at the NLCA on June 9, 2017 at 10:00 A.M. to address, amongst other things:
 - a) applications to intervene referenced at item 1 above;
 - b) whether any group of intervenors may be able to be treated as a class for the purpose of appointing a representative under section 19 of the Act;
 - c) the nature of any evidence to be filed on the Reference and the manner and timing of its presentation;
 - d) any adjustments to the timetable for perfection of the Reference;
 - e) the setting of dates and times for dealing with any other preliminary applications; and
 - f) the giving of any further directions or making of such further orders as may be necessary or desirable to advance the hearing of the Reference.

 3. The schedule for filing documents and the hearing of the Reference is, subject to future modifications, as follows:
 - a) the Attorney General of Newfoundland and Labrador ("AGNL") to file his factum no later than July 26, 2017;
 - b) the Attorney General of Canada, any other Attorney Generals and any intervenors to file their factums no later than August 23, 2017;
 - c) the AGNL to file his reply factum, if necessary, no later than September 8, 2017; and
 - d) the Reference to be heard on September 20 and 22, 2017.

The contact information for the NLCA is:

Supreme Court of Newfoundland and Labrador
Court of Appeal
287 Duckworth Street, P.O. Box 937
St. John's, NL A1C 5M3
COAregistry@supreme.court.nl.ca (709) 729-0066

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Schedule C 

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The Attorney General shall cause a notice to be published on at least two occasions before May 26, 2017 in each of the newspapers listed below:

1. *The Globe and Mail*
2. *The Telegram* (St. John's)
3. *The Western Star* (Corner Brook)
4. *The Aurora* (Labrador West)
5. *Le Nord Côtier* (Sept-Îles)
6. *Le Trait d'union du Nord* (Fermont)

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Schedule D 

CANADA

**PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

**SUPERIOR COURT
(Commercial Division)**

(Sitting as a court designated pursuant to the Companies' Creditors Arrangement Act, R.S.C., c. 36, as amended)

N°: 500-11-048114-157

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

**BLOOM LAKE GENERAL PARTNER LIMITED,
QUINTO MINING CORPORATION,
8568391 CANADA LIMITED,
CLIFFS QUEBEC IRON MINING ULC,
WABUSH IRON CO. LIMITED
AND
WABUSH RESOURCES INC.**

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE LIMITED
PARTNERSHIP,
BLOOM LAKE RAILWAY COMPANY LIMITED,
WABUSH MINES,
ARNAUD RAILWAY COMPANY
AND
WABUSH LAKE RAILWAY COMPANY, LIMITED**

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

**SERVICE LIST
(UPDATED AS OF APRIL 18, 2017)**

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<p><i>Counsel for the Petitioners</i> <i>Blake, Cassels & Graydon LLP</i> 1 Place Ville Marie, Suite 3000 Montréal, Québec H3B 4N8</p> <p>Attention: Bernard Boucher (Montréal) Sébastien Guy (Montréal) Steven Weisz (Toronto) Milly Chow (Toronto) Aryo Shalviri (Toronto)</p> <p>Email: bernard.boucher@blakes.com sebastien.guy@blakes.com steven.weisz@blakes.com milly.chow@blakes.com aryo.shalviri@blakes.com</p>	<p><i>The Monitor</i> <i>FTI Consulting Canada Inc.</i> TD Waterhouse Tower 79 Wellington Street West Suite 2010, P.O. Box 104 Toronto, ON M5K 1G8</p> <p>Attention : Nigel Meakin Email : nigel.meakin@fticonsulting.com</p> <p>Attention: Steven W. Bissell Email: steven.bissell@fticonsulting.com</p> <p>Attention: Michael Basso Email: michael.basso@fticonsulting.com</p> <p>Attention: Ellen Dong Email: ellen.dong@fticonsulting.com</p>
<p><i>Counsel for the Monitor</i> <i>Norton RoseFulbright LLP</i> Suite 2500, 1 Place Ville Marie Montréal, QC H3B 1R1</p> <p>Attention : Sylvain Rigaud (Montréal) Chrystal Ashby (Montréal) Andre Anne Fortin (Montréal) Tony Reyes (Montréal) Evan Cobb (Toronto)</p> <p>Email : sylvain.rigaud@nortonrosefulbright.com chrystal.ashby@nortonrosefulbright.com evan.cobb@nortonrosefulbright.com AndreAnne.Fortin@nortonrosefulbright.com Tony.Reyes@nortonrosefulbright.com</p>	<p><i>Independent Counsel for the Board of Directors of the Petitioners</i> <i>Lax O'Sullivan Scott Lisus LLP</i> 145 King Street West, Suite 2750 Toronto, ON M5H 1J8</p> <p>Attention: Andrew Winton Email: awinton@counsel-toronto.com</p> <p>Attention: Matthew Gottlieb Email: mgottlieb@counsel-toronto.com</p>

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<p><i>Counsel for Cliffs Mining Company</i> <i>Thomton Grout Finnigan LLP,</i> Suite 3200, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, ON M5K 1K7</p> <p>Attention: Grant B. Moffat Email: gmoftat@tgf.ca</p> <p><i>Dentons</i> 1 Place Ville Marie 39th Floor, Montréal Québec H3B 4M7</p> <p>Attention: Roger Simard Louis Dumont</p> <p>Email: roger.simard@dentons.com louis.dumont@dentons.com</p> <p><i>Hicks Morley</i> 77 King Street West, 39th Floor Box 371, TD Centre Toronto, ON M5K 1K8</p> <p>Attention: Elizabeth M Brown John Prezioso</p> <p>Email: elizabeth-brown@hicksmorley.com john-prezioso@hicksmorley.com</p>	
<p><i>3858031 Canada Inc.</i> <i>(ASSI)</i></p> <p><i>Besnier Dion Rondeau S.E.N.C. Avocats</i> 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6</p> <p>Attention : Hubert Besnier Email : hbesnier.bdr@cqocable.ca</p>	<p><i>3887952 Canada Inc.</i> <i>(Équipements Nordiques)</i></p> <p><i>Besnier Dion Rondeau S.E.N.C. Avocats</i> 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6</p> <p>Attention : Luc Dion Email : besnier.avocats@cqocable.ca</p>
<p><i>8901341 Canada Inc.</i> <i>Canadian Development and Marketing Corporation</i></p> <p><i>Osler, Hoskin & Harcourt LLP</i> 1000 De La Gauchetière Street West, Suite 2100, Montréal QC H3B 4W5</p> <p>Attention: Julien Morissette Email: jmorissette@osler.com</p>	<p><i>Administration Portuaire de Sept-îles</i></p> <p><i>Fasken Martineau</i> PO Box 242, The Stock Exchange Tower 800 Victoria Place, Suite 3700 Montréal, QC H4Z 1E9</p> <p>Attention: Luc Morin Guillaume-Pierre Michaud</p> <p>Email: lmorin@fasken.com gmichaud@fasken.com</p>

<p>AIA Automation Inc. Besnier Dion Rondeau S.E.N.C. Avocats 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6 Attention : Luc Dion Email : besnier.avocats@cqocable.ca</p>	<p>Air Inuit Ltd. Langlois, avocats sencri 1250, boul. René-Lévesque Ouest Montréal Qc H3B 4W8 Attention: Gerry Apostolatos Daniel Baum Email: gerry.apostolatos@langlois.ca daniel.baum@langlois.ca</p>
<p>Attorney General of Canada Department of Justice – Canada Surintendant des Institutions Financières Guy-Favreau Complex 200 René-Lévesque Blvd. West, 9th Floor Montréal, Québec H2Z 1X4 Attention: Pierre Lecavalier Email: pierre.lecavalier@justice.qc.ca</p>	<p>Axor Experts-Consell Inc. Besnier Dion Rondeau S.E.N.C. Avocats 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6 Attention : Luc Dion Email : besnier.avocats@cqocable.ca</p>
<p>Bank of America Osler, Hoskin & Harcourt LLP 1000 De La Gauchetière Street West, Suite 2100 Montréal QC H3B 4W5 Attention: Martin Desrosiers Email: mdesrosiers@osler.com</p>	<p>BBA Inc. Lavery, De Billy S.E.N.C.R.L. 1, Place Ville-Marie, bureau 4000 Montréal, Québec H3B 4M4 Attention : Jean-Yves Simard Despina Mandilaras Email : jysimard@lavery.ca dmandilaras@lavery.ca</p>
<p>Béton Provincial Ltée 8090, rue Boyer Casier postal 87041 Québec, Québec G1G 5E1 Attention: Annie Guérette Email: a.guerette@betonprovincial.com</p>	<p>Beumer Corporation Fasken Martineau PO Box 242, The Stock Exchange Tower 800 Victoria Place, Suite 3700 Montréal, QC H4Z 1E9 Attention: Annie Bernard Brandon Farber Email: abernard@fasken.com bfarber@fasken.com</p>

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<p>Bremo Inc (a.k.a. Rematech Division Bremo) Bouchard Pagé Tremblay Avocats 825, boul. Lebourgneuf, bureau 510 Québec, Québec G2J 0B9</p> <p>Attention : Katherine Boulianne Email : katherineboulianne@bptavocats.com</p>	<p>Canadian Iron Ore Railcar Leasing LP McMillan LLP Brookfield Place, Suite 4400 181 Bay Street, Toronto, Ontario M5J 2T3</p> <p>Attention : Wael Rostom Michael J. Hanlon and Emile Catimel-Marchand</p> <p>Email: wael.rostom@mcmillan.ca; michael.hanlon@mcmillan.ca Emile.Catimel-Marchand@mcmillan.ca</p>
<p>Canadian Transportation Agency 15 Eddy Street Gatineau, Quebec J8X 4B3</p> <p>Attention : Allan Matte Email: Allan.Matte@otc-cta.gc.ca</p>	<p>Caterpillar Financial Services Limited Miller Thomson SENCRL / LLP 1000, rue De La Gauchetière Ouest, Suite 3700 Montréal (Québec) H3B 4W5</p> <p>Attention : Michel La Roche Email : milaroche@millertomson.com</p>
<p>CIT Financial Ltd. Miller Thomson SENCRL / LLP 1000, rue De La Gauchetière Ouest, Suite 3700 Montréal (Québec) H3B 4W5</p> <p>Attention : Jean-François Gauvin Email : jfgauvin@millertomson.com</p>	<p>City of Fermont Cain Lamarre Casgrain Wells S.E.N.C.R.L. 255, rue Racine Est, bureau 600, case postale 5420 Chicoutimi (Québec) G7H 6J6</p> <p>Attention : François Bouchard Jean-François Delisle</p> <p>Email : francois.bouchard@clcw.qc.ca; jean.francois.delisle@clcw.ca</p>
<p>Concassés de la Rive-Sud Inc. and Hatch Ltée McCarthy Tétraut S.E.N.C.R.L., s.r.l. Bureau 2500 1000, rue De La Gauchetière Ouest Montréal QC H3B 0A2</p> <p>Attention : Gabriel Query Miguel Bourbonnais</p> <p>Email : gquery@mccarthy.ca mbourbonnais@mccarthy.ca</p>	<p>Construction Fortin & Lévesque Inc. BCF s.e.n.c.r.l. / LLP 1100, boulevard René-Lévesque Ouest, 25e étage, Montréal (Québec) H3B 5C9 CANADA</p> <p>Attention : Bertrand Giroux Email : bertrand.giroux@bcf.ca</p>

<p>Construction L.F.G. Inc.</p> <p><i>Avocats BSL Inc.</i> 160 rue de l'Évêché West, Suite 202 Rimouski, QC G5L 4H9</p> <p>Attention: Chantal Gagnon Guillaume Amiot</p> <p>Email: cgagnon@avocatsbsl.com gamiot@avocatsbsl.com</p>	<p>CSL Group Inc.</p> <p><i>Davies Ward Phillips & Vineberg LLP</i> 155 Wellington Street West Toronto, ON M5V 3J7</p> <p>Attention: Robin Schwill Email: rschwill@dwpv.com</p> <p>With a copy to: Julie Lambert, Assistant General Counsel</p> <p>Email: julie.lambert@csiships.com</p>
<p>Dexter Québec Inc.</p> <p><i>Fasken Martineau</i> PO Box 242, The Stock Exchange Tower 800 Victoria Place, Suite 3700 Montréal, QC H4Z 1E9</p> <p>Attention : Brandon Farber Email : bfarber@fasken.com</p>	<p>DVB Bank S.E.</p> <p><i>Bennett Jones LLP</i> Ben 4500 Bankers Hall East, 855 2nd Street S.W. Calgary, Alberta T2P 4K7</p> <p>Att: Patrick J. Brennan Email: brennanp@bennettjones.com</p>
<p>Dynamitage Castonguay Ltée</p> <p><i>Hackett Campbell Bouchard s.e.n.c.</i> 80 rue Peel, Sherbrooke QC J1H 4K1</p> <p>Attention: Me Julien Collin-Piché Email: julien.collin@hcblegal.com</p>	<p>Eabametoong First Nation; Ginoogaming First Nation; Constance lake First Nation; Long Lake #58 First Nation; Aroland First Nation; and Marten Falls First Nation</p> <p><i>Miller Thomson SENCRL / LLP</i> 1000, rue De La Gauchetière Ouest, bureau 3700, Montréal (Québec) H3B 4W5</p> <p>Att : Stéphane Hébert; Email : shebert@millerthomson.com</p>
<p>Gérald Leblond Ltée</p> <p><i>Avocats BSL Inc.</i> 160 rue de l'Évêché West, Suite 202 Rimouski, QC G5L 4H9</p> <p>Attention: Chantal Gagnon Guillaume Amiot</p> <p>Email: cgagnon@avocatsbsl.com gamiot@avocatsbsl.com</p>	<p>Golder Associates Ltd.</p> <p><i>BCF s.e.n.c.r.l. / LLP</i> 1100, boulevard René-Lévesque Ouest, 25e étage, Montréal (Québec) , H3B 5C9</p> <p>Attention : Bertrand Giroux Email : bertrand.giroux@bcf.ca</p>

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<p>Government of Newfoundland and Labrador Department of Justice and Public Safety</p> <p>Attention: Todd Stanley, Assistant Deputy Minister – Courts and Legal Services</p> <p>Email: toddstanley@gov.nl.ca</p>	<p>Groupe Unnu-EBC s.e.n.c. and EBC Inc.</p> <p>Borden Ladner Gervais 1000 De La Gauchetière Street West, Suite 900 Montréal, QC H3B 5H4</p> <p>Attention: Gabriel Lefebvre Francois Gagnon Marc Duchesne Ouassim Tadlaoui</p> <p>Email: GLefebvre@blg.com fgagnon@blg.com mduchesne@blg.com otadlaoui@blg.com</p>
<p>Iron Ore Company of Canada</p> <p>Langlois, avocats sncrl 1250, boul. René-Lévesque Ouest Montréal Qc H3B 4W8</p> <p>Attention: Gerry Apostolatos; Dimitri Maniatis; Daniel Baum</p> <p>Email: gerry.apostolatos@langlois.ca; dimitri.maniatis@langlois.ca; daniel.baum@langlois.ca</p>	<p>Jacques Blanchard, Arpenteur-geomètre Inc</p> <p>Besnier Dion Rondeau S.E.N.C. Avocats 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6</p> <p>Attention : Luc Dion Email : besnier.avocats@cqcocable.ca</p>
<p>KeyBank National Association</p> <p>127 Public Square Second Floor, Cleveland, Ohio 44114-1308</p> <p>Attention: Michael A. Axel, Esq. Senior Vice President & Senior Counsel</p> <p>Email: michael_axel@keybank.com</p>	<p>Kilotech Contrôle Inc. Kilotech-Contrôle (1995) Inc.</p> <p>Simard Boivin Lemieux 1700 Talbot Blvd., Suite 420 Chicoutimi, QC G7H 7Y1</p> <p>Attention: Alain Provencher Email: a.provencher@sblavocats.com</p>
<p>Maxam Explosives, Inc.</p> <p>Fasken Martineau PO Box 242, The Stock Exchange Tower 800 Victoria Place, Suite 3700 Montréal, QC H4Z 1E9</p> <p>Attention : Brandon Farber Email : bfarber@fasken.com</p>	<p>Metso Shared Services Ltd.</p> <p>Langlois, avocats sncrl 1250, boul. René-Lévesque Ouest Montréal Qc H3B 4W8</p> <p>Attention: Gerry Apostolatos Daniel Baum</p> <p>Email: gerry.apostolatos@langlois.ca daniel.baum@langlois.ca</p>

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<p>MFC Industrial Ltd. BCF S.E.N.C.R.L. / LLP 1100 René-Lévesque West, Suite 2500 Montréal, QC H3B 5C9</p> <p>Attention : Claude Paquet, Gary Rivard Email : claud.paquet@bcf.ca gary.rivard@bcf.ca</p> <p>AND</p> <p>Sangra, Moller LLP 925 W Georgia St Vancouver, BC V6C 3L2</p> <p>Attention: Rod Talaifar, Harjit Sangra</p> <p>Email: rtalaifar@sangramoller.com hsangra@sangramoller.com</p>	<p>Minister of Natural Resources; Minister of Environment and Conservation; Minister of Municipal and Intergovernmental Affairs; and Minister of Finance</p> <p>C/O - Attorney General of Newfoundland and Labrador</p> <p>Department of Justice and Public Safety 4th Floor, East Block, Confederation Building PO Box 8700, St. John's, NL A1B 4J6 Email: legcounsel@gov.nl.ca</p>
<p>Ministère de la Justice du Québec Direction des Affaires Juridiques Énergie et Ressources naturelles Forêts, Faune et Parcs 5700, 4^e avenue Ouest, B-301 Québec, Québec G1H 6R1</p> <p>Attention : Isabelle Giguère Email: isabelle.giguere@mern.gouv.qc.ca</p>	<p>Ministère du Développement durable, de l'Environnement et de la Lutte contre les changements climatiques</p> <p>Direction des affaires juridiques - MDDELCC 675, boul. René Lévesque Est, 5e étage Québec (Québec) G1R 5V7</p> <p>Attention : Anne Parent, Avocate Email : anne.parent@mddelcc.gouv.qc.ca</p> <p>Direction régionale de l'analyse et de l'expertise de la Côte-Nord 818, boulevard Laure Sept-Îles (Québec) G4R 1Y8</p> <p>Attention : Alain Gaudreault, Directeur Régional Email : alain.gaudreault@mddelcc.gouv.qc.ca</p>

<p>Morneau Shepell <i>(Wabush Mines Replacement Plan's Administrator)</i></p> <p>7071 Bayers Rd, suite 3007 Halifax, NS B3L 2C2</p> <p>Attention : Paul Chang Email: pchang@morneaushepell.com</p> <p>Attention : Paula Boyd Email: pboyd@morneaushepell.com</p> <p>Attention : Bettina Quistgaard Email: bquistgaard@pinklarkin.com</p> <p>Attention : Ronald Pink Email: rpink@pinklarkin.com</p>	<p>Non-Union Employees and Retirees <i>(Michael Keeper and Terence Watt, rep.)</i></p> <p>Scheib Legal / Étude Légale 600, de Maisonneuve West, Suite 1700 Montréal, Québec H3A 3J2</p> <p>Attention : Nicholas Scheib Email: nick@scheib.ca</p> <p>Koskie Minsky LLP 20 Queen Street West, Suite 900 Toronto, Ontario M5H 3R3</p> <p>Attention : Andrew J. Hatnay Barbara Walancik Email: ahatnay@kmlaw.ca bwalancik@kmlaw.ca</p>
<p>Office of the Superintendent of Financial Institutions (OSFI)</p> <p>Department of Justice – Canada Surintendant des Institutions Financières Guy-Favreau Complex 200 René-Lévesque Blvd. West, 9th Floor Montréal, Québec H2Z 1X4</p> <p>Attention: Pierre Lecavalier Email: pierre.lecavalier@justice.qc.ca</p>	<p>Quebec North Shore and Labrador Railway Company Inc.</p> <p>Langlois, avocats sncrl 1250, boul. René-Lévesque Ouest Montréal Qc H3B 4W8</p> <p>Attention: Gerry Apostolatos Dimitri Maniatis Daniel Baum</p> <p>Email: gerry.apostolatos@langlois.ca dimitri.maniatis@langlois.ca daniel.baum@langlois.ca</p>
<p>Quebec Iron Ore Inc. Champion Iron Limited</p> <p>McCarthy Tétrault LLP 1000 De La Gauchetière Street West Montréal, Québec</p> <p>Attention: Philippe Bélanger Jocelyn Perreault Marc Dorion Louis-Nicolas Boulanger</p> <p>Email: pbelanger@mccarthy.ca jperreault@mccarthy.ca mdorion@mccarthy.ca lnboulanger@mccarthy.ca</p>	<p>Regions Commercial Equipment Finance LLC</p> <p>BCF s.e.n.c.r.l. / LLP 1100, boulevard René-Lévesque Ouest, 25e étage, Montréal (Québec) H3B 5C9 CANADA</p> <p>Attention : Gary Rivard Email : gary.rivard@bcf.ca</p>

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<p>Retraite Québec 2600, boul. Laurier, Suite 501 Québec, Québec G1V 4T3</p> <p>Attention: Marie-Josée Comeau Louis Robillard</p> <p>Email: marie-josee.comeau@retraitequebec.gouv.qc.ca louis.robillard@retraitequebec.gouv.qc.ca</p>	<p>Ritchie Bros Auctioneers (Canada) Ltd. <i>Stikeman Elliott</i> 1155, René-Lévesque Blvd. West, 40th Floor Montréal, Québec H3B 3V2</p> <p>Attention: Danny Duy Vu Email: ddvu@stikeman.com</p>
<p>Royal Bank of Canada <i>Stewart McKelvey</i> Suite 1100, Cabot Place, 100 New Gower Street St. John's, NL</p> <p>Attention: Neil Jacobs Email: njacobs@stewartmckelvey.com</p>	<p>Shetush-Ondel Inc. <i>Besnier Dion Rondeau S.E.N.C. Avocats</i> 865, Boul. Laure, Sept-Îles (Québec) G4R 1Y6</p> <p>Attention : Luc Dion Email : besnier.avocats@cqcable.ca</p>
<p>SMS Equipment Inc. <i>Fasken Martineau</i> PO Box 242, The Stock Exchange Tower 800 Victoria Place, Suite 3700 Montréal, QC H4Z 1E9</p> <p>Attention: Guillaume-Pierre Michaud Email: gmichaud@fasken.com</p>	<p>Société Ferroviaire et Portuaire de Pointe-Noire s.e.c. <i>McCarthy Tétrault LLP</i> 2500 – 1000 De La Gauchetière Street West Montréal, QC H3B 0A2</p> <p>Attention: Alain N. Tardif Email: notification@mccarthy.ca atardif@mccarthy.ca</p>
<p>Superintendent of Pensions (Newfoundland and Labrador) Service NL Government of Newfoundland and Labrador 2nd Floor, West Block, Confederation Bldg 100 Prince Phillip Drive, St. John's, NL A1B 4J6</p> <p>Attention: Michael Delaney, Director, Pension Benefit Standards Division Email : MichaelPDelaney@gov.nl.ca</p> <p>Irving Mitchell Kalichman 3500, De Maisonneuve Blvd. West, Suite 1400 Montréal, Québec H3Z 3C1</p> <p>Attention : Doug Mitchell Email : dmitchell@imk.ca</p>	<p>Syndicat des Métallos, Section Locale 9996, Section Locale 6254, Section Locale 6285 <i>Phillion Leblanc Beaudry Avocats s.a.</i> 5000, boul. des Gradins, bureau 280 Québec (Québec) G2J 1N3</p> <p>Attention : Daniel Boudreault; Jean-François Beaudry Email : dboudreault@plba.ca jfbaudry@plba.ca</p> <p>...</p> <p>United Steelworkers – National Office 234, Eglinton Avenue East, 8th Floor Toronto, Ontario M4P 1K7</p> <p>Attention: Katrina Peddle Email: kpeddle@usw.ca</p>

Ex Parte Order by Justice Green, C.J.N.L., May 5, 2017

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<p>The Bank of Nova Scotia <i>Kugler Kandestin, LLP (Québec Counsel)</i> 1 Place Ville Marie, Suite 2101 Montréal, QC H3B 2C6</p> <p>Attention : Jeremy Cuttler David Stolow</p> <p>Email : jcuttler@kklex.com; dstolow@kklex.com</p> <p><i>Cassels Brock LLP (Ontario Counsel)</i> Suite 2100, Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p>Attention: Joseph J. Bellissimo Keri Wallace</p> <p>Email: jbello@caselsbrock.com kewallace@caselsbrock.com</p>	<p>Town of Wabush 15, Whiteway Dr. P.O. Box 190 Wabush, NL A0R 1B0</p> <p>Att. : Charlie Perry, Town Manager</p> <p>Email : townmanager@wabush.ca</p>
<p>Tyco International du Canada Ltée (AKA SimplexGrinnell)</p> <p><i>Dunton Rainville S.E.N.C.R.L.</i> Tour de la Bourse, 43e étage 800, Square Victoria, C.P. 303 Montréal (Québec) H4Z 1H1</p> <p>Att. : Gilles Metcalfe Email : gmetcalfe@duntonrainville.com</p>	<p>Ville de Sept-îles <i>Stein Monast LLP</i> 70, Dalhousie, Suite 300 Québec, Québec G1K 4B2</p> <p>Att. : Richard Laflamme Marc Germain Antoine Beaudoin Camille Roy Martin Roy</p> <p>Email : richard.laflamme@steinmonast.ca marc.germain@steinmonast.ca antoine.beaudoin@steinmonast.ca camille.roy@steinmonast.ca Martin.Roy@SteinMonast.ca</p>

Ex Parte Order by Justice Green, C.J.N.L., May 5, 2017

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<p>Wesco Distribution Canada LP Dunton Rainville S.E.N.C.R.L. Tour de la Bourse, 43e étage 800, Square Victoria, C.P. 303 Montréal (Québec) H4Z 1H1 Attention: Thomas Cliche Email : TCliche@DuntonRainville.com</p>	<p>Worldlink Resources Limited Clifford Chance Europe LLP 9 Place Vendome. CS 50018 75038 Paris Cedex 01, France Attention: Audley Sheppard Simon Greenberg Karolina Rozycka Email: audley.sheppard@cliffordchance.com simon.greenberg@cliffordchance.com karolina.rozycka@cliffordchance.com BCF Business Law 25th Floor 1100 René-Lévesque Blvd. West Montréal, QC H3B 5C9 Attention : Éric Ouimet Bertrand Giroux Frédéric Côté Email : eric.ouimet@bcf.ca bertrand.giroux@bcf.ca frederic.cote@bcf.ca Perley-Robertson, Hill & McDougall LLP/s.r.l. Constitution Square, 400-340 Albert Street Ottawa, ON K1R 0A5 Attention: John Siwiec R. Aaron Rubinoff Email: jsiwiec@perlaw.ca arubinoff@perlaw.ca</p>
<p>WSP Canada Inc. Langlois, avocats sncrl 1250, boul. René-Lévesque Ouest Montréal Qc H3B 4W8 Attention : Marc-André Sansregret Reynald Auger Email : marc-andre.sansregret@langlois.ca reynald.auger@langlois.ca</p>	

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Emails : bernard.boucher@blakes.com; sebastien.guy@blakes.com; steven.weisz@blakes.com; milly.chow@blakes.com; aryo.shalviri@blakes.com; nigel.meakin@fticonsulting.com; steven.bissell@fticonsulting.com; ellen.dong@fticonsulting.com; michael.basso@fticonsulting.com; evan.cobb@nortonrosefulbright.com; sylvain.rigaud@nortonrosefulbright.com; chrystal.ashby@nortonrosefulbright.com; AndreAnne.Fortin@nortonrosefulbright.com; awinton@counsel-toronto.com; mqottlieb@counsel-toronto.com; gerry.apostolatos@langlois.ca; mdesrosiers@osler.com; mIaroche@millerthomson.com; brennang@bennettiones.com; dimitri.maniatis@langlois.ca; daniel.baum@langlois.ca; gary.rivard@bcf.ca; jcuttler@kklex.com; jbellissimo@casselsbrock.com; kewallace@casselsbrock.com; audley.sheppard@cliffordchance.com; simon.greenberg@cliffordchance.com; karolina.rozycka@cliffordchance.com; eric.ouimet@bcf.ca; bertrand.giroux@bcf.ca; frederic.cole@bcf.ca; lsiwiec@perlaw.ca; arubinoff@perlaw.ca; abernard@fasken.com; bfarber@fasken.com; cgaqnon@avocatsbsl.com; GLEfebvre@blq.com; fgagnon@blq.com; a.provencher@sblavocats.com; francois.bouchard@clcw.qc.ca; julien.collin@hcblegal.com; toddstanley@gov.nl.ca; Imorin@fasken.com; gmichaud@fasken.com; gmetcafe@duntonrainville.com; TCliche@DuntonRainville.com; michael.axel@keybank.com; rschwill@dwpv.com; julie.lambert@cslships.com; besnier.avocats@cqocable.ca; shebert@millerthomson.com; dstolow@kklex.com; jmorissette@osler.com; wael.rostom@mcmillan.ca; Emile.Catime-Marchand@mcmillan.ca; gmoftat@tgf.ca; roger.simard@dentons.com; louis.dumont@dentons.com; katherineboulianne@bptavocats.com; dboudreault@plba.ca; hbesnier.bdr@cqocable.ca; claudefpaquet@bcf.ca; rtalaifar@sanqramoller.com; hsangra@sanqramoller.com; pierre.lecavalier@justice.qc.ca; dmitcheill@imk.ca; ahatnav@kmlaw.ca; jfbaudry@plba.ca; MichaelPDelaney@gov.nl.ca; nick@schelb.ca; Tony.Reyes@nortonrosefulbright.com; anne.parent@mddelcc.gouv.qc.ca; gquerry@mccarthy.ca; mbourbonnais@mccarthy.ca; [Allan.Matte@oic-cta.qc.ca](mailto>Allan.Matte@oic-cta.qc.ca); alain.gaudreault@mddelcc.gouv.qc.ca; kpeddle@usw.ca; legcounsel@gov.nl.ca; jean.francois.delisle@clcw.ca; niacobs@stewartmckelvey.com; reynald.auger@langlois.ca; jfgauvin@millerthomson.com; mduchesne@blq.com; otadlaoui@blq.com; isabelle.giquere@mem.gouv.qc.ca; michael.hanlon@mcmillan.ca; townmanager@wabush.ca; pbelanger@mccarthy.ca; jperreault@mccarthy.ca; mdorion@mccarthy.ca; lboulanger@mccarthy.ca; marc-andre.sansregret@langlois.ca; richard.lafamme@steinmonast.ca; jysimard@lavery.ca; dmandilaras@lavery.ca; pchang@morneaushepell.com; pboyd@morneaushepell.com; bquistoard@pinklarkin.com; rpink@pinklarkin.com; bwalancik@kmlaw.ca; elizabeth-brown@hicksmorley.com; john-prezioso@hicksmorley.com; gamiot@avocatsbsl.com; notification@mccarthy.ca; atardif@mccarthy.ca; marc.germain@steinmonast.ca; ddvu@stikeman.com; a.querette@betonprovincial.com; antoine.beaudoin@steinmonast.ca; camille.roy@steinmonast.ca; martin.roy@steinmonast.ca; marie-josee.comeau@retraitequebec.gouv.qc.ca; louis.robillard@retraitequebec.gouv.qc.ca;

Ex Parte Order by Justice Green, C.J.N.L., May 5, 2017

Schedule E 

Ex Parte Order by Justice Green, C.J.N.L., May 5, 2017

TIMETABLE FOR PERFECTION OF REFERENCE

EVENT	DEADLINE
Filing of Notices of Intention to Intervene (Order, para. 3)	May 31, 2017
Filing of Applications for Intervenor Status (Order, para. 4)	May 31, 2017
Status Hearing (Order, para. 8)	June 9, 2017
Filing of Evidentiary Materials	(TBD at status hearing)
Attorney General of Newfoundland to file Factum	July 26, 2017
Attorney General of Canada, other Attorney Generals and Interveners to file Factums	August 23, 2017
Attorney General of Newfoundland to file reply Factum, if any	September 8, 2017
Hearing of Reference	September 21-22, 2017

Order in Council 2017-103, March 27, 2017

Executive
CouncilNewfoundland
and Labrador

*Certified to be a true copy of a Minute of a Meeting
of the Committee of the Executive Council of Newfoundland and
Labrador approved by His Honour the Lieutenant-Governor on*

2017/03/27

OC2017-103

JPS/DM
Asst Sec/SPC
SNL/DM
FIN/DM
TB/Secretary
AG
Deputy Clerk
File

MC2017-0088. JPS2017-006. SPC2017-013.

Under the authority of section 13 of the *Judicature Act*, the Lieutenant-Governor in Council hereby refers the following to the Newfoundland and Labrador Court of Appeal:

In *Arrangement relatif à Bloom Lake*, 2017 QCCS 284 (CanLII), the Quebec Superior Court stated at paragraph 89: "If the Government of Newfoundland and Labrador wishes to obtain a judgment from the courts of the province on the interpretation of the *Pension Benefits Act, 1997*, SNL1996 cP-4.01, it can refer a matter to the Court of Appeal of Newfoundland and Labrador". In that context, the following questions stated at paragraph 25 of that decision are referred:

- 1) The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c.C-36. What is the scope of section 32 of the *Pension Benefits Act, 1997*, SNL1996 cP-4.01 deemed trusts in respect of:
 - a) unpaid current service costs;
 - b) unpaid special payments; and
 - c) unpaid wind-up deficits?
- 2) The Salaried Plan is registered in Newfoundland and Labrador and regulated by the *Pension Benefits Act, 1997*.
 - a) (i) Does the federal *Pension Benefits Standards Act*, R.S.C. 1985, c-32 deemed trust also apply to those members of the Salaried Plan who worked on the

Order in Council 2017-103, March 27, 2017

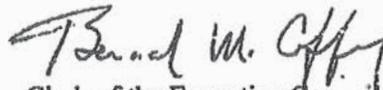


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of the Committee of the Executive Council of Newfoundland and
Labrador approved by His Honour the Lieutenant-Governor on*

2017/03/27

railway (i.e., a federal undertaking)?

- (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*? If so, how is the conflict resolved?
- b) (i) Does the *Quebec Supplemental Pension Plans Act, CQLR, c. R-15.1* also apply to those members of the Salaried Plan who reported for work in Quebec?
- (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the *Quebec Supplemental Pension Plans Act*. If so, how is the conflict resolved?
- (iii) Do the *Quebec Supplemental Pension Plans Act* deemed trusts also apply to Quebec Salaried Plan members?
- 3) Is the *Pension Benefits Act, 1997* lien and charge in favour of the pension plan administrator in section 32(4) of the *Pension Benefits Act, 1997* a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?


Clerk of the Executive Council



CANADA

CONSOLIDATION

CODIFICATION

**Pension Benefits Standards Act,
1985****Loi de 1985 sur les normes de
prestation de pension**

R.S.C. 1985, c. 32 (2nd Supp.)

S.R.C. 1985, ch. 32 (2^e suppl.)

NOTE

[1986, c. 40, assented to 27th June, 1986]

NOTE

[1986, ch. 40, sanctionné le 27 juin 1986]

Current to December 11, 2017

Last amended on June 30, 2016

À jour au 11 décembre 2017

Dernière modification le 30 juin 2016

**OFFICIAL STATUS
OF CONSOLIDATIONS**

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

NOTE

This consolidation is current to December 11, 2017. The last amendments came into force on June 30, 2016. Any amendments that were not in force as of December 11, 2017 are set out at the end of this document under the heading "Amendments Not in Force".

**CARACTÈRE OFFICIEL
DES CODIFICATIONS**

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité – lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

NOTE

Cette codification est à jour au 11 décembre 2017. Les dernières modifications sont entrées en vigueur le 30 juin 2016. Toutes modifications qui n'étaient pas en vigueur au 11 décembre 2017 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

*Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)***TABLE OF PROVISIONS****An Act respecting pension plans organized and administered for the benefit of persons employed in connection with certain federal works, undertakings and businesses**

	Short Title
1	Short title
	Interpretation
2	Definitions
3	Pension plans may exceed minimum requirements
	Application of Act
4	Application of Act
	Powers of Superintendent
5	Powers of Superintendent
	Agreements
6.1	One or more designated provinces
6.2	Force of law
6.3	Review by Federal Court
6.4	Association of pension supervisory authorities
	Administration of Pension Plans
7	Administrator
7.1	Representative of members
7.2	Pension council
7.3	Choosing representatives
7.4	Duties of administrator
7.5	Superintendent may require meeting
7.6	Appointment of replacement administrator
8	Amounts to be held in trust
	Funding and Surplus
	Required Funding
9	Funding of pension plan
9.01	Designation of actuary

TABLE ANALYTIQUE**Loi concernant les régimes de pension institués et gérés en faveur de personnes dont l'emploi est lié à des ouvrages, entreprises ou activités de compétence fédérale**

	Titre abrégé
1	Titre abrégé
	Définitions
2	Définitions
3	Régimes plus avantageux
	Application de la loi
4	Application de la loi
	Attributions du surintendant
5	Attributions du surintendant
	Accords
6.1	Une ou plusieurs provinces désignées
6.2	Force de loi
6.3	Compétence de la Cour fédérale
6.4	Association d'autorités de surveillance des pensions
	Gestion des régimes de pension
7	Administrateur
7.1	Représentants au comité des pensions
7.2	Conseil des pensions
7.3	Choix des représentants
7.4	Attributions de l'administrateur
7.5	Demande d'assemblée
7.6	Nomination d'un nouvel administrateur
8	Montants détenus en fiducie
	Capitalisation et excédent
	Capitalisation requise
9	Capitalisation
9.01	Désignation d'un actuaire

*Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)**Pension Benefits Standards, 1985*
TABLE OF PROVISIONS*Loi de 1985 sur les normes de prestation de pension*
TABLE ANALYTIQUE

9.1	Notification of remittance Letters of Credit	9.1	Notification au fiduciaire ou dépositaire Lettres de crédit
9.11	Letters of credit	9.11	Lettres de crédit
9.12	Duty of employer	9.12	Obligation de l'employeur
9.13	Obligation of trustee	9.13	Obligation du fiduciaire
9.14	Demand for payment	9.14	Demande de paiement
9.15	Costs Crown Corporations	9.15	Coûts Sociétés d'État
9.16	Reduction of payments Surplus	9.16	Réduction Excédent
9.2	Refund of surplus to the employer	9.2	Paiement de l'excédent
	Registration of Pension Plans		Agrément
10	Duty of administrator to file documents	10	Dépôt des documents
10.1	Filing of amendments	10.1	Dépôt des modifications
10.11	Negotiated contribution plans	10.11	Régime à cotisations négociées
	Transfer of Funds		Transfert de fonds
10.2	No transfer without permission	10.2	Consentement préalable au transfert
10.3	Designated entity	10.3	Entité désignée
	Separate Pension Plan		Régime distinct
10.4	Establishment of separate pension plan	10.4	Institution d'un régime distinct
	Directions of Compliance		Directives
11	Superintendent's directions to administrators	11	Pratiques douteuses
11.1	Revocation of registration	11.1	Révocation
	General Requirements		Obligations générales
	Duty to Provide Information		Obligation en matière de renseignements
12	Annual reporting requirements	12	Rapports annuels
13	Information to members Eligibility for Membership	13	Renseignements Conditions de participation
14	Eligibility (full-time employees)	14	Salariés à temps plein
15	Eligibility (part-time employees) Entitlement to Immediate Pension Benefit	15	Admissibilité : salariés à temps partiel Droit à une prestation de pension immédiate
16	Entitlement at pensionable age Phased Retirement Benefit	16	Âge admissible Prestation de retraite progressive
16.1	Definitions	16.1	Définitions

*Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)**Pension Benefits Standards, 1985*
TABLE OF PROVISIONS*Loi de 1985 sur les normes de prestation de pension*
TABLE ANALYTIQUE

	Variable Benefit		Prestation variable
16.2	Variable benefit	16.2	Prestation variable
16.3	Entitlement of survivor	16.3	Droit du survivant
16.4	Transfer	16.4	Transfert du solde du compte
16.5	Cessation	16.5	Cessation
	Vesting of Benefits		Acquisition du droit aux prestations
17	Provision respecting vesting	17	Acquisition du droit
	Locking-in		Immobilisation des cotisations
18	Provisions respecting locking-in	18	Dispositions applicables
	Interest		Intérêt
19	Interest (defined contribution plans)	19	Régime à cotisations déterminées
	Minimum Employer Contributions for Defined Benefit Plans		Cotisations patronales minimales — Régime à prestations déterminées
21	Minimum pension benefit credit	21	Droits à pension minimaux
	Post-retirement		L'après-retraite
22	Meaning of normal form of the pension benefit	22	Définition de prestation normale
	Pre-retirement Death Benefit		Prestation de décès préretraite
23	If member dies before retirement	23	Décès antérieur à la retraite
	Marriage or Common-law Partnership		Mariage ou union de fait
24	New relationship not to terminate pension benefit	24	Effet du mariage ou d'une union de fait
	Divorce, Annulment, Separation or Breakdown of Common-law Partnership		Divorce, annulation du mariage, séparation ou échec de l'union de fait
25	Definition of provincial property law	25	Définition de droit provincial des biens
	Portability of Pension Benefit Credits and Purchase of Life Annuities		Transferts des droits à pension et achats de prestations viagères
26	If member not yet eligible to retire	26	Transfert avant l'admissibilité à la retraite
26.1	If transfer or purchase impairs solvency	26.1	Transfert ou achat nuisible à la solvabilité
	Sex Discrimination Prohibited		Interdiction de la discrimination sexuelle
27	Sex discrimination prohibited	27	Règle générale
	Rights to Information		Droits à l'information
28	Provisions respecting information to member and spouse or common-law partner	28	Information des participants et époux ou conjoints de fait
	Termination and Winding-up of Pension Plans		Cessation et liquidation
29	Deemed termination	29	Présomption
	Distressed Pension Plan Workout Scheme		Mécanisme d'accommodement pour les régimes de pension en difficulté
29.01	Application	29.01	Champ d'application

*Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)**Pension Benefits Standards, 1985*
TABLE OF PROVISIONS*Loi de 1985 sur les normes de prestation de pension*
TABLE ANALYTIQUE

29.02	Definitions	29.02	Définitions
29.03	Election of employer	29.03	Choix de l'employeur
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R.S.C. 1985, c. 32 (2nd Supp.)

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An Act respecting pension plans organized and administered for the benefit of persons employed in connection with certain federal works, undertakings and businesses

Loi concernant les régimes de pension institués et gérés en faveur de personnes dont l'emploi est lié à des ouvrages, entreprises ou activités de compétence fédérale

Short Title

Titre abrégé

Short title

1 This Act may be cited as the *Pension Benefits Standards Act, 1985*.

Titre abrégé

1 *Loi de 1985 sur les normes de prestation de pension.*

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Definitions

2 (1) In this Act,

actuary means a Fellow of the Canadian Institute of Actuaries; (*actuaire*)

additional voluntary contribution under a pension plan means an optional contribution by a member that does not give rise to an obligation on the employer to make additional contributions; (*cotisation facultative*)

administrator, in relation to a pension plan, means the administrator referred to in section 7, and includes the replacement administrator appointed under subsection 7.6(1); (*administrateur*)

cessation of membership in a pension plan has the meaning assigned by subsection (2); (*fin de participation*)

collective agreement means an agreement in writing entered into between an employer and a bargaining agent containing provisions respecting terms and conditions of employment and related matters; (*convention collective*)

common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a

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2 (1) Les définitions qui suivent s'appliquent à la présente loi.

accord de sauvetage Accord établissant un calendrier de capitalisation approuvé par le ministre au titre de l'article 29.3. (*workout agreement*)

accord fédéral-provincial Accord conclu en vertu du paragraphe 6.1(1). (*federal-provincial agreement*)

accord multilatéral [Abrogée, 2016, ch. 7, art. 201]

actuaire Fellow de l'Institut canadien des actuaires. (*actuary*)

administrateur L'administrateur, au sens de l'article 7, d'un régime de pension ou son remplaçant nommé en vertu du paragraphe 7.6(1). (*administrator*)

âge admissible Âge minimal, compte tenu des périodes d'emploi du participant auprès de l'employeur ou de sa période de participation au régime, le cas échéant, auquel le service d'une prestation de pension — autre qu'une prestation d'invalidité au sens des règlements — peut débuter en faveur du participant, au titre du régime, sans

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conjugal relationship, having so cohabited for a period of at least one year; (*conjoint de fait*)

common-law partnership means the relationship between two persons who are common-law partners of each other; (*union de fait*)

continuous, in relation to membership in a pension plan or to employment, means without regard to periods of temporary interruption of the membership or employment; (*continu*)

deferred pension benefit means a pension benefit other than an immediate pension benefit; (*prestation de pension différée*)

defined benefit plan means a pension plan that is not a defined contribution plan; (*régime à prestations déterminées*)

defined benefit provision means a provision of a pension plan under which pension benefits for a member are determined in any way other than that described in the definition **defined contribution provision**; (*disposition à prestations déterminées*)

defined contribution plan means a pension plan that consists of defined contribution provisions and does not contain defined benefit provisions, other than

(a) a defined benefit provision relating to pension benefits accrued in respect of employment before the effective date of the pension plan, or

(b) a defined benefit provision that provides for a minimum pension benefit whose additional value is not significant in the Superintendent's opinion; (*régime à cotisations déterminées*)

defined contribution provision means a provision of a pension plan under which pension benefits for a member are determined solely as a function of the amount of pension benefit that can be provided by

(a) contributions made by and on behalf of that member, and

(b) interest earnings and other gains and losses allocated to that member; (*disposition à cotisations déterminées*)

designated province means a province prescribed as a province in which there is in force pension legislation applicable to private superannuation plans; (*province désignée*)

qu'il soit nécessaire d'obtenir le consentement de l'administrateur et sans réduction pour retraite anticipée. (*pensionable age*)

ancien Relativement à un régime de pension, se dit :

a) sauf aux articles 9.2 et 24 et à l'alinéa 28(1)b.1), du participant dont la participation a pris fin ou qui a pris sa retraite, le 1^{er} janvier 1987 ou après cette date;

b) à l'article 9.2 et à l'alinéa 28(1)b.1), du participant dont la participation a pris fin ou qui a pris sa retraite, à l'exception de celui qui, avant la cessation totale du régime, a, au titre de l'article 26, transféré ses droits à pension ou utilisé ceux-ci pour acheter une prestation viagère ou fait transférer ses prestations de pension à un autre régime de pension;

c) à l'article 24, du participant dont la participation a pris fin ou qui a pris sa retraite, même avant le 1^{er} janvier 1987. (*former member*)

à temps partiel Travaille à temps partiel le salarié dont le contrat ne prévoit pas qu'il travaille à temps plein. (*part-time basis*)

à temps plein Travaille à temps plein le salarié dont le contrat prévoit l'accomplissement, au cours de l'année, de la totalité ou de la quasi-totalité du nombre d'heures normal prévu pour sa catégorie professionnelle. (*full-time basis*)

cessation Cessation d'un régime de pension dans les cas visés par les paragraphes 29(1), (2), (2.1) et (4.2). (*termination*)

conjoint [Abrogée, 2000, ch. 12, art. 254]

conjoint de fait La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*)

continu Sont considérés comme continus les emplois ou la participation à un régime de pension qui ne subissent que des interruptions temporaires. (*continuous*)

convention collective Convention écrite intervenue entre un employeur et un agent négociateur et contenant des dispositions relatives aux conditions d'emploi et questions connexes. (*collective agreement*)

cotisation facultative Cotisation facultative d'un participant à un régime de pension, sans obligation pour l'employeur de verser une cotisation supplémentaire. (*additional voluntary contribution*)

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electronic document means any form of representation of information or of concepts fixed in any medium by electronic, optical or other similar means that can be read or perceived by a person or by any means; (*document électronique*)

employee includes an officer; (*salariés*)

employer, in relation to an employee, means the person or organization, whether incorporated or unincorporated, in respect of employment with which the employee receives his remuneration, and includes the successors or assigns of that person or organization; (*employeur*)

employment means the performance by an employee of work for remuneration for an employer under an express or implied contract of service or apprenticeship, and includes the tenure of an office; (*emploi*)

federal-provincial agreement means an agreement entered into under subsection 6.1(1); (*accord fédéral-provincial*)

former member, in relation to a pension plan, means

(a) except in sections 9.2 and 24 and paragraph 28(1)(b.1), a person who, on or after January 1, 1987, has either ceased membership in the plan or retired;

(b) in section 9.2 and paragraph 28(1)(b.1), a person who has either ceased membership in the plan or retired and has not, before the termination of the whole of the plan,

(i) transferred their pension benefit credit under section 26,

(ii) used their pension benefit credit to purchase a life annuity under section 26, or

(iii) had their pension benefits transferred to another pension plan; or

(c) in section 24, a person who, before, on or after January 1, 1987, has either ceased membership in the plan or retired; (*ancien*)

full-time basis, in relation to an employee of a particular class, means engaged to work, throughout the year, all or substantially all of the normally scheduled hours of work established for persons in that class of employees; (*à temps plein*)

immediate pension benefit means a pension benefit that is to commence within one year after the member

disposition à cotisations déterminées Disposition d'un régime de pension qui fixe les prestations de pension d'un participant en fonction seulement du montant des prestations que peuvent lui assurer :

a) ses cotisations et celles qui sont versées pour son compte;

b) les intérêts courus ainsi que des profits et pertes qui lui sont attribués. (*defined contribution provision*)

disposition à prestations déterminées Disposition d'un régime de pension qui fixe les prestations de pension d'un participant d'une façon différente de celle prévue à la définition de **disposition à cotisations déterminées**. (*defined benefit provision*)

document électronique S'entend de toute forme de représentation d'information ou de notions fixée sur quelque support que ce soit, par des moyens électroniques, optiques ou autres moyens semblables, et qui peut être lue ou perçue par une personne ou par tout moyen. (*electronic document*)

droit à pension Valeur, à un moment donné, des prestations de pension et autres d'une personne prévues par un régime de pension, calculée selon les modalités réglementaires. (*pension benefit credit*)

emploi Exécution d'un travail ou exercice de fonctions par un salarié pour un employeur, contre rémunération, au titre d'un contrat formel ou tacite de services ou d'apprentissage. (*employment*)

emploi inclus S'entend au sens de l'article 4. (*included employment*)

employeur Personne ou organisme, ainsi que leurs successeurs ou ayants droit, dotés ou non de la personnalité morale et auprès de qui le salarié occupe un emploi. (*employer*)

employeur participant Employeur tenu de verser des cotisations à un régime interentreprises. (*participating employer*)

époux Est assimilée à l'époux la personne qui est une partie à un mariage nul. (*spouse*)

excédent L'excédent, déterminé au moyen de la méthode prévue par règlement, de l'actif d'un régime de pension sur le passif. (*surplus*)

exercice du régime Année civile, à moins de stipulation contraire dans le régime de pension. (*plan year*)

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becomes entitled to it; (*prestation de pension immédiate*)

included employment has the meaning assigned by section 4; (*emploi inclus*)

information system means a system used to generate, send, receive, store or otherwise process an electronic document; (*système d'information*)

joint and survivor pension benefit means an immediate pension benefit that continues at least until the death of the member or former member or the death of the survivor of the member or former member, whichever occurs later; (*prestation réversible*)

marriage and **remarriage** [Repealed, 2000, c. 12, s. 254]

member, in relation to a pension plan, means a person who has become a member of the pension plan and has neither ceased membership in the plan nor retired; (*participant*)

Minister means the Minister of Finance; (*ministre*)

multi-employer pension plan means a pension plan organized and administered for employees of two or more employers whose contributions to the pension plan are determined under an agreement between the participating employers or a collective agreement, statute or regulation, if the pension plan provides pension benefits that are determined by periods of employment with any or all of the participating employers, but does not include a pension plan where more than 95% of the plan members are employed by participating employers who are incorporated and are affiliates within the meaning of the *Canada Business Corporations Act*; (*régime interentreprises*)

multilateral agreement [Repealed, 2016, c. 7, s. 201]

negotiated contribution plan means a multi-employer pension plan that includes at least one defined benefit provision and under which a participating employer's contributions are limited to an amount determined in accordance with an agreement entered into by the participating employers or a collective agreement, statute or regulation, and which amount does not vary as a function of the prescribed tests and standards for solvency referred to in subsection 9(1); (*régime à cotisations négociées*)

office means the position of an individual entitling that individual to a fixed or ascertainable stipend or remuneration, and includes the position of an officer or director of a corporation or other organization and of an agent or

fin de participation S'entend au sens du paragraphe (2). (*cessation of membership*)

fonctions Attributions au titre desquelles une personne a droit à un salaire, traitement ou autre rémunération fixe ou vérifiable. Sont incluses dans la présente définition les fonctions de dirigeant ou d'administrateur d'une personne morale ou autre organisme et de mandataire agissant pour le compte de son mandant. En outre, **cadre** s'entend du titulaire de telles attributions. (*office and officer*)

fonds de pension Fonds alimenté en vue du versement de prestations au titre d'un régime de pension ou relativement à celui-ci. (*pension fund*)

liquidation Répartition des actifs d'un régime de pension à la suite de sa cessation. (*winding-up*)

mariage et **remariage** [Abrogée, 2000, ch. 12, art. 254]

maximum des gains annuels ouvrant droit à pension S'entend au sens du *Régime de pensions du Canada*. (*Year's Maximum Pensionable Earnings*)

ministre Le ministre des Finances. (*Minister*)

normes d'agrément [Abrogée, 1998, ch. 12, art. 1]

participant S'entend, relativement à un régime de pension, d'une personne qui participe à celui-ci, qui n'a pas pris sa retraite et dont la participation n'a pas pris fin. (*member*)

participant ancien [Abrogée, 2010, ch. 12, art. 1786]

prestation de pension Montant périodique auquel a ou pourra avoir droit, au titre d'un régime de pension, le participant ou l'ancien participant, son époux ou conjoint de fait, son survivant ou son bénéficiaire désigné, ou sa succession. (*pension benefit*)

prestation de pension différée Prestation de pension autre qu'une prestation de pension immédiate. (*deferred pension benefit*)

prestation de pension immédiate Prestation de pension dont le service doit commencer dans l'année suivant l'ouverture du droit du participant. (*immediate pension benefit*)

prestation réversible Prestation de pension immédiate dont le service continue jusqu'au décès du participant actuel ou ancien, ou de son survivant. (*joint and survivor pension benefit*)

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mandatary acting for a principal or mandator, and **officer** means a person holding such a position; (*fonctions et cadre*)

participating employer, in relation to a multi-employer pension plan, means an employer who is required to contribute to that plan; (*employeur participant*)

part-time basis, in relation to an employee, means engaged to work on other than a full-time basis; (*à temps partiel*)

pension benefit means a periodic amount to which, under the terms of a pension plan, a member or former member, or the spouse, common-law partner, survivor or designated beneficiary or estate or succession of a member or former member, is or may become entitled; (*prestation de pension*)

pension benefit credit, in relation to any person, means the aggregate value at a particular time of that person's pension benefit and other benefits provided under a pension plan, calculated in prescribed manner; (*droit à pension*)

pension fund, in relation to a pension plan, means a fund maintained to provide benefits under or related to the pension plan; (*fonds de pension*)

pension plan has the meaning assigned by subsection 4(2); (*régime de pension*)

pensionable age, in relation to a member, means the earliest age (taking into account the period of employment with the employer or the period of membership in the pension plan, if applicable) at which a pension benefit, other than a benefit in respect of a disability (as defined in the regulations), is payable to the member under the terms of the pension plan without the consent of the administrator and without reduction by reason of early retirement; (*âge admissible*)

plan year, in respect of a pension plan, means a calendar year, unless otherwise specified in the plan; (*exercice du régime*)

prescribed means prescribed by regulation; (*Version anglaise seulement*)

registered pension plan means a pension plan that is registered and in respect of which a certificate of registration has been issued by the Superintendent under this Act; (*régime agréé*)

retire has the meaning assigned by subsection (3); (*retraite*)

prestation variable Prestation de pension versée sous la forme de paiements variables faits sur le fonds de pension. (*variable benefit*)

province désignée Province où, selon les règlements, est en vigueur une loi sur les pensions applicable aux régimes privés de retraite. (*designated province*)

régime à cotisations déterminées Régime de pension qui, à l'exception des dispositions à prestations déterminées suivantes, ne contient que des dispositions à cotisations déterminées :

- a) celles qui portent sur les prestations de pension accumulées au titre d'un emploi avant la prise d'effet du régime;
- b) celles qui assurent des prestations de pension minimales sans valeur additionnelle importante selon le surintendant. (*defined contribution plan*)

régime à cotisations négociées Régime interentreprises qui prévoit au moins une disposition à prestations déterminées et dans le cadre duquel, d'une part, les cotisations de l'employeur participant sont limitées à la somme fixée conformément à un accord entre les employeurs participants, à une convention collective, à une loi ou à un règlement et, d'autre part, cette somme ne varie pas en fonction des critères et normes de solvabilité réglementaires visés au paragraphe 9(1). (*negotiated contribution plan*)

régime agréé Régime de pension dont l'agrément est constaté par certificat délivré par le surintendant au titre de la présente loi. (*registered pension plan*)

régime à prestations déterminées Régime de pension différent du régime à cotisations déterminées. (*defined benefit plan*)

régime de pension S'entend au sens du paragraphe 4(2). (*pension plan*)

régime interentreprises Régime de pension institué et géré pour les salariés de plusieurs employeurs qui y versent des cotisations fixées au titre d'un accord entre les employeurs participants, d'une convention collective, d'une loi ou d'un règlement, dans le cas où le régime prévoit des prestations de pension calculées en fonction des périodes d'emploi auprès de l'un ou de l'ensemble des employeurs participants. N'est toutefois pas visé le régime dont plus de quatre-vingt-quinze pour cent des participants sont des salariés d'employeurs participants lesquels sont dotés de la personnalité morale et

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spouse, in relation to an individual, includes a person who is party to a void or, in Quebec, null marriage with the individual; (*époux*)

standards for registration [Repealed, 1998, c. 12, s. 1]

Superintendent means the Superintendent of Financial Institutions appointed pursuant to subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*; (*surintendant*)

surplus means the amount, determined in the prescribed manner, by which the assets of a pension plan exceed its liabilities; (*excédent*)

survivor, in relation to a member or former member, means

(a) if there is no person described in paragraph (b), the spouse of the member or former member at the time of the member's or former member's death, or

(b) a person who was the common-law partner of the member or former member at the time of the member's or former member's death; (*survivant*)

termination, in relation to a pension plan, means the situations described in subsections 29(1), (2), (2.1) and (4.2); (*cessation*)

variable benefit means a pension benefit payable in the form of a variable payment out of the pension fund; (*prestation variable*)

winding-up, in relation to a pension plan, means the distribution of the assets of a pension plan that has been terminated; (*liquidation*)

workout agreement means an agreement that establishes a funding schedule that has been approved by the Minister under section 29.3; (*accord de sauvetage*)

Year's Maximum Pensionable Earnings has the same meaning as in the *Canada Pension Plan*. (*maximum des gains annuels ouvrant droit à pension*)

Cessation of membership in a pension plan

(2) For the purposes of this Act, a member of a pension plan shall be deemed to cease membership in the plan

(a) in the case of a multi-employer pension plan, when no contributions have been made in respect of that member by any of the participating employers for a period of twenty-four months, or such shorter period as is provided under the plan, and the member is not in receipt of an immediate pension benefit;

appartiennent au même groupe au sens de la *Loi canadienne sur les sociétés par actions*. (*multi-employer pension plan*)

retraite S'entend au sens du paragraphe (3). (*retiree*)

salariés Les cadres sont compris parmi les salariés. (*employee*)

surintendant Le surintendant des institutions financières, nommé aux termes du paragraphe 5(1) de la *Loi sur le Bureau du surintendant des institutions financières*. (*Superintendent*)

survivant S'entend :

a) soit, en cas d'inapplication de l'alinéa b), de l'époux du participant actuel ou ancien au décès de celui-ci;

b) soit du conjoint de fait du participant actuel ou ancien au décès de celui-ci. (*survivor*)

système d'information Système utilisé pour créer, transmettre, recevoir, mettre en mémoire ou traiter de toute autre manière des documents électroniques. (*information system*)

union de fait Relation qui existe entre deux conjoints de fait. (*common-law partnership*)

Fin de la participation

(2) Pour l'application de la présente loi, la participation d'un participant à un régime de pension est réputée prendre fin :

a) dans le cas d'un régime interentreprises, si aucun des employeurs participants n'a versé de cotisations pour le participant pendant vingt-quatre mois ou pendant la période inférieure prévue par le régime et si le

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(b) in the case of any other pension plan, when the member's employment with the employer terminates and the member is not in receipt of an immediate pension benefit, whether or not contributions by the employer in respect of that member had ceased previously; or

(c) in any other prescribed circumstance.

Meaning of retire

(3) For the purposes of this Act, a member of a pension plan shall be deemed to retire on commencing to receive an immediate pension benefit, whether the member's employment has terminated or not.

How "spouse or common-law partner" to be read

(4) Except in section 25, where a member or former member has a spouse from whom they are separated and a common-law partner with whom they are cohabiting, a reference to a "spouse or common-law partner" in respect of that member or former member means the common-law partner.

Negotiated contribution plan

(5) Even though a pension plan — established as a negotiated contribution plan — is no longer a negotiated contribution plan because it has only one participating employer or more than 95% of its members are employed by participating employers who are incorporated and are affiliates within the meaning of the *Canada Business Corporations Act*, that pension plan is deemed to be a negotiated contribution plan for a period of one year after the day it is no longer a negotiated contribution plan, or for any longer period that may be specified by the Superintendent.

R.S., 1985, c. 32 (2nd Supp.), s. 2, c. 18 (3rd Supp.), s. 38; 1994, c. 24, s. 34(F); 1998, c. 12, s. 1; 2000, c. 12, s. 254; 2001, c. 34, s. 66; 2010, c. 12, ss. 1786, 1824(F), 1825(E), c. 25, s. 179; 2016, c. 7, s. 201.

Pension plans may exceed minimum requirements

3 The requirements of this Act and the regulations shall not be construed as preventing the registration or operation of a pension plan containing provisions that are more advantageous to members of the plan, former members or potential members or their spouses, common-law partners, designated beneficiaries, estates or successions.

R.S., 1985, c. 32 (2nd Supp.), s. 3; 2000, c. 12, s. 255; 2010, c. 12, s. 1787.

service d'une prestation de pension immédiate n'a pas débuté en faveur du participant;

b) dans le cas de tout autre régime de pension, si le participant cesse d'occuper son emploi et si le service d'une prestation de pension immédiate n'a pas débuté en faveur du participant, que l'employeur ait ou non cessé auparavant de verser des cotisations pour lui;

c) dans toutes autres circonstances prévues par règlement.

Sens de retraite

(3) Pour l'application de la présente loi, un participant est réputé avoir pris sa retraite au moment où débute le service d'une prestation de pension immédiate, qu'il continue ou non d'occuper son emploi.

Interprétation

(4) Sauf à l'article 25, la mention de « époux ou conjoint de fait » relativement au participant actuel ou ancien qui est séparé de son époux et vit avec un conjoint de fait vaut mention du conjoint de fait.

Régime à cotisations négociées

(5) Est réputé demeurer un régime à cotisations négociées pour une période d'un an à compter de la date où il n'en est plus un, ou pour la période plus longue précisée par le surintendant, le régime de pension qui était un régime à cotisations négociées au moment de son institution mais qui n'en est plus un soit parce qu'il ne compte plus qu'un seul employeur participant, soit parce que plus de quatre-vingt-quinze pour cent des participants sont des salariés d'employeurs participants dotés de la personnalité morale et appartenant au même groupe au sens de la *Loi canadienne sur les sociétés par actions*.

L.R. (1985), ch. 32 (2^e suppl.), art. 2, ch. 18 (3^e suppl.), art. 38; 1994, ch. 24, art. 34(F); 1998, ch. 12, art. 1; 2000, ch. 12, art. 254; 2001, ch. 34, art. 66; 2010, ch. 12, art. 1786, 1824(F) et 1825(A), ch. 25, art. 179; 2016, ch. 7, art. 201.

Régimes plus avantageux

3 La présente loi et ses règlements n'ont pas pour effet d'empêcher l'agrément ou le fonctionnement d'un régime de pension comportant des dispositions plus avantageuses pour ses participants, anciens participants ou participants éventuels, leur époux ou conjoint de fait, leur bénéficiaire désigné ou leur succession.

L.R. (1985), ch. 32 (2^e suppl.), art. 3; 2000, ch. 12, art. 255; 2010, ch. 12, art. 1787.

Application of Act

Application of Act

4 (1) This Act applies in respect of pension plans.

Definition of pension plan

(2) In this Act, **pension plan** means a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees) and to which the employer is required under or in accordance with the plan to contribute, whether or not provision is also made for other benefits or for benefits to other persons, and includes a supplemental pension plan, whether or not the employer is required to make contributions under or in accordance with the supplemental pension plan, but does not include

(a) an employees' profit sharing plan or a deferred profit sharing plan as defined in sections 144 and 147, respectively, of the *Income Tax Act*;

(b) an arrangement to provide a **retiring allowance** as defined in subsection 248(1) of the *Income Tax Act*;

(b.1) a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*; or

(c) any other prescribed arrangement.

Definition of supplemental pension plan

(3) In subsection (2), **supplemental pension plan** means a pension plan for employees whose membership in another pension plan is a condition precedent to membership in the supplemental pension plan and that is an integral part of that other plan.

Definition of included employment

(4) In this Act, **included employment** means employment, other than excepted employment, on or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including, without restricting the generality of the foregoing,

(a) any work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of a ship and transportation by ship anywhere in Canada;

Application de la loi

Application de la loi

4 (1) La présente loi s'applique relativement aux régimes de pension.

Définition de régime de pension

(2) Pour l'application de la présente loi, **régime de pension** s'entend d'un régime de retraite ou autre institué et géré en vue d'assurer des prestations de pension aux salariés occupant un emploi inclus ainsi qu'aux anciens salariés, que le régime prévoit ou non d'autres prestations ou le paiement de prestations à d'autres personnes, et au titre duquel et conformément auquel l'employeur est tenu d'y verser des cotisations; est assimilé à un régime de pension tout régime complémentaire, au titre duquel ou conformément auquel l'employeur est tenu d'y verser des cotisations, mais non :

a) les régimes de participation des employés aux bénéfiques et les régimes de participation différée aux bénéfiques au sens des articles 144 et 147 de la *Loi de l'impôt sur le revenu*;

b) les ententes en vue du versement d'une allocation de retraite au sens du paragraphe 248(1) de la *Loi de l'impôt sur le revenu*;

b.1) les régimes de pension agréés collectifs au sens du paragraphe 2(1) de la *Loi sur les régimes de pension agréés collectifs*;

c) les autres ententes prévues par les règlements.

Définition de régime complémentaire

(3) Au paragraphe (2), **régime complémentaire** s'entend d'un régime de pension auquel les salariés ne peuvent adhérer que s'ils participent à un autre régime de pension, et qui fait partie intégrante de celui-ci.

Définition de emploi inclus

(4) Pour l'application de la présente loi, **emploi inclus** s'entend de tout emploi, autre qu'un emploi exclu, lié ou rattaché à la mise en service d'un ouvrage, d'une entreprise ou d'une activité de compétence fédérale et lié notamment à :

a) un ouvrage, une entreprise ou une activité exploitée relativement à la navigation et les expéditions par eau, intérieures ou maritimes, y compris la mise en service d'un navire et le transport par navire au Canada;

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
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Application de la loi
Article 4

(b) any railway, canal, telegraph or other work or undertaking connecting a province with another province or extending beyond the limits of a province;

(c) any line of steam or other ships connecting a province with another province or extending beyond the limits of a province;

(d) any ferry between a province and another province or between a province and a country other than Canada;

(e) any aerodrome, aircraft or line of air transportation;

(f) any radio broadcasting station;

(g) any bank or authorized foreign bank within the meaning of section 2 of the *Bank Act*;

(h) any work, undertaking or business that, although wholly situated within a province, is before or after its execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more provinces; and

(i) any work, undertaking or business outside the exclusive legislative authority of provincial legislatures, and any work, undertaking or business of a local or private nature in Yukon, the Northwest Territories or Nunavut.

Definition of *excepted employment*

(5) In this Act, ***excepted employment*** means

(a) employment by Her Majesty in right of Canada; and

(b) any employment that is excepted from included employment by any regulation made under subsection (6).

Idem

(6) The Governor in Council may make regulations excepting from included employment

(a) employment by an agent of Her Majesty in right of Canada; and

(b) any other employment if the Governor in Council, on a report of the Minister, is satisfied that

(i) provision has been made for the coverage of employees employed in that employment under the terms of a pension plan that is organized and administered for the benefit primarily of employees

b) un chemin de fer, canal, télégraphe ou autre ouvrage ou entreprise reliant une ou plusieurs provinces ou s'étendant à l'extérieur d'une province;

c) une ligne de navires à vapeur ou autres reliant une ou plusieurs provinces ou s'étendant au-delà des limites d'une province;

d) un traversier exploité entre une ou plusieurs provinces ou une province et un pays étranger;

e) un aérodrome, un aéronef ou une ligne aérienne;

f) une station de radiodiffusion;

g) une banque ou une banque étrangère autorisée, au sens de l'article 2 de la *Loi sur les banques*;

h) un ouvrage, une entreprise ou une activité que le Parlement déclare être à l'avantage général du Canada ou de plusieurs provinces même si l'ouvrage ou l'entreprise sont situés, ou l'activité est exercée, entièrement à l'intérieur d'une province;

i) un ouvrage, une entreprise ou autre activité qui ne relèvent pas de la compétence législative exclusive des provinces ou qui sont de nature locale ou privée au Yukon, dans les Territoires du Nord-Ouest ou au Nunavut.

Définition de *emploi exclu*

(5) Pour l'application de la présente loi, ***emploi exclu*** s'entend de tout emploi :

a) occupé au service de Sa Majesté du chef du Canada;

b) exclu par les règlements pris en application du paragraphe (6).

Idem

(6) Le gouverneur en conseil peut, par règlement, exclure des emplois inclus :

a) l'emploi d'un mandataire de Sa Majesté du chef du Canada;

b) tout autre emploi, s'il est convaincu, sur le rapport du ministre :

(i) soit que des dispositions ont été prises en vue d'offrir aux salariés occupant un tel emploi la garantie d'un régime de pension institué et géré, essentiellement pour des salariés qui n'occupent pas

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Application of Act
Sections 4-6

Normes de prestation de pension (1985)
Application de la loi
Articles 4-6

employed in other than included employment and that is required to be registered under the law of a designated province, or

(ii) in any other case, the exception of that employment is warranted having regard to the existence of other arrangements for the safeguarding of any benefits that are or may become available to employees or other persons in respect of that employment, or having regard to such other circumstances as the Governor in Council deems relevant.

R.S., 1985, c. 32 (2nd Supp.), s. 4; 1993, c. 28, s. 78; 1999, c. 28, s. 172, c. 31, s. 244(F); 2002, c. 7, s. 226; 2012, c. 16, s. 84.

Powers of Superintendent

Powers of Superintendent

5 (1) The Superintendent, under the direction of the Minister, has the control and supervision of the administration of this Act and has the powers conferred by this Act.

Information and studies

(2) The Superintendent may

(a) collect information to determine the extent to which inflation adjustments and other adjustments to pension benefits are provided;

(b) conduct studies, surveys and research programs and compile statistical and other information relating to pension plans and their operation;

(c) disclose information gathered under paragraph (a) or (b) or subsection 9.01(6) or filed under subsection 9.01(5) or section 10, 10.1 or 12 to any government agency or regulatory body; and

(d) collect information from a pension supervisory authority of a designated province and disclose information to that authority for the purposes of implementing a federal-provincial agreement.

Terms and conditions

(3) Any approval, authorization, consent or permission of the Superintendent given under this Act may be subject to terms and conditions.

R.S., 1985, c. 32 (2nd Supp.), s. 5; 1998, c. 12, s. 3; 2010, c. 12, s. 1788, c. 25, s. 180; 2016, c. 7, s. 202.

Agreements

6 [Repealed, 2016, c. 7, s. 203]

un emploi inclus, et qui doit être agréé en application de la loi d'une province désignée,

(ii) soit, dans les autres cas, que l'exclusion est justifiée, compte tenu de l'existence d'autres ententes visant à protéger les prestations dont bénéficient ou pourront bénéficier des salariés ou d'autres personnes relativement à cet emploi, ou de toutes autres circonstances qu'il estime indiquées.

L.R. (1985), ch. 32 (2^e suppl.), art. 4; 1993, ch. 28, art. 78; 1999, ch. 28, art. 172, ch. 31, art. 244(F); 2002, ch. 7, art. 226; 2012, ch. 16, art. 84.

Attributions du surintendant

Attributions du surintendant

5 (1) Sous l'autorité du ministre, le surintendant est chargé de l'application de la présente loi et, à ce titre, dispose des pouvoirs qu'elle lui confère.

Renseignements et études

(2) Il peut notamment :

a) recueillir les renseignements permettant d'apprécier les révisions, en particulier celles liées à l'inflation, apportées aux prestations de pension;

b) procéder à des études, sondages ou recherches et recueillir des données statistiques ou autres relatives aux régimes de pension et à leur fonctionnement;

c) communiquer les renseignements recueillis en application des alinéas a) ou b) ou du paragraphe 9.01(6) ou déposés au titre du paragraphe 9.01(5) ou des articles 10, 10.1 ou 12 à tout organisme public, notamment un organisme de réglementation;

d) aux fins de mise en œuvre d'un accord fédéral-provincial, recueillir des renseignements auprès de l'autorité de surveillance des pensions d'une province désignée et lui en communiquer.

Conditions

(3) Il peut assortir de conditions tout agrément qu'il donne en vertu du paragraphe 9.2(10) et tout consentement, autorisation ou approbation qu'il donne en vertu de la présente loi.

L.R. (1985), ch. 32 (2^e suppl.), art. 5; 1998, ch. 12, art. 3; 2010, ch. 12, art. 1788, ch. 25, art. 180; 2016, ch. 7, art. 202.

Accords

6 [Abrogé, 2016, ch. 7, art. 203]

One or more designated provinces

6.1 (1) The Minister may, with the approval of the Governor in Council, enter into an agreement with one or more designated provinces respecting any matter relating to pension plans that are subject to the pension legislation of at least one designated province that is a party to the agreement.

Content of agreement

(2) A federal-provincial agreement may, among other things,

(a) limit the application of the pension legislation of a designated province that is a party to the agreement to a pension plan and adapt that legislation to that pension plan;

(b) limit the application of this Act and the regulations to a pension plan and adapt them to that pension plan;

(c) exempt a pension plan from the application of this Act and the regulations or the pension legislation of a designated province that is a party to the agreement;

(c.1) make applicable, with respect to a pension plan, the pension legislation of a designated province that is a party to the agreement;

(d) provide for the administration and enforcement of this Act, the regulations and the pension legislation of a designated province that is a party to the agreement;

(e) authorize a pension supervisory authority of a designated province that is a party to the agreement or the association referred to in section 6.4 to exercise any of the Superintendent's powers under this Act;

(f) authorize the Superintendent to exercise any powers of a pension supervisory authority of a designated province that is a party to the agreement or the association referred to in section 6.4;

(g) establish requirements — in addition to any other requirements under this Act, the regulations and the pension legislation of a designated province that is a party to the agreement — with respect to a pension plan, administrator or employer; and

(h) confer powers on the Superintendent.

Tabling in Parliament

(3) The Minister must cause every federal-provincial agreement to be tabled in each House of Parliament.

Une ou plusieurs provinces désignées

6.1 (1) Le ministre peut, avec l'approbation du gouverneur en conseil, conclure avec une ou plusieurs provinces désignées un accord concernant toute question liée aux régimes de pension qui sont assujettis à la législation sur les pensions d'au moins une province désignée qui est partie à l'accord.

Contenu

(2) L'accord fédéral-provincial peut notamment :

a) restreindre l'application de la législation sur les pensions d'une province désignée qui est partie à l'accord à un régime de pension et adapter cette législation à ce régime;

b) restreindre l'application de la présente loi et des règlements à un régime de pension et les adapter à ce régime;

c) soustraire un régime de pension à l'application de la présente loi et des règlements ou à la législation sur les pensions d'une province désignée qui est partie à l'accord;

c.1) rendre applicable à l'égard d'un régime de pension la législation sur les pensions d'une province désignée qui est partie à l'accord;

d) régir l'exécution et le contrôle d'application de la présente loi, des règlements et de la législation sur les pensions de toute province désignée qui est partie à l'accord;

e) autoriser l'autorité de surveillance des pensions d'une province désignée qui est partie à l'accord ou l'association visée à l'article 6.4 à exercer toute attribution que la présente loi confère au surintendant;

f) autoriser le surintendant à exercer toute attribution de l'autorité de surveillance des pensions d'une province désignée qui est partie à l'accord ou de l'association visée à l'article 6.4;

g) établir des exigences à l'égard du régime de pension, de l'administrateur ou de l'employeur en sus des autres exigences imposées par la présente loi, les règlements et la législation sur les pensions de toute province désignée qui est partie à l'accord;

h) conférer des attributions au surintendant.

Dépôt au Parlement

(3) Le ministre fait déposer devant chaque chambre du Parlement tout accord fédéral-provincial.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
 Agreements
 Sections 6.1-6.3

Normes de prestation de pension (1985)
 Accords
 Articles 6.1-6.3

Publication — *Canada Gazette*

(4) The Minister must cause to be published in the *Canada Gazette*

(a) every federal-provincial agreement and a notice of the date on which the agreement comes into effect with respect to pension plans;

(b) every amendment to a federal-provincial agreement and a notice of the date on which the amendment comes into effect with respect to pension plans; and

(c) a notice of the effective date of the Government of Canada's withdrawal from the federal-provincial agreement or of the effective date of termination of that agreement, whichever comes first.

Publication — other

(5) In addition to the publishing requirements under subsection (4), the Minister must ensure that every federal-provincial agreement and every amendment to a federal-provincial agreement is accessible to the public through the Internet or by any other means that the Minister considers appropriate.

2010, c. 25, s. 181; 2016, c. 7, s. 204.

Force of law

6.2 (1) The provisions of a federal-provincial agreement, other than those exempted from the application of this subsection by regulation, have the force of law during the period that the agreement is in effect with respect to pension plans and are enforceable during that period as if those provisions formed part of this Act.

Inconsistency with agreement

(2) The provisions of a federal-provincial agreement that have the force of law prevail over any provision of this Act and the regulations to the extent of any inconsistency or conflict between them.

2010, c. 25, s. 181; 2016, c. 7, s. 205.

Review by Federal Court

6.3 (1) A decision of a pension supervisory authority of a designated province that is made under the authority of a federal-provincial agreement and that relates to the application of this Act or the regulations is deemed to be a decision of a **federal board, commission or other tribunal**, as defined in subsection 2(1) of the *Federal Courts Act*, and is subject to judicial review under that Act.

Publication dans la *Gazette du Canada*

(4) Le ministre fait publier dans la *Gazette du Canada* :

a) l'accord fédéral-provincial et un avis de la date de sa prise d'effet à l'égard des régimes de pension;

b) toute modification apportée à l'accord fédéral-provincial et un avis de la date de sa prise d'effet à l'égard des régimes de pension;

c) un avis de la date de prise d'effet de la dénonciation, par le gouvernement du Canada, de l'accord fédéral-provincial ou, si elle est antérieure, de sa résiliation.

Accessibilité

(5) En plus de les faire publier dans la *Gazette du Canada*, le ministre veille à ce que l'accord fédéral-provincial et toute modification apportée à celui-ci soient accessibles au public par Internet ou par tout autre moyen qu'il estime indiqué.

2010, ch. 25, art. 181; 2016, ch. 7, art. 204.

Force de loi

6.2 (1) Les dispositions de l'accord fédéral-provincial — à l'exception de celles soustraites par règlement à l'application du présent paragraphe — ont force de loi pendant la période où l'accord s'applique à l'égard des régimes de pension et sont exécutoires, durant cette période, comme si elles faisaient partie de la présente loi.

Primauté de l'accord

(2) En cas d'incompatibilité, les dispositions de l'accord fédéral-provincial qui ont force de loi l'emportent sur les dispositions de la présente loi et des règlements.

2010, ch. 25, art. 181; 2016, ch. 7, art. 205.

Compétence de la Cour fédérale

6.3 (1) La décision de l'autorité de surveillance des pensions d'une province désignée qui est rendue au titre d'un accord fédéral-provincial et qui porte sur l'application de la présente loi ou des règlements est assimilée à celle d'un **office fédéral** au sens du paragraphe 2(1) de la *Loi sur les Cours fédérales* et est susceptible de révision judiciaire au titre de cette loi.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Agreements
Sections 6.3-7.1

Normes de prestation de pension (1985)
Accords
Articles 6.3-7.1

No review by Federal Court

(2) A decision of the Superintendent that is made under the authority of a federal-provincial agreement and that relates to the application of the pension legislation of a designated province is deemed to be a decision of the pension supervisory authority of that province and is not subject to judicial review under the *Federal Courts Act*.

2010, c. 25, s. 181; 2016, c. 7, s. 205.

Association of pension supervisory authorities

6.4 The Minister may, with the approval of the Governor in Council, enter into an agreement with one or more designated provinces respecting the establishment and operation in Canada of an association of pension supervisory authorities.

2010, c. 25, s. 181; 2016, c. 7, s. 205.

Administration of Pension Plans

Administrator

7 (1) The administrator of a pension plan shall be

(a) in the case of a multi-employer pension plan established under one or more collective agreements, a board of trustees or other similar body constituted in accordance with the terms of the plan or the collective agreement or agreements to manage the affairs of the plan;

(b) in the case of a multi-employer pension plan not described in paragraph (a), a pension committee constituted in accordance with the terms of the plan, subject to section 7.1, to manage the affairs of the plan; or

(c) in the case of a pension plan other than a multi-employer pension plan,

(i) the employer, or

(ii) if the plan is established under one or more collective agreements and the terms of the plan or the collective agreement or agreements to manage the affairs of the plan provide for the constitution of a board of trustees or other similar body, that body.

(2) [Repealed, 2012, c. 16, s. 85]

R.S., 1985, c. 32 (2nd Supp.), s. 7; 1998, c. 12, s. 5; 2012, c. 16, s. 85.

Representative of members

7.1 A pension committee must

(a) if a majority of the pension plan members so requests, include a representative of the plan members; and

Pas de compétence

(2) La décision du surintendant qui est rendue au titre d'un accord fédéral-provincial et qui porte sur l'application de la législation sur les pensions d'une province désignée est assimilée à celle de l'autorité de surveillance des pensions de cette province et n'est pas susceptible de révision judiciaire au titre de la *Loi sur les Cours fédérales*.

2010, ch. 25, art. 181; 2016, ch. 7, art. 205.

Association d'autorités de surveillance des pensions

6.4 Le ministre peut, avec l'approbation du gouverneur en conseil, conclure avec une ou plusieurs provinces désignées un accord concernant la création et le fonctionnement au Canada d'une association d'autorités de surveillance des pensions.

2010, ch. 25, art. 181; 2016, ch. 7, art. 205.

Gestion des régimes de pension

Administrateur

7 (1) L'administrateur d'un régime de pension est :

a) dans le cas d'un régime interentreprises institué en application d'une ou de plusieurs conventions collectives, l'organe de gestion constitué, conformément aux dispositions du régime de pension ou de cette ou ces conventions collectives, pour gérer le régime;

b) dans le cas de tout autre régime interentreprises, le comité des pensions constitué, conformément aux dispositions du régime de pension et à l'article 7.1, pour gérer le régime;

c) dans le cas de tout autre régime de pension, l'organe de gestion désigné dans le régime de pension ou dans la convention collective par les parties liées par une convention collective ou, à défaut, l'employeur.

(2) [Abrogé, 2012, ch. 16, art. 85]

L.R. (1985), ch. 32 (2^e suppl.), art. 7; 1998, ch. 12, art. 5; 2012, ch. 16, art. 85.

Représentants au comité des pensions

7.1 Le comité des pensions est composé de sorte que :

a) à la demande de la majorité des participants, au moins un de ses membres les représente;

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Administration of Pension Plans
Sections 7.1-7.4

Normes de prestation de pension (1985)
Gestion des régimes de pension
Articles 7.1-7.4

(b) if the pension plan has fifty or more retired members and a majority of the retired members so requests, include a representative of the retired members.

1998, c. 12, s. 5.

Pension council

7.2 (1) An employer who is the administrator of a pension plan may establish a pension council but, if the pension plan has fifty or more members and a majority of the members so requests, the employer shall establish a pension council.

Representative of members

(2) A pension council must include a representative of the pension plan members and, if the plan has fifty or more retired members and a majority of the retired members so requests, the council must include a representative of the retired members.

Functions of pension council

(3) The functions of a pension council are the following:

(a) to promote awareness and understanding of the pension plan among members and potential members;

(b) to review, at least once every year, the financial, actuarial and administrative aspects of the plan;

(c) to perform the prescribed administrative functions; and

(d) to perform any other functions that are specified by the pension plan or the employer.

Information

(4) The employer shall provide a pension council with any information that is necessary to enable it to carry out its functions.

1998, c. 12, s. 5.

Choosing representatives

7.3 Pension plan members and retired members shall choose their representatives for the purposes of section 7.1 and subsection 7.2(2), directly or indirectly, in the prescribed manner.

1998, c. 12, s. 5.

Duties of administrator

7.4 (1) The administrator of a pension plan shall, in accordance with this Act and the regulations, administer the pension plan and the pension fund and file the required documents.

b) si le régime comprend au moins cinquante participants retraités et que la majorité de ceux-ci le demandent, au moins un de ses membres les représente.

1998, ch. 12, art. 5.

Conseil des pensions

7.2 (1) Si le régime de pension compte au moins cinquante participants et que la majorité de ceux-ci le demandent, l'employeur qui est l'administrateur constitue un conseil des pensions; la constitution du conseil est facultative dans les autres cas.

Représentants au conseil

(2) Le conseil doit compter un représentant des participants et, si le régime comprend au moins cinquante participants retraités et que la majorité de ceux-ci le demandent, un représentant de ces derniers.

Attributions du conseil

(3) Le conseil a les attributions suivantes :

a) favoriser la connaissance et la compréhension du régime de pension chez les participants actuels et éventuels;

b) examiner, au moins une fois par année, les aspects financiers, actuariels et administratifs du régime;

c) exercer les attributions administratives réglementaires;

d) exercer les attributions prévues par le régime de pension ou fixées par l'employeur.

Renseignements

(4) L'employeur doit fournir au conseil les renseignements nécessaires à l'exercice de ces attributions.

1998, ch. 12, art. 5.

Choix des représentants

7.3 Les participants, retraités ou non, choisissent leurs représentants aux instances visées aux articles 7.1 et 7.2, directement ou indirectement, conformément aux modalités réglementaires.

1998, ch. 12, art. 5.

Attributions de l'administrateur

7.4 (1) L'administrateur d'un régime de pension doit, conformément à la présente loi et aux règlements, assurer la gestion du régime et du fonds de pension et déposer auprès du surintendant tous les documents requis.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Administration of Pension Plans
Sections 7.4-7.6

Normes de prestation de pension (1985)
Gestion des régimes de pension
Articles 7.4-7.6

Employer to provide information

(2) An employer who is not the administrator of its pension plan shall provide the administrator with the information that is required by the administrator in order to comply with the terms of the plan and discharge the duties under subsection (1).

Coordinates

(3) The administrator of a pension plan shall, within 30 days after being constituted or becoming the administrator, inform the Superintendent, in the form and manner, if any, that the Superintendent directs, of

- (a)** the administrator's name and address; or
- (b)** the names and addresses of the persons who together constitute the body that is the administrator.

The administrator shall inform the Superintendent, in the form and manner, if any, that the Superintendent directs, of any change to that information within 30 days after the change.

1998, c. 12, s. 5; 2010, c. 25, s. 182.

Superintendent may require meeting

7.5 (1) An administrator shall hold a meeting, within the period specified by the Superintendent, to consider any matters set out in a written notice from the Superintendent requiring the administrator to hold a meeting.

Participation

(2) The Superintendent may

- (a)** participate in the meeting;
- (b)** require the administrator to invite members, former members or any other persons entitled to pension benefits under the pension plan to attend the meeting; and
- (c)** require any other interested persons to attend the meeting.

1998, c. 12, s. 5; 2010, c. 12, s. 1789.

Appointment of replacement administrator

7.6 (1) If the administrator of a pension plan is insolvent or unable to act or the Superintendent is of the opinion that it is in the best interests of the members or former members, or any other persons entitled to pension benefits under the plan, that the administrator be removed, the Superintendent may remove the administrator and appoint a replacement administrator. A replacement administrator may recover their reasonable fees and expenses from the pension fund.

Renseignements à fournir par l'employeur

(2) L'employeur qui n'est pas l'administrateur du régime est tenu de fournir tous les renseignements exigés par l'administrateur pour que celui-ci puisse se conformer aux dispositions du régime et s'acquitter des attributions que lui confère le paragraphe (1).

Coordonnées

(3) L'administrateur informe le surintendant, dans les trente jours suivant la date à laquelle il est devenu administrateur, soit de ses nom et adresse, soit des nom et adresse des personnes qui constituent l'organe de gestion; il l'informe de plus de tout changement de ces renseignements dans les trente jours qui suivent. Ces renseignements et changements sont fournis en la forme et de la manière que peut fixer le surintendant.

1998, ch. 12, art. 5; 2010, ch. 25, art. 182.

Demande d'assemblée

7.5 (1) L'administrateur est tenu, sur demande écrite du surintendant, de convoquer, dans le délai fixé par celui-ci, une assemblée chargée d'examiner les points inscrits à l'ordre du jour joint à la demande.

Participation

(2) Le surintendant peut participer à l'assemblée et ordonner à toute autre personne intéressée d'y participer; il peut également ordonner à l'administrateur d'y inviter les participants, les anciens participants et les autres personnes qui ont droit à une prestation de pension au titre du régime de pension.

1998, ch. 12, art. 5; 2010, ch. 12, art. 1789.

Nomination d'un nouvel administrateur

7.6 (1) Si l'administrateur est insolvable ou est dans l'impossibilité d'agir, ou si le surintendant l'estime nécessaire dans l'intérêt des participants, des anciens participants ou de toute autre personne qui a droit à une prestation de pension au titre du régime de pension, ce dernier peut remplacer l'administrateur par toute personne qu'il nomme à cette fin. Le remplaçant peut recouvrer sur le fonds de pension ses honoraires et dépenses, dans la mesure où ils sont raisonnables.

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Pension Benefits Standards, 1985
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Notification

(2) The Superintendent must notify a replaced administrator of their removal as soon as feasible.

Effect of replacement

(3) The replacement administrator is seized of the pension fund as of the date of the notification under subsection (2).

Notice

(4) If the whole of a pension plan is terminated, the replacement administrator must, on receiving approval of the termination report under subsection 29(10), give notice to the members, former members and any other persons who are entitled to pension benefits under the pension plan of the replacement administrator's intention to distribute the assets of the plan in accordance with the report.

Publication

(5) The replacement administrator must publish the notice in the *Canada Gazette* and, except as otherwise directed by the Superintendent, once a week for two consecutive weeks in one or more newspapers in general circulation in each province.

Subrogation

(6) The members, former members and any other persons who were entitled to pension benefits under the pension plan immediately before the appointment of the replacement administrator are subrogated to those rights and claims of the replacement administrator that the replacement administrator has elected in writing not to pursue. They may maintain an action in respect of those rights and claims in their own name.

Discharge

(7) The Superintendent may discharge the replacement administrator when the assets of the pension plan have been distributed in accordance with this Act and the regulations.

2010, c. 12, s. 1790.

Amounts to be held in trust

8 (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:

- (a) the moneys in the pension fund,

Notification

(2) Le surintendant notifie sa décision à l'administrateur remplacé dans les plus brefs délais.

Effet du remplacement

(3) La décision emporte transfert de la saisine du fonds de pension au profit du nouvel administrateur à la date de la notification.

Avis

(4) Si le régime de pension fait l'objet d'une cessation totale, le nouvel administrateur avise, dès l'approbation du rapport de cessation au titre du paragraphe 29(10), les participants, les anciens participants ainsi que toute autre personne qui a droit à une prestation de pension au titre du régime de son intention de répartir l'actif du régime en conformité avec le rapport.

Publication

(5) Il fait publier l'avis d'intention dans la *Gazette du Canada* et, sauf directives contraires du surintendant, une fois par semaine pendant deux semaines consécutives, dans un ou plusieurs journaux à grand tirage publiés dans chaque province.

Subrogation

(6) Les participants, les anciens participants ainsi que toute autre personne qui a droit à une prestation de pension au titre du régime de pension avant la nomination du nouvel administrateur sont subrogés dans les droits et réclamations que celui-ci a choisis, par écrit, de ne pas faire valoir. Ils peuvent, pour faire valoir ces droits et réclamations, ester en justice sous leur propre nom.

Libération

(7) Le surintendant peut libérer le nouvel administrateur qui a réparti l'actif du régime de pension conformément à la présente loi et aux règlements.

2010, ch. 12, art. 1790.

Montants détenus en fiducie

8 (1) L'employeur veille à ce que les montants suivants soient gardés séparément de ceux qui lui appartiennent et est réputé les détenir en fiducie pour les participants actuels ou anciens ainsi que pour toutes autres personnes qui ont droit à des prestations de pension ou à des remboursements au titre du régime :

- a) les sommes versées au fonds;

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(b) an amount equal to the aggregate of the following payments that have accrued to date:

(i) the prescribed payments, and

(ii) the payments that are required to be made under a workout agreement; and

(c) all of the following amounts that have not been remitted to the pension fund:

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

Where bankruptcy, etc., of employer

(2) In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

Administration of pension plan and fund

(3) The administrator shall administer the pension plan and pension fund as a trustee for the employer, the members of the pension plan, former members, and any other persons entitled to pension benefits under the plan.

Standard of care

(4) In the administration of the pension plan and pension fund, the administrator shall exercise the degree of care that a person of ordinary prudence would exercise in dealing with the property of another person.

Manner of investing assets

(4.1) The administrator shall invest the assets of a pension fund in accordance with the regulations and in a manner that a reasonable and prudent person would apply in respect of a portfolio of investments of a pension fund.

Investment choices

(4.2) A pension plan may permit a member, former member, survivor or former spouse or former common law partner of a member or former member to make investment choices with respect to their account maintained in respect of a defined contribution provision or

b) le montant correspondant à la somme des paiements, accumulés à la date en cause, prévus par règlement ou par un accord de sauvetage;

c) les montants suivants qui n'ont pas été versés au fonds de pension :

(i) les montants déduits par l'employeur sur la rémunération des participants,

(ii) les autres sommes que l'employeur doit au fonds de pension, notamment celles visées aux paragraphes 9.14(2) ou 29(6).

Faillite de l'employeur

(2) En cas de liquidation, de cession des biens ou de faillite de l'employeur, un montant correspondant à celui censé détenu en fiducie, au titre du paragraphe (1), est réputé ne pas faire partie de la masse des biens assujettis à la procédure en cause, que l'employeur ait ou non gardé ce montant séparément de ceux qui lui appartiennent ou des actifs de la masse.

Gestion du régime et du fonds

(3) L'administrateur du régime de pension gère le régime et le fonds de pension en qualité de fiduciaire de l'employeur, des participants, des anciens participants et de toute autre personne qui a droit à une prestation de pension au titre du régime.

Qualité de gestion

(4) L'administrateur doit agir, dans sa gestion, avec autant de prudence que le ferait une personne normale relativement aux biens d'autrui.

Gestion en matière de placement de l'actif

(4.1) L'administrateur doit se conformer, en matière de placement de l'actif d'un fonds de pension, au règlement et adopter la pratique qu'une personne prudente suivrait dans la gestion d'un portefeuille de placements de fonds de pension.

Choix

(4.2) Le régime de pension peut permettre au participant, à l'ancien participant, au survivant ou à l'ex-époux ou ancien conjoint de fait d'un participant ou ancien participant d'effectuer des choix en matière de placement à

with respect to their account maintained for additional voluntary contributions.

Administrator's duty

(4.3) If a pension plan permits a member, former member, survivor or former spouse or former common law partner of a member or former member to make investment choices, the administrator must offer investment options of varying degrees of risk and expected return that would allow a reasonable and prudent person to create a portfolio of investments that is well adapted to their retirement needs.

Deemed compliance with subsection (4.1)

(4.4) With respect to the account for which an investment choice is made by a member, former member, survivor or former spouse or former common law partner of a member or former member, if an administrator offers investment options in accordance with subsection (4.3) and the regulations, that administrator is deemed to comply with subsection (4.1).

Special knowledge or skill

(5) Without limiting the generality of subsection (4), an administrator who in fact possesses, or by reason of profession or business ought to possess, a particular level of knowledge or skill relevant to the administration of a pension plan or pension fund shall employ that particular level of knowledge or skill in the administration of the pension plan or pension fund.

Administrator not liable

(5.1) An administrator is not liable for contravening subsection (4), (4.1) or (5) if the contravention occurred because the administrator relied in good faith on

(a) financial statements of the pension plan prepared by an accountant, or a written report of the auditor or auditors of the plan, that have been represented to the administrator as fairly reflecting the financial condition of the plan; or

(b) a report of an accountant, an actuary, a lawyer, a notary or another professional person whose profession lends credibility to the report.

Conflict of interest

(6) A person shall not accept an appointment to a body referred to in paragraph 7(1)(a) or (b) or subparagraph 7(1)(c)(ii) if there would be a material conflict of interest between that person's role as a member of that body and that person's role in any other capacity.

l'égard de son compte qui a trait à une disposition à cotisations déterminées et à l'égard de son compte qui a trait aux cotisations facultatives.

Devoir de l'administrateur

(4.3) Si le régime de pension permet au participant, à l'ancien participant, au survivant ou à l'ex-époux ou ancien conjoint de fait d'un participant ou ancien participant d'effectuer des choix en matière de placement, l'administrateur offre des options de placement qui comportent divers niveaux de risque et de rendement attendu et qui permettraient à une personne prudente de créer un portefeuille bien adapté à ses besoins de retraite.

Personne prudente

(4.4) L'administrateur qui offre des options en matière de placement conformes au paragraphe (4.3) et aux règlements est réputé respecter le paragraphe (4.1) à l'égard du compte pour lequel un choix en matière de placement est effectué par le participant, l'ancien participant, le survivant ou l'ex-époux ou ancien conjoint de fait d'un participant ou ancien participant.

Compétences

(5) L'administrateur qui a ou devrait avoir, compte tenu de sa profession ou de son entreprise, des connaissances ou aptitudes utiles en l'occurrence est tenu de les mettre en œuvre dans la gestion du régime ou du fonds de pension.

Immunité

(5.1) N'est pas engagée, aux termes des paragraphes (4), (4.1) ou (5), la responsabilité de l'administrateur qui s'appuie de bonne foi sur :

a) des états financiers préparés par un comptable ou un rapport écrit préparé par un vérificateur censés refléter fidèlement la situation du régime de pension;

b) le rapport d'une personne dont la profession permet d'ajouter foi à sa déclaration, notamment l'actuaire, l'avocat, le notaire ou le comptable.

Conflit d'intérêts

(6) Ne peut accepter de faire partie de l'organe de gestion ou du comité des pensions visés au paragraphe 7(1) la personne dont la présence à ce poste créerait un conflit d'intérêts sérieux.

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Not a conflict of interest

(6.1) For the purposes of subsection (6), merely being entitled to a pension benefit or having an interest in a pension benefit credit does not constitute a conflict of interest.

Eliminating conflict of interest

(7) A person described in subsection (6) shall, within ninety days after becoming aware that a material conflict of interest exists,

- (a)** eliminate that conflict of interest; or
- (b)** resign as a member of that body.

Validity of documents

(8) A document issued by a board of trustees or other similar body or a pension committee is valid notwithstanding a material conflict of interest of a member thereof.

Removal of member

(9) If a person contravenes subsection (6) or (7), the Superintendent or any other interested person may apply to a court of competent jurisdiction for an order that that person be replaced, and the court may make an order on such terms as it considers appropriate.

Other conflicts of interest

(10) If there is a material conflict of interest between the role of an employer who is an administrator and their role in any other capacity, the administrator

- (a)** shall, within thirty days after becoming aware that a material conflict of interest exists, declare that conflict of interest to the pension council or to the members of the pension plan; and
- (b)** shall act in the best interests of the members of the pension plan.

Court order

(11) If an administrator contravenes subsection (10), a court of competent jurisdiction may, on application by the Superintendent or any other interested person, make any order on such terms as the court considers appropriate.

R.S., 1985, c. 32 (2nd Suppl.), s. 8; 1998, c. 12, s. 6; 2010, c. 12, s. 1791, c. 25, s. 183; 2012, c. 16, s. 86.

Absence de conflit d'intérêts

(6.1) Pour l'application du paragraphe (6), le seul fait d'avoir droit à une prestation de pension ou d'être titulaire d'un droit à une pension ne constitue pas un conflit d'intérêts sérieux.

Suppression du conflit d'intérêts

(7) Le membre, visé au paragraphe (6), qui constate l'existence d'un conflit d'intérêts sérieux doit, dans les quatre-vingt-dix jours suivant le moment où il en constate l'existence :

- a)** soit y mettre fin;
- b)** soit se démettre de ses fonctions.

Validité des documents

(8) Les documents émis par l'organe de gestion ou le comité des pensions sont valides malgré l'existence d'un conflit d'intérêts sérieux mettant en cause un de ses membres.

Révocation du membre

(9) Le tribunal compétent peut, à la demande du surintendant ou de tout autre intéressé, ordonner, selon les modalités qu'il estime indiquées, le remplacement de la personne qu'il juge en conflit d'intérêts sérieux.

Autre conflit d'intérêts

(10) L'employeur qui est l'administrateur et qui se trouve dans un conflit d'intérêts sérieux entre les fonctions qu'il exerce à ce double titre et celles qu'il assume par ailleurs doit :

- a)** faire part du conflit au conseil des pensions ou aux participants du régime de pension dans les trente jours suivant le moment où il en constate l'existence;
- b)** agir de façon à servir les intérêts des participants.

Ordonnance du tribunal

(11) En cas de contravention au paragraphe (10), le tribunal compétent peut, à la demande du surintendant ou de tout autre intéressé, rendre l'ordonnance qu'il estime indiquée en l'espèce.

L.R. (1985), ch. 32 (2^e suppl.), art. 8; 1998, ch. 12, art. 6; 2010, ch. 12, art. 1791, ch. 25, art. 183; 2012, ch. 16, art. 86.

Funding and Surplus

Required Funding

Funding of pension plan

9 (1) A pension plan shall be funded in accordance with the prescribed tests and standards for solvency.

Payments by employer

(1.1) In respect of a pension plan that is not a multi-employer pension plan, the employer shall pay into the pension fund all amounts required to meet the prescribed tests and standards for solvency.

Multi-employer pension plan

(1.2) In respect of a multi-employer pension plan, each participating employer shall pay into the pension fund all contributions that they are required to pay under an agreement between participating employers or a collective agreement, statute or regulation.

Actuarial reports

(2) In the case of an actuarial report required under subsection 12(2), if the Superintendent is of the opinion that the report has not been prepared

(a) on the basis of actuarial assumptions or methods that are adequate and appropriate, and

(b) in accordance with the standards of practice adopted by the Canadian Institute of Actuaries, except as otherwise specified by the Superintendent,

the Superintendent shall notify the administrator in writing of this opinion and shall direct the administrator to cause the appropriate changes to be made to the report, and the administrator shall forthwith comply with such a direction.

Amended report

(3) A pension plan shall be funded in accordance with the report referred to in subsection (2) as amended pursuant to any direction of the Superintendent under that subsection.

(4) to (6) [Repealed, 1998, c. 12, s. 8]

R.S., 1985, c. 32 (2nd Supp.), s. 9; 1998, c. 12, s. 8; 2010, c. 12, s. 1793.

Designation of actuary

9.01 (1) If the Superintendent is of the opinion that it is in the best interests of the members or former members,

Capitalisation et excédent

Capitalisation requise

Capitalisation

9 (1) Le régime de pension doit être capitalisé conformément aux critères et normes de solvabilité réglementaires.

Paiements par l'employeur

(1.1) L'employeur est tenu, dans le cas d'un régime de pension qui n'est pas un régime interentreprises, de verser au fonds de pension toutes les sommes nécessaires pour satisfaire aux critères et normes de solvabilité réglementaires.

Régimes interentreprises

(1.2) Dans le cas d'un régime interentreprises, l'employeur participant est tenu de verser au fonds de pension les cotisations que lui impose tout accord entre employeurs participants, toute convention collective, toute loi ou tout règlement.

Rapports actuariels

(2) Le surintendant est tenu, s'il est d'avis qu'un rapport actuariel exigé par le paragraphe 12(2) n'a pas été établi en conformité avec l'un ou l'autre des éléments ci-après, d'informer par écrit l'administrateur de son avis et de lui enjoindre de faire effectuer les changements voulus :

a) les hypothèses et les méthodes actuarielles adéquates et appropriées;

b) les normes de pratique de l'Institut canadien des actuaires, sauf indication contraire du surintendant.

Le cas échéant, l'administrateur doit se conformer sans délai à cette directive.

Rapport modifié

(3) Le régime de pension doit être capitalisé en conformité avec le rapport visé au paragraphe (2) et modifié, le cas échéant, selon les directives du surintendant.

(4) à (6) [Abrogés, 1998, ch. 12, art. 8]

L.R. (1985), ch. 32 (2^e suppl.), art. 9; 1998, ch. 12, art. 8; 2010, ch. 12, art. 1793.

Désignation d'un actuaire

9.01 (1) Le surintendant peut, s'il l'estime dans l'intérêt des participants, des anciens participants ou de toute

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or any other persons entitled to pension benefits under a pension plan, the Superintendent may designate an actuary to prepare, in accordance with subsection 12(3.1), an actuarial report or a termination report required under subsection 12(2) or 29(9), respectively, and to provide the administrator with the report within the period specified by the Superintendent.

Notification

(2) The Superintendent must notify the administrator in writing of the designation. If the administrator is not the employer, the administrator must notify the employer in writing.

Obligation to provide information

(3) The administrator and employer must, if requested to do so, provide the designated actuary with any information in their possession or control that the designated actuary considers necessary for the preparation of the report.

Comments on draft report

(4) Before finalizing the report, the designated actuary must provide the administrator with a copy of the draft report and give the administrator an opportunity to submit comments.

Report to be filed

(5) The administrator must file with the Superintendent the report prepared by the designated actuary within the period specified by the Superintendent.

Power of Superintendent

(6) If the administrator fails to file the report within the specified period, the Superintendent may require the designated actuary to provide a copy of the report.

Replacement report

(7) If the administrator has already filed the report in respect of which an actuary is designated, subsection 9(2) does not apply to that report and the designated actuary's report replaces it.

Funding of pension plan

(8) A pension plan must be funded in accordance with the report prepared by the designated actuary, once the report has been filed under subsection (5) or provided to the Superintendent under subsection (6).

autre personne qui a droit à une prestation de pension au titre du régime de pension, désigner un actuaire qu'il charge d'établir, conformément au paragraphe 12(3.1), le rapport actuariel ou le rapport de cessation exigés par les paragraphes 12(2) et 29(9) respectivement et de le remettre à l'administrateur dans le délai qu'il fixe.

Avis à l'administrateur

(2) Le surintendant avise l'administrateur par écrit de la désignation. Ce dernier, s'il n'est pas l'employeur, avise celui-ci par écrit.

Obligation de fournir des renseignements

(3) L'administrateur et l'employeur sont tenus de fournir à l'actuaire désigné, à sa demande, les renseignements à leur disposition que celui-ci estime nécessaires pour établir le rapport.

Observations sur le projet de rapport

(4) Avant de terminer son rapport, l'actuaire désigné adresse son projet de rapport à l'administrateur et lui donne la possibilité de présenter des observations.

Dépôt du rapport

(5) L'administrateur dépose auprès du surintendant, dans le délai que celui-ci fixe, le rapport de l'actuaire désigné.

Pouvoir du surintendant

(6) Le surintendant peut ordonner à l'actuaire désigné de lui remettre copie du rapport si l'administrateur ne l'a pas déposé dans le délai fixé.

Remplacement

(7) Si l'administrateur a déjà déposé le rapport visé par la désignation, le paragraphe 9(2) ne s'applique pas à l'égard du rapport déjà déposé et le rapport de l'actuaire désigné remplace celui-ci.

Capitalisation

(8) Le régime de pension est capitalisé en conformité avec le rapport de l'actuaire désigné, une fois que le rapport a été déposé auprès du surintendant en application du paragraphe (5) ou lui a été remis en application du paragraphe (6).

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Fees and expenses

(9) The administrator must pay out of the pension fund the reasonable fees and expenses of the designated actuary that are associated with the preparation of the report.

2010, c. 12, s. 1794.

Notification of remittance

9.1 (1) The administrator of a pension plan must notify in writing the trustee or custodian of the pension fund of all amounts that are to be remitted to the pension fund and the expected date of the remittance.

Effect of late remittance

(2) If a payment to a pension fund is not remitted within 30 days after the date referred to in subsection (1),

(a) the administrator of the pension plan must immediately notify the Superintendent; and

(b) a trustee or custodian of the pension fund must, if the administrator is the employer, immediately notify the Superintendent.

Content

(3) The Superintendent may direct the form and content of any notice referred to in subsection (2) as well as the manner of providing that notice.

1998, c. 12, s. 9; 2010, c. 25, s. 184.

Letters of Credit

Letters of credit

9.11 (1) Subject to the regulations, an employer may provide a trustee with, or transfer to a trust, a letter of credit made out to the trustee for the benefit of the pension plan, instead of paying into the pension fund an amount that is required to be paid under subsection 9(1.1).

Copy to administrator

(2) As soon as feasible after the letter of credit is issued, the employer must provide the administrator with a copy of it.

Deductions from remuneration

(3) The employer may not obtain a letter of credit in respect of an amount that it has deducted from members' remuneration.

Honoraires et dépenses

(9) L'administrateur paie, sur le fonds de pension, les honoraires et les dépenses raisonnables de l'actuaire désigné qui sont liés à l'établissement du rapport.

2010, ch. 12, art. 1794.

Notification au fiduciaire ou dépositaire

9.1 (1) L'administrateur notifie au fiduciaire ou dépositaire du fonds de pension la date et le montant de tout versement éventuel au fonds de pension.

Notification au surintendant

(2) L'administrateur et, si l'employeur est l'administrateur, le fiduciaire ou dépositaire du fonds de pension notifient sans délai au surintendant tout versement au fonds de pension qui n'est pas effectué dans les trente jours suivant la date fixée dans la notification visée au paragraphe (1).

Contenu

(3) Le surintendant peut fixer le contenu et la forme de la notification visée au paragraphe (2) ainsi que la façon de la donner.

1998, ch. 12, art. 9; 2010, ch. 25, art. 184.

Lettres de crédit

Lettres de crédit

9.11 (1) Sous réserve des règlements, l'employeur peut, au lieu de verser une somme au fonds de pension en application du paragraphe 9(1.1), transférer à une fiducie une lettre de crédit établie au nom du fiduciaire en faveur du régime de pension ou confier à un fiduciaire une telle lettre de crédit.

Copie à l'administrateur

(2) Il remet copie de la lettre de crédit à l'administrateur dans les meilleurs délais après son émission.

Déductions de la rémunération

(3) La lettre de crédit ne peut tenir lieu de versement au fonds de pension d'une somme que l'employeur a déduite de la rémunération des participants.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

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Letters of Credit
Sections 9.11-9.14

Normes de prestation de pension (1985)
Capitalisation et excédent
Lettres de crédit
Articles 9.11-9.14

Non-application

(4) Subsection (1) does not apply in respect of a pension plan that has been terminated in whole.

2010, c. 12, s. 1795.

Duty of employer

9.12 The employer must ensure that the letter of credit and the trust agreement comply with this Act and the regulations and must, at any intervals or times and in the form that the Superintendent directs, provide the Superintendent and the administrator with a written statement confirming that compliance.

2010, c. 12, s. 1795.

Obligation of trustee

9.13 (1) The trustee must hold the letter of credit in trust for the pension plan.

Disclosure

(2) The trustee must file with the Superintendent any information in respect of a letter of credit that the Superintendent requires at any intervals or times that the Superintendent directs.

No liability

(3) No civil action lies against the trustee for having, in good faith and in accordance with the regulations, on the direction of the employer, allowed the letter of credit to be cancelled or its face value to be reduced.

2010, c. 12, s. 1795.

Demand for payment

9.14 (1) In the prescribed circumstances, the trustee must make a demand to the issuer for payment into the pension fund of an amount equal to the face value of the letter of credit.

Payment by employer

(2) If the issuer fails to honour the letter of credit, the employer must pay an amount equal to its face value into the pension fund without delay.

Non-application of subsection 8(1)

(3) Subsection 8(1) does not apply to an amount in respect of which the employer has obtained a letter of credit unless the issuer fails to honour the letter of credit.

Bankruptcy, etc., of employer

(4) In the event of any liquidation, assignment or bankruptcy of the employer, an amount equal to the amount of a letter of credit that has not been honoured by the issuer is deemed to be separate from and form no

Non-application

(4) Le paragraphe (1) ne s'applique pas à l'égard du régime de pension qui a fait l'objet d'une cessation totale.

2010, ch. 12, art. 1795.

Obligation de l'employeur

9.12 L'employeur veille à ce que la lettre de crédit et l'acte de fiducie soient conformes à la présente loi et aux règlements. Il fournit au surintendant et à l'administrateur une attestation écrite de cette conformité à tout intervalle ou moment et en la forme fixés par le surintendant.

2010, ch. 12, art. 1795.

Obligation du fiduciaire

9.13 (1) Le fiduciaire détient la lettre de crédit en fiducie pour le régime de pension.

Communication

(2) Il dépose auprès du surintendant les renseignements relatifs aux lettres de crédit exigés par celui-ci, à tout intervalle ou moment fixé par ce dernier.

Immunité du fiduciaire

(3) Il bénéficie de l'immunité judiciaire en matière civile relativement au fait d'avoir permis de bonne foi et conformément aux règlements, à la demande de l'employeur, l'annulation de la lettre de crédit ou la réduction de sa valeur nominale.

2010, ch. 12, art. 1795.

Demande de paiement

9.14 (1) Dans les circonstances réglementaires, le fiduciaire demande à l'émetteur de verser au fonds de pension une somme égale à la valeur nominale de la lettre de crédit.

Paiement par l'employeur

(2) L'employeur verse sans délai au fonds de pension une somme égale à la valeur nominale de la lettre de crédit si celle-ci n'est pas honorée par l'émetteur.

Fiducie

(3) Le paragraphe 8(1) ne s'applique à la somme dont la lettre de crédit tient lieu de paiement que si cette dernière n'est pas honorée par l'émetteur.

Faillite de l'employeur

(4) En cas de liquidation, de cession des biens ou de faillite de l'employeur, une somme égale à celle dont la lettre de crédit tient lieu de paiement, si celle-ci n'est pas

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Funding and Surplus
Letters of Credit
Sections 9.14-9.2

Normes de prestation de pension (1985)
Capitalisation et excédent
Lettres de crédit
Articles 9.14-9.2

part of the estate in liquidation, assignment or bankruptcy.

2010, c. 12, s. 1795.

Costs

9.15 The costs that are associated with obtaining, holding, amending or cancelling a letter of credit may not be paid out of the pension fund.

2010, c. 12, s. 1795.

Crown Corporations

Reduction of payments

9.16 If the employer is a Crown corporation, a payment that it is required to make under subsection 9(1.1) may be reduced, provided the payment does not relate to any amount that the employer has deducted from members' remuneration and the prescribed conditions have been met.

2010, c. 12, s. 1795.

Surplus

Refund of surplus to the employer

9.2 (1) If an actuarial report prepared by a designated actuary or filed under subsection 12(2) indicates that there is a surplus, no part of that surplus may be refunded to the employer unless

- (a) the employer establishes that
 - (i) it is entitled to the surplus, or part of it, under the pension plan, or
 - (ii) it has a claim to the surplus, or part of it, under this section;
- (b) the requirements of the regulations made under paragraph 39(1)(h.1) are met; and
- (c) the Superintendent consents to the refund.

Consent to surplus

(2) In deciding whether to consent to a refund, the Superintendent shall recognize the claim of the employer to the surplus, or part of it, established under this section.

Claim to surplus

(3) An employer has a claim to the surplus, or part of it, if, after being notified of the employer's proposal for a refund of that surplus or part of it, at least two thirds of the persons in each of the following categories notify the employer that they consent to the proposal:

honorée par l'émetteur, est réputée ne pas faire partie de la masse des biens assujettis à la procédure en cause.

2010, ch. 12, art. 1795.

Coûts

9.15 Les coûts liés à l'obtention, à la détention, à la modification ou à l'annulation de la lettre de crédit ne peuvent être payés sur le fonds de pension.

2010, ch. 12, art. 1795.

Sociétés d'État

Réduction

9.16 Les sommes que toute société d'État est tenue de verser au fonds de pension en application du paragraphe 9(1.1), à l'exception de celles qu'elle a déduites de la rémunération des participants, peuvent être réduites si les conditions réglementaires sont remplies.

2010, ch. 12, art. 1795.

Excédent

Paiement de l'excédent

9.2 (1) Le paiement à l'employeur de tout ou partie de l'excédent figurant dans le rapport actuariel établi par un actuaire désigné ou déposé en application du paragraphe 12(2) est subordonné :

- a) à la justification par l'employeur :
 - (i) soit de son droit à tout ou partie de l'excédent au titre du régime de pension,
 - (ii) soit de sa réclamation, en vertu du présent article, concernant tout ou partie de l'excédent;
- b) à l'observation du règlement pris au titre de l'alinéa 39(1)h.1);
- c) au consentement du surintendant.

Consentement à l'excédent

(2) Pour déterminer s'il doit consentir au remboursement, le surintendant ne peut remettre en question la réclamation concernant tout ou partie de l'excédent établie par l'employeur au titre du présent article.

Réclamation à l'excédent

(3) L'employeur a une réclamation concernant tout ou partie de l'excédent si, après avoir été informés de son intention, au moins les deux tiers des membres de chacun des groupes suivants lui notifient leur consentement :

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Funding and Surplus
Surplus
Section 9.2

Normes de prestation de pension (1985)
Capitalisation et excédent
Excédent
Article 9.2

- (a)** members of the pension plan; and
- (b)** former members of the plan and any other persons within a prescribed class.

Submission to arbitration

(4) Subject to subsection (5), if more than one half but fewer than two thirds of the persons in each of the categories referred to in subsection (3) consented to the proposal, the employer may, or if the whole of the pension plan is terminated shall, submit the proposal to arbitration. The employer shall notify the Superintendent, in the form and manner, if any, that the Superintendent directs, and the persons in those categories if the proposal is to be submitted to arbitration.

Liquidation of employer

(5) The employer's claim to the surplus, or part of it, shall be submitted to arbitration within 18 months after the termination of the whole of the pension plan, or any longer period specified by the Superintendent, if

- (a)** the employer has not established a claim to the surplus; and
- (b)** the employer is in the process of being liquidated.

The employer shall notify the Superintendent, in the form and manner, if any, that the Superintendent directs, and the persons in the categories referred to in subsection (3) that the claim is to be submitted to arbitration.

Deemed agreement

(6) If a proposal or claim is submitted to arbitration, the employer and all interested persons are deemed to have agreed to have the employer's claim determined by the arbitration.

Choice of arbitrator

(7) The arbitrator shall be chosen by the employer and the persons in the categories set out in subsection (3). If they cannot agree on an arbitrator within the prescribed period, the Superintendent shall choose the arbitrator.

Arbitration

(8) The arbitrator is not bound by any legal or technical rules of evidence in conducting any matter that comes before the arbitrator, and shall deal with it as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit.

Retention of experts

(9) An arbitrator may retain any experts that the arbitrator considers necessary.

- a)** les participants;
- b)** les participants anciens et les autres personnes qui entrent dans les catégories prévues par règlement.

Arbitrage

(4) Si plus de la moitié mais moins des deux tiers des membres de chacun des groupes visés au paragraphe (3) ont donné leur consentement, l'employeur peut ou doit, selon que l'on se trouve avant ou après la cessation totale du régime de pension, soumettre la question à l'arbitrage. Il en informe dans tous les cas le surintendant, en la forme et de la manière que ce dernier peut fixer, et les personnes faisant partie de ces groupes.

Liquidation de l'employeur

(5) L'employeur soumet toutefois à l'arbitrage sa réclamation concernant tout ou partie de l'excédent dans les dix-huit mois suivant la cessation totale du régime de pension, ou dans le délai plus long que précise le surintendant, si les conditions ci-après sont réunies :

- a)** il n'a pas établi de réclamation concernant l'excédent;
- b)** il est en liquidation.

Il en informe le surintendant, en la forme et de la manière que ce dernier peut fixer, et les personnes faisant partie des groupes visés au paragraphe (3).

Présomption de consentement

(6) Si l'employeur soumet la proposition ou la réclamation à l'arbitrage, l'employeur et toutes les personnes intéressées sont réputées avoir consenti à ce que la réclamation de l'employeur soit tranchée par l'arbitre.

Arbitre

(7) L'arbitre est désigné par l'employeur et les personnes visées au paragraphe (3); en cas de désaccord au terme du délai prévu par règlement, la désignation est faite par le surintendant.

Attributions de l'arbitre

(8) L'arbitre n'est pas lié par les règles juridiques ou techniques applicables en matière de preuve lors de l'arbitrage. Dans la mesure où les circonstances, l'équité et la justice naturelle le permettent, il lui appartient d'agir rapidement et sans formalités.

Expertise

(9) L'arbitre peut, s'il l'estime nécessaire, retenir les services d'un expert.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Funding and Surplus
Surplus
Sections 9.2-10

Normes de prestation de pension (1985)
Capitalisation et excédent
Excédent
Articles 9.2-10

Costs of arbitration

(10) Subject to the provisions of the pension plan, the parties to an arbitration shall pay its costs in the amount, subject to the approval of the Superintendent, and in the proportion that the arbitrator determines.

Issuance of decision

(11) The arbitrator shall issue a written decision with reasons, file them with the Superintendent within ten days after issuing them and make them available for inspection by any interested person.

Scheme of division

(12) In respect of a claim submitted to arbitration under subsection (5), the arbitrator may impose a scheme of division of the surplus, or of part of it, between the parties to the arbitration.

Decision binding

(13) An arbitrator's decision is final and binding on the parties and on any other person affected by it.

Notification to unions

(14) All notifications to unionized members under this section must also be made to the executive of their union.

Union represents members

(15) Unless otherwise provided by the relevant collective agreement, the executive of a union shall represent its members, other than former members of the plan, for the purposes of this section.

1998, c. 12, s. 9; 2001, c. 34, s. 67(F); 2010, c. 12, s. 1796, c. 25, s. 185.

Registration of Pension Plans

Duty of administrator to file documents

10 (1) The administrator of a pension plan shall file with the Superintendent, within 60 days after the plan is established and in the form and manner, if any, that the Superintendent directs,

- (a)** a copy of the plan;
- (b)** a copy of every document that creates or supports the plan or the pension fund; and
- (c)** a declaration signed by the administrator that the plan complies with this Act and the regulations.

Frais d'arbitrage

(10) Sous réserve des dispositions du régime de pension, l'arbitre détermine le montant des frais d'arbitrage — sous réserve de l'agrément du surintendant — et leur répartition entre les parties.

Sentence arbitrale

(11) L'arbitre rend sa sentence par écrit, motifs à l'appui, la communique au surintendant dans les dix jours et la met à la disposition de qui veut en prendre connaissance.

Régime de répartition

(12) Dans le cas d'un arbitrage découlant de l'application du paragraphe (5), l'arbitre peut imposer un régime de répartition de la totalité ou de partie de l'excédent entre les parties.

Effet de la sentence

(13) La sentence arbitrale est définitive et lie les parties et quiconque est touché par elle.

Syndicats

(14) Toute notification à un participant syndiqué au titre du présent article est faite également aux dirigeants du syndicat en cause.

Décision des dirigeants

(15) Pour l'application du présent article, la décision des dirigeants d'un syndicat s'impose, à défaut de disposition contraire dans la convention collective, aux participants membres de ce syndicat, à l'exclusion des participants anciens.

1998, ch. 12, art. 9; 2001, ch. 34, art. 67(F); 2010, ch. 12, art. 1796, ch. 25, art. 185.

Agrément

Dépôt des documents

10 (1) Dans les soixante jours suivant l'institution d'un régime de pension, l'administrateur dépose auprès du surintendant, en la forme et de la manière que ce dernier peut fixer :

- a)** le texte du régime;
- b)** copie de tout document constitutif ou à l'appui du régime ou du fonds de pension;
- c)** un certificat signé par lui attestant que le régime est conforme à la présente loi et aux règlements.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Registration of Pension Plans
Sections 10-10.1

Normes de prestation de pension (1985)
Agrément
Articles 10-10.1

Registration of pension plan

(2) Subject to subsection (3), the Superintendent shall register a pension plan and issue a certificate of registration in respect of the plan if the administrator has filed the documents under subsection (1).

Refusal to register

(3) The Superintendent may refuse to register a pension plan if the plan does not comply with this Act or the regulations.

Notification

(4) If the Superintendent refuses to register a pension plan, the Superintendent shall notify the administrator of the particulars of the non-compliance.

Administration of plan prohibited

(5) An administrator shall not administer a pension plan before complying with subsection (1) and shall, while the plan remains in force, ensure that it complies with this Act and the regulations.

Treatment of surplus

(6) Every pension plan that is filed for registration must provide for the use of surplus during the continuation of the plan and on its termination.

R.S., 1985, c. 32 (2nd Supp.), s. 10; 1998, c. 12, s. 10; 2010, c. 25, s. 186.

Filing of amendments

10.1 (1) The administrator of a pension plan must file with the Superintendent, within 60 days after an amendment is made to any document referred to in subsection 10(1), in the form and manner, if any, that the Superintendent directs, a copy of the amendment and a declaration, signed by the administrator that the plan as amended complies with this Act and the regulations.

Void amendments

(2) Unless the Superintendent authorizes the amendment, an amendment is void or, in Quebec, null if

- (a)** it would have the effect of reducing
 - (i)** pension benefits accrued before the date of the amendment or pension benefit credits relating to pension benefits accrued before the date of the amendment, or
 - (ii)** an immediate or deferred pension benefit to which a member, former member or any other person was entitled before the date of the amendment;
- (b)** the solvency ratio of the pension plan would fall below the prescribed solvency ratio level;

Agrément

(2) Sous réserve du paragraphe (3), le surintendant agréé le régime de pension et délivre le certificat correspondant sur réception des documents.

Refus du surintendant

(3) Le surintendant peut refuser l'agrément lorsque le régime de pension n'est pas conforme à la présente loi ou aux règlements.

Avis de la décision

(4) Il informe l'administrateur des motifs de la non-conformité.

Obligations de l'administrateur

(5) L'administrateur ne peut gérer le régime que s'il a rempli son obligation au titre du paragraphe (1), et il est tenu de s'assurer, pendant sa durée de validité, de la conformité du régime.

Excédent

(6) Le régime déposé pour agrément doit prévoir le mode d'utilisation de tout excédent tant en cours de validité qu'à sa cessation.

L.R. (1985), ch. 32 (2^e suppl.), art. 10; 1998, ch. 12, art. 10; 2010, ch. 25, art. 186.

Dépôt des modifications

10.1 (1) Dans les soixante jours suivant la modification d'un document visé au paragraphe 10(1), l'administrateur la dépose auprès du surintendant accompagnée d'un certificat signé par lui attestant que le régime de pension modifié est conforme à la présente loi et aux règlements. La modification et le certificat sont déposés en la forme et de la manière que peut fixer le surintendant.

Nullité

(2) Sauf autorisation du surintendant, est nulle la modification qui, selon le cas :

- a)** aurait pour effet de réduire soit le droit à pension relatif à la prestation de pension accumulée avant la date de la modification ou la prestation de pension, elle-même accumulée avant cette date, soit la prestation de pension immédiate ou différée à laquelle un participant, un ancien participant ou toute autre personne avait droit avant cette date;
- b)** entraînerait le ratio de solvabilité du régime en deçà du seuil de solvabilité réglementaire;
- c)** réduirait le ratio de solvabilité du régime dans les cas où ce ratio serait, une fois la modification

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Registration of Pension Plans
Sections 10.1-10.3

Normes de prestation de pension (1985)
Agrément
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(c) the amendment would reduce the solvency ratio of the pension plan and the solvency ratio would be below the prescribed solvency ratio level once the amendment is made; or

(d) the solvency ratio of the pension plan is below the prescribed solvency ratio level and the amendment would increase pension benefits or pension benefit credits.

1998, c. 12, s. 10; 2010, c. 12, s. 1797, c. 25, s. 187.

Negotiated contribution plans

10.11 The administrator of a negotiated contribution plan may, subject to section 10.1 and despite the terms of the pension plan, make an amendment to any document referred to in paragraph 10(1)(a) or (b) that has the effect of reducing pension benefits or pension benefit credits.

2010, c. 12, s. 1798, c. 25, s. 188.

Transfer of Funds

No transfer without permission

10.2 (1) Subject to section 26, the administrator may transfer or permit the transfer of any part of the assets of the pension plan that relate to defined benefit provisions to another pension plan, including a pension plan to which this Act does not apply, only with the Superintendent's permission.

Transfer to pooled registered pension plan

(2) Subject to section 26, the administrator may transfer or permit the transfer of any part of the assets of the pension plan to a pooled registered pension plan, within the meaning of subsection 2(1) of the *Pooled Registered Pension Plans Act*, only with the Superintendent's permission.

1998, c. 12, s. 10; 2010, c. 12, s. 1799; 2012, c. 16, s. 87.

Designated entity

10.3 (1) The Minister may, with the approval of the Governor in Council, designate an entity, as defined in section 2 of the *Bank Act*, for the purposes, among others, of receiving and holding the pension benefit credit of any person who cannot be located, as well as the assets of a pension plan relating to that credit, and of disbursing that credit in a lump sum.

Transfer

(2) The administrator of a pension plan may transfer to the designated entity the pension benefit credit of any person who cannot be located, as well as the assets of a pension plan relating to that credit.

apportée, inférieur au seuil de solvabilité réglementaire;

(d) accroîtrait un droit à pension ou une prestation de pension, si le ratio de solvabilité du régime est inférieur au seuil de solvabilité réglementaire.

1998, ch. 12, art. 10; 2010, ch. 12, art. 1797, ch. 25, art. 187.

Régime à cotisations négociées

10.11 L'administrateur d'un régime à cotisations négociées peut, sous réserve de l'article 10.1 et malgré les dispositions du régime, apporter toute modification aux documents visés aux alinéas 10(1)a) ou b) qui a pour effet de réduire les droits à pension ou les prestations de pension.

2010, ch. 12, art. 1798, ch. 25, art. 188.

Transfert de fonds

Consentement préalable au transfert

10.2 (1) Sous réserve de l'article 26, l'administrateur ne peut, sans le consentement du surintendant, effectuer le transfert d'éléments de l'actif du régime de pension liés à une disposition à prestations déterminées vers un autre régime, assujéti ou non à la présente loi.

Consentement préalable au transfert

(2) Sous réserve de l'article 26, l'administrateur ne peut, sans le consentement du surintendant, effectuer le transfert d'éléments de l'actif du régime de pension vers un régime de pension agréé collectif au sens du paragraphe 2(1) de la *Loi sur les régimes de pension agréés collectifs*.

1998, ch. 12, art. 10; 2010, ch. 12, art. 1799; 2012, ch. 16, art. 87.

Entité désignée

10.3 (1) Le ministre peut, avec l'approbation du gouverneur en conseil, désigner une entité, au sens de l'article 2 de la *Loi sur les banques*, chargée, notamment, de recevoir et de détenir les droits à pension de personnes introuvables ainsi que les actifs du régime de pension liés à ces droits, et de payer, en une somme forfaitaire, de tels droits.

Transfert

(2) L'administrateur peut transférer à l'entité désignée les droits à pension de personnes introuvables ainsi que les actifs du régime de pension liés à ces droits.

If transfer impairs solvency

(3) However, the administrator of a pension plan must obtain the consent of the Superintendent to transfer pension benefit credits and assets to the designated entity if, in the Superintendent's opinion, the transfer would impair the solvency of the pension fund.

Transfer to Her Majesty

(4) A designated entity that holds, for the prescribed period of time, the assets relating to the pension benefit credit of a person who cannot be located, must transfer those assets to Her Majesty in right of Canada.

Limitation period or prescription

(5) Upon transfer of assets to Her Majesty in right of Canada, a claim to the pension benefit credit associated with those assets can no longer be made.

2010, c. 25, s. 189.

Separate Pension Plan

Establishment of separate pension plan

10.4 (1) The Superintendent may direct the administrator of a pension plan that is subject to the pension legislation of more than one jurisdiction to

(a) establish a separate pension plan for members employed in included employment, former members who were employed in included employment and any survivors of those members or former members; and

(b) transfer assets and liabilities relating to the members and former members of the separate pension plan, as well as to any survivors of those members or former members, from the original pension plan to the separate pension plan.

Comparable plan

(2) A separate pension plan must be comparable, in the opinion of the Superintendent, to the original pension plan.

2010, c. 25, s. 189.

Directions of Compliance

Superintendent's directions to administrators

11 (1) If, in the opinion of the Superintendent, an administrator, an employer or any person is, in respect of a pension plan, committing or about to commit an act, or pursuing or about to pursue any course of conduct, that

Transfert nuisible à la solvabilité

(3) L'administrateur obtient toutefois le consentement du surintendant pour transférer des droits à pension et des actifs à l'entité désignée, si, de l'avis de ce dernier, le transfert risque de porter atteinte à la solvabilité du fonds de pension.

Transfert à Sa Majesté

(4) L'entité désignée transfère à Sa Majesté du chef du Canada les actifs liés au droit à pension de la personne introuvable après les avoir détenus durant la période réglemентаire.

Prescription

(5) Toute demande de paiement du droit à pension de la personne introuvable est prescrite une fois effectué le transfert, à Sa Majesté du chef du Canada, des actifs liés à ce droit.

2010, ch. 25, art. 189.

Régime distinct

Institution d'un régime distinct

10.4 (1) Le surintendant peut ordonner à l'administrateur d'un régime de pension qui est assujéti à la législation sur les pensions de plus d'une autorité législative :

a) d'instituer un régime de pension distinct pour les participants occupant un emploi inclus, les anciens participants en ayant occupé un et les survivants de ces participants et anciens participants;

b) de transférer du régime de pension initial au régime de pension distinct l'actif et le passif liés aux participants et anciens participants du régime de pension distinct et à leurs survivants.

Régime comparable

(2) Le régime distinct doit être, de l'avis du surintendant, comparable au régime initial.

2010, ch. 25, art. 189.

Directives

Pratiques douteuses

11 (1) S'il est d'avis qu'un administrateur, un employeur ou toute autre personne est en train ou sur le point, relativement à un régime de pension, de commettre un acte ou d'adopter une attitude contraires aux bonnes pratiques du commerce, le surintendant peut lui enjoindre d'y mettre un terme, de s'en abstenir ou de

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
 Directions of Compliance
 Sections 11-11.1

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is contrary to safe and sound financial or business practices, the Superintendent may direct the administrator, employer or other person to

(a) cease or refrain from committing the act or pursuing the course of conduct; and

(b) perform such acts as in the opinion of the Superintendent are necessary to remedy the situation.

Directions in the case of non-compliance

(2) If, in the opinion of the Superintendent, a pension plan does not comply with this Act or the regulations or is not being administered in accordance with this Act, the regulations or the plan, the Superintendent may direct the administrator, the employer or any person to

(a) cease or refrain from committing the act or pursuing the course of conduct that constitutes the non-compliance; and

(b) perform such acts as in the opinion of the Superintendent are necessary to remedy the situation.

Opportunity for representations

(3) Subject to subsection (4), no direction shall be issued under subsection (1) or (2) unless the Superintendent gives the administrator, employer or other person a reasonable opportunity to make written representations.

Temporary direction

(4) If, in the opinion of the Superintendent, the length of time required for representations to be made under subsection (3) might be prejudicial to the interests of the members, former members or any other persons entitled to pension benefits under the pension plan, the Superintendent may make a direction with respect to the matters referred to in subsection (1) or (2) that has effect for a period of not more than 15 days.

Continued effect

(5) A temporary direction under subsection (4) continues to have effect after the expiry of the fifteen day period referred to in that subsection if no representations are made to the Superintendent within that period or, if representations have been made, the Superintendent notifies the administrator, employer or other person that the Superintendent is not satisfied that there are sufficient grounds for revoking the direction.

R.S., 1985, c. 32 (2nd Supp.), s. 11; 1998, c. 12, s. 10; 2010, c. 12, s. 1800.

Revocation of registration

11.1 The Superintendent may revoke the registration and cancel the certificate of registration in respect of a

prendre les mesures qui, selon lui, s'imposent pour remédier à la situation.

Non-conformité

(2) S'il estime qu'un régime de pension ou la gestion de celui-ci n'est pas conforme à la présente loi ou aux règlements, ou que cette gestion n'est pas conforme au régime, le surintendant peut enjoindre à l'administrateur, à l'employeur ou à toute autre personne de prendre les mesures visées au paragraphe (1) pour en assurer la conformité.

Observations

(3) Sous réserve du paragraphe (4), le surintendant ne peut prendre la directive visée au paragraphe (1) ou (2) sans donner à l'administrateur, à l'employeur ou à toute autre personne la possibilité de présenter par écrit ses observations à cet égard.

Directive provisoire

(4) Lorsque, à son avis, le délai pour la présentation des observations pourrait être préjudiciable à l'intérêt des participants, des anciens participants ou de toute autre personne qui a droit à une prestation de pension au titre du régime de pension, le surintendant peut prendre la directive visée au paragraphe (1) ou (2) pour une période d'au plus quinze jours.

Directive reste en vigueur

(5) La directive ainsi prise reste en vigueur après l'expiration des quinze jours si aucune observation n'a été présentée dans ce délai ou si le surintendant avise l'administrateur, l'employeur ou toute autre personne qu'il n'est pas convaincu que les observations présentées justifient la révocation de la directive.

L.R. (1985), ch. 32 (2^e suppl.), art. 11; 1998, ch. 12, art. 10; 2010, ch. 12, art. 1800.

Révocation

11.1 Le surintendant peut révoquer l'agrément du régime et annuler le certificat correspondant si

pension plan if the administrator of the plan does not comply with a direction under section 11 within sixty days, or such longer period as the Superintendent may determine, after being informed by the Superintendent of the failure to comply. The Superintendent shall notify the administrator of the measures taken, including the date of the revocation and cancellation.

1998, c. 12, s. 10.

General Requirements

Duty to Provide Information

Annual reporting requirements

12 (1) The administrator of a pension plan shall file with the Superintendent — annually or at any other intervals or times that the Superintendent directs — an information return relating to that pension plan, containing the prescribed information.

Actuarial reports, financial statements and other information

(2) The administrator of a pension plan shall file with the Superintendent actuarial reports, financial statements, and any other information required by or under the regulations at any intervals or times that the Superintendent directs.

Employer

(3) The employer shall file with the Superintendent any information required by or under the regulations at any intervals or times that the Superintendent directs.

Actuarial reports and financial statements

(3.1) Except as otherwise specified by the Superintendent,

(a) the actuarial reports must be prepared in accordance with the standards of practice adopted by the Canadian Institute of Actuaries; and

(b) the financial statements must be prepared in accordance with generally accepted accounting principles, the primary source of which is the Handbook of the Canadian Institute of Chartered Accountants.

Form and manner of filings and time limit

(4) Every document required to be filed under this section shall be filed in the form and manner, if any, that the Superintendent directs, and unless otherwise directed by

l'administrateur ne se conforme pas aux directives dans les soixante jours suivant la notification du défaut ou dans tout délai supérieur qu'il peut accorder; il l'informe, le cas échéant, des mesures prises ainsi que de la date de la révocation et de l'annulation.

1998, ch. 12, art. 10.

Obligations générales

Obligation en matière de renseignements

Rapports annuels

12 (1) L'administrateur d'un régime de pension dépose auprès du surintendant, annuellement ou à tout autre intervalle ou moment fixé par ce dernier, un état relatif au régime contenant les renseignements réglementaires.

Rapports actuariels, états financiers et renseignements

(2) Il dépose également auprès du surintendant les rapports actuariels, les états financiers ainsi que tous autres renseignements exigés par les règlements ou en application de ceux-ci, à tout intervalle ou moment fixé par le surintendant.

Employeur

(3) L'employeur dépose auprès du surintendant les renseignements exigés par les règlements ou en application de ceux-ci, à tout intervalle ou moment fixé par celui-ci.

Principes comptables

(3.1) Sauf indication contraire du surintendant, les rapports actuariels et les états financiers sont établis :

a) dans le premier cas, selon les normes de pratique de l'Institut canadien des actuaires;

b) dans le deuxième cas, selon les principes comptables généralement reconnus, principalement ceux qui sont énoncés dans le Manuel de l'Institut canadien des comptables agréés.

Délai et modalités

(4) Les documents visés au présent article sont déposés en la forme et de la manière que peut fixer le surintendant et, sauf directives contraires de celui-ci, dans les six

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards Act, 1985
General Requirements
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Articles 12-15

the Superintendent, within six months after the end of the plan year to which the document relates.

R.S., 1985, c. 32 (2nd Supp.), s. 12; 1998, c. 12, s. 12; 2010, c. 12, s. 1801, c. 25, s. 190.

Information to members

13 The administrator of a pension plan must provide the members, former members and any other persons entitled to pension benefits under the plan with any information that the Superintendent specifies, at the time and in the manner specified by the Superintendent.

R.S., 1985, c. 32 (2nd Supp.), s. 13; 1998, c. 12, s. 13; 2010, c. 12, s. 1802.

Eligibility for Membership

Eligibility (full-time employees)

14 (1) Each employee who is engaged to work on a full-time basis for an employer and is a member of a class of employees for which a pension plan is provided by that employer shall be eligible to become a member of that pension plan on and after

(a) the day on which the employee completes twenty-four months of continuous employment with the employer, in the case of a pension plan other than a multi-employer pension plan; or

(b) in the case of a multi-employer pension plan, the day on which both the following requirements have been fulfilled, namely,

(i) twenty-four months have elapsed since the employee was first employed with a participating employer, and

(ii) the employee has earned, in respect of employment with the participating employers, at least thirty-five per cent of the Year's Maximum Pensionable Earnings in each of two consecutive calendar years after December 31, 1984, or has fulfilled an alternative requirement that, in the Superintendent's opinion, is reasonably equivalent.

Optional provision

(2) Notwithstanding subsection (1), a pension plan may provide, in respect of employees who are engaged to work on a full-time basis, that membership in the plan is compulsory, except for employees who, because of their religious beliefs, object to becoming members of the plan.

Eligibility (part-time employees)

15 (1) Subject to regulations made under subsection (5), where a pension plan is provided for members of a class of employees who are engaged to work on a full-time

mois suivant la fin de l'exercice du régime auquel ils se rapportent.

L.R. (1985), ch. 32 (2^e suppl.), art. 12; 1998, ch. 12, art. 12; 2010, ch. 12, art. 1801, ch. 25, art. 190.

Renseignements

13 L'administrateur remet, selon les modalités que le surintendant fixe, aux participants, aux anciens participants et à toute autre personne qui a droit à une prestation de pension au titre du régime de pension les renseignements que le surintendant précise.

L.R. (1985), ch. 32 (2^e suppl.), art. 13; 1998, ch. 12, art. 13; 2010, ch. 12, art. 1802.

Conditions de participation

Salariés à temps plein

14 (1) Tout salarié dont le contrat prévoit qu'il travaille à temps plein pour un employeur et qui appartient à une catégorie de salariés en faveur de laquelle l'employeur offre un régime de pension a le droit d'adhérer au régime à compter du jour où :

a) dans le cas d'un régime autre qu'un régime interentreprises, il compte vingt-quatre mois d'emploi continu auprès de l'employeur;

b) dans le cas d'un régime interentreprises, il satisfait aux deux exigences suivantes :

(i) vingt-quatre mois se sont écoulés depuis qu'il a été embauché pour la première fois par un des employeurs participants,

(ii) il a gagné, relativement à son emploi auprès des employeurs participants, au moins trente-cinq pour cent du maximum des gains annuels ouvrant droit à pension au cours de chacune de deux années civiles consécutives postérieures au 31 décembre 1984, ou a satisfait à toute autre condition estimée à peu près équivalente par le surintendant.

Disposition optionnelle

(2) Par dérogation au paragraphe (1), un régime de pension peut prévoir la participation obligatoire à celui-ci des salariés dont le contrat prévoit qu'ils travaillent à temps plein, sauf de ceux qui s'y opposent en raison de leurs croyances religieuses.

Admissibilité : salariés à temps partiel

15 (1) Sous réserve des règlements pris en application du paragraphe (5), dans le cas où un régime de pension est offert à une catégorie de salariés dont le contrat

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
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basis for an employer, each employee who is engaged to work on a part-time basis for that employer and is a member of that class of employees shall be eligible to become a member of that pension plan on and after the day on which both the following requirements have been fulfilled, namely,

(a) either

(i) the employee completes twenty-four months of continuous employment with the employer, or

(ii) in the case of a multi-employer pension plan, twenty-four months have elapsed since the employee was first employed with a participating employer; and

(b) the employee has earned, in respect of employment with the employer (or participating employers, in the case of a multi-employer pension plan), at least thirty-five per cent of the Year's Maximum Pensionable Earnings in each of two consecutive calendar years after December 31, 1984, or has fulfilled an alternative requirement that, in the Superintendent's opinion, is reasonably equivalent.

Alternative: separate plan

(2) An administrator may meet the requirements of subsection (1) by providing a separate pension plan for employees who are engaged to work on a part-time basis that, in the opinion of the Superintendent, is reasonably comparable, on balance, to the plan covering the employees who are engaged to work on a full-time basis.

Drop in income

(3) An employee who is engaged to work on a part-time basis, is a member of a pension plan and is employed continuously shall not cease to be a member of the plan by reason only of having earned less than thirty-five per cent of the Year's Maximum Pensionable Earnings in a calendar year.

Optional provision

(4) Notwithstanding subsections (1) to (3), a pension plan may provide, in respect of employees who are engaged to work on a part-time basis, that membership in the plan is compulsory, except for employees who, because of their religious beliefs, object to becoming members of the plan.

Regulations altering subsection (1) requirement

(5) The Governor in Council may make regulations, in relation to one or more pension plans or to all pension plans, deeming subparagraphs (1)(a)(i) and (ii) to read as if the references therein to "twenty-four months" were

prévoit qu'ils travaillent à temps plein pour un employeur, chaque salarié dont le contrat prévoit qu'il travaille à temps partiel pour cet employeur et qui appartient à la même catégorie a le droit d'adhérer au régime à compter du jour où il satisfait aux deux exigences suivantes :

a) il compte vingt-quatre mois d'emploi continu auprès de l'employeur ou, dans le cas d'un régime interentreprises, vingt-quatre mois se sont écoulés depuis qu'il a été embauché pour la première fois par un des employeurs participants;

b) il a gagné, relativement à son emploi auprès de l'employeur ou des employeurs participants, s'il s'agit d'un régime interentreprises, au moins trente-cinq pour cent du maximum des gains annuels ouvrant droit à pension au cours de chacune de deux années civiles consécutives postérieures au 31 décembre 1984, ou a satisfait à une autre condition estimée à peu près équivalente par le surintendant.

Option : régime distinct

(2) L'administrateur peut satisfaire aux exigences du paragraphe (1) en offrant aux salariés dont le contrat prévoit qu'ils travaillent à temps partiel un régime distinct qui, de l'avis du surintendant, se compare assez bien au régime offert aux salariés dont le contrat prévoit qu'ils travaillent à temps plein.

Diminution de revenu

(3) Le salarié dont le contrat prévoit qu'il travaille à temps partiel, qui participe à un régime de pension et qui travaille de façon continue ne cesse pas de participer au régime du seul fait qu'il a gagné, dans une année civile, moins de trente-cinq pour cent du maximum des gains annuels ouvrant droit à pension.

Disposition optionnelle

(4) Par dérogation aux paragraphes (1) à (3), un régime de pension peut prévoir la participation obligatoire à celui-ci des salariés dont le contrat de travail prévoit qu'ils travaillent à temps partiel, sauf de ceux qui s'y opposent en raison de leurs croyances religieuses.

Règlements modifiant les exigences d'admissibilité

(5) Le gouverneur en conseil peut, par règlements pris relativement à certains régimes de pension ou à l'ensemble de ceux-ci, permettre à leur égard que les mentions de « vingt-quatre mois », à l'alinéa (1)a), et de « au

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
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references to such longer period as is prescribed and deeming paragraph (1)(b) to read as if the reference therein to “thirty-five per cent” were a reference to such lower percentage, including zero, as is prescribed.

Entitlement to Immediate Pension Benefit

Entitlement at pensionable age

16 (1) A pension plan shall provide that each member is entitled to an immediate pension benefit on attaining pensionable age.

Early retirement

(2) Notwithstanding the pensionable age specified by a pension plan, members and former members of the plan shall be eligible, commencing ten years before pensionable age, to receive an immediate pension benefit based on the period of employment and salary up to the actual retirement date, but a plan is not required to provide an immediate pension benefit commencing earlier than ten years before pensionable age.

Minimum period of membership

(3) A pension plan may require a minimum period of membership, not exceeding two years, in order for a member to be eligible to receive an immediate pension benefit.

Pension reduced

(4) An immediate pension benefit that commences before pensionable age pursuant to subsection (2) may be reduced, provided that its actuarial present value is not less than the aggregate of

(a) the actuarial present value of the pension that would have been payable commencing at pensionable age, and

(b) the actuarial present value of any other benefit to which the member would have been entitled had the member remained a member of the pension plan until pensionable age.

Employment after pensionable age

(5) Where a pension plan provides generally that a member's period of employment or the member's salary during that period, or both, affect the member's pension benefit, it shall provide that, where a member continues employment after attaining pensionable age and is not receiving a pension benefit in respect of employment with the current employer, the member's period of employment after pensionable age or the member's salary

moins trente-cinq pour cent », à l'alinéa (1)b), équivaillent respectivement aux mentions « d'une période supérieure réglementaire » et « d'un pourcentage réglementaire inférieur y compris zéro pour cent ».

Droit à une prestation de pension immédiate

Âge admissible

16 (1) Un régime de pension doit prévoir que chaque participant a droit à une prestation de pension immédiate dès qu'il atteint l'âge admissible.

Retraite anticipée

(2) Malgré l'âge admissible prévu par un régime de pension, les participants actuels ou anciens ont droit, à compter de dix ans avant l'âge admissible, à une prestation de pension immédiate, qui tient compte de leur période d'emploi et de leur rémunération jusqu'au jour de leur retraite effective, mais aucun régime n'est tenu de prévoir l'exercice d'une telle option antérieurement à ces dix ans.

Période minimale de participation

(3) Un régime de pension peut assujettir le droit à une prestation de pension immédiate à une participation minimale d'au plus deux ans au régime.

Réduction de la pension

(4) La prestation de pension immédiate visée au paragraphe (2) peut être réduite à la condition que sa valeur actuarielle du moment soit au moins égale à la somme de :

a) la valeur actuarielle, à ce moment, de la pension qui aurait été payable à compter de l'âge admissible;

b) la valeur actuarielle, à ce moment, de toute autre prestation à laquelle le participant aurait eu droit s'il avait maintenu sa participation jusqu'à l'âge admissible.

Emploi après l'âge admissible

(5) Un régime de pension qui prévoit, d'une façon générale, que la période d'emploi d'un participant ou sa rémunération durant cette période, ou les deux, influent sur ses prestations de pension doit également prévoir l'application de ces facteurs relativement à la période postérieure à l'âge admissible, pour le calcul de ses prestations de pension, s'il continue à travailler après l'âge admissible sans recevoir de prestations de pension,

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
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during that period, or both, as the case may be, shall be taken into account in calculating the member's pension benefit, subject to any term of the pension plan

(a) fixing a maximum number of years of employment that can be taken into account under the plan for purposes of determining the pension benefit; or

(b) fixing a maximum amount of the pension benefit.

Variable amount

(6) A pension plan may provide that a member or former member may elect to receive an immediate pension benefit the amount of which

(a) is varied by reference to the amount of any pension payable under

(i) the *Old Age Security Act*, and

(ii) either the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of the *Canada Pension Plan*; or

(b) is varied on any other basis approved by the Superintendent.

Phased Retirement Benefit

Definitions

16.1 (1) The following definitions apply in this section.

phased retirement benefit means a pension benefit that is equal to a portion of the immediate pension benefit to which a person is entitled under subsection 16(1) or which they are eligible to receive under subsection 16(2). (*prestation de retraite progressive*)

phased retirement period means the period in respect of which the phased retirement benefit is to be paid. (*période de retraite progressive*)

Phased retirement benefit

(2) A pension plan may provide for the payment of a phased retirement benefit.

Conditions

(3) A phased retirement benefit is only to be paid to a person if

(a) the person enters into a written agreement with an employer who contributes to the pension plan from which the phased retirement benefit is to be paid, or

relativement à l'emploi qu'il occupe auprès de l'employeur actuel, sous réserve des dispositions du régime fixant :

a) le nombre maximal d'années d'emploi dont il peut être tenu compte pour la détermination des prestations de pension;

b) le montant maximal des prestations de pension.

Montant variable

(6) Un régime de pension peut prévoir le droit du participant actuel ou ancien de choisir de recevoir une prestation de pension immédiate dont le montant varie :

a) en fonction de la pension payable au titre :

(i) de la *Loi sur la sécurité de la vieillesse*,

(ii) du *Régime de pensions du Canada* ou d'un régime de pension provincial au sens de l'article 3 du *Régime de pensions du Canada*;

b) suivant tout autre critère approuvé par le surintendant.

Prestation de retraite progressive

Définitions

16.1 (1) Les définitions qui suivent s'appliquent au présent article.

période de retraite progressive Période pour laquelle la prestation de retraite progressive est à verser. (*phased retirement period*)

prestation de retraite progressive Prestation de pension dont le montant correspond à une partie du montant de la prestation de pension immédiate à laquelle une personne a droit au titre des paragraphes 16(1) ou (2). (*phased retirement benefit*)

Prestation de retraite progressive

(2) Le régime de pension peut prévoir le versement de prestations de retraite progressive.

Conditions

(3) Il ne peut être versé de prestation de retraite progressive que si les conditions ci-après sont remplies :

a) la personne conclut, par écrit, une entente faisant état du consentement au versement de la prestation de retraite progressive avec l'employeur versant des cotisations au régime de pension au titre duquel la

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

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Article 16.1

with a prescribed administrator, that evidences their consent to its payment;

(b) in the case of a person who was receiving a joint and survivor pension benefit prior to the phased retirement period, the person's spouse or common-law partner who would receive that joint and survivor pension benefit on the death of the person consents in the prescribed form to the cessation of the payment of the joint and survivor pension benefit;

(c) the employer provides a copy of the agreement referred to in paragraph (a) to the administrator of the pension plan from which the phased retirement benefit is to be paid;

(d) the person accrues a pension benefit during the phased retirement period under circumstances to which subsection 8503(19) of the *Income Tax Regulations* applies; and

(e) the whole of the pension plan from which the phased retirement benefit is to be paid has not been terminated.

Rules — during phased retirement period

(4) During a phased retirement period

- (a)** the person is deemed to be a member;
- (b)** subsection 2(3) does not apply and the person is deemed not to be receiving an immediate pension benefit;
- (c)** the administrator of the pension plan from which the phased retirement benefit is to be paid shall not pay the immediate pension benefit to which the person would otherwise be entitled under subsection 16(1) or which they would otherwise be eligible to receive under subsection 16(2);
- (d)** paragraph 18(1)(b) and subsections 36(1) and (4) do not apply to an agreement or arrangement that may be entered into for the payment of the phased retirement benefit;
- (e)** section 21 does not apply to the calculation of the phased retirement benefit;
- (f)** section 22 does not apply to the phased retirement benefit; and
- (g)** in the case of a person who, prior to the phased retirement period, was receiving an immediate pension benefit from the pension plan from which the phased retirement benefit is to be paid, the administrator of

prestation est à verser ou avec un administrateur visé par règlement;

b) dans le cas où elle reçoit une prestation réversible avant le début de la période de retraite progressive, son époux ou conjoint de fait qui recevrait une telle prestation à son décès consent, en la forme réglementaire, à la cessation du versement de la prestation réversible;

c) l'employeur fournit copie de l'entente visée à l'alinéa a) à l'administrateur du régime de pension au titre duquel la prestation de retraite progressive est à verser;

d) la personne accumule, au cours de la période de retraite progressive, des prestations de pension dans les circonstances où le paragraphe 8503(19) du *Règlement de l'impôt sur le revenu* s'applique;

e) il n'y a pas eu cessation totale du régime de pension au titre duquel la prestation de retraite progressive est à verser.

Règles applicables pendant la période de retraite progressive

(4) Les règles ci-après s'appliquent pendant la période de retraite progressive :

- a)** la personne est réputée avoir le statut de participant;
- b)** le paragraphe 2(3) ne s'applique pas et elle est réputée ne pas recevoir de prestation de pension immédiate;
- c)** l'administrateur du régime de pension au titre duquel la prestation de retraite progressive est à verser ne peut pas verser la prestation de pension immédiate à laquelle la personne aurait droit au titre des paragraphes 16(1) ou (2);
- d)** l'alinéa 18(1)(b) et les paragraphes 36(1) et (4) ne s'appliquent pas à l'entente ou à l'arrangement concernant le versement de la prestation de retraite progressive;
- e)** l'article 21 ne s'applique pas au calcul de la prestation de retraite progressive;
- f)** l'article 22 ne s'applique pas à la prestation de retraite progressive;
- g)** dans le cas où la personne reçoit, avant le début de cette période, une prestation de pension immédiate aux termes du régime de pension au titre duquel la

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

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that pension plan shall not pay the immediate pension benefit and an election that was made under subsection 22(5) is void or, in Quebec, null unless it was made under provincial property law within the meaning of subsection 25(1).

Rules — after phased retirement period

(5) At the end of a phased retirement period

(a) the pension benefit accrued during the phased retirement period is to be treated as vested without regard to conditions as to age, period of membership in the pension plan or period of employment;

(b) the immediate pension benefit to which the person is entitled under subsection 16(1) or which they are eligible to receive under subsection 16(2) is, unless otherwise prescribed, to be calculated without regard to the amount of the phased retirement benefit received;

(c) an election under subsection 22(5) that is void or, in Quebec, null under paragraph (4)(g) remains void or, in Quebec, null;

(d) subsection 26(2) applies as if it contained no reference to “but before the commencement of payment of a pension benefit”; and

(e) in the case of a phased retirement period that ends as a result of the death of a person,

(i) the person is deemed to have retired for purposes of the survivor benefit,

(ii) the person is deemed to have been entitled to the joint and survivor pension benefit payable pursuant to section 22, without regard to subsection 22(5), in respect of the immediate pension benefit to which the person would otherwise be entitled under subsection 16(1) or which they would otherwise be eligible to receive under subsection 16(2), and

(iii) subsections 23(5) to (7) apply.

2007, c. 35, s. 141; 2010, c. 12, ss. 1803, 1824(F), 1825(E).

Variable Benefit

Variable benefit

16.2 (1) Subject to the regulations, a pension plan may provide that a member or former member who is entitled to an immediate pension benefit under subsection 16(1)

prestation de retraite progressive est à verser, l'administrateur de ce régime ne peut pas verser la prestation de pension immédiate, et tout choix fait antérieurement au titre du paragraphe 22(5) est nul sauf s'il a été effectué au titre du droit provincial des biens au sens du paragraphe 25(1).

Règles applicables après la période de retraite progressive

(5) Les règles ci-après s'appliquent dès que prend fin la période de retraite progressive :

a) les prestations de pension accumulées pendant cette période sont tenues comme telles, indépendamment de l'âge, de la durée de la participation ou de la période d'emploi;

b) le montant de la prestation de pension immédiate à laquelle la personne a droit au titre des paragraphes 16(1) ou (2) est calculé, sauf disposition contraire des règlements, sans qu'il soit tenu compte de toute somme versée à titre de prestation de retraite progressive;

c) tout choix fait au titre du paragraphe 22(5) qui est nul aux termes de l'alinéa (4)g) le demeure;

d) le paragraphe 26(2) s'applique, abstraction faite du passage « mais avant le début du service de la prestation de pension »;

e) si la période prend fin pour cause de décès :

(i) la personne est réputée avoir pris sa retraite pour ce qui est de la prestation au survivant,

(ii) elle est réputée être admissible à la prestation réversible au titre de l'article 22, indépendamment du paragraphe 22(5), à l'égard de la prestation de pension immédiate à laquelle elle aurait droit au titre des paragraphes 16(1) ou (2),

(iii) les paragraphes 23(5) à (7) s'appliquent.

2007, ch. 35, art. 141; 2010, ch. 12, art. 1803, 1824(F) et 1825(A).

Prestation variable

Prestation variable

16.2 (1) Sous réserve des règlements, le régime de pension peut permettre au participant ou à l'ancien participant qui a droit à une prestation de pension immédiate

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Variable Benefit
Sections 16.2-16.4

Normes de prestation de pension (1985)
Obligations générales
Prestation variable
Articles 16.2-16.4

or eligible to receive an immediate pension benefit under subsection 16(2) may elect to receive a variable benefit payable under a defined contribution provision.

Conditions

(2) A member or former member may make the election only if

- (a)** their spouse or common-law partner notifies the administrator of their consent, in the prescribed form; and
- (b)** the whole of the pension plan has not been terminated at the time the election is made.

Non-application

(3) Section 22 does not apply to a variable benefit.

2010, c. 12, s. 1804.

Entitlement of survivor

16.3 (1) In the case of the death of a former member who had a spouse or common-law partner at the time payment of a variable benefit referred to in subsection 16.2(1) commenced, the survivor is entitled to receive, subject to the regulations and the regulations made under the *Income Tax Act*, a variable benefit payable under a defined contribution provision based on the amount remaining in the former member's account maintained in respect of the defined contribution provision.

Designated beneficiary or estate or succession

(2) If a former member dies without leaving a survivor, the amount remaining in the former member's account maintained in respect of a defined contribution provision is to be paid, subject to the regulations made under the *Income Tax Act*, to the former member's designated beneficiary or, if there is none, to the former member's estate or succession.

2010, c. 12, s. 1804.

Transfer

16.4 (1) At least once every year, or more frequently if the pension plan permits, a former member or their survivor may elect

- (a)** to transfer the amount remaining to another pension plan, including a plan referred to in paragraph 26(5)(a) or (b), if that other plan permits;
- (b)** to transfer the amount remaining to a retirement savings plan of the prescribed kind for the former member or survivor, as the case may be; or

au titre des paragraphes 16(1) ou (2) de choisir de recevoir, au titre d'une disposition à cotisations déterminées, une prestation variable.

Conditions

(2) Le participant ou l'ancien participant ne peut effectuer le choix que si les conditions ci-après sont remplies :

- a)** son époux ou conjoint de fait notifié à l'administrateur, en la forme réglementaire, son consentement à l'exercice du choix;
- b)** au moment du choix, le régime de pension n'a pas fait l'objet d'une cessation totale.

Non-application

(3) L'article 22 ne s'applique pas à la prestation variable.

2010, ch. 12, art. 1804.

Droit du survivant

16.3 (1) En cas de décès de l'ancien participant qui avait un époux ou conjoint de fait à la date du début du service de la prestation variable visée au paragraphe 16.2(1), le survivant a droit au titre de la disposition à cotisations déterminées, sous réserve des règlements et des règlements pris en vertu de la *Loi de l'impôt sur le revenu*, à une prestation variable basée sur le solde du compte de l'ancien participant qui a trait à la disposition à cotisations déterminées.

Bénéficiaire désigné ou succession

(2) En l'absence de survivant, le solde du compte de l'ancien participant décédé qui a trait à la disposition à cotisations déterminées est versé, sous réserve des règlements pris en vertu de la *Loi de l'impôt sur le revenu*, au bénéficiaire désigné. En l'absence de bénéficiaire désigné, le solde est versé à la succession.

2010, ch. 12, art. 1804.

Transfert du solde du compte

16.4 (1) L'ancien participant ou le survivant peut, une fois par année ou à la fréquence plus élevée prévue par le régime de pension, choisir :

- a)** de transférer le solde du compte à un autre régime de pension, notamment un régime de pension visé au paragraphe 26(5), si l'autre régime prévoit un tel transfert;
- b)** de transférer le solde du compte à un régime d'épargne-retraite prévu par règlement pour l'ancien participant ou le survivant, selon le cas;

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Variable Benefit
Sections 16.4-17

Normes de prestation de pension (1985)
Obligations générales
Prestation variable
Articles 16.4-17

(c) to use the amount remaining to purchase an immediate or deferred life annuity of the prescribed kind for the former member or survivor, as the case may be.

The former member or survivor must notify the administrator of their intention to make such an election in the prescribed form and the administrator must, without delay, take the necessary action to give effect to the notification.

Transfer in case of death

(2) If the survivor notifies the administrator of their intention to do so, in the prescribed form, within 90 days after the former member's death or, if the Superintendent allows a longer period under paragraph 28(1)(d), within 60 days after the administrator has given the written statement under that paragraph, the survivor may also

(a) transfer the amount remaining to another pension plan, including a plan referred to in paragraph 26(5)(a) or (b), if that other plan permits;

(b) transfer the amount remaining to a retirement savings plan of the prescribed kind for the survivor; or

(c) use the amount remaining to purchase an immediate or deferred life annuity of the prescribed kind for the survivor.

The administrator must, without delay, take the necessary action to give effect to the notification.

2010, c. 12, s. 1804.

Cessation

16.5 Before a pension plan ceases to provide for the payment of a variable benefit referred to in subsection 16.2(1), an administrator must offer a former member or survivor who receives that variable benefit the options referred to in subsection 16.4(1).

2010, c. 25, s. 198.

Vesting of Benefits

Provision respecting vesting

17 A pension plan must provide that any member of the plan is entitled, on cessation of membership in the plan,

(a) to a deferred pension benefit, based on the member's period of employment and salary up to the time of cessation of membership, and calculated in a similar manner and payable on the same terms and conditions as the immediate pension benefit — other than that provided by additional voluntary contributions — that the member would have been eligible to receive

(c) d'utiliser le solde du compte pour acheter une prestation viagère immédiate ou différée prévue par règlement pour l'ancien participant ou le survivant, selon le cas.

L'ancien participant ou le survivant avise l'administrateur, en la forme réglementaire, de son intention et celui-ci prend sans délai les mesures voulues pour donner effet à l'avis.

Transfert après le décès

(2) Le survivant peut aussi, s'il avise l'administrateur, en la forme réglementaire, de son intention dans les quatre-vingt-dix jours suivant le décès de l'ancien participant ou, si le surintendant accorde un délai supplémentaire au titre de l'alinéa 28(1)d), dans les soixante jours suivant la remise du relevé visé à cet alinéa :

a) transférer le solde du compte à un autre régime de pension, notamment un régime de pension visé au paragraphe 26(5), si l'autre régime prévoit un tel transfert;

b) transférer le solde du compte à un régime d'épargne-retraite prévu par règlement pour le survivant;

c) utiliser le solde du compte pour acheter une prestation viagère immédiate ou différée prévue par règlement pour le survivant.

L'administrateur prend sans délai les mesures voulues pour donner effet à l'avis.

2010, ch. 12, art. 1804.

Cessation

16.5 Avant que le régime de pension ne cesse de prévoir le versement des prestations variables visées au paragraphe 16.2(1), l'administrateur offre à l'ancien participant ou au survivant qui en reçoit une les choix prévus au paragraphe 16.4(1).

2010, ch. 25, art. 198.

Acquisition du droit aux prestations

Acquisition du droit

17 Le régime de pension doit prévoir qu'un participant a droit, à la fin de sa participation :

a) au service d'une prestation de pension différée qui tient compte de sa période d'emploi et de sa rémunération, jusqu'au moment où sa participation prend fin, dont le mode de calcul et les modalités de paiement sont les mêmes, sous réserve de toute cotisation facultative, que ceux de la prestation de pension immédiate à laquelle il aurait eu droit, au titre du régime, s'il avait atteint l'âge admissible;

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Vesting of Benefits
Sections 17-18

Normes de prestation de pension (1985)
Obligations générales
Acquisition du droit aux prestations
Articles 17-18

under the plan if they had attained pensionable age; and

(b) to any other benefit or option, based on the member's period of employment and salary up to the time of cessation of membership, and calculated in a similar manner and payable on the same terms and conditions as the benefit or option to which, if the member had remained a member of the plan until pensionable age, the member would have been entitled under the terms of the plan that are required or permitted by subsections 16(2), (4) and (6) and sections 22 to 25 and 27.

R.S., 1985, c. 32 (2nd Supp.), s. 17; 2001, c. 34, s. 68(F); 2010, c. 12, s. 1805.

Locking-in

Provisions respecting locking-in

18 (1) Subject to subsections 23(5) and 25(4), a pension plan shall provide

(a) that no benefit provided under the plan is capable of being assigned, charged, anticipated or given as security or confers on a member or former member, that person's personal representative or dependant or other person any right or interest therein that is capable of being assigned, charged, anticipated or given as security;

(b) that, except in the case of the unexpired period of a guaranteed annuity, no benefit described in section 16 or 17 is capable of being surrendered or commuted during the lifetime of the member or former member or that person's spouse or common-law partner or confers on a member or former member, that person's personal representative or dependant or other person any right or interest therein that is capable of being surrendered or commuted during the lifetime of the member or former member or that person's spouse or common-law partner; and

(c) with respect to a person who has been a member for a continuous period of at least two years, that, except as provided in section 26, that person — if they are entitled to a benefit described in section 16 or 17 or would be entitled to the benefit if they retired or ceased membership in the plan — is not permitted to withdraw any part of their contributions to the plan, other than additional voluntary contributions, in respect of any period of membership in the plan on or after October 1, 1967 for which they are entitled to the benefit, and that any pension fund moneys attributable to those contributions shall be applied under the terms of the plan toward the payment of the benefit.

b) à toute autre prestation ou toute option qui tiennent compte de sa période d'emploi et de sa rémunération jusqu'au moment où sa participation prend fin, dont le mode de calcul et les modalités de paiement sont les mêmes que ceux de la prestation ou de l'option auxquelles il aurait eu droit s'il avait maintenu sa participation jusqu'à l'âge admissible au titre des dispositions du régime exigées ou autorisées par les paragraphes 16(2), (4) et (6) et par les articles 22 à 25 et 27.

L.R. (1985), ch. 32 (2^e suppl.), art. 17; 2001, ch. 34, art. 68(F); 2010, ch. 12, art. 1805.

Immobilisation des cotisations

Dispositions applicables

18 (1) Sous réserve des paragraphes 23(5) et 25(4), un régime de pension doit prévoir :

a) qu'aucune prestation, au titre de celui-ci, ne peut être cédée, grevée ou faire l'objet d'une promesse de paiement ou d'une garantie ni ne confère à un participant actuel ou ancien, à son représentant, à une personne à sa charge ou à toute autre personne un droit afférent susceptible d'être cédé, grevé, ou de faire l'objet d'une telle promesse ou d'une garantie;

b) que sauf avant l'expiration de la période certaine d'une rente viagère garantie, une prestation visée aux articles 16 ou 17 ne peut être rachetée pendant la vie du participant actuel ou ancien ou de son époux ou conjoint de fait, ni ne confère au participant actuel ou ancien, à son représentant, à une personne à sa charge ou à toute autre personne un droit afférent susceptible d'être cédé ou racheté pendant la vie du participant actuel ou ancien ou de son époux ou conjoint de fait;

c) à l'égard de la personne comptant une période de participation continue d'au moins deux ans, que, sous réserve de l'article 26, cette personne, si elle a droit à une prestation visée aux articles 16 ou 17, ou y aurait droit si elle prenait sa retraite ou si sa participation prenait fin, ne peut retirer une partie de ses cotisations, versées en vue d'une telle prestation, sauf les cotisations facultatives, relativement à sa participation à compter du 1^{er} octobre 1967, et que toutes les sommes du fonds de pension imputables à ces cotisations doivent servir, conformément aux dispositions du régime, au service des prestations visées par l'un ou l'autre de ces articles, selon le cas.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Locking-in
Sections 18-19

Normes de prestation de pension (1985)
Obligations générales
Immobilisation des cotisations
Articles 18-19

Optional provisions

(2) Notwithstanding subsection (1), a pension plan may provide

(a) [Repealed, 2010, c. 12, s. 1806]

(b) that a member or former member who is entitled to a deferred pension benefit described in section 17 may, before the commencement of payment thereof, elect, or be authorized, to receive a payment or series of payments by reason of disability, as defined by the regulations, partly or wholly in lieu of the deferred pension benefit described in section 17; and

(c) that, if the pension benefit credit is less than 20% of the Year's Maximum Pensionable Earnings for the calendar year in which a member ceases to be a member of the plan or dies, or any other percentage that may be prescribed, the pension benefit credit may be paid to the member or survivor, as the case may be.

R.S., 1985, c. 32 (2nd Supp.), s. 18; 1998, c. 12, s. 14; 2000, c. 12, ss. 256, 263; 2001, c. 34, s. 69(F); 2010, c. 12, s. 1806, c. 25, s. 191.

Interest

Interest (defined contribution plans)

19 (1) In the case of a defined contribution plan, the members' accounts shall be credited with such interest, gains and losses as can reasonably be attributed to the operation of the pension fund.

Interest (defined benefit plans)

(2) In the case of a defined benefit plan,

(a) interest shall be credited on members' contributions at a rate equal to or greater than the rate fixed in advance by the Superintendent, or

(b) members' contributions shall be credited with such interest, gains and losses as can reasonably be attributed to the operation of the pension fund,

and the plan shall specify which of paragraph (a) or (b) operates, but the plan may specify that one of those two paragraphs applies to required contributions and the other paragraph applies to additional voluntary contributions, in which case the reference in paragraph (b) to "the operation of the pension fund" shall be read as either "the operation of that portion of the pension fund that relates to required contributions" or "the operation of that portion of the pension fund that relates to additional voluntary contributions", as the case may be.

Dispositions optionnelles

(2) Par dérogation au paragraphe (1), un régime de pension peut prévoir :

a) [Abrogé, 2010, ch. 12, art. 1806]

b) qu'un participant actuel ou ancien qui a droit à une prestation de pension différée au titre de l'article 17 peut, avant le début du service de celle-ci, choisir de recevoir ou être autorisé à recevoir, en raison d'une invalidité, au sens des règlements, un paiement, unique ou échelonné, en remplacement total ou partiel de la prestation de pension différée visée à l'article 17;

c) que si le droit à pension est inférieur à vingt pour cent — ou à tout autre pourcentage fixé par règlement — du maximum des gains annuels ouvrant droit à pension pour l'année civile au cours de laquelle le participant est décédé ou sa participation a pris fin, le droit à pension peut être payé au participant ou à son survivant, selon le cas.

L.R. (1985), ch. 32 (2^e suppl.), art. 18; 1998, ch. 12, art. 14; 2000, ch. 12, art. 256 et 263; 2001, ch. 34, art. 69(F); 2010, ch. 12, art. 1806, ch. 25, art. 191.

Intérêt

Régime à cotisations déterminées

19 (1) Sont portés au crédit des comptes des participants à un régime à cotisations déterminées les intérêts et les profits, et portés au débit les pertes, normalement imputables au fonctionnement du régime.

Régime à prestations déterminées

(2) Dans le cas d'un régime à prestations déterminées, doivent être portés au compte des cotisations des participants :

a) soit un intérêt, calculé selon le taux égal ou supérieur à celui fixé d'avance par le surintendant;

b) soit l'intérêt, les gains ou les pertes qui sont raisonnablement imputables au fonctionnement du régime.

Le régime doit prévoir laquelle de ces mesures est à appliquer et peut prévoir l'application de l'une d'elles aux cotisations obligatoires, et de l'autre aux cotisations facultatives. Si le régime prévoit l'application de l'une et de l'autre, l'imputation visée à l'alinéa b) se fait, selon le cas, à la partie du régime relative aux cotisations obligatoires ou à celle relative aux obligations facultatives.

Superintendent's guideline

(3) The rate fixed by the Superintendent under subsection (2) must be fixed so that it reflects reasonably current interest rates.

20 [Repealed, 2010, c. 12, s. 1807]

Minimum Employer Contributions for Defined Benefit Plans

Minimum pension benefit credit

21 (1) Subject to paragraph 26(3)(b), if a member of a defined benefit plan retires, ceases to be a member or dies or if the whole or part of the plan is terminated, the pension benefit in respect of the member is to be increased by the amount, if any, by which the aggregate of the member's contributions, other than additional voluntary contributions, together with interest in accordance with section 19, exceeds 50 per cent of the pension benefit credit in respect of the member's membership in the plan.

Exception

(2) Subsection (1) does not apply to a contribution, or the pension benefit arising from it, in respect of any defined contribution provision of a defined benefit plan.

If plan provides for indexation

(3) Subsection (1) does not apply if a defined benefit plan provides for annual indexation of a deferred pension benefit, up to the day when payment of that deferred pension benefit commences, on the basis of

(a) increases of at least 75 per cent of the annual increase of the Consumer Price Index, minus one per cent; or

(b) any other formula that, in the Superintendent's opinion, would provide protection that on the average would be comparable to that described in paragraph (a).

Calculation of annual increase of Consumer Price Index

(4) For the purposes of paragraph (3)(a),

(a) the *Consumer Price Index* means the Consumer Price Index for Canada, as published by Statistics Canada under the authority of the *Statistics Act*; and

(b) the annual increase of the Consumer Price Index must be calculated, in prescribed manner, by the

Taux d'intérêt

(3) Le taux visé au paragraphe (2) doit refléter le plus possible le taux d'intérêt courant.

20 [Abrogé, 2010, ch. 12, art. 1807]

Cotisations patronales minimales — Régime à prestations déterminées

Droits à pension minimaux

21 (1) Sous réserve de l'alinéa 26(3)b), les prestations à l'égard du participant à un régime à prestations déterminées sont augmentées du montant de la prestation de pension pouvant provenir de l'excédent éventuel du total, majoré des intérêts calculés conformément à l'article 19, des cotisations non facultatives versées par le participant sur cinquante pour cent des droits à pension afférents à sa participation, si le participant prend sa retraite ou meurt ou si sa participation prend fin, ou en cas de cessation totale ou partielle du régime.

Exception

(2) Le paragraphe (1) ne s'applique pas à la cotisation, ou à la prestation de pension qui s'y rattache, versée relativement à une disposition à cotisations déterminées d'un régime à prestations déterminées.

Indexation prévue au régime

(3) Le paragraphe (1) ne s'applique pas dans le cas où un régime à prestations déterminées prévoit l'indexation annuelle d'une prestation de pension différée, calculée selon l'une ou l'autre des formules ci-après, jusqu'au début du service de celle-ci :

a) une augmentation d'au moins soixante-quinze pour cent de l'augmentation annuelle de l'indice des prix à la consommation moins un pour cent;

b) toute autre formule qui, de l'avis du surintendant, accorderait une protection moyenne équivalant à celle visée à l'alinéa a).

Calcul — indice des prix à la consommation

(4) Pour l'application de l'alinéa (3)a) :

a) *indice des prix à la consommation* s'entend de l'indice des prix à la consommation publié, pour le Canada, par Statistique Canada en application de la *Loi sur la statistique*;

comparison between two consecutive and reasonably current 12-month periods.

R.S., 1985, c. 32 (2nd Supp.), s. 21; 2001, c. 34, s. 71(F); 2010, c. 12, s. 1808.

Post-retirement

Meaning of normal form of the pension benefit

22 (1) In this section, **normal form of the pension benefit** means the form of pension benefit under a pension plan that would be paid to a member at pensionable age were it not for this section.

Joint and survivor pension benefit

(2) A pension benefit that commences to be paid on or after January 1, 1987 to a member or former member of a pension plan who has a spouse or common-law partner at the time the pension benefit commences to be paid shall be in the form of a joint and survivor pension benefit, subject to subsection 25(7).

Reduction by reason of death

(3) A pension benefit described in subsection (2) may be reduced by reason of the death of either spouse or common-law partner, to an amount not less than sixty per cent of the amount of the pension benefit that would have been payable in respect of the member or former member had the death not occurred.

Initial adjustment

(4) The initial amount of a pension benefit described in subsection (2) may be adjusted, provided that the actuarial present value of that pension benefit is not less than the actuarial present value of the normal form of the pension benefit.

Other forms of pension benefit

(5) Notwithstanding subsections (2) to (4), a pension plan shall provide that, in respect of a pension benefit that commences to be paid on or after January 1, 1987, a member or former member may elect to receive

- (a)** the normal form of the pension benefit, or
- (b)** the pension benefit in any other form provided for under the terms of the plan,

except that, where the member or former member has a spouse or common-law partner, an election as a result of which the pension benefit would reduce on the death of the member or former member, where the member or former member predeceases the spouse or common-law partner, to less than sixty per cent of the amount payable

b) l'augmentation annuelle de l'indice des prix à la consommation est calculée, selon les modalités réglementaires, par la comparaison de deux périodes consécutives de douze mois suffisamment récentes.

L.R. (1985), ch. 32 (2^e suppl.), art. 21; 2001, ch. 34, art. 71(F); 2010, ch. 12, art. 1808.

L'après-retraite

Définition de prestation normale

22 (1) Au présent article, **prestation normale** s'entend du type de la prestation de pension dont le service débiterait, en l'absence du présent article, à l'âge admissible.

Prestation réversible

(2) Toute prestation de pension dont le service débute à compter du 1^{er} janvier 1987 en faveur d'un participant actuel ou ancien qui a, à la date du début du service, un époux ou conjoint de fait, doit être, sous réserve du paragraphe 25(7), une prestation réversible.

Réduction pour cause de décès

(3) Une prestation de pension visée au paragraphe (2) peut être réduite en raison du décès de l'un des époux ou conjoints de fait mais doit être d'au moins soixante pour cent de celle qui aurait pu être servie relativement au participant actuel ou ancien sans le décès.

Révision du montant initial

(4) Le montant initial d'une prestation de pension visée au paragraphe (2) peut être révisé à la condition que sa valeur actuarielle du moment soit au moins égale à celle de la prestation normale.

Autres choix

(5) Par dérogation aux paragraphes (2) à (4), un régime de pension doit, dans le cas d'une prestation de pension dont le service débute à compter du 1^{er} janvier 1987, permettre à un participant actuel ou ancien de choisir de recevoir :

- a)** soit la prestation normale;
- b)** soit tout autre type de prestation de pension prévu par le régime.

Toutefois, si le choix a pour effet de ramener, au décès du participant actuel ou ancien, la prestation servie à son époux ou conjoint de fait survivant à moins de soixante pour cent de celle qui serait servie si l'un et l'autre vivaient, l'époux ou conjoint de fait doit consentir par écrit,

when both were alive, may not be made without the spouse's or common-law partner's written agreement, in prescribed form and deposited with the administrator of the plan.

R.S., 1985, c. 32 (2nd Supp.), s. 22; 2000, c. 12, s. 263.

Pre-retirement Death Benefit

If member dies before retirement

23 (1) In the case of the death of a member or former member of a pension plan who is entitled to a deferred pension benefit under section 17, or, in the case of a member, would be entitled to that benefit if the member ceased membership in the plan, the member's or former member's survivor is entitled to the pension benefit credit, calculated in accordance with section 21, to which the member or former member would have been entitled on the day of death if they had terminated employment on that day and had not died.

No survivor

(1.1) If a member or former member dies without leaving a survivor, the pension benefit credit referred to in subsection (1) is to be paid to the member's or former member's designated beneficiary or, if there is none, to their estate or succession.

Alternative

(2) A pension plan may provide for a survivor, as an alternative to what is provided by subsection (1), an immediate pension benefit equal to or greater than what is provided by subsection (1).

(3) and (4) [Repealed, 2010, c. 12, s. 1809]

Surrender of pension benefit or pension benefit credit

(5) A pension plan may provide that a survivor may, after the death of a member or former member, surrender, in writing, the pension benefit or pension benefit credit to which the survivor is entitled under this section and designate a beneficiary who is a dependant, within the meaning of subsection 8500(1) of the *Income Tax Regulations*, of the survivor, member or former member.

Effect of group life insurance plan

(6) Subject to subsection (7), a defined benefit plan may provide for the reduction of the benefit payable under subsection (1) or (2) by an amount equal to that part of the group life insurance payment that can be considered to have been paid by employer premiums, calculated in a manner satisfactory to the Superintendent, if

- (a)** in the circumstances described in subsection (1) or (2), a survivor is entitled to a payment under a group

en la forme réglementaire, à l'exercice de ce choix et déposer le texte de son consentement auprès de l'administrateur du régime.

L.R. (1985), ch. 32 (2^e suppl.), art. 22; 2000, ch. 12, art. 263.

Prestation de décès préretraite

Décès antérieur à la retraite

23 (1) Le survivant d'un participant ou d'un ancien participant qui a droit à une prestation de pension différée au titre de l'article 17, ou du participant qui y aurait droit si sa participation prenait fin, a droit aux droits à pension, calculés conformément à l'article 21, auxquels le participant ou l'ancien participant aurait eu droit, à la date de son décès, s'il avait cessé de travailler ce même jour et était toujours vivant.

Bénéficiaire désigné ou succession

(1.1) En l'absence de survivant, le bénéficiaire désigné ou, s'il n'y en a pas, la succession a droit aux droits à pension visés au paragraphe (1).

Option

(2) Un régime de pension peut prévoir, au lieu de ce qui est prévu au paragraphe (1), le service d'une prestation de pension immédiate au survivant égale ou supérieure à ce qui est prévu à ce paragraphe.

(3) et (4) [Abrogés, 2010, ch. 12, art. 1809]

Renonciation

(5) Le régime de pension peut prévoir le droit pour le survivant de céder par écrit les droits qui lui sont reconnus au présent article à la personne à sa charge ou à la charge du participant, actuel ou ancien, qu'il désigne, **personne à charge** s'entendant au sens du paragraphe 8500(1) du *Règlement de l'impôt sur le revenu*.

Régime collectif d'assurance-vie

(6) Sous réserve du paragraphe (7), le régime à prestations déterminées peut prévoir la réduction de la prestation payable au survivant, au titre des paragraphes (1) ou (2), dans le cas où celui-ci a droit, lors du décès du participant ou de l'ancien participant, à un paiement prévu par un régime collectif d'assurance-vie approuvé par le surintendant pour l'application du présent paragraphe, et pour lequel les primes sont payées, en tout ou en partie, par l'employeur. La réduction peut être d'un montant,

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Pre-retirement Death Benefit
Sections 23-25

Normes de prestation de pension (1985)
Obligations générales
Prestation de décès préretraite
Articles 23-25

life insurance plan on the death of the member or former member of the pension plan;

(b) the group life insurance plan is one that is approved by the Superintendent for the purposes of this subsection; and

(c) the group life insurance premiums are paid in whole or in part by the employer.

Limitation

(7) In respect of a reduction referred to in subsection (6),

(a) the actuarial present value of the reduction may not exceed the amount of the payment to which the survivor is entitled under the group life insurance plan; and

(b) in the case of a contributory pension plan, the reduction may not reduce the benefit payable to the survivor to an amount less than the aggregate of the member's required contributions together with interest in accordance with section 19.

R.S., 1985, c. 32 (2nd Supp.), s. 23; 1998, c. 12, s. 15; 2000, c. 12, ss. 257, 264; 2001, c. 34, s. 72(F); 2010, c. 12, s. 1809.

Marriage or Common-law Partnership

New relationship not to terminate pension benefit

24 A pension benefit payable to the spouse, former spouse or former common-law partner of a member or former member or to the survivor of a deceased member or former member shall not terminate by reason only that the spouse, former spouse, former common-law partner or survivor marries or enters into a common-law partnership.

R.S., 1985, c. 32 (2nd Supp.), s. 24; 2000, c. 12, s. 258.

Divorce, Annulment, Separation or Breakdown of Common-law Partnership

Definition of provincial property law

25 (1) In this section, *provincial property law* means the law of a province relating to the distribution, pursuant to court order or agreement between them,

(a) of the property of spouses on divorce, annulment or separation; or

(b) of the property of former common-law partners on the breakdown of their common-law partnership.

calculé d'une manière jugée satisfaisante par le surintendant, égal à la partie du paiement d'assurance-vie que l'on peut considérer comme correspondant aux primes versées par l'employeur.

Réserve

(7) Toutefois, la valeur actuarielle, au moment en cause, de cette réduction ne peut être supérieure au montant du paiement d'assurance-vie. Dans le cas d'un régime cotisable, la prestation payable au survivant ne peut être réduite à un montant inférieur à la somme des cotisations obligatoires du participant, majorées des intérêts calculés conformément à l'article 19.

L.R. (1985), ch. 32 (2^e suppl.), art. 23; 1998, ch. 12, art. 15; 2000, ch. 12, art. 257 et 264; 2001, ch. 34, art. 72(F); 2010, ch. 12, art. 1809.

Mariage ou union de fait

Effet du mariage ou d'une union de fait

24 Le service d'une prestation de pension à l'époux, à l'ex-époux ou ancien conjoint de fait, ou au survivant, d'un participant actuel ou ancien n'est pas arrêté du seul fait que l'époux, l'ex-époux ou ancien conjoint de fait ou le survivant se marie ou devient partie à une union de fait.

L.R. (1985), ch. 32 (2^e suppl.), art. 24; 2000, ch. 12, art. 258.

Divorce, annulation du mariage, séparation ou échec de l'union de fait

Définition de droit provincial des biens

25 (1) Au présent article, *droit provincial des biens* s'entend du droit d'une province régissant la répartition des biens, conformément à l'ordonnance d'un tribunal ou à une entente entre les parties :

a) dans le cas des époux, lors du divorce, de l'annulation du mariage ou de la séparation;

b) dans le cas des anciens conjoints de fait, lors de l'échec de leur union de fait.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
 General Requirements
 Divorce, Annulment, Separation or Breakdown of Common-law Partnership
Section 25

Normes de prestation de pension (1985)
 Obligations générales
 Divorce, annulation du mariage, séparation ou échec de l'union de fait
Article 25

Application of provincial property law

(2) Subject to subsections (4), (7) and (8), pension benefits, pension benefit credits and any other benefits under a pension plan are, on divorce, annulment, separation or breakdown of common-law partnership, subject to the applicable provincial property law.

Non-application of this Act

(3) A pension benefit, pension benefit credit or other benefit under a pension plan that is subject to provincial property law pursuant to this section is not subject to the provisions of this Act relating to the valuation or distribution of pension benefits, pension benefit credits or other benefits under a pension plan, as the case may be.

Power to assign to spouse, etc.

(4) A member or former member of a pension plan may assign all or part of their pension benefit, pension benefit credit or other benefit under the plan to their spouse, former spouse, common-law partner or former common-law partner, effective as of divorce, annulment, separation, or breakdown of the common-law partnership, as the case may be. The assignee is, in respect of the assigned portion of the pension benefit, pension benefit credit or other benefit, deemed for the purposes of this Act, except section 21,

- (a)** to have been a member of that pension plan; and
- (b)** to have ceased to be a member of that pension plan as of the effective date of the assignment.

However, a subsequent spouse or common-law partner of the assignee is not entitled to any pension benefit, pension benefit credit or other benefit under the pension plan in respect of that assigned portion.

Duty of administrator

(5) On divorce, annulment, separation or breakdown of a common-law partnership, if a court order or an agreement between the parties provides for the distribution of property between a member or former member and their spouse, former spouse or former common-law partner, the administrator shall determine and administer any pension benefit, pension benefit credit or other benefit of a pension plan of the member or former member in the prescribed manner and in accordance with the court order or agreement on receipt of

- (a)** a written request from either the member or former member or their spouse, former spouse or former common-law partner that all or part of the pension benefit, pension benefit credit or other benefit, as the

Application du droit provincial des biens

(2) Sous réserve des paragraphes (4), (7) et (8), les prestations de pension ou autres ainsi que les droits à pension que prévoit le régime de pension sont, lors du divorce, de l'annulation du mariage, de la séparation ou de l'échec de l'union de fait, assujettis au droit provincial des biens applicable.

Non-application de la présente loi

(3) Une prestation de pension ou autre et les droits à pension que prévoit un régime de pension et qui sont assujettis au droit provincial des biens conformément au présent article ne sont pas assujettis aux dispositions, relatives à leur évaluation et à leur répartition, prévues par la présente loi.

Pouvoir de cession au conjoint

(4) Le participant ou l'ancien participant peut céder à son époux ou conjoint de fait ou à son ex-époux ou ancien conjoint de fait tout ou partie de ses prestations de pension ou autres ou de ses droits à pension que prévoit le régime de pension, cette cession prenant effet lors du divorce, de l'annulation du mariage, de la séparation ou de l'échec de l'union de fait, selon le cas. Dans le cas d'une telle cession et pour l'application de la présente loi, sauf de l'article 21, et relativement à la partie des prestations ou droits cédés :

- a)** le cessionnaire est réputé avoir participé au régime;
- b)** la participation du cessionnaire est réputée avoir pris fin à compter du jour où la cession prend effet.

L'époux ou conjoint de fait que le cessionnaire peut avoir à l'avenir n'a toutefois droit à aucune prestation de pension ou autres ni à aucun droit à pension prévus au régime relativement à la partie ainsi cédée.

Fonctions de l'administrateur

(5) Lors du divorce, de l'annulation du mariage, de la séparation ou de l'échec de l'union de fait, si l'ordonnance d'un tribunal ou une entente entre les parties prévoit la répartition de biens entre un participant ou un ancien participant et son époux, ex-époux ou ancien conjoint de fait, l'administrateur, sur réception des documents ci-après, évalue et gère les prestations de pension ou autres ou les droits à pension du participant ou de l'ancien participant conformément aux modalités réglementaires et à l'ordonnance ou à l'entente en cause :

- a)** un écrit émanant du participant ou de l'ancien participant ou de son époux, ex-époux ou ancien conjoint de fait et demandant que les prestations de pension ou autres ou les droits à pension soient partagés ou gérés conformément à l'ordonnance ou à l'entente;

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Divorce, Annulment, Separation or Breakdown of Common-law Partnership
Section 25

Normes de prestation de pension (1985)
Obligations générales
Divorce, annulation du mariage, séparation ou échec de l'union de fait
Article 25

case may be, be distributed or administered in accordance with the court order or the agreement; and

(b) a copy of the court order or agreement.

However, in the case of a court order, the administrator shall not administer the pension benefit, pension benefit credit or other benefit in accordance with the court order until all appeals from that order have been finally determined or the time for appealing has expired.

Notice

(6) On receipt of a request referred to in subsection (5), the administrator shall notify the non-requesting spouse, former spouse or former common-law partner of the request and shall provide that person with a copy of the court order or agreement submitted in support of the request, but this requirement does not apply in respect of a request or an agreement received by the administrator in a form or manner that indicates that it was jointly submitted.

Splitting of joint and survivor pension benefit

(7) A pension plan may provide that, where, pursuant to this section, all or part of a pension benefit of a member or former member is required to be distributed to that person's spouse, former spouse or former common-law partner under a court order or agreement, a joint and survivor pension benefit may be adjusted so that it becomes payable as two separate pensions, one to the member or former member and the other to that person's spouse, former spouse or former common-law partner, if the aggregate of the actuarial present values of the two pensions is not less than the actuarial present value of the joint and survivor pension benefit.

Adjustment of joint and survivor pension benefit

(7.1) A pension plan may provide that, if no part of the pension benefit of a member or former member is required to be distributed to that person's spouse, former spouse or former common-law partner under a court order or agreement referred to in subsection (5), a joint and survivor pension benefit may be adjusted so that it becomes payable in the normal form of the pension benefit as defined in subsection 22(1).

Limitation

(8) The aggregate of the following amounts shall not be greater than the actuarial present value of the pension benefit or other benefit, as the case may be, that would have been payable to the member or former member had the divorce, annulment, separation or breakdown not occurred:

b) une copie de l'ordonnance ou de l'entente.

L'administrateur ne peut toutefois appliquer à sa gestion les modalités d'une ordonnance avant que celle-ci ne soit définitive ou que les délais d'appel n'aient expiré.

Avis

(6) Sur réception de la demande visée au paragraphe (5), l'administrateur en informe l'autre époux ou l'autre ex-époux ou ancien conjoint de fait et lui transmet une copie de l'ordonnance ou de l'entente à l'appui de la demande, sauf si la forme de la demande ou de l'entente indique que les parties l'ont présentée de concert.

Partage d'une pension réversible

(7) Un régime de pension peut prévoir que, dans le cas où la totalité ou une partie de la prestation de pension d'un participant actuel ou ancien doit être attribuée à son époux ou à son ex-époux ou ancien conjoint de fait, au titre d'une ordonnance d'un tribunal ou d'une entente, une prestation réversible peut être révisée de façon à être servie en deux prestations distinctes, l'une au participant actuel ou ancien, l'autre à son époux ou à son ex-époux ou ancien conjoint de fait, à la condition que la somme de la valeur actuarielle du moment de l'une et de l'autre ne soit pas inférieure à la valeur actuarielle du moment de la prestation réversible.

Révision de la prestation réversible

(7.1) Le régime de pension peut prévoir que, si les prestations de pension du participant ou de l'ancien participant n'ont pas à être attribuées à son époux, ex-époux ou ancien conjoint de fait au titre de l'ordonnance d'un tribunal ou d'une entente visées au paragraphe (5), la prestation réversible peut être révisée de façon à être servie comme une prestation normale au sens du paragraphe 22(1).

Restriction

(8) La somme des montants ci-après ne doit pas être supérieure à la valeur actualisée de la prestation de pension ou autre qui aurait été servie au participant ou à l'ancien participant, sans le divorce, l'annulation du mariage, la séparation ou l'échec de l'union de fait :

a) la valeur actualisée de la prestation de pension ou autre servie au participant ou à l'ancien participant;

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Divorce, Annulment, Separation or Breakdown of Common-law Partnership
Sections 25-26

Normes de prestation de pension (1985)
Obligations générales
Divorce, annulation du mariage, séparation ou échec de l'union de fait
Articles 25-26

(a) the actuarial present value of the pension benefit or other benefit paid to the member or former member, and

(b) the actuarial present value of the pension benefit or other benefit paid to the spouse, former spouse or former common-law partner of the member or former member.

R.S., 1985, c. 32 (2nd Supp.), s. 25; 2000, c. 12, s. 259; 2001, c. 34, s. 73(F); 2010, c. 12, s. 1811.

Portability of Pension Benefit Credits and Purchase of Life Annuities

If member not yet eligible to retire

26 (1) If a member, before becoming eligible to receive an immediate pension benefit pursuant to subsection 16(2), ceases to be a member of a pension plan or dies, the member or the survivor, as the case may be, is entitled

(a) to transfer the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to another pension plan, if that other plan permits,

(b) to transfer the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to a retirement savings plan of the prescribed kind for the member or survivor, as the case may be, or

(c) to use the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to purchase an immediate or deferred life annuity of the prescribed kind for the member or survivor, as the case may be,

if the member or the survivor notifies the administrator of that desire, in prescribed form and within ninety days after the cessation of membership or the member's death, as the case may be (or, where the Superintendent allows a longer period under paragraph 28(1)(d), within sixty days after the administrator has given the written statement pursuant to that paragraph), and the administrator shall forthwith take the necessary action to give effect to any such notification.

Where member eligible to retire

(2) Where a member, after becoming eligible to retire pursuant to subsection 16(2) but before the commencement of payment of a pension benefit, ceases to be a member of the pension plan or dies, the plan may permit the member or the survivor, as the case may be,

b) la valeur actualisée de la prestation de pension ou autre servie à son époux, ex-époux ou ancien conjoint de fait.

L.R. (1985), ch. 32 (2^e suppl.), art. 25; 2000, ch. 12, art. 259; 2001, ch. 34, art. 73(F); 2010, ch. 12, art. 1811.

Transferts des droits à pension et achats de prestations viagères

Transfert avant l'admissibilité à la retraite

26 (1) Le participant dont la participation a pris fin avant qu'il n'ait droit à la prestation visée au paragraphe 16(2), ou son survivant, dans le cas où le participant meurt avant d'y avoir droit, peut, s'il informe l'administrateur de son intention, en la forme réglementaire, dans les quatre-vingt-dix jours suivant l'événement en cause, ou si le surintendant accorde un délai supplémentaire au titre de l'alinéa 28(1)d), dans les soixante jours suivant la remise du relevé visé par cet alinéa :

a) transférer les droits à pension du participant ou, selon le cas, ceux de son survivant à un autre régime de pension si celui-ci prévoit un tel transfert;

b) transférer les droits à pension du participant ou, selon le cas, ceux de son survivant à un régime d'épargne-retraite prévu par règlement pour le participant ou son survivant, selon le cas;

c) utiliser les droits à pension du participant ou, selon le cas, ceux de son survivant pour acheter une prestation viagère immédiate ou différée prévue par règlement pour le participant ou, le cas échéant, le survivant.

L'administrateur prend sans délai les mesures voulues pour donner effet à l'avis l'informant de l'intention en cause.

Admissibilité à la retraite

(2) Le régime de pension peut permettre à un participant ou à son survivant, selon le cas, si, après être devenu admissible à la retraite au titre du paragraphe 16(2) mais avant le début du service de la prestation de pension, le participant meurt ou sa participation à un régime de pension prend fin :

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Portability of Pension Benefit Credits and Purchase of Life Annuities
Section 26

Normes de prestation de pension (1985)
Obligations générales
Transferts des droits à pension et achats de prestations viagères
Article 26

(a) to transfer the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to another pension plan, if that other plan permits;

(b) to transfer the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to a retirement savings plan of the prescribed kind for the member or survivor, as the case may be; or

(c) to use the member's pension benefit credit or the survivor's pension benefit credit, whichever is applicable, to purchase an immediate or deferred life annuity of the prescribed kind for the member or survivor, as the case may be.

Consent

(2.1) The transfer of pension benefit credit, referred to in paragraph (2)(b), may be made by a member only if the member's spouse or common-law partner notifies the administrator, in the prescribed form, of their consent to the transfer.

Other optional provisions of plan

(3) Where, at any time, a member ceases to be a member of the pension plan or dies, the plan may provide

(a) [Repealed, 2010, c. 25, s. 192]

(b) that, if part of the pension benefit payable results from the excess described in subsection 21(1), the member or the survivor, as the case may be, must choose one of the following options in respect of that excess:

(i) transfer it to another pension plan, if that other plan permits,

(ii) transfer it to a retirement savings plan of the prescribed kind for the member or survivor, as the case may be, or

(iii) use it to purchase an immediate or deferred life annuity for the member or survivor, as the case may be.

(4) [Repealed, 2010, c. 12, s. 1813]

Pension plans include

(5) For the purposes of this section, pension plans to which pension benefits may be transferred include

(a) pension plans that are under provincial jurisdiction;

a) de transférer les droits à pension du participant ou, selon le cas, ceux de son survivant à un autre régime de pension si celui-ci permet un tel transfert;

b) de transférer les droits à pension du participant ou, selon le cas, ceux de son survivant à un régime d'épargne-retraite prévu par règlement pour le participant ou son survivant, selon le cas;

c) d'utiliser les droits à pension du participant ou, selon le cas, ceux de son survivant pour acheter une prestation viagère immédiate ou différée prévue par règlement pour le participant ou le survivant, selon le cas.

Consentement

(2.1) Le transfert de droits à pension visé à l'alinéa (2)b) ne peut être effectué par un participant que si l'époux ou le conjoint de fait de celui-ci notifie à l'administrateur, en la forme réglementaire, son consentement au transfert.

Autres dispositions optionnelles

(3) Le régime de pension peut prévoir que, dans le cas où, à un moment donné, un participant meurt ou sa participation prend fin :

a) [Abrogé, 2010, ch. 25, art. 192]

b) si une partie de la prestation de pension payable provient de la différence visée au paragraphe 21(1), le participant ou son survivant, selon le cas, doit choisir, relativement à cette différence, l'une des options suivantes :

(i) la transférer à un autre régime de pension, si celui-ci permet un tel transfert,

(ii) la transférer à un régime d'épargne-retraite prévu par règlement pour le participant ou son survivant, selon le cas,

(iii) l'utiliser pour acheter une prestation viagère immédiate ou différée pour le participant ou son survivant, selon le cas.

(4) [Abrogé, 2010, ch. 12, art. 1813]

Portée

(5) Pour l'application du présent article, un régime de pension auquel des prestations de pension peuvent être transférées vise notamment le régime de pension de compétence provinciale, celui qui est institué et géré pour fournir des prestations de pension aux employés qui ont

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Portability of Pension Benefit Credits and Purchase of Life Annuities
Sections 26-27

Normes de prestation de pension (1985)
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Articles 26-27

(b) pension plans that are organized and administered to provide pension benefits to employees employed in excepted employment; and

(c) a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*.

R.S., 1985, c. 32 (2nd Supp.), s. 26; 1995, c. 17, s. 61; 1998, c. 12, s. 16; 1999, c. 31, s. 175(F); 2000, c. 12, s. 264; 2001, c. 34, s. 74(F); 2010, c. 12, s. 1813, c. 25, s. 192; 2012, c. 16, s. 88.

If transfer or purchase impairs solvency

26.1 The administrator of a pension plan must obtain the consent of the Superintendent to transfer moneys out of the pension fund under section 26 or purchase an immediate or deferred life annuity if, in the Superintendent's opinion, the transfer or purchase would impair the solvency of the pension fund. The Superintendent may consent to the transfer or purchase or may direct the administrator to carry out the transfer or purchase.

2010, c. 12, s. 1814.

Sex Discrimination Prohibited

Sex discrimination prohibited

27 (1) The sex of a member or former member or of their spouse, former spouse, common-law partner or former common-law partner may not be taken into account in determining

(a) the amount of any contribution required to be paid by the member under a pension plan after December 31, 1986; or

(b) the amount of any benefit to which any of those persons becomes entitled under the plan after December 31, 1986.

Compliance

(2) In order to comply with subsection (1), a pension plan may

(a) use annuity factors that do not differentiate as to sex;

(b) provide for employer contributions that vary according to the sex of the employee; or

(c) use any other method approved by the Superintendent.

Transfer under section 26

(3) Notwithstanding subsection (1), amounts transferred pursuant to section 26 may vary according to the sex of

un emploi exclu et le régime de pension agréé collectif au sens du paragraphe 2(1) de la *Loi sur les régimes de pension agréés collectifs*.

L.R. (1985), ch. 32 (2^e suppl.), art. 26; 1995, ch. 17, art. 61; 1998, ch. 12, art. 16; 1999, ch. 31, art. 175(F); 2000, ch. 12, art. 264; 2001, ch. 34, art. 74(F); 2010, ch. 12, art. 1813, ch. 25, art. 192; 2012, ch. 16, art. 88.

Transfert ou achat nuisible à la solvabilité

26.1 L'administrateur doit obtenir le consentement du surintendant pour effectuer un transfert au titre de l'article 26 ou pour acheter une prestation viagère immédiate ou différée, si, de l'avis de ce dernier, le transfert ou l'achat risque de porter atteinte à la solvabilité du régime de pension. Le surintendant peut consentir au transfert ou à l'achat, ou enjoindre à l'administrateur de l'effectuer.

2010, ch. 12, art. 1814.

Interdiction de la discrimination sexuelle

Règle générale

27 (1) Il ne peut être tenu compte du sexe d'un participant actuel ou ancien ou de celui de son époux ou conjoint de fait ou de son ex-époux ou ancien conjoint de fait pour déterminer, relativement à la participation au régime postérieure au 31 décembre 1986, le montant :

a) des cotisations du participant prévues par le régime;

b) des prestations de pension auxquelles l'un ou l'autre a ou pourra avoir droit au titre du régime.

Mesures d'application

(2) Afin de se conformer à la règle générale prévue au paragraphe (1), un régime de pension peut :

a) utiliser des facteurs qui ne font pas de distinctions fondées sur le sexe;

b) prévoir des cotisations patronales variables selon le sexe du salarié;

c) utiliser toute autre méthode approuvée par le surintendant.

Transferts au titre de l'article 26

(3) Par dérogation au paragraphe (1), les montants transférés au titre de l'article 26 peuvent varier selon le

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Sex Discrimination Prohibited
Sections 27-28

Normes de prestation de pension (1985)
Obligations générales
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the member if the variation is such that the pension benefit payable at pensionable age, based on the amount so transferred, does not vary materially according to the sex of the member.

R.S., 1985, c. 32 (2nd Supp.), s. 27; 2000, c. 12, s. 260.

sexe du participant dans la mesure où cette variation n'entraîne pas de variation importante de la prestation de pension payable, à l'âge admissible, selon le sexe, en fonction des montants ainsi transférés.

L.R. (1985), ch. 32 (2^e suppl.), art. 27; 2000, ch. 12, art. 260.

Rights to Information

Provisions respecting information to member and spouse or common-law partner

28 (1) A pension plan shall provide

(a) that each member of the plan and each employee who is eligible to join the plan, and that person's spouse or common-law partner, will be given, in the prescribed circumstances and in the prescribed manner,

(i) a written explanation of the provisions of the plan and of any applicable amendments to the plan, within 60 days after the establishment of the plan or after the making of the amendment, as the case may be, and

(ii) such other information as is prescribed;

(b) that each member of the plan and the member's spouse or common-law partner will be given, in the prescribed circumstances and manner and within six months — or any longer period permitted by the Superintendent — after the end of each year of operation of the plan, a written statement showing

(i) in the case of a defined benefit plan, the pension benefits to which the member is entitled under the plan at the end of that year,

(ii) the value of accumulated contributions made under the plan by the member (or, in the case of a defined contribution provision, by or in respect of the member) since the member became a member, expressed in prescribed manner,

(iii) the prescribed ratio of the plan or, if there is no prescribed ratio, the funded ratio, if applicable, and

(iv) such other information as is prescribed;

(b.1) that each former member of the plan and the former member's spouse or common-law partner will be given, in the prescribed circumstances and manner and within six months — or any longer period permitted by the Superintendent — after the end of each year of operation of the plan, a written statement showing

Droits à l'information

Information des participants et époux ou conjoints de fait

28 (1) Un régime de pension doit prévoir que :

a) chaque participant et chaque salarié admissible à participer au régime ainsi que leur époux ou conjoint de fait doivent recevoir, selon les circonstances et les modalités réglementaires :

(i) une explication écrite des dispositions du régime ainsi que des modifications de celui-ci applicables, dans les soixante jours suivant son institution ou sa modification, selon le cas,

(ii) tous autres renseignements prévus par règlement;

b) chaque participant ainsi que son époux ou conjoint de fait doivent recevoir, selon les circonstances et les modalités réglementaires, dans les six mois suivant la fin de chaque année de fonctionnement du régime ou tout délai supérieur accordé par le surintendant, un relevé indiquant :

(i) dans le cas d'un régime à prestations déterminées, les prestations de pension auxquelles le participant a droit, à la fin de l'année, au titre du régime,

(ii) la valeur cumulative, exprimée selon les modalités réglementaires, des cotisations versées, au titre du régime, par le participant ou, dans le cas d'une disposition à cotisations déterminées, par le participant ou relativement à celui-ci, depuis le début de sa participation,

(iii) le coefficient établi par règlement ou, à défaut, celui de capitalisation du régime, le cas échéant,

(iv) tous autres renseignements prévus par règlement;

b.1) chaque ancien participant ainsi que son époux ou conjoint de fait doivent recevoir, selon les circonstances et les modalités réglementaires, dans les six mois suivant la fin de chaque année de fonctionnement du régime ou tout délai supérieur accordé par le surintendant, un relevé indiquant :

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General Requirements
Rights to Information
Section 28

Normes de prestation de pension (1985)
Obligations générales
Droits à l'information
Article 28

(i) the prescribed ratio of the plan or, if there is no prescribed ratio, the funded ratio, if applicable, and

(ii) any other prescribed information;

(c) that each member and former member of the plan, every other person entitled to pension benefits under the plan and their spouses or common-law partners may, once in each year of operation of the plan, either personally or by an agent or mandatary authorized in writing for that purpose,

(i) examine copies of the documents or information filed with the Superintendent under subsection 9.01(5), 10(1) or 10.1(1), section 12 or subsection 29.03(4) or any regulations made under paragraph 39(1)(i), the reports provided under subsection 9.01(6), the letters of credit referred to in subsection 9.11(1), the documents submitted under subsection 29.3(3), and of any other prescribed documents, at the Canadian head office of the administrator or at any other place that is agreed to by the administrator and the person requesting to examine the documents, and

(ii) order, in writing, a copy of any of those documents;

(d) that, if a member of the plan retires or ceases to be a member of the plan for any reason other than the termination of the whole of the plan, the administrator shall give to that member and to the member's spouse or common-law partner a written statement, in the prescribed form, of the member's pension benefits and other benefits payable under the plan, within 30 days after the date of the retirement or cessation of membership, or any longer period permitted by the Superintendent; and

(e) that, if a member of the plan dies, the administrator shall give the written statement referred to in paragraph (d) in the prescribed form within 30 days after the date of the death — or any longer period permitted by the Superintendent — to the survivor, if there is one, to the member's designated beneficiary, if the administrator has been notified of the designation and there is no survivor, or, in every other case, to the executor, administrator or liquidator of the member's estate or succession.

Meaning of funded ratio

(2) In subparagraph (1)(b)(iii), **funded ratio** means the ratio of the assets of a pension plan to the liabilities of the pension plan on a going-concern basis, as reported in the latest actuarial report respecting the pension plan filed with the Superintendent.

(i) le coefficient établi par règlement ou, à défaut, celui de capitalisation du régime, le cas échéant,

(ii) tous autres renseignements prévus par règlement;

e) chaque participant ou ancien participant, ou toute autre personne qui a droit à une prestation de pension au titre du régime, ainsi que son époux ou conjoint de fait, ou son mandataire autorisé par écrit, peuvent, une fois au cours de chaque année de fonctionnement du régime, examiner copie des documents déposés au titre des paragraphes 9.01(5), 10(1) ou 10.1(1), de l'article 12, du paragraphe 29.03(4) ou des règlements pris en application de l'alinéa 39(1)i), des rapports remis au titre du paragraphe 9.01(6), des lettres de crédit visées au paragraphe 9.11(1), des documents présentés en application du paragraphe 29.3(3) ainsi que de tout autre document réglementaire, au bureau principal de l'administrateur au Canada ou à tout autre lieu dont sont convenus ce dernier et l'intéressé ou en commandant par écrit un exemplaire;

d) l'administrateur remet au participant, si celui-ci prend sa retraite ou si sa participation prend fin pour une raison autre que la cessation totale du régime, ainsi qu'à son époux ou conjoint de fait, dans les trente jours de l'événement en cause — ou dans tout délai supérieur accordé par le surintendant — un relevé en la forme réglementaire indiquant les prestations de pension et autres prévues par le régime;

e) l'administrateur établit, en cas de décès du participant, un relevé en la forme réglementaire indiquant les prestations de pension et autres prévues par le régime et le remet, dans les trente jours suivant le décès — ou dans tout délai supérieur accordé par le surintendant — au survivant s'il y en a un, au bénéficiaire désigné s'il a été avisé de la désignation et qu'il n'y a pas de survivant, ou au liquidateur, à l'exécuteur testamentaire ou à l'administrateur de la succession dans tout autre cas.

Sens de coefficient de capitalisation

(2) L'expression **coefficient de capitalisation**, au sous-alinéa (1)b)(iii), s'entend du rapport actif-passif du régime en fonctionnement, tel qu'il figure dans le dernier rapport actuariel relatif au régime et déposé auprès du surintendant.

Information on plan termination

(2.1) A pension plan shall provide that if the whole of the plan is terminated, the administrator shall give to each member and former member and to the spouse or common-law partner of each member and former member, a written statement, in the prescribed form, informing them of

(a) the termination of the plan within 30 days or any longer period permitted by the Superintendent; and

(b) the member's pension benefits and other benefits payable under the plan within 120 days after the termination or any longer period that the Superintendent may allow.

Administrator's duty

(3) The administrator shall forthwith

(a) permit any examination of documents that is requested under subparagraph (1)(c)(i); and

(b) comply, on condition of payment of such reasonable fee as the administrator may fix, with any written order for a photocopy placed under subparagraph (1)(c)(ii).

R.S., 1985, c. 32 (2nd Supp.), s. 28; 1998, c. 12, s. 17; 2000, c. 12, s. 263; 2001, c. 34, s. 75; 2010, c. 12, s. 1815, c. 25, s. 193.

Termination and Winding-up of Pension Plans

Deemed termination

29 (1) The revocation of registration of a pension plan shall be deemed to constitute termination of the plan.

Where Superintendent may declare a plan terminated

(2) The Superintendent may declare the whole or part of a pension plan terminated where

(a) there is any suspension or cessation of employer contributions in respect of all or part of the plan members;

(b) the employer has discontinued or is in the process of discontinuing all of its business operations or a part thereof in which a substantial portion of its employees who are members of the pension plan are employed;
 OR

(c) the Superintendent is of the opinion that the pension plan has failed to meet the prescribed tests and standards for solvency in respect of funding referred to in subsection 9(1).

Information à fournir à la cessation du régime

(2.1) Le régime de pension prévoit que, en cas de cessation totale du régime, l'administrateur remet au participant et à l'ancien participant ainsi qu'à leur époux ou conjoint de fait :

a) un avis en la forme réglementaire les informant de la cessation, dans les trente jours suivant celle-ci ou dans tout délai supérieur accordé par le surintendant;

b) un relevé en la forme réglementaire indiquant les prestations de pension et autres prévues par le régime, dans les cent vingt jours suivant la cessation ou dans tout délai supérieur accordé par le surintendant.

Devoir de l'administrateur

(3) L'administrateur doit, sans délai :

a) donner accès pour examen aux documents visés à l'alinéa (1)c);

b) expédier, sur paiement des frais raisonnables qu'il fixe, les exemplaires demandés au titre de l'alinéa (1)c).

L.R. (1985), ch. 32 (2^e suppl.), art. 28; 1998, ch. 12, art. 17; 2000, ch. 12, art. 263; 2001, ch. 34, art. 75; 2010, ch. 12, art. 1815, ch. 25, art. 193.

Cessation et liquidation

Présomption

29 (1) La révocation de l'agrément d'un régime de pension est réputée en constituer la cessation.

Décision du surintendant

(2) Le surintendant peut, dans les cas suivants, déclarer la cessation totale ou partielle d'un régime de pension :

a) la suspension ou l'arrêt de paiement des cotisations patronales relativement à plusieurs ou à l'ensemble des participants;

b) l'abandon total ou progressif de tout ou partie des secteurs d'activité de l'employeur où travaillent un nombre important de ses salariés qui participent au régime;

c) le surintendant est d'avis que le régime n'est pas conforme aux critères et normes de solvabilité réglementaires, relativement à la capitalisation prévue au paragraphe 9(1).

Declaration by Superintendent

(2.1) The Superintendent may also declare the whole of a pension plan terminated if there is a cessation of crediting of benefits to the plan members.

Date of termination

(3) In a declaration made under subsection (2) or (2.1), the Superintendent shall declare a pension plan or part of a pension plan, as the case may be, to be terminated as of the date that the Superintendent considers appropriate in the circumstances.

Adoption of new plan

(4) If employer contributions to a negotiated contribution plan are suspended or cease as a result of the adoption of a new defined benefit plan, the original plan is deemed not to have been terminated, and the pension benefits and other benefits provided under the original plan are deemed to be benefits provided under the new plan in respect of any period of membership before the adoption of the new plan, whether or not the assets and liabilities of the original plan have been consolidated with those of the new plan.

Partial termination

(4.1) Only the Superintendent may declare part of a pension plan terminated.

Termination by administrator or employer

(4.2) Subject to subsections (1), (2) and (2.1), the whole of a pension plan is terminated only if the administrator or employer notifies the Superintendent, in writing or in the form and manner, if any, that the Superintendent directs, of their decision to terminate the pension plan and the date of the termination.

Result of termination

(4.3) As of the date of the termination of the whole of a pension plan, there is to be no crediting of benefits to the plan members under that pension plan.

Notice of voluntary termination or winding-up

(5) An administrator or employer who terminates or winds up a pension plan shall notify the Superintendent, in writing or in the form and manner, if any, that the Superintendent directs, not less than 60 and not more than 180 days before the date of the termination or winding-up.

Décision du surintendant

(2.1) Il peut aussi déclarer la cessation totale d'un régime de pension s'il n'est plus porté de droits à prestation en faveur des participants.

Date de cessation

(3) Il précise dans sa déclaration la date de la cessation totale ou partielle du régime de pension qu'il estime indiquée dans les circonstances.

Adoption d'un nouveau régime

(4) Dans le cas de l'arrêt ou de la suspension des cotisations patronales à un régime à cotisations négociées à la suite de l'adoption d'un nouveau régime à prestations déterminées, le régime initial est réputé ne pas avoir fait l'objet d'une cessation et les prestations de pension ou autres prévues par celui-ci sont réputées être les prestations prévues par le nouveau régime relativement à toute période de participation antérieure à l'adoption du nouveau régime, indépendamment du fait qu'il y a eu ou non fusion de l'actif et du passif des deux régimes.

Cessation partielle

(4.1) Seul le surintendant peut déclarer la cessation partielle du régime de pension.

Cessation totale à l'initiative de l'administrateur ou de l'employeur

(4.2) Sous réserve des paragraphes (1), (2) et (2.1), il n'y a cessation totale du régime de pension que si l'administrateur ou l'employeur avise le surintendant de sa décision d'y mettre fin et de la date de la cessation. L'avis est donné par écrit ou en la forme et de la manière que peut fixer le surintendant.

Effet de la cessation totale

(4.3) À compter de la date de cessation totale d'un régime de pension, il n'est plus porté de droits à prestation en faveur des participants au titre de celui-ci.

Préavis de cessation volontaire ou de liquidation

(5) L'administrateur ou l'employeur qui met fin à un régime de pension ou le liquide en informe le surintendant, par écrit ou en la forme et de la manière que ce dernier peut fixer, au moins soixante jours et au plus cent quatre-vingts jours avant la date de la cessation ou de la liquidation, selon le cas.

Payments by employer to meet solvency requirements

(6) If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the pension fund

(a) an amount equal to the normal cost that has accrued to the date of the termination;

(b) the amounts of any prescribed special payments that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(c) the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(d) all of the following amounts that have not been remitted to the pension fund at the date of the termination:

(i) the amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer; and

(e) the amounts of all of the payments that are required to be made under subsection 9.14(2).

Payment by employer of pension benefits

(6.1) If the whole of a pension plan that is not a negotiated contribution plan is terminated, the employer shall pay into the pension fund, in accordance with the regulations, the amount — calculated periodically in accordance with the regulations — that is required to ensure that any obligation of the plan with respect to pension benefits, as they are determined on the date of the termination, is satisfied.

Application of subsection 8(1)

(6.2) Subsection 8(1) does not apply in respect of the amount that the employer is required to pay into the pension fund under subsection (6.1). However, it applies in respect of any payments that are due and that have not been paid into the pension fund in accordance with the regulations made for the purposes of subsection (6.1).

Paiements par l'employeur

(6) S'il y a une cessation totale d'un régime de pension, l'employeur est tenu de verser sans délai au fonds de pension toutes les sommes qu'il aurait fallu par ailleurs payer pour satisfaire aux critères et normes de solvabilité visés au paragraphe 9(1) et notamment :

a) une somme correspondant aux coûts normaux accumulés à la date de la cessation;

b) une somme correspondant aux paiements spéciaux prévus par règlement qui sont exigibles à la cessation ou qui seraient devenus exigibles, en l'absence de cessation, entre la date de celle-ci et la fin de l'exercice du régime où elle survient;

c) une somme correspondant aux paiements prévus par l'accord de sauvetage qui sont exigibles à la cessation ou qui seraient devenus exigibles, en l'absence de cessation, entre la date de celle-ci et la fin de l'exercice du régime où elle survient;

d) les sommes ci-après qui n'ont pas été versées au fonds de pension à la date de la cessation :

(i) les sommes déduites par l'employeur de la rémunération des participants,

(ii) les autres sommes que l'employeur doit au fonds;

e) une somme correspondant aux paiements exigibles en vertu du paragraphe 9.14(2).

Obligation de l'employeur

(6.1) S'il y a une cessation totale d'un régime de pension autre qu'un régime à cotisations négociées, l'employeur est tenu de verser au fonds de pension, conformément aux règlements, la somme, calculée périodiquement conformément aux règlements, qui est nécessaire pour que soient acquittées toutes les obligations du régime à l'égard des droits à pension déterminés à la date de la cessation.

Application du paragraphe 8(1)

(6.2) Le paragraphe 8(1) ne s'applique pas à l'égard de la somme que l'employeur est tenu de verser en application du paragraphe (6.1). Il s'applique toutefois à l'égard de tout paiement dû qui n'a pas été versé au fonds conformément aux règlements d'application du paragraphe (6.1).

Overpayment

(6.3) If, on the winding-up of the pension plan, there remains in the pension fund an amount that is more than the amount required to permit the plan to satisfy all obligations with respect to pension benefits as they are determined on the date of termination, the portion of the remaining amount that is, according to the regulations, attributable to the payments made under subsection (6.1) does not constitute a surplus and, subject to subsection (7), is to revert to the benefit of the employer.

Winding-up or bankruptcy

(6.4) On the winding-up of the pension plan or the liquidation, assignment or bankruptcy of the employer, the amount required to permit the plan to satisfy any obligations with respect to pension benefits as they are determined on the date of termination is payable immediately.

Application of subsection 8(1)

(6.5) Subsection 8(1) does not apply in respect of the amount that the employer is required to pay into the pension fund under subsection (6.4). However, it applies in respect of any payments that have accrued before the date of the winding-up, liquidation, assignment or bankruptcy and that have not been remitted to the fund in accordance with the regulations made for the purposes of subsection (6.1).

Assets of the pension plan

(7) On the termination or winding-up of the whole of a pension plan, no part of the assets of the plan shall revert to the benefit of the employer until the Superintendent's consent has been obtained and provision has been made for the payment to members and former members and their spouses, common-law partners, designated beneficiaries, estates or successions of all accrued or payable benefits in respect of membership up to the date of the termination or winding-up.

Effect of termination on assets

(8) On the termination of the whole of a pension plan, all assets of the plan that are to be used for the purpose of providing pension benefits or other benefits continue to be subject to this Act.

Actuarial termination report

(9) On the termination of the whole or part of a pension plan, the administrator of the plan shall file with the Superintendent, in the form and manner, if any, that the Superintendent directs, a termination report prepared by a person having the prescribed qualifications, setting out the nature of the pension benefits and other benefits to

Paiement en trop

(6.3) À la liquidation du régime de pension, s'il reste dans le fonds de pension un solde qui excède la somme nécessaire pour permettre au régime de s'acquitter de toutes ses obligations à l'égard des droits à pension déterminés à la date de la cessation, la partie du solde qui est, selon les règlements, attribuable aux paiements effectués par l'employeur sous le régime du paragraphe (6.1) ne constitue pas un excédent et, sous réserve du paragraphe (7), ce dernier a droit de la recouvrer.

Liquidation ou faillite

(6.4) En cas de liquidation du régime de pension ou de liquidation, de cession de biens ou de faillite de l'employeur, est immédiatement exigible la somme nécessaire pour permettre au régime de s'acquitter de toutes ses obligations à l'égard des droits à pension déterminés à la date de la cessation.

Application du paragraphe 8(1)

(6.5) Le paragraphe 8(1) ne s'applique pas à l'égard de la somme que l'employeur est tenu de verser en application du paragraphe (6.4). Il s'applique toutefois à l'égard de tout paiement accumulé avant la liquidation, la cession de biens ou la faillite, selon le cas, qui n'a pas été versé au fonds conformément aux règlements d'application du paragraphe (6.1).

Actifs du régime

(7) Lors de la cessation ou liquidation totale d'un régime de pension, l'employeur n'a droit à aucun recouvrement d'actifs du régime avant que le consentement du surintendant n'ait été obtenu et que des mesures n'aient été prises pour le service des prestations accumulées ou payables aux participants ou anciens participants, à leur époux ou conjoint de fait, à leur bénéficiaire désigné ou à leur succession, relativement à la participation au régime jusqu'à la date de la cessation ou de la liquidation, selon le cas.

Effet de la cessation sur les actifs

(8) Lors de la cessation totale d'un régime de pension, tous les actifs de celui-ci à utiliser pour le service des prestations de pension ou autres demeurent assujettis à la présente loi.

Rapport de cessation

(9) Lors de la cessation totale ou partielle d'un régime de pension, l'administrateur dépose auprès du surintendant, en la forme et de la manière que peut fixer ce dernier, un rapport de cessation, établi par une personne ayant les qualifications prévues par règlement, exposant la nature des prestations de pension ou autres à servir au titre du

be provided under the plan and a description of the methods of allocating and distributing those benefits and deciding the priorities in respect of the payment of full or partial benefits to the members. The report must also give the amount referred to in subsection (6.1) — calculated as at the date of termination — and contain any prescribed information.

Assets not to be applied until termination report approved

(10) Assets of the pension plan may not be applied toward the provision of any benefits until the Superintendent has approved the termination report. The administrator of the plan may nevertheless pay pension benefits, as they fall due, to the person entitled.

Superintendent may direct winding-up

(11) If the whole of a pension plan has been terminated and the Superintendent is of the opinion that no action or insufficient action has been taken to wind up the plan, the Superintendent may direct the administrator to distribute the assets of the plan in accordance with the regulations made under paragraph 39(1)(j), and may direct that any expenses incurred in connection with that distribution be paid out of the pension fund of the plan, and the administrator shall comply with any such direction without delay.

(12) [Repealed, 2010, c. 12, s. 1816]

R.S., 1985, c. 32 (2nd Supp.), s. 29; 1998, c. 12, s. 18; 2000, c. 12, s. 261; 2010, c. 12, s. 1816, c. 25, ss. 194, 198.

Distressed Pension Plan Workout Scheme

Application

29.01 (1) Sections 29.02 to 29.3 apply only in respect of a defined benefit plan that is not a multi-employer pension plan.

Agent of Her Majesty

(2) Sections 29.02 to 29.3 do not apply in respect of an employer who is an agent of Her Majesty in right of Canada.

2010, c. 12, s. 1817.

Definitions

29.02 The following definitions apply in sections 29.03 to 29.3:

régime ainsi que les méthodes d'affectation et de répartition de celles-ci, et établissant les priorités de paiement des prestations intégrales ou partielles aux participants. Le rapport mentionne la somme visée au paragraphe (6.1), arrêtée à la date de la cessation, et contient les renseignements prévus par règlement.

Approbation préalable du rapport

(10) Les actifs du régime de pension ne peuvent être utilisés pour le service de prestations avant que le surintendant n'ait approuvé le rapport de cessation; cependant, l'administrateur peut payer à la personne qui y a droit les prestations de pension, au fur et à mesure de leur échéance.

Cessation imposée

(11) Le surintendant peut, après la cessation totale d'un régime de pension, s'il est d'avis qu'aucune mesure n'a été prise en vue de sa liquidation ou que celles qui l'ont été sont insuffisantes à cette fin, enjoindre à l'administrateur de répartir les actifs du régime conformément aux règlements pris en vertu de l'alinéa 39(1)(j) et ordonner que toutes dépenses afférentes à cette distribution soient payées sur le fonds de pension; l'administrateur doit se conformer sans délai à ces directives.

(12) [Abrogé, 2010, ch. 12, art. 1816]

L.R. (1985), ch. 32 (2^e suppl.), art. 29; 1998, ch. 12, art. 18; 2000, ch. 12, art. 261; 2010, ch. 12, art. 1816, ch. 25, art. 194 et 198.

Mécanisme d'accommodement pour les régimes de pension en difficulté

Champ d'application

29.01 (1) Les articles 29.02 à 29.3 ne s'appliquent qu'à l'égard du régime à prestations déterminées qui n'est pas un régime interentreprises.

Mandataire de Sa Majesté

(2) Ils ne s'appliquent pas dans les cas où l'employeur est mandataire de Sa Majesté du chef du Canada.

2010, ch. 12, art. 1817.

Définitions

29.02 Les définitions qui suivent s'appliquent aux articles 29.03 à 29.3.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Distressed Pension Plan Workout Scheme
Sections 29.02-29.03

Normes de prestation de pension (1985)
Mécanisme d'accommodement pour les régimes de pension en difficulté
Articles 29.02-29.03

beneficiary means any person, other than a member, who is entitled to pension benefits under a pension plan. (*bénéficiaire*)

representative means a bargaining agent for unionized members or a representative appointed under subsection 29.08(3). (*représentant*)

2010, c. 12, s. 1817.

Election of employer

29.03 (1) Subject to the regulations, an employer may elect to enter into a distressed pension plan workout scheme, as provided for in this section and sections 29.04 to 29.3, unless the employer is in the process of being liquidated, has made an assignment or has become bankrupt or the whole of the pension plan has been terminated.

Resolution

(2) The election must be authorized by a resolution of the employer and, in the case of a Crown corporation, must also be authorized by the Minister and the appropriate Minister, as defined in subsection 83(1) of the *Financial Administration Act*.

Declaration

(3) The election must be made by means of a declaration, in the prescribed form, of an officer of the employer and the declaration must

(a) state that the employer does not anticipate being able to make the payments required under subsection 9(1.1) or that the employer is the subject of proceedings under the *Companies' Creditors Arrangement Act* or Part III of the *Bankruptcy and Insolvency Act*;

(b) state that the employer intends to negotiate with the representatives of the members and beneficiaries with the purpose of entering into a workout agreement;

(c) indicate, in the case of an employer who is not the subject of proceedings under the *Companies' Creditors Arrangement Act* or Part III of the *Bankruptcy and Insolvency Act*, what portion of the payments referred to in subsection 29.07(1) the employer intends to defer; and

(d) contain any prescribed information.

Filing

(4) The employer must, without delay, file the declaration, a certified copy of the employer's resolution and any

bénéficiaire Personne qui, sans être un participant, a droit à une prestation de pension au titre du régime de pension. (*beneficiary*)

représentant Agent négociateur des participants syndiqués ou représentant nommé au titre du paragraphe 29.08(3). (*representative*)

2010, ch. 12, art. 1817.

Choix de l'employeur

29.03 (1) Sous réserve des règlements, l'employeur peut choisir de se prévaloir du mécanisme d'accommodement pour les régimes de pension en difficulté prévu au présent article et aux articles 29.04 à 29.3, sauf s'il est en liquidation, a fait cession de ses biens ou a fait faillite ou si le régime de pension a fait l'objet d'une cessation totale.

Résolution

(2) Le choix doit être autorisé par une résolution de l'employeur. S'il s'agit d'une société d'État, il doit aussi être autorisé par le ministre et par le ministre de tutelle au sens du paragraphe 83(1) de la *Loi sur la gestion des finances publiques*.

Déclaration

(3) Le choix s'effectue au moyen d'une déclaration, en la forme réglementaire, d'un dirigeant de l'employeur, qui, à la fois :

a) porte que l'employeur ne prévoit pas d'être en mesure d'effectuer les paiements exigés par le paragraphe 9(1.1) ou qu'il fait l'objet d'une procédure prévue par la *Loi sur les arrangements avec les créanciers des compagnies* ou la partie III de la *Loi sur la faillite et l'insolvabilité*;

b) porte que l'employeur entend négocier avec les représentants des participants et des bénéficiaires dans le but de conclure un accord de sauvetage;

c) si le choix est effectué par un employeur ne faisant pas l'objet d'une procédure prévue par la *Loi sur les arrangements avec les créanciers des compagnies* ou la partie III de la *Loi sur la faillite et l'insolvabilité*, précise la partie des paiements visés au paragraphe 29.07(1) que l'employeur entend reporter;

d) contient tout renseignement prévu par règlement.

Dépôt

(4) L'employeur dépose sans délai auprès du surintendant la déclaration, une copie certifiée de sa résolution ainsi que tout document réglementaire et en remet copie au ministre et à l'administrateur.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Distressed Pension Plan Workout Scheme
Sections 29.03-29.07

Normes de prestation de pension (1985)
Mécanisme d'accommodement pour les régimes de pension en difficulté
Articles 29.03-29.07

prescribed documents with the Superintendent and provide the Minister and the administrator with a copy of the documents filed.

Notice to members and beneficiaries

(5) The employer must, in accordance with the regulations, provide notice of the declaration to the members and beneficiaries.

2010, c. 12, s. 1817.

Negotiation period

29.04 (1) On the day on which the declaration is filed with the Superintendent, a negotiation period for the purposes of paragraph 29.03(3)(b) begins and, subject to subsections (2) and (3), ends on the date that is determined in accordance with the regulations.

Extension by Minister

(2) The Minister may extend the negotiation period by a period of up to three months and, in determining whether to do so, must take into account any written representations made by the employer or the representatives and any other matter that the Minister considers relevant. No more than one extension may be granted in respect of any negotiation period.

Termination by Minister

(3) The Minister may terminate the negotiation period by notifying the Superintendent, the administrator, the employer and the representatives of the date of the termination.

2010, c. 12, s. 1817.

Exception

29.05 Despite section 29.04, the negotiation period ends, and may not be extended, on the liquidation, assignment or bankruptcy of the employer.

2010, c. 12, s. 1817.

No termination

29.06 Despite section 11.1 and subsections 29(2) and (2.1), the Superintendent may not revoke the registration of a pension plan or declare the whole of a pension plan terminated during the negotiation period.

2010, c. 12, s. 1817.

Deferral of payments

29.07 (1) If an employer makes an election under subsection 29.03(1), the payments to the pension fund that become due during the negotiation period are deferred, to the extent specified in the declaration, except payments that relate to normal cost and payments of the

Avis aux participants et bénéficiaires

(5) L'employeur avise les participants et les bénéficiaires de la déclaration conformément aux règlements.

2010, ch. 12, art. 1817.

Période de négociation

29.04 (1) La période de négociation de l'accord de sauvetage débute à la date du dépôt de la déclaration auprès du surintendant et prend fin à la date fixée conformément aux règlements.

Prorogation par le ministre

(2) Toutefois, le ministre peut, une seule fois, proroger d'au plus trois mois la période de négociation. Pour décider d'accorder ou non la prorogation, il tient compte des observations écrites présentées par l'employeur et les représentants ainsi que de tout autre facteur qu'il estime indiqué.

Fin hâtée par le ministre

(3) Il peut aussi mettre fin à la période de négociation en avisant le surintendant, l'administrateur, l'employeur et les représentants de la date où celle-ci prend fin.

2010, ch. 12, art. 1817.

Exception

29.05 Malgré l'article 29.04, la période de négociation prend fin lorsque survient la liquidation, la cession de biens ou la faillite de l'employeur, et, dès lors, ne peut plus être prorogée.

2010, ch. 12, art. 1817.

Suspension des pouvoirs

29.06 Malgré l'article 11.1 et les paragraphes 29(2) et (2.1), le surintendant ne peut révoquer l'agrément du régime de pension ni en déclarer la cessation totale durant la période de négociation.

2010, ch. 12, art. 1817.

Report des paiements

29.07 (1) Sont reportés, dans la mesure prévue dans la déclaration, les paiements au fonds de pension qui deviennent exigibles durant la période de négociation, à l'exception, d'une part, des paiements relatifs aux coûts normaux du régime et, d'autre part, du versement des

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Distressed Pension Plan Workout Scheme
Sections 29.07-29.08

Normes de prestation de pension (1985)
Mécanisme d'accommodement pour les régimes de pension en difficulté
Articles 29.07-29.08

amounts that the employer has deducted from members' remuneration.

Non-application of subsection 8(1)

(2) Subsection 8(1) does not apply to the deferred payments during the negotiation period.

When deferred payments become due

(3) The deferred payments and interest on those payments become due immediately if

- (a) the whole of the pension plan is terminated during the negotiation period;
- (b) the employer becomes the subject of proceedings under the *Companies' Creditors Arrangement Act* or Part III of the *Bankruptcy and Insolvency Act* during the negotiation period;
- (c) the workout agreement does not provide for the payment of the deferred amounts; or
- (d) there is no workout agreement at the end of the negotiation period.

Non-application

(4) Subsections (1) to (3) do not apply if, at the time the election is made to enter into a distressed pension plan workout scheme, the employer is the subject of proceedings under the *Companies' Creditors Arrangement Act* or Part III of the *Bankruptcy and Insolvency Act*.

2010, c. 12, s. 1817.

Appointment by Federal Court

29.08 (1) Once the declaration has been filed with the Superintendent, the employer must, without delay, apply to the Federal Court for the appointment of

- (a) a representative who has exclusive authority to negotiate a workout agreement on behalf of the beneficiaries; and
- (b) a representative who has exclusive authority to negotiate a workout agreement on behalf of the non-unionized members, if any.

Other court

(2) If the employer is the subject of proceedings under the *Companies' Creditors Arrangement Act* or Part III of the *Bankruptcy and Insolvency Act*, the employer must make the application instead to the appropriate court as determined by the regulations.

sommes que l'employeur a déduites de la rémunération des participants.

Non-application du paragraphe 8(1)

(2) Durant la période de négociation, le paragraphe 8(1) ne s'applique pas aux paiements reportés.

Fin du report

(3) Les paiements reportés deviennent exigibles avec intérêts dès que l'une ou l'autre des conditions ci-après est remplie :

- a) le régime de pension fait l'objet d'une cessation totale durant la période de négociation;
- b) l'employeur devient, durant la période de négociation, l'objet d'une procédure prévue par la *Loi sur les arrangements avec les créanciers des compagnies* ou la partie III de la *Loi sur la faillite et l'insolvabilité*;
- c) l'accord de sauvetage ne prévoit pas le paiement des sommes visées par le report;
- d) la période de négociation prend fin sans qu'il y ait d'accord de sauvetage.

Non-application

(4) Les paragraphes (1) à (3) ne s'appliquent pas si le choix de se prévaloir du mécanisme d'accommodement pour les régimes de pension en difficulté est effectué par un employeur faisant l'objet d'une procédure prévue par la *Loi sur les arrangements avec les créanciers des compagnies* ou la partie III de la *Loi sur la faillite et l'insolvabilité*.

2010, ch. 12, art. 1817.

Nomination par la Cour fédérale

29.08 (1) Sans délai après le dépôt de la déclaration auprès du surintendant, l'employeur demande à la Cour fédérale de nommer :

- a) un représentant ayant le droit exclusif de négocier un accord de sauvetage au nom des bénéficiaires;
- b) un représentant ayant le droit exclusif de négocier un accord de sauvetage au nom des participants non syndiqués, s'il y en a.

Autre tribunal

(2) S'il fait l'objet d'une procédure prévue par la *Loi sur les arrangements avec les créanciers des compagnies* ou la partie III de la *Loi sur la faillite et l'insolvabilité*, l'employeur présente plutôt la demande au tribunal visé par règlement.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Distressed Pension Plan Workout Scheme
Sections 29.08-29.1

Normes de prestation de pension (1985)
Mécanisme d'accommodement pour les régimes de pension en difficulté
Articles 29.08-29.1

Eligibility

(3) The Federal Court or the court referred to in subsection (2) must appoint representatives who meet the prescribed eligibility criteria. The appointment is subject to any terms that the Federal Court or other court considers appropriate.

Information to be provided to representatives

(4) Within five days after the day on which a representative is appointed, the administrator must provide the representative with the names and home addresses of the non-unionized members or beneficiaries that they represent and a copy of the declaration.

Notice to members and beneficiaries

(5) Each representative — or, if the representative agrees, the employer — must, in the prescribed manner and within the prescribed period, notify the non-unionized members or beneficiaries that they represent of their appointment and provide them with any prescribed information.

Costs

(6) The costs associated with the application made under subsection (1) or (2) must be paid by the employer and not out of the pension fund.

2010, c. 12, s. 1817.

Obligation of employer and administrator

29.09 (1) The employer and administrator must provide the representatives with any prescribed information in the prescribed manner and within the prescribed period.

Fees and expenses

(2) The reasonable fees and expenses of the representatives must be paid by the employer and not out of the pension fund.

2010, c. 12, s. 1817.

Workout agreement

29.1 (1) Subject to the regulations made for the purposes of sections 29.03 to 29.09, this section and sections 29.2 and 29.3, the employer and the representatives may negotiate a workout agreement that, among other things, proposes a funding schedule in respect of the pension plan for the period specified in the agreement.

Exception

(2) The proposed funding schedule may not provide for payments that become due before the day on which the negotiation period begins or that relate to normal cost.

Admissibilité

(3) La Cour fédérale ou le tribunal nommé des représentants qui satisfont aux conditions d'admissibilité réglementaires et peut assortir la nomination de toute modalité qu'il juge indiquée en l'espèce.

Renseignements

(4) Dans les cinq jours suivant la nomination du représentant, l'administrateur lui fournit le nom et l'adresse résidentielle des participants non syndiqués ou des bénéficiaires que ce dernier représente et une copie de la déclaration.

Avis aux participants et aux bénéficiaires

(5) Le représentant avise de sa nomination les participants non syndiqués ou les bénéficiaires qu'il représente et leur fournit les renseignements prévus par règlement, selon les modalités et dans le délai réglementaires. Si le représentant y consent, ces obligations incombent à l'employeur.

Responsabilité de l'employeur

(6) Les coûts liés à la demande faite en application des paragraphes (1) ou (2) sont à la charge de l'employeur et ne peuvent être payés sur le fonds de pension.

2010, ch. 12, art. 1817.

Obligation de l'employeur et de l'administrateur

29.09 (1) L'employeur et l'administrateur fournissent aux représentants, selon les modalités et dans le délai réglementaires, les renseignements prévus par règlement.

Honoraires et dépenses

(2) Les honoraires et les dépenses raisonnables des représentants sont à la charge de l'employeur et ne peuvent être payés sur le fonds de pension.

2010, ch. 12, art. 1817.

Accord de sauvetage

29.1 (1) Sous réserve des règlements d'application des articles 29.03 à 29.09, du présent article et des articles 29.2 et 29.3, l'employeur et les représentants peuvent négocier un accord de sauvetage qui, notamment, propose un calendrier de capitalisation du régime de pension pour la période précisée par l'accord.

Portée du calendrier

(2) Le calendrier de capitalisation proposé ne peut traiter ni des sommes qui sont devenues exigibles avant le début de la période de négociation ni des coûts normaux du régime.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Distressed Pension Plan Workout Scheme
Sections 29.1-29.3

Normes de prestation de pension (1985)
Mécanisme d'accommodement pour les régimes de pension en difficulté
Articles 29.1-29.3

Termination

(3) A workout agreement may not be entered into in respect of a pension plan that has been terminated in whole.

1998, c. 12, s. 19; 2010, c. 12, s. 1817.

Information to be provided to members and beneficiaries

29.2 (1) The members and beneficiaries must be provided with the prescribed information regarding the proposed workout agreement within the prescribed period by their respective representatives or, if the representative agrees, by the employer.

Consent of representatives

(2) A representative who is not a bargaining agent may consent to a proposed workout agreement only if less than one third of the members or beneficiaries that they represent object to the agreement within the prescribed period.

How objections are counted

(3) Any objection expressed by a representative on behalf of the members or beneficiaries that they represent is to be counted as a separate objection for each person that they represent.

2010, c. 12, s. 1817.

Approval by Minister

29.3 (1) The proposed funding schedule may take effect only if it is approved by the Minister, on the request of the employer and the representatives who consent to the proposed workout agreement.

Objections

(2) The request for approval of the funding schedule may be submitted to the Minister only if less than one third of the members and less than one third of the beneficiaries object to the proposed workout agreement within the prescribed period.

Request for approval

(3) A request for approval must be submitted within the prescribed period and must be accompanied by

(a) a copy of the proposed workout agreement signed by the employer and the representatives that consent to it;

(b) the funding schedule in the form that the Superintendent directs;

(c) a written statement from each representative who consents to the proposed workout agreement or the

Exception

(3) L'accord de sauvetage ne peut être conclu si le régime de pension a fait l'objet d'une cessation totale.

1998, ch. 12, art. 19; 2010, ch. 12, art. 1817.

Renseignements aux participants et aux bénéficiaires

29.2 (1) Le représentant fournit à ceux qu'il représente, dans le délai réglementaire, les renseignements concernant l'accord de sauvetage proposé qui sont prévus par règlement. Si le représentant y consent, cette obligation incombe à l'employeur.

Consentement des représentants

(2) Le représentant qui n'est pas un agent négociateur ne peut consentir à l'accord de sauvetage proposé que si moins du tiers de ceux qu'il représente s'y opposent dans le délai réglementaire.

Calcul des voix

(3) L'opposition exprimée par un représentant au nom de ceux qu'il représente est considérée comme une opposition distincte exprimée par chacun de ces derniers.

2010, ch. 12, art. 1817.

Approbation du ministre

29.3 (1) Le calendrier de capitalisation proposé ne prend effet que si le ministre l'approuve à la demande de l'employeur et des représentants qui consentent à l'accord de sauvetage proposé.

Opposition

(2) La demande d'approbation du calendrier de capitalisation ne peut être présentée que si moins du tiers des participants et moins du tiers des bénéficiaires s'opposent, dans le délai réglementaire, à l'accord de sauvetage proposé.

Demande d'approbation

(3) Elle est présentée dans le délai réglementaire et accompagnée des éléments suivants :

a) une copie de l'accord de sauvetage proposé signé par l'employeur et les représentants qui y consentent;

b) le calendrier de capitalisation établi en la forme que fixe le surintendant;

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Distressed Pension Plan Workout Scheme
Sections 29.3-30

Normes de prestation de pension (1985)
Mécanisme d'accommodement pour les régimes de pension en difficulté
Articles 29.3-30

employer, as the case may be, confirming that the requirements set out in subsection 29.2(1) have been met;

(d) a written statement in which the employer confirms that the requirement set out in subsection (2) has been met; and

(e) any prescribed documents or information.

Conditions

(4) The Minister may approve the funding schedule only if, in the Superintendent's opinion, it complies with the regulations made under subparagraph 39(1)(n.1)(v). In deciding whether or not to approve the funding schedule, the Minister must consider the prescribed criteria and any other matter that the Minister considers relevant.

Notification of decision

(5) The Minister must notify the Superintendent, employer, administrator and representatives of the decision and, if the funding schedule is approved, must provide the Superintendent with a copy of the schedule.

Effect of approval

(6) On approval by the Minister, the funding schedule is, for the purposes of this Act — except section 38 — and the regulations, considered to be part of the prescribed tests and standards for solvency in respect of the pension plan in question.

Inconsistency

(7) In the event of an inconsistency between the approved funding schedule and the provisions of the regulations, the funding schedule prevails to the extent of the inconsistency.

2010, c. 12, s. 1817.

Effect of Sale, Etc., of Business

Effect of sale, etc., of business

30 (1) Where

(a) an employer who is a party to a pension plan sells, assigns or otherwise disposes of all or part of its business or undertaking or all or part of the assets of its business or undertaking,

(b) an employee of that employer becomes an employee of the person acquiring the business, undertaking

c) une déclaration écrite de tout représentant qui consent à l'accord de sauvetage proposé ou de l'employeur, selon le cas, dans laquelle il confirme qu'il s'est conformé au paragraphe 29.2(1);

d) une déclaration écrite de l'employeur confirmant que l'exigence prévue au paragraphe (2) a été remplie;

e) tout document ou renseignement prévu par règlement.

Conditions

(4) Le ministre ne peut approuver le calendrier de capitalisation que si le surintendant estime qu'il respecte les règlements pris en vertu du sous-alinéa 39(1)n.1)(v). Pour décider d'accorder ou non l'approbation, il tient compte des critères réglementaires et de tout autre facteur qu'il estime indiqué.

Notification de la décision

(5) Il notifie sa décision au surintendant, à l'employeur, à l'administrateur et aux représentants. S'il accorde son approbation, il remet au surintendant copie du calendrier de capitalisation.

Effet de l'approbation

(6) Une fois approuvé par le ministre, le calendrier de capitalisation est considéré, pour l'application de la présente loi — exception faite de l'article 38 — et des règlements, comme faisant partie des critères et normes de solvabilité réglementaires qui s'appliquent au régime de pension en cause.

Incompatibilité

(7) En cas d'incompatibilité, le calendrier de capitalisation, une fois approuvé, l'emporte sur les dispositions des règlements.

2010, ch. 12, art. 1817.

Effet de la vente de l'entreprise ou de l'exploitation

Effet de la vente

30 (1) Le salarié conserve, si les faits suivants surviennent, son droit aux prestations prévues par le régime de l'employeur relativement à sa période de participation à ce régime, sans accumulation de nouveaux droits à pension pour l'emploi qu'il occupe auprès du nouvel employeur :

a) l'employeur qui cotise à un régime de pension vend, cède ou aliène de toute autre façon son

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Effect of Sale, Etc., of Business
Sections 30-31

Normes de prestation de pension (1985)
Effet de la vente de l'entreprise ou de l'exploitation
Articles 30-31

or assets (in this section called the “successor employer”), and

(c) the successor employer does not assume responsibility for the accrued benefits of the employer’s pension plan,

the employee continues to be entitled to the benefits provided under the employer’s plan in respect of the period of membership in that employer’s plan, without further accrual.

Idem

(2) Where the events described in paragraphs (1)(a) and (b) occur, whether or not the successor employer assumes responsibility for the accrued benefits of the employer’s plan, then,

(a) for the purposes of the employer’s plan, membership in the employer’s plan of an employee referred to in paragraph (1)(b) shall be deemed not to have ceased by reason of those events; and

(b) for the purposes of

(i) determining the period of employment with respect to any eligibility condition of the successor employer’s pension plan, and

(ii) determining whether such an employee is entitled to a benefit under a pension plan of the employer or of the successor employer,

the period of employment shall be deemed to include employment with both the employer and the successor employer without any interruption.

R.S., 1985, c. 32 (2nd Supp.), s. 30; 2010, c. 12, s. 1824(F).

Payment of Benefits and Designation of Beneficiaries

Certain provisions of provincial law to apply

31 Except to the extent that they are inconsistent with this Act, any provisions of any provincial law respecting the payment of benefits or the designation of beneficiaries under pension plans that would be applicable to a pension plan organized and administered to provide pension benefits to employees employed in included employment if that provincial law were applicable to such a pension plan shall be deemed to apply to such a pension plan as though that employment were not included employment.

entreprise ou son exploitation ou tout ou partie des actifs y afférents;

b) le salarié de l’employeur devient le salarié de l’acquéreur de l’entreprise, de l’exploitation ou d’actifs, désigné au présent article, le nouvel employeur;

c) le nouvel employeur ne prend pas la responsabilité des prestations accumulées sous le régime de pension de l’employeur.

Idem

(2) Dans le cas de la réalisation des faits visés aux alinéas (1)a) et b), que le nouvel employeur prenne ou non la responsabilité des prestations accumulées sous le régime de l’employeur, les faits suivants sont réputés être survenus :

a) la participation, au régime de l’employeur, d’un salarié visé à l’alinéa (1)b) est réputée ne pas avoir cessé;

b) la période d’emploi du salarié est réputée comprendre son emploi auprès de l’employeur et du nouvel employeur, sans interruption, pour la détermination des faits suivants :

(i) la période d’emploi relativement à une condition d’admissibilité du régime du nouvel employeur,

(ii) le droit du salarié à une prestation au titre du régime de l’employeur ou du nouvel employeur.

L.R. (1985), ch. 32 (2^e suppl.), art. 30; 2010, ch. 12, art. 1824(F).

Paiement des prestations et désignation des bénéficiaires

Application du droit provincial

31 Sous réserve de leur incompatibilité avec les dispositions de la présente loi, les dispositions du droit provincial, relatives au service des prestations de pension ou à la désignation des bénéficiaires au titre de régimes de pension, qui seraient applicables à un régime de pension institué et géré en vue d’offrir des prestations à des salariés qui occupent des emplois inclus, si le droit provincial s’appliquait à ce régime, sont réputées s’appliquer à celui-ci comme si l’emploi en cause n’était pas un emploi inclus.

Electronic Communications

Consent and other conditions

31.1 (1) Any requirement under this Act to provide a person with information, including information in a document, may be satisfied by the provision of an electronic document if

- (a) the addressee has consented and has designated an information system for the receipt of the electronic document;
- (b) the electronic document is provided to the designated information system; and
- (c) the information in the electronic document is accessible by the addressee and capable of being retained by the addressee, so as to be usable for subsequent reference.

Revocation of consent

(2) An addressee may revoke the consent referred to in paragraph (1)(a).

Non-application

(3) Subsections (1) and (2) do not apply

- (a) to any requirement under this Act to provide the Minister or the Superintendent with information;
- (b) to any requirement under this Act, imposed on the Minister or the Superintendent, to provide a person with information; or
- (c) to any requirement under this Act exempted, by regulation, from the application of those subsections.

Communications by Minister or Superintendent

(4) For greater certainty, the Minister and the Superintendent may use electronic means to communicate information, including information in a document, under this Act.

2010, c. 25, s. 195.

Signatures

31.2 A requirement under this Act for a signature is satisfied in relation to an electronic document if the prescribed requirements, if any, are met and if the signature results from the use by a person of a technology or a process that permits the following to be proven:

- (a) the signature resulting from the use by the person of the technology or process is unique to them;

Communications électroniques

Consentement et autres exigences

31.1 (1) L'obligation, imposée sous le régime de la présente loi, de fournir à une personne une information, notamment dans un document, peut être acquittée par la fourniture d'un document électronique si les conditions suivantes sont remplies :

- a) le destinataire a donné son consentement et a désigné un système d'information pour la réception du document électronique;
- b) le document électronique est fourni au système d'information désigné;
- c) l'information contenue dans le document électronique est accessible au destinataire et peut être conservée par ce dernier pour consultation future.

Révocation du consentement

(2) Le destinataire peut révoquer son consentement.

Non-application

(3) Les paragraphes (1) et (2) ne s'appliquent pas :

- a) à l'obligation imposée, sous le régime de la présente loi, de fournir une information au ministre ou au surintendant;
- b) à l'obligation imposée à l'un d'eux, sous le régime de la présente loi, de fournir une information;
- c) à l'obligation soustraite, par règlement, à l'application de ces paragraphes.

Communications par le ministre ou le surintendant

(4) Il est entendu que le ministre et le surintendant peuvent utiliser des moyens électroniques pour communiquer toute information, notamment dans un document, sous le régime de la présente loi.

2010, ch. 25, art. 195.

Signatures

31.2 Dans le cas où une signature est exigée sous le régime de la présente loi, la signature qui résulte de l'utilisation d'une technique ou d'un procédé satisfait à l'obligation en ce qui concerne un document électronique si les exigences réglementaires éventuellement fixées sont observées et si la technique ou le procédé permet d'établir ce qui suit :

- a) la signature est propre à l'utilisateur;

(b) the technology or process is used by the person to incorporate, attach or associate their signature to the electronic document; and

(c) the technology or process can be used to identify its user.

2010, c. 25, s. 195.

b) la technique ou le procédé est utilisé pour l'incorporation, l'adjonction ou l'association de la signature au document électronique;

c) la technique ou le procédé permet d'identifier l'utilisateur.

2010, ch. 25, art. 195.

Objections and Appeals

Notice of objection

32 (1) An administrator who is notified under subsection 10(4) or section 11.1 may, within sixty days after the day the notification is given, serve on the Superintendent a notice of objection in the prescribed form and manner, setting out the reasons for the objection and all facts relevant to it.

Reconsideration by Superintendent

(2) On receipt of a notice of objection, the Superintendent shall immediately reconsider the refusal or the revocation and cancellation, as the case may be, and vary or confirm the action taken, and shall immediately notify the administrator of the decision.

R.S., 1985, c. 32 (2nd Supp.), s. 32; 1998, c. 12, s. 20.

Appeal to Federal Court

33 (1) Where an administrator has served a notice of objection under section 32, the administrator may,

(a) within ninety days after the Superintendent has confirmed the action taken as described in subsection 32(1), or

(b) after ninety days and before one hundred and eighty days have elapsed after service of the notice of objection and the Superintendent has not notified the administrator that the Superintendent has varied or confirmed the action taken,

appeal to the Federal Court for an order as described in paragraph (5)(b).

Institution of appeal

(2) An appeal to the Federal Court shall be instituted by filing in the Registry of the Court, or by sending by registered mail addressed to it at Ottawa, three copies of a notice of appeal in prescribed form.

Registry to transmit copies

(3) On receipt of the copies of the notice of appeal referred to in subsection (2), the Registry of the Court shall transmit two copies to the Superintendent.

Oppositions et appels

Avis d'opposition

32 (1) L'administrateur peut, dans les soixante jours suivant la date de notification du refus prévu au paragraphe 10(3) ou de la révocation et de l'annulation prévues à l'article 11.1, expédier au surintendant l'avis d'opposition en la forme et de la manière prévues par règlement, exposant ses motifs et les faits en cause.

Réexamen par le surintendant

(2) Sur réception de l'avis d'opposition, le surintendant doit, sans délai, réexaminer soit le refus, soit la révocation et l'annulation, selon le cas, modifier ou maintenir la mesure qu'il a prise et informer l'administrateur de son action.

L.R. (1985), ch. 32 (2^e suppl.), art. 32; 1998, ch. 12, art. 20.

Appel à la Cour fédérale

33 (1) Après avoir signifié un avis d'opposition, l'administrateur peut, dans les délais suivants, interjeter appel à la Cour fédérale en vue de l'obtention d'une ordonnance visée à l'alinéa (5)b) :

a) dans les quatre-vingt-dix jours suivant celui où le surintendant a décidé de maintenir la mesure visée au paragraphe 32(1);

b) après le quatre-vingt-dixième jour et avant le cent quatre-vingtième jour suivant la signification de l'avis d'opposition si le surintendant n'a pas avisé l'administrateur de la modification ou du maintien de la mesure prise.

Appel

(2) L'appel est interjeté par dépôt au greffe de la Cour fédérale, ou envoi à celui-ci à Ottawa, par courrier recommandé, de trois copies d'un avis d'appel en la forme réglementaire.

Remise des copies

(3) Sur réception des copies visées au paragraphe (2), le greffe de la Cour en transmet deux copies au surintendant.

Documents relevant to appeal

(4) Forthwith after receiving a copy of the notice of appeal, the Superintendent shall forward to the Registry of the Court copies of all documents relevant to the appeal.

Disposal of appeal

(5) The Court may dispose of an appeal

(a) by dismissing it and ordering the appellant to ensure the compliance of the pension plan to which the appeal relates with this Act and the regulations; or

(b) by allowing it and ordering the Superintendent to register the pension plan to which the appeal relates or reinstate the registration of the plan, as the circumstances require, and issue a certificate of registration in respect thereof.

Conditions

(6) An order made as described in paragraph (5)(b) may include conditions imposed on the appellant that are conditions precedent to the registration or reinstatement of registration of the pension plan to which the appeal relates.

R.S., 1985, c. 32 (2nd Supp.), s. 33; 1998, c. 12, s. 21.

General

Application to Federal Court

33.1 (1) If an administrator, employer or other person has omitted to do any thing under this Act that is required to be done by them or on their part, or contravenes a direction of the Superintendent or a provision of this Act or the regulations, the Superintendent may, in addition to any other action that the Superintendent may take, apply to the Federal Court for an order requiring the administrator, employer or other person to cease the contravention or do any thing that is required to be done, and on such application the Federal Court may so order and make any other order it thinks fit.

Appeal

(2) An appeal from an order made under subsection (1) lies in the same manner as an appeal from any other order of the Federal Court.

1998, c. 12, s. 22.

Superintendent may bring actions

33.2 (1) In addition to any other action that the Superintendent may take in respect of a pension plan, the Superintendent may bring against the administrator, employer or any other person any cause of action that a

Documents utiles

(4) Sur réception d'une copie de l'avis d'appel, le surintendant transmet au greffe de la Cour une copie de tous les documents utiles pour l'appel.

Décision

(5) La Cour peut :

a) rejeter l'appel et enjoindre à l'appelant de prendre les mesures voulues pour que le régime soit conforme à la présente loi et aux règlements;

b) accueillir l'appel et enjoindre au surintendant d'agréer le régime ou de rétablir l'agrément, selon le cas, et de délivrer le certificat correspondant.

Conditions

(6) L'ordonnance visée à l'alinéa (5)b) peut imposer à l'appelant des conditions à satisfaire préalablement à l'agrément du régime ou à son rétablissement, selon le cas.

L.R. (1985), ch. 32 (2^e suppl.), art. 33; 1998, ch. 12, art. 21.

Dispositions générales

Exécution judiciaire

33.1 (1) En cas de manquement soit à une de ses directives, soit à une disposition de la présente loi ou des règlements — notamment une obligation —, le surintendant peut, en plus de toute autre mesure qu'il peut prendre, demander à la Cour fédérale de rendre une ordonnance obligeant l'administrateur, l'employeur ou toute autre personne en faute à mettre fin ou à remédier au manquement, ou toute autre ordonnance qu'il juge indiquée en l'espèce.

Appel

(2) L'ordonnance rendue peut être portée en appel.

1998, ch. 12, art. 22.

Pouvoir de poursuivre

33.2 (1) Le surintendant peut, en plus de toute autre mesure qu'il peut prendre, intenter, au même titre qu'un participant, qu'un ancien participant ou qu'une personne qui a droit à une prestation de pension au titre du régime, des poursuites, relativement à un régime de

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General
Sections 33.2-36

Normes de prestation de pension (1985)
Dispositions générales
Articles 33.2-36

member, former member or any other person entitled to a benefit from the plan could bring.

Retroactivity

(2) Subsection (1) applies in respect of any cause of action regardless of whether it arose before or after the coming into force of this section.

1998, c. 12, s. 22; 2010, c. 12, s. 1818.

Inspection

34 (1) The Superintendent or any person authorized in writing by the Superintendent for any purpose relating to the administration of this Act may, at any reasonable time,

(a) inspect any books, records or other documents, regardless of their physical form or characteristics, relating to a pension plan or to any securities, obligations or other investments in which pension fund moneys are invested; and

(b) require the administrator of a pension plan to furnish such information and in such form as the Superintendent deems necessary for the purpose of ascertaining whether or not the provisions of this Act or the regulations have been or are being complied with.

Powers of Superintendent

(2) The Superintendent has the same powers as those conferred on commissioners under Part II of the *Inquiries Act* with respect to the taking of evidence, and may delegate those powers.

Payment of expenses

(3) The fees and expenses of persons appointed on a temporary basis from outside the public service for the purposes of an inspection under paragraph (1)(a), including their fees and expenses related to preparing a report to the Superintendent relating to that inspection, are payable by the pension fund on being approved by the Superintendent.

R.S., 1985, c. 32 (2nd Supp.), s. 34; 1998, c. 12, s. 23; 2003, c. 22, s. 225(E).

No action against person for withholding, etc.

35 No action lies against any person for withholding, deducting, paying or crediting any sum of money in compliance or intended compliance with this Act or the regulations.

Void or, in Quebec, null agreements

36 (1) Where any provision of this Act or the regulations requires an amount to be withheld, deducted, paid or credited, any agreement or arrangement by the person on whom the requirement is imposed not to withhold,

pension, contre l'administrateur, l'employeur ou toute autre personne.

Fait antérieur

(2) La poursuite intentée par le surintendant peut se rapporter à un fait antérieur à l'entrée en vigueur du présent article.

1998, ch. 12, art. 22; 2010, ch. 12, art. 1818.

Inspection

34 (1) Le surintendant ou toute personne qu'il autorise par écrit, pour l'application de la présente loi, peuvent à toute heure convenable :

a) procéder à l'inspection de tous livres ou documents — quel qu'en soit le support — relatifs à un régime de pension ou à des valeurs, obligations ou autres placements dans lesquels sont investis des fonds d'un régime de pension;

b) exiger que l'administrateur d'un régime de pension lui fournisse, en la forme qu'il fixe, les renseignements qu'il estime nécessaires pour vérifier l'observation des dispositions de la présente loi et des règlements.

Pouvoirs du surintendant

(2) Le surintendant jouit des pouvoirs conférés aux commissaires en vertu de la partie II de la *Loi sur les enquêtes* pour la réception des éléments de preuve; il peut les déléguer à une personne agissant sous ses ordres.

Rémunération de l'assistance contractuelle

(3) Le surintendant autorise le paiement sur le fonds de pension de la rémunération des personnes engagées — ainsi que des dépenses rattachées à la préparation, par celles-ci, d'un rapport à lui destiné — à titre temporaire à l'extérieur de la fonction publique pour l'aider dans le cadre de l'inspection.

L.R. (1985), ch. 32 (2^e suppl.), art. 34; 1998, ch. 12, art. 23; 2003, ch. 22, art. 225(A).

Absence de droit d'action

35 Aucune action ne peut être intentée contre une personne qui a retenu, déduit, payé ou crédité une somme d'argent en croyant ou voulant agir en application de la présente loi ou de ses règlements.

Ententes nulles

36 (1) Toute entente ou autre arrangement en vertu duquel une personne s'engage, contrairement à la présente loi ou à ses règlements, à ne pas retenir, déduire, payer ou créditer une somme d'argent est nul.

deduct, pay or credit that amount is void or, in Quebec, null.

Idem

(2) Any agreement or arrangement to assign, charge, anticipate or give as security

(a) any benefit provided under a pension plan, or

(b) any money withdrawn from a pension fund pursuant to section 26

is void or, in Quebec, null.

Exception

(3) Subsection (2) does not apply to prevent the assignment of an interest in a pension benefit, or in a life-annuity of the prescribed kind resulting from a transfer or purchase pursuant to section 26, where the assignment

(a) is ordered by a court pursuant to provincial property law (within the meaning of subsection 25(1)); or

(b) is made under subsection 25(4) pursuant to a written agreement.

Void or, in Quebec, null agreements

(4) Any agreement or arrangement

(a) to surrender or commute a benefit, or any right or interest therein, or

(b) to surrender or commute benefits payable as a result of a transfer or purchase pursuant to section 26

that is inconsistent with the rules set out in subsection 18(1) is void or, in Quebec, null.

Exception

(5) Subsection (4) does not apply in respect of payments pursuant to paragraph 18(2)(b) or (c).

R.S., 1985, c. 32 (2nd Supp.), s. 36; 2000, c. 12, s. 262; 2010, c. 12, s. 1825(E).

Amendments to pension plans

37 (1) Where an amendment to a pension plan may reasonably be regarded as having been made in contemplation of the termination or winding-up of the plan, either immediately or in the future, with a view to avoiding payment of any pension benefit or other benefit for which the plan provided, the amendment is subject to being declared void or, in Quebec, null, in the manner provided in this section.

Idem

(2) Est nul toute entente ou autre arrangement visant à céder, grever ou promettre à titre de paiement ou de garantie :

a) une prestation prévue par un régime de pension;

b) les sommes retirées d'un fonds de pension au titre de l'article 26.

Exception

(3) Le paragraphe (2) n'a pas pour effet d'empêcher la cession d'un droit afférent à une prestation de pension ou à une prestation viagère prévue par règlement résultant d'un transfert ou d'un achat effectué au titre de l'article 26, dans le cas où la cession est :

a) imposée par une ordonnance d'un tribunal en application du droit provincial au sens du paragraphe 25(1);

b) effectuée en vertu du paragraphe 25(4) conformément à une entente écrite.

Ententes nulles

(4) Est nul toute entente ou autre arrangement qui ne respecte pas les règles énoncées au paragraphe 18(1) visant :

a) le rachat d'une prestation ou d'un droit y afférent;

b) le rachat de prestations payables consécutivement à un achat ou un transfert prévu à l'article 26.

Exception

(5) Le paragraphe (4) ne s'applique pas aux paiements effectués au titre des alinéas 18(2)b) ou c).

L.R. (1985), ch. 32 (2^e suppl.), art. 36; 2000, ch. 12, art. 262; 2010, ch. 12, art. 1825(A).

Modification des régimes

37 (1) Toute modification à un régime de pension raisonnablement tenue comme faite en vue de la cessation ou liquidation immédiate ou future du régime, dans l'intention d'éviter le service de prestations de pension ou autres prévues par celui-ci, est assujettie à une déclaration de nullité selon les modalités prévues au présent article.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
General
Sections 37-38

Normes de prestation de pension (1985)
Dispositions générales
Articles 37-38

Application and declaration

(2) A judge of the Federal Court may, on application to that Court by the Superintendent and after such notice to the administrator of the pension plan as the judge may direct, declare void or, in Quebec, null any amendment to that pension plan that under subsection (1) is subject to being declared void or, in Quebec, null, and thereon, except as otherwise determined on appeal, if any, the amendment shall be deemed to be and always to have been void or, in Quebec, null for all purposes.

Proceedings on declaration

(3) Where any declaration has been made under subsection (2), except with consent of the Superintendent, no process or proceedings shall be taken or instituted in consequence of that declaration within the time limit for the bringing of any appeal therefrom or while any such appeal remains to be disposed of.

R.S., 1985, c. 32 (2nd Supp.), s. 37; 2010, c. 12, s. 1825(E).

Not statutory instruments

37.1 A direction issued under this Act by the Superintendent with respect to a particular pension plan is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

1998, c. 12, s. 24.

Offences and Punishment

Offences

38 (1) Every person who

(a) contravenes any provision of this Act or the regulations or a direction of the Superintendent given under the authority of this Act or the regulations,

(b) to avoid compliance with this Act or the regulations,

(i) destroys, alters, mutilates, secretes or otherwise disposes of any record, writing or other document,

(ii) in any record, writing or other document, makes a false or deceptive statement or a false or deceptive entry, or

(iii) omits to furnish any material particular in any statement or in any record, writing or other document,

(c) prevents or obstructs, or attempts to prevent or obstruct, another person doing anything that that other person is authorized by or pursuant to section 34 to do or, unless unable to do so, fails to do anything that

Application et déclaration

(2) Un juge de la Cour fédérale peut, sur demande du surintendant, après que l'avis qu'il fixe a été donné à l'administrateur, déclarer nulle toute modification visée au paragraphe (1) et, dès lors, sauf décision contraire rendue en appel, la modification est réputée être nulle et l'avoir toujours été.

Autres procédures

(3) Sauf du consentement du surintendant, aucune procédure ne peut être prise pour donner suite à la déclaration visée au paragraphe (2) pendant le délai d'appel en l'espèce ou en attendant qu'une décision soit rendue sur cet appel.

L.R. (1985), ch. 32 (2^e suppl.), art. 37; 2010, ch. 12, art. 1825(A).

Dérogation à la *Loi sur les textes réglementaires*

37.1 Les directives données par le surintendant relativement à un régime de pension ne constituent pas des textes réglementaires assujettis à la *Loi sur les textes réglementaires*.

1998, ch. 12, art. 24.

Infractions et peines

Infractions

38 (1) Commet une infraction quiconque :

a) contrevient à une disposition de la présente loi ou de ses règlements, ou à une directive donnée par le surintendant en application de la présente loi ou de ses règlements;

b) dans l'intention de se soustraire à l'application de la présente loi ou de ses règlements :

(i) détruit, altère, mutile, cache ou aliène de quelque autre façon un dossier, un écrit ou tout autre document,

(ii) fait une déclaration ou une inscription fausses ou trompeuses dans un dossier, écrit ou autre document,

(iii) omet d'indiquer un détail important dans une déclaration, un dossier, un écrit ou autre document;

c) empêche ou gêne, ou essaie d'empêcher ou de gêner, une personne dans l'exercice des fonctions que lui

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards Act, 1985
Offences and Punishment
Section 38

Normes de prestation de pension (1985)
Infractions et peines
Article 38

is required to be done by or pursuant to that section,
or

(d) being an employer, fails to remit to the pension fund all amounts that the employer is liable so to remit,

is guilty of an offence.

Punishment

(1.1) A person who commits an offence under subsection (1) is

(a) in the case of an individual, liable on summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding twelve months, or to both; and

(b) in the case of a corporation or other body, liable on summary conviction to a fine not exceeding five hundred thousand dollars.

Remittance of amount owing

(2) If an employer is found guilty of not remitting all amounts to a pension fund, the court may, in addition to imposing a penalty under subsection (1.1), order the employer to remit to the pension fund all amounts owing with interest.

Evidence

(3) In any prosecution for an offence under this section, a certificate purporting to be signed by the Superintendent or by any person on the Superintendent's behalf certifying that a copy of a pension plan or of an amendment to any such plan was not filed with the Superintendent as required by this Act, or certifying as to the registration of a pension plan, is admissible in evidence and, in the absence of any evidence to the contrary, is proof of the matters so certified.

Limitation period

(4) Proceedings in respect of an offence under this Act may be commenced at any time within, but not later than, two years after the day on which the subject-matter of the proceedings became known to the Superintendent.

Certificate of Superintendent

(4.1) A document appearing to have been issued by the Superintendent, certifying the day on which the subject-matter of any proceedings became known to the Superintendent, is admissible in evidence without proof of the signature or official character of the person appearing to have signed it and is, in the absence of evidence to the contrary, proof of the matter asserted in it.

confie l'article 34 ou, sauf s'il en est incapable, néglige d'accomplir un devoir que lui impose le même article;

d) néglige, en sa qualité d'employeur, de verser au fonds de pension les montants qu'il est tenu d'y verser.

Peines

(1.1) L'auteur d'une infraction définie au paragraphe (1) est passible, sur déclaration de culpabilité par procédure sommaire :

a) s'il s'agit d'une personne physique, d'une amende maximale de cent mille dollars et d'un emprisonnement maximal d'un an, ou de l'une de ces peines;

b) s'il s'agit d'une personne morale ou d'un autre organisme, d'une amende maximale de cinq cent mille dollars.

Ordonnance

(2) Le tribunal peut en outre ordonner à l'employeur qui est reconnu coupable de l'infraction visée à l'alinéa (1)d) de verser au fonds de pension les sommes dues, de même que les intérêts afférents.

Preuve

(3) Dans les poursuites pour une infraction prévue au présent article, le certificat censé signé par le surintendant ou en son nom, où il est déclaré que, contrairement aux exigences de la présente loi, aucune copie d'un régime ou d'une modification à celui-ci n'a été déposée auprès du surintendant, ou valant attestation touchant l'agrément du régime, est admissible en preuve et, sauf preuve contraire, fait foi de son contenu.

Prescription

(4) Les poursuites visant une infraction à la présente loi se prescrivent par deux ans à compter de la date où le surintendant a eu connaissance des éléments constitutifs de l'infraction.

Certificat du surintendant

(4.1) Tout document censé délivré par le surintendant et attestant la date où ces éléments sont parvenus à sa connaissance fait foi de cette date, en l'absence de preuve contraire, sans qu'il soit nécessaire de prouver l'authenticité de la signature qui y est apposée ou la qualité officielle du signataire.

Corporations and other bodies

(5) If a corporation or other body is guilty of an offence under this section, every officer, director, agent or mandatary or member of the corporation or body who directed, authorized, assented to, acquiesced in or participated in the offence is a party to and guilty of the offence and is liable on summary conviction to the punishment provided for the offence, whether or not the corporation or body has been prosecuted or convicted.

Informations and complaints

(6) An information or complaint under this section may be laid or made by any officer of the Office of the Superintendent of Financial Institutions, any member of the Royal Canadian Mounted Police or any person authorized in writing by the Minister.

R.S., 1985, c. 32 (2nd Supp.), s. 38; 1998, c. 12, s. 25; 2001, c. 9, s. 583; 2010, c. 12, s. 1819(E).

Regulations

Regulations

39 (1) The Governor in Council may make regulations

(a) respecting applications for registration of pension plans;

(a.1) [Repealed, 2012, c. 16, s. 89]

(b) respecting the fees that may be charged for the registration of pension plans and for the supervision, including inspection, of registered pension plans;

(b.1) respecting the implementation of a federal-provincial agreement;

(b.2) exempting a federal-provincial agreement or any provision of that agreement from the application of subsection 6.2(1);

(b.3) respecting transitional matters in the event that the Government of Canada ceases to be a party to a federal-provincial agreement;

(c) prescribing the conditions under which, on the cessation of a member's membership in a pension plan or on the termination or winding-up of a pension plan, pension benefit credits may be held in trust by the administrator of the plan, or transferred to the administrator of another pension plan or to a registered retirement savings plan of the prescribed kind;

(c.1) respecting the transfer of pension benefit credit of any person who cannot be located, as well as the

Personnes morales et autres organismes

(5) En cas de perpétration par une personne morale ou un autre organisme d'une infraction prévue au présent article, ceux de ses dirigeants, administrateurs, mandataires ou membres qui l'ont ordonnée ou autorisée, ou qui y ont consenti ou participé, sont considérés comme des coauteurs de l'infraction et encourent, sur déclaration de culpabilité par procédure sommaire, la peine prévue, que la personne morale ou l'organisme ait été ou non poursuivi ou déclaré coupable.

Dénonciations et plaintes

(6) Une dénonciation peut être formulée ou une plainte déposée, au titre du présent article, par un fonctionnaire du Bureau du surintendant des institutions financières, par un membre de la Gendarmerie royale du Canada ou par toute personne autorisée par écrit par le ministre.

L.R. (1985), ch. 32 (2^e suppl.), art. 38; 1998, ch. 12, art. 25; 2001, ch. 9, art. 583; 2010, ch. 12, art. 1819(A).

Règlements

Règlements

39 (1) Le gouverneur en conseil peut, par règlement :

a) régir les demandes d'agrément de régimes de pensions;

a.1) [Abrogé, 2012, ch. 16, art. 89]

b) régir les droits à percevoir pour l'agrément de régimes de pension et pour la supervision, notamment l'inspection, des régimes de pension agréés;

b.1) régir la mise en œuvre d'un accord fédéral-provincial;

b.2) soustraire un accord fédéral-provincial ou telle de ses dispositions à l'application du paragraphe 6.2(1);

b.3) régir la transition à effectuer dans le cas où le gouvernement du Canada cesse d'être partie à un accord fédéral-provincial;

c) prévoir les conditions dans lesquelles les droits à pension peuvent, si la participation du participant prend fin ou s'il y a cessation ou liquidation d'un régime, être détenus en fiducie par l'administrateur du régime ou transférés à l'administrateur d'un autre régime ou à un régime enregistré d'épargne-retraite prévu par règlement;

c.1) régir le transfert de droits à pension de personnes introuvables et d'actifs liés à ces droits à

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

Pension Benefits Standards, 1985
Regulations
Section 39

Normes de prestation de pension (1985)
Règlements
Article 39

assets relating to that credit to the entity designated under section 10.3, including the circumstances and conditions under which that credit and those assets may be transferred to that entity;

(c.2) respecting the entity designated under section 10.3;

(c.3) respecting the holding of pension benefit credit of any person who cannot be located, as well as the assets relating to that credit by the entity designated under section 10.3, the making of claims for that credit and the disbursement of that credit;

(c.4) respecting the transfer to Her Majesty in right of Canada of assets held by the entity designated under section 10.3;

(d) prescribing, for the purposes of this Act or any provision thereof, the manner of determining the portion of a pension benefit or other benefit that is attributable to membership in a plan after December 31, 1986;

(e) respecting the time by which contributions to a pension plan are required to be remitted to the pension fund by the administrator, and respecting the consequences of failure to remit contributions to the pension fund on time, including the liability of the administrator;

(e.1) respecting the interest to be paid on the amounts due to the pension fund from the employer or the administrator;

(e.2) respecting the letters of credit referred to in subsection 9.11(1), including regulations

(i) specifying the types of payments that may be replaced by a letter of credit,

(ii) specifying the circumstances in which a payment or part of a payment may be replaced by a letter of credit and the conditions and restrictions that apply,

(iii) specifying the eligibility criteria that the issuer of the letter of credit and the trustee referred to in section 9.13 must meet,

(iv) specifying the terms and conditions that a letter of credit and a trust agreement must contain,

(v) specifying the circumstances in which, on the direction of the employer, a letter of credit may be cancelled or its face value amended and the conditions that apply, and

l'entité désignée en vertu de l'article 10.3, notamment les circonstances où ils peuvent l'être et les conditions du transfert;

c.2) régir l'entité désignée en vertu de l'article 10.3;

c.3) régir la détention de droits à pension de personnes introuvables et d'actifs liés à ces droits par l'entité désignée en vertu de l'article 10.3, la présentation des demandes de paiement de ces droits et leur paiement;

c.4) régir le transfert à Sa Majesté du chef du Canada d'actifs détenus par l'entité désignée en vertu de l'article 10.3;

d) prévoir, pour l'application de la présente loi ou telle de ses dispositions, les modalités de détermination des prestations de pension ou autres afférentes à la participation à un régime postérieure au 31 décembre 1986;

e) prévoir les délais dans lesquels les administrateurs doivent verser au fonds de pension les cotisations ainsi que les conséquences de leur défaut de les verser dans les délais fixés, notamment la responsabilité de l'administrateur;

e.1) régir les intérêts à payer sur les sommes que l'employeur ou l'administrateur doivent au fonds de pension;

e.2) régir la lettre de crédit visée au paragraphe 9.11(1), notamment :

(i) prévoir les types de paiements dont la lettre de crédit peut tenir lieu,

(ii) prévoir les circonstances où une lettre de crédit peut tenir lieu de paiement ou de partie de paiement et assortir ce remplacement de conditions et de limitations,

(iii) prévoir les conditions à remplir pour être l'émetteur de la lettre de crédit ou le fiduciaire visé à l'article 9.13,

(iv) prévoir les stipulations que doivent contenir la lettre de crédit et l'acte de fiducie,

(v) prévoir les circonstances où, à la demande de l'employeur, la lettre de crédit peut être annulée ou sa valeur nominale modifiée et assujettir l'annulation ou la modification à des conditions,

(vi) prévoir les circonstances où la lettre de crédit doit être annulée ou sa valeur nominale réduite et

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- (vi)** specifying the circumstances in which a letter of credit must be cancelled or its face value reduced and the amount — or part of the amount — in respect of which it was obtained to be paid by the employer into the pension fund;
- (e.3)** respecting the reduction of payments referred to in section 9.16, including specifying the conditions under which they may be reduced and the types of payments that may be reduced;
- (f)** providing for the determination of the day on which a member or former member of a pension plan becomes entitled to a particular pension benefit or other benefit under the plan;
- (g)** prescribing the manner in which pension benefit credits are to be determined and fixing the time as of which the determination is to be made;
- (h)** for enabling the Superintendent to require administrators to provide up-to-date consolidations of their pension plans and respecting the form and certification of those consolidations;
- (h.1)** respecting refunds of surplus assets and arbitrations referred to in section 9.2;
- (h.2)** respecting solvency ratios and solvency ratio levels and the manner in which they are to be determined;
- (i)** authorizing the Superintendent to specify the information in respect of pension plans that is to be provided to the Superintendent by the administrator;
- (i.1)** authorizing the Superintendent to specify the information in respect of pension plans that is to be provided to the Superintendent by the employer;
- (i.2)** respecting the establishment of a separate pension plan under section 10.4, the determination of assets to be transferred to that plan and the transfer of assets and liabilities to that plan;
- (j)** respecting the distribution of the assets of a pension plan that is being wound up;
- (j.1)** respecting the manner in which the administrator of a pension plan must deal with complaints or inquiries from members of the pension plan, former members and any other persons entitled to pension benefits under the plan;
- (k)** exempting any employee or pension plan, any class of employee or pension plan or any benefit or
- où le paiement ou la partie de paiement dont elle tenait lieu doit être versé au fonds de pension par l'employeur;
- e.3)** régir la réduction des paiements visée à l'article 9.16, notamment en prévoyant à quelles conditions ils peuvent être réduits et les types de paiements qui peuvent l'être;
- f)** prévoir la détermination du jour auquel un participant actuel ou ancien acquiert, au titre du régime de pension, le droit au service d'une prestation de pension, ou autre prestation, déterminée;
- g)** fixer les modalités de temps et autres de la détermination des droits à pension;
- h)** permettre au surintendant d'exiger des administrateurs des consolidations à jour de leurs régimes de pension et de prévoir la forme et la certification de celles-ci;
- h.1)** régir le paiement de l'excédent et l'arbitrage visés à l'article 9.2;
- h.2)** régir les ratios et seuils de solvabilité et la manière de les établir;
- i)** autoriser le surintendant à préciser les renseignements relatifs aux régimes de pension que l'administrateur doit lui fournir;
- i.1)** autoriser le surintendant à préciser les renseignements relatifs aux régimes de pension que l'employeur doit lui fournir;
- i.2)** régir l'institution d'un régime distinct en application de l'article 10.4, la détermination de l'actif à y transférer et le transfert d'actif et de passif à celui-ci;
- j)** régir la répartition des actifs d'un régime de pension en liquidation;
- j.1)** régir la façon, pour l'administrateur, de traiter les plaintes ou demandes des participants, des anciens participants et de toute autre personne qui a droit à une prestation de pension au titre du régime de pension;
- k)** exclure tout salarié, tout régime de pension, toute catégorie de salariés ou de régimes de pension ou toute prestation prévue par un régime de pension de l'application de la présente loi ou de telle de ses dispositions;
- k.1)** régir les prestations de retraite progressive;

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kind of benefit under a pension plan from the application of this Act or any provision thereof;

(k.1) respecting phased retirement benefits;

(k.2) respecting variable benefits;

(l) defining the term *disability*;

(l.1) defining the term *normal cost* for the purposes of paragraph 29(6)(a) and subsections 29.07(1) and 29.1(2);

(m) respecting the meaning of *impair the solvency* for the purposes of section 26.1;

(m.1) respecting payment of the amount described in subsection 29(6.1);

(m.2) respecting the manner in which the amount described in subsection 29(6.1) is to be calculated, including the periodic adjustment of that amount between the date of termination and the date of the winding-up of the pension plan;

(m.3) respecting the determination of the portion referred to in subsection 29(6.3) and the reversion of that portion to the benefit of the employer;

(n) respecting the integration of

(i) the payment of any pension benefit or contribution under a pension plan

with

(ii) the payment of any pension or contribution payable under the *Old Age Security Act*, the *Canada Pension Plan*, or any provincial pension plan as defined in section 3 of the *Canada Pension Plan*;

(n.1) respecting the distressed pension plan scheme provided for in sections 29.01 to 29.3, including regulations

(i) specifying the circumstances in which the election referred to in subsection 29.03(1) may not be made,

(ii) specifying the form and content of the notice to be provided under subsection 29.03(5) as well as the manner in which and the period within which it is to be provided,

(iii) respecting the negotiation process,

(iv) respecting the determination of the day on which the negotiation period is to end, and

k.2) régir les prestations variables;

l) définir *invalidité*;

l.1) définir *coûts normaux* pour l'application de l'alinéa 29(6)a) et des paragraphes 29.07(1) et 29.1(2);

m) définir *risque de porter atteinte à la solvabilité* pour l'application de l'article 26.1;

m.1) régir le paiement de la somme visée au paragraphe 29(6.1);

m.2) régir la manière de calculer la somme visée au paragraphe 29(6.1), notamment l'ajustement périodique de cette somme entre la date de la cessation du régime de pension et celle de sa liquidation;

m.3) régir la détermination et le versement à l'employeur de la somme à laquelle celui-ci a droit au titre du paragraphe 29(6.3);

n) régir la coordination des paiements suivants :

(i) le paiement de toute prestation de pension ou cotisation, prévue par un régime de pension,

(ii) le paiement de toute prestation de pension ou cotisation, prévue par la *Loi sur la sécurité de la vieillesse*, le *Régime de pensions du Canada* ou tout régime provincial de pensions au sens de l'article 3 du *Régime de pensions du Canada*;

n.1) régir le mécanisme d'accommodement pour les régimes de pension en difficulté prévu aux articles 29.01 à 29.3, notamment :

(i) prévoir les circonstances où le choix prévu au paragraphe 29.03(1) ne peut pas être effectué,

(ii) prévoir la forme et le contenu de l'avis visé au paragraphe 29.03(5), la façon de le donner et le délai applicable,

(iii) régir le processus de négociation,

(iv) régir la fixation de la date où la période de négociation prend fin,

(v) régir le calendrier de capitalisation, notamment ce qu'il peut prévoir et les exigences qu'il doit respecter;

n.2) régir le processus par lequel l'administrateur offre des options en matière de placement et le processus pour effectuer des choix parmi ces options;

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(v) respecting the funding schedule, including what it may provide for and the requirements that it must meet;

(n.2) respecting the process by which investment options are offered by an administrator and choices among those options are made;

(n.3) respecting investment options offered by an administrator;

(n.4) prescribing any measure necessary for the purposes of sections 31.1 and 31.2, including the time when and circumstances under which an electronic document is to be considered to have been provided or received and the place where it is considered to have been provided or received;

(n.5) setting out the requirements under this Act to which subsections 31.1(1) and (2) do not apply;

(n.6) authorizing the Superintendent to specify the form of any information — including information in a document — required to be provided to him or her under the regulations, as well as the manner of providing that information;

(n.7) respecting the composition of a board of trustees or other similar body referred to in paragraph 7(1)(a);

(o) prescribing anything that by this Act is to be prescribed; and

(p) generally for carrying out the purposes and provisions of this Act.

Classes

(2) A regulation made under this Act may be made applicable generally to all pension plans or specifically to one or more classes of pension plans.

General or specific application

(3) A regulation made for the purposes of subsection 8(4.1) or 9(1), sections 9.11 to 9.15 or subsection 10.1(2) may be made applicable generally to all pension plans or specifically to one or more pension plans.

R.S., 1985, c. 32 (2nd Supp.), s. 39; 1998, c. 12, s. 26; 2001, c. 34, s. 76; 2007, c. 35, s. 142; 2010, c. 12, s. 1820, c. 25, ss. 196, 198; 2012, c. 16, s. 89; 2016, c. 7, s. 206.

n.3) régir les options en matière de placement offertes par l'administrateur;

n.4) prévoir toute mesure utile à l'application des articles 31.1 et 31.2, notamment les circonstances — dont le moment et le lieu — dans lesquelles les documents électroniques sont réputés avoir été fournis ou reçus;

n.5) soustraire à l'application des paragraphes 31.1(1) et (2) telle obligation, imposée sous le régime de la présente loi, de fournir une information à une personne;

n.6) autoriser le surintendant à fixer la forme de toute information, notamment une information contenue dans un document, qui doit lui être fournie en application des règlements ainsi que la manière de fournir cette information;

n.7) régir la composition de l'organe de gestion visé à l'alinéa 7(1)a);

o) prendre toute autre mesure d'ordre réglementaire prévue par la présente loi;

p) prendre toute autre mesure d'application de la présente loi.

Catégories

(2) Les règlements pris en vertu de la présente loi peuvent être d'application générale ou viser plus spécifiquement une ou plusieurs catégories de régimes de pension.

Portée générale ou particulière

(3) Les règlements d'application des paragraphes 8(4.1) et 9(1), des articles 9.11 à 9.15 et du paragraphe 10.1(2) peuvent être d'application générale ou viser plus spécifiquement un ou plusieurs régimes de pension.

L.R. (1985), ch. 32 (2^e suppl.), art. 39; 1998, ch. 12, art. 26; 2001, ch. 34, art. 76; 2007, ch. 35, art. 142; 2010, ch. 12, art. 1820, ch. 25, art. 196 et 198; 2012, ch. 16, art. 89; 2016, ch. 7, art. 206.

Incorporation by reference

39.1 (1) A regulation made under this Act may incorporate by reference a document produced by a person or body other than the Minister or the Superintendent.

Reproduced or translated document

(2) A regulation may incorporate by reference a document that the Minister or Superintendent reproduces or translates from a document produced by a person or body other than the Minister or Superintendent, with any adaptations of form or reference that will facilitate its incorporation.

Jointly produced document

(3) A regulation may incorporate by reference a document that the Minister or Superintendent produces jointly with a provincial or foreign government or government agency for the purpose of harmonizing the regulation with other laws.

Scope of incorporation

(4) A document may be incorporated by reference as it exists on a particular date or as it is amended from time to time.

Defence

(5) No person may be convicted of an offence or subjected to a penalty for the contravention of a regulation if a document that is relevant to the offence or contravention is incorporated by reference in the regulation unless it is proved that, at the time of the alleged contravention, the document was reasonably accessible to the person or reasonable steps had been taken to ensure that the document was accessible to the public.

Registration and publication

(6) For greater certainty, a document that is incorporated by reference in a regulation is not required to be transmitted for registration or published in the *Canada Gazette* by reason only that it is incorporated by reference.

Exception

(7) A regulation that is specifically applicable to one pension plan or one employer may not incorporate by reference a document produced by the employer or administrator or any person related to either of them, including

Incorporation par renvoi

39.1 (1) Peut être incorporé par renvoi dans le règlement pris en vertu de la présente loi tout document émanant d'une personne ou d'un organisme autre que le ministre ou le surintendant.

Reproduction ou traduction

(2) Peut être incorporé par renvoi dans le règlement tout document qui résulte de la reproduction ou traduction, par le ministre ou le surintendant, de tout passage d'un document émanant d'une personne ou d'un organisme autre que le ministre ou le surintendant et ce, même s'il comporte des adaptations quant à la forme et aux renvois destinées à en faciliter l'incorporation.

Documents produits conjointement

(3) Peut être incorporé par renvoi dans le règlement tout document élaboré conjointement par le ministre ou le surintendant et toute administration publique provinciale ou étrangère en vue d'harmoniser le règlement avec un autre texte législatif.

Portée de l'incorporation

(4) L'incorporation par renvoi peut viser le document soit dans sa version à une date donnée, soit avec ses modifications successives.

Moyen de défense

(5) Aucune sanction ne peut découler du non-respect d'un règlement dans lequel un document se rapportant au fait reproché est incorporé par renvoi, sauf s'il est prouvé que, au moment du fait reproché, le contrevenant avait facilement accès au document ou des mesures raisonnables avaient été prises pour que le public puisse y avoir accès.

Enregistrement et publication

(6) Il est entendu que les documents incorporés par renvoi dans un règlement n'ont pas à être transmis pour enregistrement ni à être publiés dans la *Gazette du Canada* du seul fait de leur incorporation.

Exception

(7) Le règlement visant spécifiquement un régime de pension ou un employeur ne peut incorporer par renvoi un document émanant de ce dernier ou de l'administrateur ou de toute personne liée à l'un d'eux, notamment toute personne morale qui, au sens des paragraphes 2(2),

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any body corporate that — within the meaning of subsections 2(2), (4) and (5) of the *Canada Business Corporations Act* — is affiliated with either of them or is the holding body corporate or a subsidiary of either of them.

2010, c. 12, s. 1821.

Report to Parliament

Annual report

40 The Superintendent shall, as soon as possible after the end of each fiscal year, submit to the Minister a report on

(a) the operation of this Act during that year,

(b) to (d) [Repealed, 2010, c. 12, s. 1822]

and the Minister shall cause the report to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the day the Minister receives it.

R.S., 1985, c. 32 (2nd Supp.), s. 40; 2010, c. 12, s. 1822.

Consequential Amendments to Other Acts

41 [Amendments]

Repeal

Repeal of R.S., c. P-7

42 (1) The *Pension Benefits Standards Act* is repealed.

Limitation

(2) Notwithstanding subsection (1), the *Pension Benefits Standards Act* and the regulations thereunder continue to apply to persons who have, before January 1, 1987, ceased membership in a pension plan or retired.

R.S., 1985, c. 32 (2nd Supp.), s. 42; 2001, c. 34, s. 77.

43 [Repealed, 2010, c. 12, s. 1823]

44 [Repealed, 2010, c. 12, s. 1823]

45 [Repealed, 2010, c. 12, s. 1823]

(4) et (5) de la *Loi canadienne sur les sociétés par actions*, est la personne morale mère ou la filiale de l'un d'eux ou appartient au même groupe que l'un d'eux.

2010, ch. 12, art. 1821.

Rapport au Parlement

Rapport annuel

40 À la fin de chaque exercice, le surintendant présente au ministre, dans les meilleurs délais, pour dépôt devant chaque chambre du Parlement dans les quinze premiers jours de séance de celle-ci suivant sa réception, un rapport relatif aux questions suivantes :

a) l'application de la présente loi au cours de l'année précédente.

b) à d) [Abrogés, 2010, ch. 12, art. 1822]

L.R. (1985), ch. 32 (2^e suppl.), art. 40; 2010, ch. 12, art. 1822.

Modifications corrélatives

41 [Modifications]

Abrogation

L.R., ch. P-7

42 (1) La *Loi sur les normes des prestations de pension* est abrogée.

Restriction

(2) Par dérogation au paragraphe (1), la *Loi sur les normes des prestations de pension* et ses règlements d'application continuent de s'appliquer aux personnes dont la participation à un régime de retraite a pris fin ou qui ont pris leur retraite, antérieurement au 1^{er} janvier 1987.

L.R. (1985), ch. 32 (2^e suppl.), art. 42; 2001, ch. 34, art. 77.

43 [Abrogé, 2010, ch. 12, art. 1823]

44 [Abrogé, 2010, ch. 12, art. 1823]

45 [Abrogé, 2010, ch. 12, art. 1823]

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

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Coming into Force

Coming into force

46 This Act shall come into force on January 1, 1987.

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Article 46

Entrée en vigueur

Entrée en vigueur

46 La présente loi entre en vigueur le 1^{er} janvier 1987.

Pension Benefits Standards Act, 1985, R.S.C. 1985, c.32 (2nd Supp.)

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Normes de prestation de pension (1985)
ANNEXE

SCHEDULE

[Amendments]

ANNEXE

[Modifications]

RELATED PROVISIONS

— 2010, c. 25, s. 197

Adoption of new plan

197 If, as a result of the adoption of a new plan, employer contributions to a pension plan are suspended or cease before the day on which subsection 29(4) of the *Pension Benefits Standards Act, 1985*, as enacted by subsection 194(1), comes into force, the original plan is deemed not to have been terminated, and the pension benefits and other benefits provided under the original plan are deemed to be benefits provided under the new plan in respect of any period of membership before the adoption of the new plan, regardless of whether the assets and liabilities of the original plan have been consolidated with those of the new plan.

— 2012, c. 19, s. 483

2010, c. 12, s. 1820(12)

483 Subsections 39(2) and (3) of the *Pension Benefits Standards Act, 1985* are deemed to have come into force on July 27, 2004.

DISPOSITIONS CONNEXES

— 2010, ch. 25, art. 197

Adoption d'un nouveau régime

197 Dans le cas où l'arrêt ou la suspension des cotisations patronales à un régime de pension survient avant l'entrée en vigueur du paragraphe 29(4) de la *Loi de 1985 sur les normes de prestation de pension*, édicté par le paragraphe 194(1), et à la suite de l'adoption d'un nouveau régime de pension, le régime initial est réputé ne pas avoir fait l'objet d'une cessation et les prestations de pension ou autres prévues par celui-ci sont réputées être les prestations prévues par le nouveau régime relativement à toute période de participation antérieure à l'adoption du nouveau régime, indépendamment du fait qu'il y a eu ou non fusion de l'actif et du passif des deux régimes.

— 2012, ch. 19, art. 483

2010, ch. 12, par. 1820(12)

483 Les paragraphes 39(2) et (3) de la *Loi de 1985 sur les normes de prestation de pension* sont réputés être entrés en vigueur le 27 juillet 2004.



CANADA

CONSOLIDATION

CODIFICATION

**Pension Benefits Standards
Regulations, 1985**

**Règlement de 1985 sur les
normes de prestation de
pension**

SOR/87-19

DORS/87-19

Current to December 11, 2017

À jour au 11 décembre 2017

Last amended on June 23, 2017

Dernière modification le 23 juin 2017

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

Inconsistencies in regulations

(3) In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

NOTE

This consolidation is current to December 11, 2017. The last amendments came into force on June 23, 2017. Any amendments that were not in force as of December 11, 2017 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

Incompatibilité – règlements

(3) Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

NOTE

Cette codification est à jour au 11 décembre 2017. Les dernières modifications sont entrées en vigueur le 23 juin 2017. Toutes modifications qui n'étaient pas en vigueur au 11 décembre 2017 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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8	Funding	8	Capitalisation
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10.6	End of Negotiation Period	10.6	Fin de la période de négociation
10.7	Appointment of Representatives	10.7	Nomination des représentants

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

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Règlement de 1985 sur les normes de prestation de pension
TABLE ANALYTIQUE

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Registration

SOR/87-19 December 18, 1986

PENSION BENEFITS STANDARDS ACT, 1985

Pension Benefits Standards Regulations, 1985

P.C. 1986-2856 December 18, 1986

Her Excellency the Governor General in Council, on the recommendation of the Minister of Finance, pursuant to subsections 4(6) and 9(6) and section 39 of the *Pension Benefits Standards Act, 1985*, is pleased hereby to make the annexed *Regulations respecting pension benefits standards*, effective January 1, 1987.

Enregistrement

DORS/87-19 Le 18 décembre 1986

LOI DE 1985 SUR LES NORMES DE PRESTATION DE PENSION

Règlement de 1985 sur les normes de prestation de pension

C.P. 1986-2856 Le 18 décembre 1986

Sur avis conforme du ministre des Finances et en vertu des paragraphes 4(6) et 9(6) et de l'article 39 de la *Loi de 1985 sur les normes de prestation de pension*, il plaît à Son Excellence le Gouverneur général en conseil de prendre, à compter du 1^{er} janvier 1987, le *Règlement concernant les normes de prestation de pension*, ci-après.

* S.C. 1986, c. 40

* S.C. 1986, ch. 40

Regulations Respecting Pension Benefits Standards

Short Title

1 These Regulations may be cited as the *Pension Benefits Standards Regulations, 1985*.

Interpretation

2 (1) In these Regulations,

accepted actuarial practice means the standards of practice described in paragraph 9(2)(b) of the Act, taking into account any specification made by the Superintendent under that paragraph; (*normes actuarielles reconnues*)

accountant means a person authorized to act as an accountant under the laws of a province; (*comptable*)

Act means the *Pension Benefits Standards Act, 1985*; (*Loi*)

actuarial gain [Repealed, SOR/2010-149, s. 1]

actuarial report means an actuarial report filed with the Superintendent under subsection 9.01(5) or 12(2) of the Act or a copy of the report that is provided under subsection 9.01(6) of the Act; (*rapport actuariel*)

actuary [Repealed, SOR/2011-85, s. 1]

adjusted solvency asset amount means the amount determined by multiplying the average solvency ratio by the amount of the solvency liabilities; (*montant rajusté de l'actif de solvabilité*)

average solvency ratio means the solvency ratio determined in accordance with subsections 9(8) to (11); (*ratio de solvabilité moyen*)

book value, in respect of an asset, means the cost of acquisition to the person acquiring the asset, including all direct costs associated with the acquisition; (*valeur comptable*)

bridging benefit means a periodic payment that is provided under a plan to a former member of the plan for a temporary period of time after the former member's retirement for the purpose of supplementing the former

Règlement concernant les normes de prestation de pension

Titre abrégé

1 *Règlement de 1985 sur les normes de prestation de pension.*

Définitions

2 (1) Les définitions qui suivent s'appliquent au présent règlement.

actif de solvabilité Le résultat de la formule suivante :

$$A + B - C$$

où :

A représente la valeur marchande des éléments d'actif liés aux dispositions à prestations déterminées du régime, établie à la date d'évaluation;

B la valeur nominale de toutes les lettres de crédit en vigueur à la date d'évaluation — autres que celles qui sont utilisées pour capitaliser le régime au titre de la partie 3 du *Règlement sur l'allègement de la capitalisation du déficit de solvabilité des régimes à prestations déterminées* ou de la partie 3 du *Règlement sur l'allègement de la capitalisation du déficit de solvabilité des régimes à prestations déterminées (2009)* — jusqu'à un maximum de 15 % du passif de solvabilité établi à la date d'évaluation;

C les frais estimatifs de liquidation du régime attestés par un actuaire. (*solvency assets*)

actif évalué en continuité La valeur de l'actif d'un régime, y compris les revenus à recevoir et courus, qui est déterminée selon une évaluation en continuité. (*going concern assets*)

actif évalué sur une base de permanence [Abrogée, DORS/2010-149, art. 1]

actuaire [Abrogée, DORS/2011-85, art. 1]

avoirs miniers canadiens S'entend au sens de l'alinéa 66(15)c) de la *Loi de l'impôt sur le revenu*. (*Canadian resource property*)

caisse séparée Caisse établie par une personne morale dûment autorisée à exploiter une caisse dans laquelle les cotisations versées à un régime sont déposées et dont

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member's pension benefit until the former member is eligible to receive benefits under the *Old Age Security Act* or is eligible for or commences to receive retirement benefits under the *Canada Pension Plan* or *An Act respecting the Quebec Pension Plan*; (*prestation de rattachement*)

Canadian resource property has the same meaning as in paragraph 66(15)(c) of the *Income Tax Act*; (*avoirs miniers canadiens*)

deferred life annuity means a life annuity that

(a) commences periodic payments no earlier than one year after its purchase,

(b) provides for equal periodic payments or periodic payments that have been varied by reference to

(i) the amount of any pension payable under the *Old Age Security Act*,

(ii) the amount of any pension payable under either the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of the *Canada Pension Plan*,

(iii) the Consumer Price Index for Canada as published by Statistics Canada under the authority of the *Statistics Act*, or

(iv) the value of the assets held in a segregated fund, and

(c) is issued by a person authorized to carry on a life insurance business in Canada; (*prestation viagère différée*)

experience gain [Repealed, SOR/2010-149, s. 1]

experience loss [Repealed, SOR/2010-149, s. 1]

financial institution means

(a) except in section 11.1,

(i) a bank or an authorized foreign bank within the meaning of section 2 of the *Bank Act*,

(ii) a body corporate to which the *Trust and Loan Companies Act* applies,

(iii) a cooperative credit society to which the *Cooperative Credit Associations Act* applies,

(iv) an insurance company to which the *Insurance Companies Act* applies,

l'actif est détenu aux seules fins de ce régime ou aux fins de ce régime et d'au moins un autre régime. (*segregated fund*)

comptable Personne qui est autorisée à agir comme comptable en vertu des lois d'une province. (*accountant*)

compte accompagné de choix S'entend de tout compte à l'égard duquel le régime permet au participant, à l'ancien participant, au survivant ou à l'ex-époux ou ancien conjoint de fait du participant ou ancien participant, en application du paragraphe 8(4.2) de la Loi, d'effectuer des choix en matière de placement. (*member choice account*)

coûts normaux Le coût, déterminé selon une évaluation en continuité, des prestations, à l'exclusion des paiements spéciaux, qui sont censées s'accumuler pendant un exercice. (*normal cost*)

date d'évaluation La date à laquelle le passif d'un régime est évalué dans un rapport actuariel. (*valuation date*)

date d'évaluation antérieure La date précédant d'un an la date d'évaluation. (*prior valuation date*)

déficit de solvabilité L'excédent du passif de solvabilité sur le montant rajusté de l'actif de solvabilité. (*solvency deficiency*)

déficit évalué en continuité L'excédent du passif évalué selon le principe de continuité d'exploitation sur l'actif évalué selon le même principe. (*going concern deficit*)

deuxième date d'évaluation antérieure La date précédant de deux ans la date d'évaluation. (*prior second valuation date*)

évaluation de la solvabilité Évaluation de l'actif et du passif d'un régime selon des hypothèses et des méthodes actuarielles conformes aux normes actuarielles reconnues qui s'appliquent à l'évaluation d'un régime effectuée en fonction de la cessation de celui-ci. (*solvency valuation*)

évaluation en continuité Évaluation de l'actif et du passif d'un régime selon des hypothèses et des méthodes actuarielles conformes aux normes actuarielles reconnues qui s'appliquent à l'évaluation d'un régime selon le principe de continuité d'exploitation. (*going concern valuation*)

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(v) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province,

(vi) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province,

(vii) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province and that is primarily engaged in dealing in securities, including portfolio management and investment counselling, or

(viii) a foreign institution; and

(b) for the purposes of section 11.1, those entities referred to in subparagraphs (a)(i) to (vi) or a foreign institution for which an order of the Superintendent has been made under section 574 of the *Insurance Companies Act*; (*institution financière*)

foreign institution means an entity that is

(a) engaged in the business of banking, the trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities or is otherwise engaged primarily in the business of providing financial services, and

(b) incorporated or formed otherwise than by or under an Act of Parliament or of the legislature of a province; (*institution étrangère*)

going concern assets means the value of the assets of a plan, including income due and accrued, determined on the basis of a going concern valuation; (*actif évalué en continuité*)

going concern deficit means the amount by which the going concern liabilities exceed the going concern assets; (*déficit évalué en continuité*)

going concern excess means the amount by which the going concern assets exceed the going concern liabilities; (*excédent évalué en continuité*)

going concern liabilities means the present value of the accrued benefits of a plan, including amounts due and unpaid, determined on the basis of a going concern valuation; (*passif évalué en continuité*)

going concern special payment means a special payment made in respect of an unfunded liability under subsection 9(3); (*paiement spécial de continuité*)

évaluation sur une base de permanence [Abrogée, DORS/2010-149, art. 1]

excédent de solvabilité L'excédent du montant rajusté de l'actif de solvabilité sur le passif de solvabilité. (*solvency excess*)

excédent évalué en continuité L'excédent de l'actif évalué selon le principe de continuité d'exploitation sur l'actif évalué selon le même principe. (*going concern excess*)

exercice S'entend au sens de **exercice du régime** au paragraphe 2(1) de la Loi. (*French version only*)

fonds de placement Fonds établi par une personne morale, une société en commandite ou une fiducie ayant pour objet d'investir des sommes d'argent provenant d'au moins deux investisseurs à qui sont attribuées des actions ou parts en proportion de la participation de chacun d'eux dans l'actif du fonds. (*investment fund*)

fonds de revenu viager Fonds enregistré de revenu de retraite, au sens du paragraphe 146.3(1) de la *Loi de l'impôt sur le revenu*, qui satisfait aux exigences énoncées à l'article 20.1. (*life income fund*)

fonds de revenu viager restreint Fonds enregistré de revenu de retraite, au sens du paragraphe 146.3(1) de la *Loi de l'impôt sur le revenu*, qui satisfait aux exigences énoncées à l'article 20.3. (*restricted life income fund*)

fonds mutuel ou **fonds commun** [Abrogée, DORS/2015-60, art. 1]

gain actuariel [Abrogée, DORS/2010-149, art. 1]

gain actuariel courant [Abrogée, DORS/2010-149, art. 1]

institution étrangère Toute entité qui :

a) d'une part, se livre à des activités bancaires, fiduciaires, de prêt ou d'assurance, ou fait office de coopérative de crédit ou fait le commerce des valeurs mobilières, ou encore, de toute autre manière, a pour activité principale la prestation de services financiers;

b) d'autre part, n'est pas constituée — avec ou sans la personnalité morale — sous le régime d'une loi fédérale ou provinciale. (*foreign institution*)

institution financière

a) Sauf pour l'application de l'article 11.1 :

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going concern valuation means a valuation of the assets and liabilities of a plan using actuarial assumptions and methods that are in accordance with accepted actuarial practice for the valuation of a plan that is not expected to be terminated or wound up; (*évalué en continuité*)

immediate life annuity means a life annuity that

(a) commences periodic payments within one year after its purchase,

(b) provides for equal periodic payments or periodic payments that have been varied by reference to

(i) the amount of any pension payable under the *Old Age Security Act*,

(ii) the amount of any pension payable under either the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of the *Canada Pension Plan*,

(iii) the Consumer Price Index for Canada as published by Statistics Canada under the authority of the *Statistics Act*, or

(iv) the value of the assets held in a segregated fund, and

(c) is issued by a person authorized to carry on a life insurance business in Canada; (*prestation viagère immédiate*)

insured plan means a plan in which all benefits are paid by means of an annuity or insurance contract issued by a person authorized to carry on a life insurance business in Canada and under which the person is obligated to pay all the benefits set out in the plan; (*régime assuré*)

investment fund means a fund — established by a corporation, limited partnership or trust — the purpose of which is to invest the moneys of two or more investors and the shares or units of which are allocated to each investor in proportion to the interest of the investor in the assets of the fund; (*fonds de placement*)

letter of credit means a letter of credit that meets the requirements of subsection 9.1(5); (*lettre de crédit*)

life income fund means a registered retirement income fund, as defined in subsection 146.3(1) of the *Income Tax Act*, that meets the requirements set out in section 20.1; (*fonds de revenu viager*)

locked-in registered retirement savings plan means a registered retirement savings plan, as defined in

(i) une banque ou une banque étrangère autorisée, au sens de l'article 2 de la *Loi sur les banques*,

(ii) une personne morale régie par la *Loi sur les sociétés de fiducie et de prêt*,

(iii) une coopérative de crédit régie par la *Loi sur les associations coopératives de crédit*,

(iv) une société d'assurance régie par la *Loi sur les sociétés d'assurances*,

(v) une société de fiducie, de prêt ou d'assurance constituée en personne morale sous le régime d'une loi provinciale,

(vi) une coopérative de crédit constituée en personne morale sous le régime d'une loi provinciale et régie par une telle loi,

(vii) une entité constituée en personne morale ou formée sous le régime d'une loi fédérale ou provinciale et dont l'activité est principalement le commerce des valeurs mobilières, y compris la gestion de portefeuille et la fourniture de conseils de placement,

(viii) une institution étrangère;

(b) pour l'application de l'article 11.1, les entités visées aux sous-alinéas a)(i) à (vi) ou une institution étrangère à l'égard de laquelle le surintendant a pris une ordonnance en vertu de l'article 574 de la *Loi sur les sociétés d'assurances*. (*financial institution*)

lettre de crédit Lettre de crédit qui satisfait aux exigences du paragraphe 9.1(5). (*letter of credit*)

Loi La *Loi de 1985 sur les normes de prestation de pension*. (*Act*)

marché Selon le cas :

a) une Bourse;

b) un système de cotation et de déclaration des opérations;

c) toute autre entité qui remplit les conditions suivantes :

(i) elle établit, maintient ou offre un marché ou un mécanisme qui vise à rapprocher les acheteurs et vendeurs de valeurs mobilières ou de produits dérivés,

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subsection 146(1) of the *Income Tax Act*, that meets the requirements set out in section 20; (*régime enregistré d'épargne-retraite immobilisée*)

marketplace means

- (a) an exchange;
- (b) a quotation and trade-reporting system;
- (c) any other entity that
 - (i) constitutes, maintains or provides a market or facility for bringing together buyers and sellers of securities or derivatives,
 - (ii) brings together the orders for securities or derivatives of multiple buyers and sellers, and
 - (iii) uses established, non-discretionary methods under which the orders interact and with which the buyers and sellers entering the orders agree to the terms of a trade; (*marché*)

market value, in respect of an asset, means the price that would be obtained in the purchase or sale of the asset in an open market under conditions requisite to a fair transaction between parties who are at arm's length and acting prudently, knowledgeably and willingly; (*valeur marchande*)

member choice account means an account in relation to which a member, former member, survivor or former spouse or former common-law partner of the member or former member is permitted to make investment choices under a plan referred to in subsection 8(4.2) of the Act; (*compte accompagné de choix*)

mutual fund or **pooled fund** [Repealed, SOR/2015-60, s. 1]

normal cost means the cost of benefits, excluding special payments, that are to accrue during a plan year, as determined on the basis of a going concern valuation; (*coûts normaux*)

plan means a pension plan; (*régime*)

plan year [Repealed, SOR/2011-85, s. 1]

prior second valuation date in relation to a valuation date, means the day two years prior to that valuation date; (*deuxième date d'évaluation antérieure*)

prior valuation date in relation to a valuation date, means the day one year prior to that valuation date; (*date d'évaluation antérieure*)

(ii) elle réunit les ordres de nombreux acheteurs et vendeurs de valeurs mobilières ou de produits dérivés,

(iii) elle utilise des méthodes éprouvées, non discrétionnaires, selon lesquelles les ordres interagissent et les acheteurs et les vendeurs qui passent des ordres s'entendent sur les conditions d'une opération. (*marketplace*)

montant rajusté de l'actif de solvabilité Le produit du ratio de solvabilité moyen par le montant du passif de solvabilité. (*adjusted solvency asset amount*)

normes actuarielles reconnues Normes de pratique visées à l'alinéa 9(2)b) de la Loi, compte tenu des indications données par le surintendant aux termes de cet alinéa. (*accepted actuarial practice*)

paiement spécial S'entend d'un paiement unique, ou d'un paiement faisant partie d'une série de paiements, établi conformément à l'article 9 aux fins de liquidation d'un passif non capitalisé ou d'un déficit de solvabilité. (*special payment*)

paiement spécial de continuité Tout paiement spécial versé à l'égard d'un passif non capitalisé au titre du paragraphe 9(3). (*going concern special payment*)

paiement spécial de solvabilité Tout paiement spécial versé au titre des alinéas 9(4)c) ou d). (*solvency special payment*)

passif de solvabilité Le passif du régime se rapportant aux dispositions à prestations déterminées, calculé selon l'hypothèse de la cessation du régime. (*solvency liabilities*)

passif évalué en continuité La valeur actualisée des prestations accumulées d'un régime, y compris les montants dus et impayés, qui est déterminée selon une évaluation en continuité. (*going concern liabilities*)

passif évalué sur une base de permanence [Abrogée, DORS/2010-149, art. 1]

perte actuarielle courante [Abrogée, DORS/2010-149, art. 1]

prestation de rattachement Paiement périodique accordé provisoirement à un participant ancien après la retraite, aux termes d'un régime, pour lui procurer un revenu d'appoint jusqu'à ce qu'il soit admissible aux prestations prévues par la *Loi sur la sécurité de la vieillesse* ou qu'il soit admissible ou commence à recevoir

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PRPP means a plan registered under section 12 of the *Pooled Registered Pension Plans Act*; (*RPAC*)

restricted life income fund means a registered retirement income fund, as defined in subsection 146.3(1) of the *Income Tax Act*, that meets the requirements set out in section 20.3; (*fonds de revenu viager restreint*)

restricted locked-in savings plan means a registered retirement savings plan, as defined in subsection 146(1) of the *Income Tax Act*, that meets the requirements set out in section 20.2; (*régime d'épargne immobilisée restreint*)

segregated fund means a fund established by a corporation that is duly authorized to operate a fund in which contributions to a pension plan are deposited and the assets of which are held exclusively for the purposes of that plan alone or that plan and one or more other pension plans; (*caisse séparée*)

simplified pension plan [Repealed, SOR/2015-60, s. 1]

solvency assets means the amount determined by the formula

$$A + B - C$$

where

- A** is the market value of the assets that relate to the defined benefit provisions of a plan as determined at the valuation date,
- B** is the face value of all letters of credit in effect on the valuation date, other than those being used to fund a plan under Part 3 of the *Solvency Funding Relief Regulations* or Part 3 of the *Solvency Funding Relief Regulations, 2009*, up to a maximum of 15% of the solvency liabilities of the plan as determined at the valuation date, and
- C** is the estimated expense of the winding-up of the plan as certified by an actuary; (*actif de solvabilité*)

solvency deficiency means the amount by which the solvency liabilities exceed the adjusted solvency asset amount; (*déficit de solvabilité*)

solvency excess means the amount by which the adjusted solvency asset amount exceeds the solvency liabilities; (*excédent de solvabilité*)

solvency liabilities means the liabilities of a plan that relate to defined benefit provisions and are determined on the basis that the plan is terminated; (*passif de solvabilité*)

des prestations de retraite en vertu du *Régime de pensions du Canada* ou de la *Loi sur le régime de rentes du Québec*. (*bridging benefit*)

prestation viagère différée Rente viagère qui répond aux exigences suivantes :

- a)** le service des paiements périodiques commence au moins un an après son achat;
- b)** elle prévoit des paiements périodiques égaux ou des paiements périodiques qui ont été modifiés en fonction de l'un des facteurs suivants :
 - (i)** le montant de toute pension payable en vertu de la *Loi sur la sécurité de la vieillesse*,
 - (ii)** le montant de toute pension payable en vertu du *Régime de pensions du Canada* ou d'un régime provincial de pensions au sens de l'article 3 du *Régime de pensions du Canada*,
 - (iii)** l'indice des prix à la consommation pour le Canada, publié par Statistique Canada en application de la *Loi sur la statistique*,
 - (iv)** la valeur de l'actif tenu dans une caisse séparée;
- c)** elle est établie par une personne autorisée à exploiter une entreprise d'assurance-vie au Canada. (*deferred life annuity*)

prestation viagère immédiate Rente viagère qui répond aux exigences suivantes :

- a)** le service des paiements périodiques commence dans l'année suivant son achat;
- b)** elle prévoit des paiements périodiques égaux ou des paiements périodiques qui ont été modifiés en fonction de l'un des facteurs suivants :
 - (i)** le montant de toute pension payable en vertu de la *Loi sur la sécurité de la vieillesse*,
 - (ii)** le montant de toute pension payable en vertu du *Régime de pensions du Canada* ou d'un régime provincial de pensions au sens de l'article 3 du *Régime de pensions du Canada*,
 - (iii)** l'indice des prix à la consommation pour le Canada, publié par Statistique Canada en application de la *Loi sur la statistique*,
 - (iv)** la valeur de l'actif tenu dans une caisse séparée;

solvency ratio means

(a) for a plan that is a defined contribution plan that does not have defined benefit provisions, and an insured plan, one; and

(b) for any other plan, the ratio of the solvency assets to the solvency liabilities, excluding those solvency assets and solvency liabilities that are attributable to benefits that are paid by means of an annuity, other than a revocable annuity, or an insurance contract, based on the most recent actuarial report; (*ratio de solvabilité*)

solvency special payment means a special payment made under paragraph 9(4)(c) or (d); (*paiement spécial de solvabilité*)

solvency valuation means a valuation of the assets and liabilities of a plan using actuarial assumptions and methods that are in accordance with accepted actuarial practice for the valuation of a plan, determined on the basis that the plan is terminated; (*évaluation de la solvabilité*)

special payment means a payment or one of a series of payments determined in accordance with section 9 and made for the purpose of liquidating an unfunded liability or a solvency deficiency; (*paiement spécial*)

valuation date means the date on which the actuarial report values the liabilities of a plan; (*date d'évaluation*)

(c) elle est établie par une personne autorisée à exploiter une entreprise d'assurance-vie au Canada. (*immediate life annuity*)

rapport actuariel Tout rapport actuariel déposé auprès du surintendant en vertu des paragraphes 9.01(5) ou 12(2) de la Loi ou toute copie du rapport qui est remise à ce dernier en vertu du paragraphe 9.01(6) de la Loi. (*actuarial report*)

ratio de solvabilité

a) Dans le cas d'un régime à cotisations déterminées sans disposition à prestations déterminées et d'un régime assuré, un;

b) dans le cas de tout autre régime, le ratio de l'actif de solvabilité sur le passif de solvabilité, hormis l'actif de solvabilité et le passif de solvabilité attribuables aux prestations d'un régime qui sont versées sous forme de rente, autre qu'une rente révocable, ou aux termes d'un contrat d'assurance, d'après le plus récent rapport actuariel. (*solvency ratio*)

ratio de solvabilité moyen Le ratio de solvabilité établi conformément aux paragraphes 9(8) à (11). (*average solvency ratio*)

régime Tout régime de pension. (*plan*)

régime assuré Régime dont toutes les prestations sont versées aux termes d'un contrat de rente ou d'assurance accordé par une personne autorisée à exploiter une entreprise d'assurance-vie au Canada et selon lequel cette personne est tenue de verser toutes les prestations prévues dans le régime. (*insured plan*)

régime d'épargne immobilisée restreint Régime enregistré d'épargne-retraite, au sens du paragraphe 146(1) de la *Loi de l'impôt sur le revenu*, qui satisfait aux exigences énoncées à l'article 20.2. (*restricted locked-in savings plan*)

régime de pension simplifié [Abrogée, DORS/2015-60, art. 1]

régime enregistré d'épargne-retraite immobilisée Régime enregistré d'épargne-retraite, au sens du paragraphe 146(1) de la *Loi de l'impôt sur le revenu*, qui satisfait aux exigences énoncées à l'article 20. (*locked-in registered retirement savings plan*)

RPAC S'entend de tout régime agréé en vertu de l'article 12 de la *Loi sur les régimes de pension agréés collectifs*. (*PRPP*)

(2) Disability means

(a) for the purpose of paragraph 18(2)(b) of the Act, a mental or physical condition that a physician has certified as being likely to shorten considerably the life expectancy of a member; and

(b) for the purpose of determining pensionable age, a mental or physical condition that a physician has certified as rendering a member unable to perform the member's duties as an employee. (*invalidité*)

SOR/90-363, s. 1(E); SOR/93-109, s. 1; SOR/93-299, s. 1; SOR/94-384, s. 1; SOR/95-86, s. 1; SOR/95-551, s. 1; SOR/2001-222, s. 1; SOR/2002-78, s. 1; SOR/2008-144, s. 1; SOR/2010-149, s. 1; SOR/2011-85, ss. 1, 14(F), 15(F); SOR/2015-60, s. 1; SOR/2017-145, s. 1.

Designated Provinces

3 For the purposes of the definition *designated province* in subsection 2(1) of the Act, Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Saskatchewan, Alberta and Newfoundland and Labrador are prescribed as provinces in which there is in force pension legislation applicable to private superannuation plans.

SOR/90-363, s. 2; SOR/93-109, s. 2; SOR/94-384, s. 2; SOR/2002-78, s. 2; SOR/2016-205, s. 1.

Excepted Employment

4 The employment described in Schedule I is excepted from included employment.

Choice of Pension Committee and Pension Council Representative

[SOR/2002-78, s. 3]

5 (1) The representatives of the plan members or retired members who are to be included on a pension committee referred to in section 7.1 of the Act or a pension council referred to in section 7.2 of the Act shall be chosen in accordance with this section.

valeur comptable À l'égard d'un élément d'actif, le coût d'acquisition assumé par l'acquéreur, y compris les coûts directs liés à l'acquisition. (*book value*)

valeur marchande À l'égard d'un élément d'actif, le prix qui serait obtenu lors de sa vente ou de son achat sur un marché libre dans les conditions nécessaires à une transaction équitable entre des parties sans lien de dépendance qui agissent prudemment, en toute liberté et en pleine connaissance de cause. (*market value*)

(2) Le terme *invalidité* s'entend :

a) pour l'application de l'alinéa 18(2)(b) de la Loi, d'une condition mentale ou physique qui a été certifiée par un médecin comme étant susceptible d'abrèger considérablement l'espérance de vie du participant;

b) pour la détermination de l'âge admissible, d'une condition mentale ou physique qui a été certifiée par un médecin comme rendant le participant incapable d'exécuter ses fonctions à titre de salarié. (*disability*)

DORS/90-363, art. 1(A); DORS/93-109, art. 1; DORS/93-299, art. 1; DORS/94-384, art. 1; DORS/95-86, art. 1; DORS/95-551, art. 1; DORS/2001-222, art. 1; DORS/2002-78, art. 1; DORS/2008-144, art. 1; DORS/2010-149, art. 1; DORS/2011-85, art. 1, 14(F) et 15(F); DORS/2015-60, art. 1; DORS/2017-145, art. 1.

Provinces désignées

3 Pour l'application de la définition de *province désignée* au paragraphe 2(1) de la Loi, l'Ontario, le Québec, la Nouvelle-Écosse, le Nouveau-Brunswick, le Manitoba, la Colombie-Britannique, la Saskatchewan, l'Alberta et Terre-Neuve et Labrador sont les provinces où est en vigueur une loi sur les pensions applicable aux régimes privés de retraite.

DORS/90-363, art. 2; DORS/93-109, art. 2; DORS/94-384, art. 2; DORS/2002-78, art. 2; DORS/2016-205, art. 1.

Emplois exclus

4 Les emplois qui sont exclus des emplois inclus sont prévus à l'annexe I.

Choix des représentants au comité des pensions et au conseil des pensions

[DORS/2002-78, art. 3]

5 (1) Les représentants des participants ou des participants retraités devant faire partie du comité des pensions visé à l'article 7.1 de la Loi ou du conseil des pensions visé à l'article 7.2 de la Loi sont choisis conformément au présent article.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Choice of Pension Committee and Pension Council Representative
Section 5

Règlement de 1985 sur les normes de prestation de pension
Choix des représentants au comité des pensions et au conseil des pensions
Article 5

(2) A majority of the plan members or retired members shall notify an employer or a participating employer in writing of their decision to elect a representative of the members or retired members.

(3) Subject to subsection (5), the election of a representative of the plan members shall be conducted in the following manner:

(a) on receipt of a notice, referred to in subsection (2), the employer shall post, in areas that are accessible to the plan members, a notice;

(i) advising the members of an election, and

(ii) establishing a period of not less than two weeks and not more than four weeks during which nominations for the position of representative of the plan members may be made by plan members;

(b) nominations for the position of a representative of the plan members shall be filed in writing with the employer;

(c) on the closing of the nomination period, the employer shall post, in areas that are accessible to the plan members, a notice specifying

(i) the names of the nominees,

(ii) a time within the next two weeks at which plan members may cast their votes, and

(iii) a location at the place of employment at which plan members may cast their votes;

(d) the election shall be conducted by the employer by secret ballot and each plan member shall be entitled to one vote for the representative to be elected;

(e) the representative elected shall be the nominee with the greatest number of votes;

(f) where two or more nominees receive an equal number of votes that is greater than the number of votes received by any other nominee, the name of each of the first-mentioned nominees shall be placed in a container and the elected representative shall be the nominee whose name is drawn by a person who is not a nominee; and

(g) the employer shall post, in areas that are accessible to the plan members, a notice specifying the results of the election.

(2) La majorité des participants ou des participants retraités avisent par écrit l'employeur ou l'employeur participant de leur décision d'élire un représentant des participants ou des participants retraités.

(3) Sous réserve du paragraphe (5), l'élection d'un représentant des participants se tient de la manière suivante :

a) sur réception de l'avis visé au paragraphe (2), l'employeur affiche, dans des endroits accessibles aux participants, un avis :

(i) informant les participants de la tenue d'une élection,

(ii) précisant la période de mise en candidature pour le poste de représentant, laquelle ne peut être inférieure à deux semaines ni supérieure à quatre semaines;

b) les noms des candidats au poste de représentant sont remis par écrit à l'employeur;

c) à l'expiration de la période de mise en candidature, l'employeur affiche, à des endroits accessibles aux participants, un avis indiquant :

(i) les noms des candidats,

(ii) la période, au cours des deux semaines suivant l'expiration de la période de mise en candidature, pendant laquelle les participants peuvent voter,

(iii) l'endroit au lieu de travail où les participants peuvent voter;

d) l'employeur tient l'élection par voie de scrutin secret et chaque participant a droit à une voix pour le représentant à élire;

e) le candidat élu est celui qui obtient le plus grand nombre de voix;

f) dans les cas où deux candidats ou plus sont à égalité quant au plus grand nombre de voix obtenu, le nom de chacun d'eux est placé dans un contenant et le tirage au sort du nom du représentant élu est fait par une personne qui n'est pas candidate;

g) l'employeur affiche à des endroits accessibles aux participants un avis faisant état des résultats de l'élection.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Choice of Pension Committee and Pension Council Representative
Section 5

Règlement de 1985 sur les normes de prestation de pension
Choix des représentants au comité des pensions et au conseil des pensions
Article 5

(4) Subject to subsection (5), the election of a representative of the retired members shall be conducted in the following manner:

(a) on receipt of a notice, referred to in subsection (2), the employer shall mail to each retired member a notice;

(i) advising the retired member of an election, and

(ii) establishing a period of not less than four weeks and not more than eight weeks in which nominations for the position of representative of the retired members may be made by the retired members;

(b) nominations for the position of a representative of the retired members shall be filed in writing with the employer;

(c) on the closing of the nomination period, the employer shall mail to each retired member a ballot containing the names of the nominees and specifying a period of not less than four weeks and not more than eight weeks in which the ballot must be returned to the employer;

(d) the election shall be conducted by the employer by secret ballot and each retired member shall be entitled to one vote for the representative to be elected;

(e) the representative elected shall be the nominee with the greatest number of votes;

(f) the employer shall notify the retired members by mail of the result of the election; and

(g) where two or more nominees receive an equal number of votes that is greater than the number of votes received by any other nominee, the name of each of the first-mentioned nominees shall be placed in a container and the elected representative shall be the nominee whose name is drawn by a person who is not a nominee.

(5) If all the plan members or retired members are

(a) represented by a union or group of unions as defined in the *Canada Labour Code*, or

(b) members of a pension fund society established under the *Pension Fund Societies Act* or of another similar organization,

the executive of the union, group of unions, pension fund society or other organization may name the pension committee or pension council representative.

(4) Sous réserve du paragraphe (5), l'élection d'un représentant des participants retraités se tient de la manière suivante :

a) sur réception de l'avis visé au paragraphe (2), l'employeur envoie par la poste à chaque participant retraité un avis :

(i) l'informant de la tenue d'une élection,

(ii) précisant la période de mise en candidature pour le poste de représentant, laquelle ne peut être inférieure à quatre semaines ni supérieure à huit semaines;

b) les noms des candidats au poste de représentant sont remis par écrit à l'employeur;

c) à l'expiration de la période de mise en candidature, l'employeur envoie par la poste à chaque participant retraité un bulletin de vote dans lequel sont indiqués les noms des candidats et la période au cours de laquelle le bulletin doit lui être retourné, laquelle ne peut être inférieure à quatre semaines ni supérieure à huit semaines;

d) l'employeur tient l'élection par voie de scrutin secret et chaque participant retraité a droit à une voix pour le représentant à élire;

e) le candidat élu est celui qui obtient le plus grand nombre de voix;

f) l'employeur informe par la poste les participants retraités des résultats de l'élection;

g) dans les cas où deux candidats ou plus sont à égalité quant au plus grand nombre de voix obtenu, le nom de chacun d'eux est placé dans un contenant et le tirage au sort du nom du représentant élu est fait par une personne qui n'est pas candidate.

(5) Le représentant des participants ou des participants retraités au sein du comité des pensions ou du conseil des pensions peut être nommé :

a) par la direction du syndicat ou du groupe de syndicats, dans le cas où les participants ou les participants retraités sont tous représentés par un syndicat ou un groupe de syndicats, au sens du *Code canadien du travail*;

b) par la direction de la société ou de l'organisme, dans le cas où les participants ou les participants retraités sont tous membres d'une société de caisse de

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Choice of Pension Committee and Pension Council Representative
Sections 5-6

Règlement de 1985 sur les normes de prestation de pension
Choix des représentants au comité des pensions et au conseil des pensions
Articles 5-6

(6) After an election for the position of representative of the plan members or retired members has been held pursuant to subsection (3) or (4), an election for that position shall be held thereafter at intervals not exceeding three years.

(7) If a pension council has been established pursuant to subsection 7.2(1) of the Act and the plan now has fewer than 50 members, the pension council shall be dissolved if a majority of the plan members so request.

SOR/93-109, s. 3; SOR/95-171, s. 6; SOR/2002-78, s. 4.

Investments

6 (1) Every plan shall provide that the moneys of the pension fund are to be

(a) invested in accordance with Schedule III; and

(b) invested

(i) in a name that clearly indicates that the investment is held in trust for the plan and, where the investment is capable of being registered, registered in that name,

(ii) in the name of a financial institution, or a nominee of it, in accordance with a custodial agreement or trust agreement, entered into on behalf of the plan with the financial institution, that clearly indicates that the investment is held for the plan, or

(iii) in the name of CDS Clearing and Depository Services Inc., or a nominee of it, in accordance with a custodial agreement or trust agreement, entered into on behalf of the plan with a financial institution, that clearly indicates that the investment is held for the plan.

(2) For the purposes of subsection (1), **custodial agreement** means an agreement providing that

(a) an investment made or held on behalf of a plan pursuant to the agreement

(i) constitutes part of the plan's pension fund, and

(ii) shall not at any time constitute an asset of the custodian or nominee; and

retraite constituée en vertu de la *Loi sur les sociétés de caisse de retraite*, ou d'un organisme semblable.

(6) L'élection d'un représentant des participants ou des participants retraités, conformément aux paragraphes (3) ou (4) se tient à des intervalles ne dépassant pas trois ans.

(7) Si un conseil des pensions a été constitué conformément au paragraphe 7.2(1) de la Loi et que le régime compte maintenant moins de cinquante participants, le conseil est dissous à la demande de la majorité de ceux-ci.

DORS/93-109, art. 3; DORS/95-171, art. 6; DORS/2002-78, art. 4.

Placements

6 (1) Tout régime doit prévoir que le placement des sommes versées au fonds de pension le soit :

a) conformément à l'annexe III;

b) selon le cas :

(i) sous un nom qui indique clairement que le placement est détenu en fiducie pour le compte du régime, lequel placement est enregistré sous ce nom, s'il est de nature à être enregistré,

(ii) sous le nom d'une institution financière ou de son représentant, aux termes d'une entente ou d'une convention de fiducie conclue avec l'institution financière pour le compte du régime, laquelle entente ou convention indique clairement que le placement est détenu pour le compte du régime,

(iii) sous le nom de Services de dépôt et de compensation CDS inc. ou de son représentant, aux termes d'une entente ou d'une convention de fiducie conclue avec une institution financière pour le compte du régime, laquelle entente ou convention indique clairement que le placement est détenu pour le compte du régime.

(2) Pour l'application du paragraphe (1), **entente de fiducie** désigne une entente dont les modalités précisent :

a) qu'un placement effectué ou détenu pour le compte du régime aux termes de celle-ci :

(i) fait partie du régime,

(ii) ne doit jamais constituer un actif du fiduciaire ou de son représentant;

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Investments
Sections 6-7.1

Règlement de 1985 sur les normes de prestation de pension
Placements
Articles 6-7.1

(b) records shall be maintained by the custodian that are sufficient to allow the ownership of any investment to be traced to the plan at any time.

SOR/91-709, s. 1; SOR/95-86, s. 2; SOR/2011-85, s. 2.

7 The administrator of a plan shall maintain a current record that clearly identifies every investment held on behalf of the plan, the name in which the investment is made and, where appropriate, the name in which the investment is registered.

7.1 (1) The administrator of a plan shall, before the day on which the plan is registered, establish a written statement of investment policies and procedures that pertain to the plan's portfolio of investments and loans, other than those relating to any member choice account, including policies and procedures pertaining to

- (a)** categories of investments and loans, including derivatives, options and futures,
- (b)** diversification of the investment portfolio,
- (c)** asset mix and rate of return expectations,
- (d)** liquidity of investments,
- (e)** the lending of cash or securities,
- (f)** the retention or delegation of voting rights acquired through plan investments,
- (g)** the method of, and basis for, the valuation of investments that are not regularly traded at a marketplace; and
- (h)** related party transactions permitted under section 17 of Schedule III and the criteria to be used to establish whether a transaction is nominal or immaterial to the plan,

having regard to all factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligations.

(2) The statement of investment policies and procedures referred to in subsection (1) shall include a description of the factors referred to in that subsection and the relationship of those factors to those policies and procedures.

(3) The administrator of a plan shall submit the statement of investment policies and procedures referred to in subsection (1)

- (a)** to any pension council that has been established, within 60 days after the later of

b) que des registres appropriés doivent être tenus de sorte que la propriété d'un placement puisse en tout temps être attribuée au régime de pension.

DORS/91-709, art. 1; DORS/95-86, art. 2; DORS/2011-85, art. 2.

7 L'administrateur du régime doit tenir à jour un registre qui indique clairement chaque placement détenu pour le compte du régime, le nom auquel le placement est fait et, le cas échéant, le nom sous lequel il est enregistré.

7.1 (1) Avant la date d'agrément du régime, l'administrateur de celui-ci établit par écrit, en tenant compte de tous les facteurs susceptibles d'avoir un effet soit sur la capitalisation ou la solvabilité du régime, soit sur la capacité de celui-ci à remplir ses obligations financières, un énoncé des politiques et des procédures de placement applicables au portefeuille de placements et de prêts — à l'exception de celles applicables à tout compte accompagné de choix —, notamment en ce qui a trait aux aspects suivants :

- a)** les catégories de placements et de prêts, y compris les produits dérivés, les options et les contrats à terme;
- b)** la diversification du portefeuille de placements;
- c)** la composition de l'actif et le taux de rendement prévu;
- d)** la liquidité des placements;
- e)** le prêt d'espèces ou de titres;
- f)** le maintien ou la délégation des droits de vote acquis grâce aux placements du régime;
- g)** la méthode et la base d'évaluation des placements qui ne sont pas régulièrement négociés sur un marché;
- h)** les transactions avec apparentés qui sont autorisées en vertu de l'article 17 de l'annexe III ainsi que les critères à appliquer pour déterminer si une transaction est peu importante pour le régime.

(2) L'énoncé des politiques et des procédures de placement mentionné au paragraphe (1) comprend une description des facteurs visés à ce paragraphe et du rapport existant entre ces facteurs et les politiques et procédures.

(3) L'administrateur d'un régime remet l'énoncé des politiques et des procédures de placement mentionné au paragraphe (1) :

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Pension Benefits Standards Regulations, 1985
Investments
Sections 7.1-7.3

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Articles 7.1-7.3

(i) the day on which the statement is established, and

(ii) the day on which the pension council is established; and

(b) where a plan is a defined benefit plan, to the actuary to the plan on or before the day that is the later of

(i) 60 days after the day on which the statement is established, and

(ii) the day on which the actuary is appointed.

SOR/93-299, s. 2; SOR/2002-78, s. 5; SOR/2011-85, s. 14(F); SOR/2015-60, s. 2; SOR/2017-145, s. 2(F).

7.2 (1) The administrator of a plan shall review and confirm or amend the statement of investment policies and procedures referred to in subsection 7.1(1) at least once each plan year.

(2) A copy of all amendments to the statement of investment policies and procedures shall be submitted, within 60 days after the statement is amended,

(a) to any pension council that has been established; and

(b) where the plan is a defined benefit plan, to the actuary to the plan.

SOR/93-299, s. 2; SOR/2002-78, s. 6.

Member Choice Accounts

7.3 (1) The administrator shall annually provide to any person who is permitted by a plan to make investment choices under subsection 8(4.2) of the Act a written statement that

(a) includes a description of each investment option available to the person that indicates

(i) its investment objective,

(ii) the type of investments and the degree of risk associated with it,

(iii) its 10 largest asset holdings based on market value, each expressed as a percentage of the total assets,

(iv) its performance history,

a) au conseil des pensions qui a été constitué, dans les soixante jours suivant le dernier en date des jours suivants :

(i) le jour où l'énoncé est établi,

(ii) le jour où le conseil des pensions est constitué;

b) dans le cas d'un régime à prestations déterminées, à l'actuaire du régime, au plus tard le dernier en date des jours suivants :

(i) le soixantième jour suivant la date d'établissement de l'énoncé,

(ii) le jour où l'actuaire est nommé.

DORS/93-299, art. 2; DORS/2002-78, art. 5; DORS/2011-85, art. 14(F); DORS/2015-60, art. 2; DORS/2017-145, art. 2(F).

7.2 (1) L'administrateur d'un régime revoit et confirme ou modifie l'énoncé des politiques et des procédures de placement mentionné au paragraphe 7.1(1) au moins une fois par exercice.

(2) Une copie de toutes les modifications apportées à l'énoncé des politiques et des procédures de placement est remise, dans les 60 jours suivant chaque modification :

a) au conseil des pensions qui a été constitué;

b) dans le cas d'un régime à prestations déterminées, à l'actuaire du régime.

DORS/93-299, art. 2; DORS/2002-78, art. 6.

Compte accompagné de choix

7.3 (1) L'administrateur remet, annuellement, à toute personne à qui le régime permet, en application du paragraphe 8(4.2) de la Loi, d'effectuer des choix en matière de placement un relevé comprenant :

a) une explication de chaque option de placement offerte à cette personne qui indique :

(i) son objectif de placement,

(ii) le type de placement et le niveau de risque afférent,

(iii) les dix actifs les plus importants selon la valeur marchande de chacun exprimée en pourcentage des actifs totaux,

(iv) le rendement antérieur de l'option,

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Member Choice Accounts
Sections 7.3-9

Règlement de 1985 sur les normes de prestation de pension
Compte accompagné de choix
Articles 7.3-9

(v) that its past performance is not necessarily an indication of its future performance,

(vi) the benchmark that best reflects its composition,

(vii) the fees, levies and other charges associated with it that reduce return on investment expressed as a percentage or a fixed amount, and

(viii) its target asset allocation;

(b) includes a description of how the person's funds are currently invested; and

(c) indicates any timing requirements that apply to the making of an investment choice.

SOR/2015-60, s. 3.

Funding

8 The funding of a plan shall be considered to meet the standards for solvency if the funding is in accordance with section 9.

9 (1) In this section *unfunded liability* means

(a) the going concern deficit of a plan as determined on the date that the plan was established;

(b) the amount by which an increase in the going concern liabilities of a plan resulting from an amendment to the plan exceeds the going concern excess of the plan as determined on the day before the effective date of the amendment; or

(c) the amount by which the going concern deficit of a plan determined at the valuation date exceeds the present value of going concern special payments of the plan established in respect of periods after the valuation date.

(2) For the purposes of this section

(a) the date of emergence of an unfunded liability in respect of an occurrence described in

(i) paragraph (1)(a) is the effective date of the plan,

(ii) paragraph (1)(b) is the effective date of the amendment, and

(iii) paragraph (1)(c) is the valuation date;

(v) le fait que le rendement antérieur de l'option n'est pas nécessairement une indication de son rendement futur,

(vi) l'indice de référence qui reflète le mieux le contenu de l'option,

(vii) les frais, prélèvements et autres dépenses liés à l'option qui réduisent le rendement des placements, exprimés en pourcentage ou sous la forme d'un montant forfaitaire,

(viii) les cibles de répartition des actifs de l'option;

(b) une explication de la manière dont les fonds sont investis;

(c) une indication des délais dans lesquels les choix doivent être effectués.

DORS/2015-60, art. 3.

Capitalisation

8 La capitalisation d'un régime est considérée comme satisfaisant aux normes de solvabilité si elle est conforme à l'article 9.

9 (1) Au présent article, *passif non capitalisé* s'entend :

(a) du déficit évalué en continuité établi à la date d'ins-titution du régime;

(b) de l'excédent de l'accroissement du passif évalué en continuité — résultant d'une modification du régime — sur l'excédent évalué en continuité établi la veille de la date d'entrée en vigueur de la modification;

(c) de l'excédent du déficit évalué en continuité du régime établi à la date d'évaluation sur la valeur actualisée des paiements spéciaux de continuité établis à l'é-gard de toute période suivant cette date.

(2) Pour l'application du présent article :

(a) la date où survient le passif non capitalisé est :

(i) pour l'application de l'alinéa (1)a), la date d'en-trée en vigueur du régime,

(ii) pour l'application de l'alinéa (1)b), la date d'en-trée en vigueur de la modification,

(iii) pour l'application de l'alinéa (1)c), la date d'é-valuation;

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- (b)** the date of emergence of a solvency deficiency is the date of the valuation that identified the deficiency; and
- (c)** the interest rate used to determine the present value of going concern special payments referred to in paragraph (1)(c) is the same as the interest rate used to determine the going concern liabilities of the plan at the valuation date.
- (3)** An unfunded liability of a plan shall be funded by going concern special payments sufficient to liquidate the unfunded liability by equal annual payments over a period of 15 years from the date on which the unfunded liability emerged.
- (4)** A plan shall be funded in each plan year as follows:
- (a)** by a contribution equal to the normal cost of the plan,
- (b)** by going concern special payments;
- (c)** if there is a solvency deficiency, by annual solvency special payments equal to the amount by which the solvency deficiency divided by 5 exceeds the amount of going concern special payments that are payable during the plan year;
- (d)** if there is an additional solvency deficiency referred to in subsection (12), by additional annual solvency special payments payable from the effective date of the amendment and equal to the amount by which the additional solvency deficiency divided by 5 exceeds the going concern special payment in respect of the unfunded liability emerging from the amendment to the plan; and
- (e)** by an amount required to be paid by an employer under a defined contribution provision.
- (5)** The amount required under paragraph (4)(a) or (e) may be reduced by all or a portion of the lesser of
- (a)** the going concern excess, and
- (b)** the amount by which the solvency assets exceed the solvency liabilities multiplied by 1.05.
- (6)** If an unfunded liability or solvency deficiency is liquidated at a rate greater than the sum of the special payments required under paragraph (4)(b),(c) or (d) by the making of an additional payment, the amount of a special payment for a subsequent plan year may be reduced if the outstanding balance of an unfunded liability will at no time be greater than it would have been had the going
- (b)** la date de survenance d'un déficit de solvabilité est la date de l'évaluation qui l'a révélé;
- (c)** le taux d'intérêt servant au calcul de la valeur actualisée des paiements spéciaux de continuité visés à l'alinéa (1)c) est le même que celui utilisé dans le calcul du passif évalué en continuité du régime à la date d'évaluation.
- (3)** Le passif non capitalisé d'un régime est capitalisé par des paiements spéciaux de continuité consistant en des versements annuels égaux suffisants pour éliminer ce passif sur une période de quinze ans à compter de la date de sa survenance.
- (4)** Le régime est capitalisé au cours de chaque exercice, à la fois :
- (a)** par un montant de cotisations équivalant aux coûts normaux du régime;
- (b)** par des paiements spéciaux de continuité;
- (c)** en cas de déficit de solvabilité, par des paiements spéciaux de solvabilité annuels correspondant à l'excédent du déficit de solvabilité divisé par cinq sur le montant des paiements spéciaux de continuité à verser au régime au cours de l'exercice;
- (d)** en cas de déficit de solvabilité additionnel visé au paragraphe (12), par des paiements spéciaux de solvabilité annuels additionnels correspondant à l'excédent du déficit de solvabilité additionnel divisé par cinq sur le paiement spécial de continuité et versés à l'égard du passif non capitalisé qui résulte de la modification du régime;
- (e)** par une somme que l'employeur doit verser au titre d'une disposition à cotisations déterminées.
- (5)** Les montants visés aux alinéas (4)a) et e) peuvent être réduits, en tout ou en partie, du moins élevé des montants suivants :
- (a)** l'excédent évalué en continuité;
- (b)** l'excédent de l'actif de solvabilité sur le produit du passif de solvabilité par 1,05.
- (6)** Lorsqu'un passif non capitalisé ou un déficit de solvabilité est liquidé à un taux supérieur à la somme des paiements spéciaux visés aux alinéas (4)b), c) ou d) par suite du versement d'un paiement additionnel, le montant du paiement spécial pour un exercice ultérieur peut être réduit, si le solde en souffrance de tout passif non capitalisé ne sera à aucun moment supérieur à ce qu'il aurait été si

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concern special payments referred to in paragraph (4)(b) been made.

(7) If the aggregate of the present value of going concern special payments referred to in paragraph (1)(c) exceeds the going concern deficit, this excess shall be applied to reduce the outstanding balance of any unfunded liability and the going concern special payments remaining to be made in respect of the unfunded liability shall be reduced *pro rata*.

(8) The average solvency ratio for a valuation date is the arithmetic average of the solvency ratios at the valuation date, the prior valuation date and the prior second valuation date adjusted as follows:

(a) the solvency ratio at the valuation date shall be adjusted to remove the effect of any amendment made after the prior second valuation date that retroactively increases or decreases the plan benefits;

(b) the solvency ratio at the prior valuation date shall be adjusted to remove the effect of any amendment made after the prior second valuation date and before the prior valuation date that retroactively increases or decreases the plan benefits;

(c) the solvency ratios at the prior valuation date and the prior second valuation date may be adjusted to increase the solvency assets by an amount not in excess of the present value of any special payment made in respect of the period between the prior valuation date and the valuation date, or in respect of the period between the prior second valuation date and the valuation date, as the case may be, but not including an additional payment referred to in subsection (6) that will be applied to reduce special payments in respect of periods after the valuation date;

(d) the solvency ratio at the valuation date shall be adjusted by reducing the solvency assets at the valuation date by the amount of an additional payment referred to in subsection (6) that will be applied to reduce special payments in respect of periods after the valuation date;

(d.1) the solvency ratios at the prior valuation date and the prior second valuation date shall be adjusted to increase the solvency assets by the face value of all letters of credit included in the solvency assets on the valuation date and to reduce the solvency assets by the face value of all letters of credit included in the solvency assets on the prior valuation date or prior second valuation date, as the case may be;

(e) the solvency ratios at the prior valuation date and the prior second valuation date shall be adjusted to

les paiements spéciaux de continuité visés à l'alinéa 4b) avaient été versés.

(7) Lorsque le total de la valeur actualisée des paiements spéciaux évalués en continuité visée à l'alinéa (1)c) excède le déficit évalué en continuité, le surplus est utilisé pour réduire le solde en souffrance de tout passif non capitalisé et les paiements spéciaux de continuité qui restent à verser sur le passif non capitalisé sont réduits en proportion.

(8) Le ratio de solvabilité moyen à une date d'évaluation est la moyenne arithmétique des ratios de solvabilité établis à la date d'évaluation, à la date d'évaluation antérieure et à la deuxième date d'évaluation antérieure rajustés de la manière suivante :

a) le ratio de solvabilité établi à la date d'évaluation est rajusté pour exclure l'effet de toute modification du régime qui a été effectuée après la deuxième date d'évaluation antérieure et qui a eu pour conséquence d'accroître ou de réduire rétroactivement les prestations de pension;

b) le ratio de solvabilité établi à la date d'évaluation antérieure est rajusté pour exclure l'effet de toute modification du régime qui a été effectuée après la deuxième date d'évaluation antérieure mais avant la date d'évaluation antérieure et qui a eu pour conséquence d'accroître ou de réduire rétroactivement les prestations de pension;

c) les ratios de solvabilité établis à la date d'évaluation antérieure et à la deuxième date d'évaluation antérieure peuvent être rajustés pour accroître l'actif de solvabilité d'une somme n'excédant pas la valeur actualisée de tout paiement spécial versé à l'égard de la période comprise, selon le cas, entre la date d'évaluation antérieure et la date d'évaluation ou entre la deuxième date d'évaluation antérieure et la date d'évaluation, compte non tenu du paiement additionnel visé au paragraphe (6) destiné à réduire tout paiement spécial se rapportant à une période postérieure à la date d'évaluation;

d) le ratio de solvabilité établi à la date d'évaluation est rajusté par soustraction du paiement additionnel visé au paragraphe (6) destiné à réduire tout paiement spécial se rapportant à une période postérieure à la date d'évaluation;

d.1) les ratios de solvabilité établis à la date d'évaluation antérieure et à la deuxième date d'évaluation antérieure sont rajustés afin d'augmenter l'actif de solvabilité de la valeur nominale de toutes les lettres de crédit prises en compte dans le calcul de l'actif de solvabilité à la date d'évaluation et de réduire l'actif de

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reduce the solvency assets by the present value of any reduction made under subsection (5) or under subsection (7.1) as that subsection read immediately before this section comes into force, between the prior valuation date and the valuation date or between the prior second valuation date and the valuation date, as the case may be; and

(f) the solvency ratios at the prior valuation date and the prior second valuation date shall be adjusted to reflect the transfer into the plan of all of the assets of another plan between the prior valuation date and the valuation date or between the prior second valuation date and the valuation date, as the case may be, by including the assets of the transferring plan as solvency assets and the liabilities of the transferring plan as solvency liabilities.

(9) The average solvency ratio shall be adjusted to include the effect at the valuation date of any amendments referred to in paragraph (8)(a) or (b).

(10) The interest rate used to determine the present value of the special payments referred to in paragraphs (8)(c) and the present value of the reductions referred to in paragraph (8)(e) shall be the same interest rate that was used to determine the solvency liabilities of the plan on the prior valuation date or the prior second valuation date, as the case may be.

(11) The solvency ratio at the valuation date, without the adjustments made under subsection (8) or (9), may be used as the solvency ratio for a prior valuation date or prior second valuation date in respect of which no actuarial report was filed or provided to the Superintendent.

(12) An additional solvency deficiency resulting from an amendment to the plan is equal to the amount by which the increase in solvency liabilities determined in accordance with subsection (13) exceeds the solvency excess at the day before the effective date of the amendment.

(13) If an amendment to the plan increases the solvency liabilities, the increase in solvency liabilities shall be

solvabilité de la valeur nominale de toutes les lettres de crédit prises en compte dans le calcul de l'actif de solvabilité à la date d'évaluation antérieure ou à la deuxième date d'évaluation antérieure, selon le cas;

e) les ratios de solvabilité établis à la date d'évaluation antérieure et à la deuxième date d'évaluation antérieure sont rajustés pour réduire l'actif de solvabilité de la valeur actualisée de toute réduction effectuée soit au titre du paragraphe (5), soit au titre du paragraphe (7.1) dans sa version antérieure à l'entrée en vigueur du présent article, au cours de la période comprise, selon le cas, entre la date d'évaluation antérieure et la date d'évaluation ou entre la deuxième date d'évaluation antérieure et la date d'évaluation;

f) les ratios de solvabilité établis à la date d'évaluation antérieure et à la deuxième date d'évaluation antérieure sont rajustés pour tenir compte du transfert dans le régime de l'ensemble des actifs d'un autre régime au cours de la période comprise, selon le cas, entre la date d'évaluation antérieure et la date d'évaluation ou entre la deuxième date d'évaluation antérieure et la date d'évaluation, l'actif et le passif du régime effectuant le transfert étant alors inclus dans l'actif de solvabilité et le passif de solvabilité de l'autre régime.

(9) Le ratio de solvabilité moyen est rajusté pour inclure l'effet, à la date d'évaluation, de toute modification du régime visée aux alinéas (8)a) ou b).

(10) Le taux d'intérêt servant au calcul de la valeur actualisée des paiements spéciaux mentionnée à l'alinéa 8c) et de celle de la réduction visée à l'alinéa 8e) est le même que celui ayant servi au calcul du passif de solvabilité du régime à la date d'évaluation antérieure ou à la deuxième date d'évaluation antérieure, selon le cas.

(11) Le ratio de solvabilité qui est établi à la date d'évaluation et qui ne tient pas compte des rajustements visés aux paragraphes (8) ou (9) peut être utilisé comme ratio de solvabilité établi pour une date d'évaluation antérieure ou une deuxième date d'évaluation antérieure si aucun rapport actuariel n'a été déposé ni remis au surintendant pour ces dates.

(12) Le déficit de solvabilité additionnel résultant d'une modification du régime correspond à l'excédent de l'augmentation du passif de solvabilité calculé en application du paragraphe (13) sur l'excédent de solvabilité le jour précédant la date d'entrée en vigueur de la modification.

(13) Lorsqu'une modification du régime accroît le passif de solvabilité, la valeur de l'accroissement est calculée

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valued using the actuarial assumptions and methods used in the solvency valuation of the actuarial report for the most recently completed plan year before the effective date of the amendment.

(13.1) Subject to subsection (13.2), an employer, other than a participating employer under a multi-employer pension plan, may reduce the amount of any solvency special payment by the face value of a letter of credit that has been provided to a trustee or transferred to a trust under section 9.11 of the Act.

(13.2) An employer may not act under section 9.11 of the Act if the face value of all letters of credit provided to a trustee or transferred to a trust exceeds, or would exceed, 15% of the solvency liabilities of the plan as determined at the valuation date.

(13.3) For the purposes of section 9.16 of the Act, a payment that is required to be made under subsection 9(1.1) of the Act may be reduced if

- (a)** the payment is a solvency special payment;
- (b)** the Crown corporation meets the requirements of section 9.2;
- (c)** the aggregate amount of all reductions does not exceed or would not exceed 15% of the solvency liabilities of the plan as determined at the valuation date.

(13.4) The aggregate amount of all reductions made under section 9.16 of the Act may be adjusted in a plan year by subtracting the difference between

- (a)** the amount of the solvency special payment that would be payable for the plan year following the valuation date if no reductions were made under section 9.16 of the Act; and
- (b)** the amount of the solvency special payment that would have been required for the plan year following the valuation date if the solvency assets at the valuation date were increased by the aggregate amount of all reductions made under section 9.16 of the Act at the valuation date.

(13.5) The aggregate amount of all reductions made under section 9.16 of the Act may be adjusted to zero if, based on the most recent actuarial report,

- (a)** the solvency ratio of the plan is no less than 1.05; and

selon des hypothèses et des méthodes actuarielles utilisées lors de l'évaluation de solvabilité dans le rapport actuariel visant le plus récent exercice précédant la date de prise d'effet de la modification.

(13.1) Sous réserve du paragraphe (13.2), l'employeur qui n'est pas un employeur participant à un régime inter-entreprises peut réduire un paiement spécial de solvabilité de la valeur nominale de toute lettre de crédit transférée à une fiducie ou confiée à un fiduciaire au titre de l'article 9.11 de la Loi.

(13.2) L'employeur ne peut se prévaloir de l'article 9.11 de la Loi si la valeur nominale de toutes les lettres de crédit transférées à une fiducie ou confiées à un fiduciaire excède — ou excéderait en raison de ce fait — 15 % du passif de solvabilité établi à la date d'évaluation.

(13.3) Pour l'application de l'article 9.16 de la Loi, les sommes à verser au fonds de pension en application du paragraphe 9(1.1) de la Loi peuvent être réduites si les conditions ci-après sont remplies :

- a)** ces sommes correspondent à des paiements spéciaux de solvabilité;
- b)** la société d'État remplit les conditions prévues à l'article 9.2;
- c)** le total des sommes réduites n'excède pas — ou n'excéderait pas en raison de ce fait — 15 % du passif de solvabilité établi à la date d'évaluation.

(13.4) Le total des sommes réduites en vertu de l'article 9.16 de la Loi peut être rajusté, au cours d'un exercice, par soustraction de la différence entre les montants suivants :

- a)** le paiement spécial de solvabilité qui serait à verser pour l'exercice qui suit la date d'évaluation si aucune réduction n'avait été faite en vertu de l'article 9.16 de la Loi;
- b)** le paiement spécial de solvabilité qui serait à verser pour l'exercice qui suit la date d'évaluation si, à la date d'évaluation, l'actif de solvabilité avait été augmenté du total des sommes réduites en vertu de l'article 9.16 de la Loi.

(13.5) Le total des sommes réduites en vertu de l'article 9.16 de la Loi peut être rajusté à zéro si, selon le plus récent rapport actuariel :

- a)** le ratio de solvabilité du régime n'est pas inférieur à 1,05;

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(b) the average solvency ratio of the plan is no less than 1.0.

(14) Payments to a plan shall be made as follows:

(a) the normal cost of the plan shall be paid in equal instalments or as a percentage of the anticipated remuneration to be paid to the members during the plan year and shall be paid not less frequently than monthly and not later than 30 days after the end of the period in respect of which the instalment is paid;

(b) any special payment to be made during the plan year shall be paid not less frequently than monthly and not later than 30 days after the end of the period in respect of which the instalment is paid;

(c) the contributions of plan members shall be remitted to the administrator not later than 30 days after the end of the period in respect of which such contributions were deducted;

(d) the administrator shall immediately pay into the fund any amount remitted to the administrator; and

(e) an amount required to be paid by an employer under a defined contribution provision shall be paid not less frequently than monthly and not later than 30 days after the end of the period in respect of which the amount is required to be paid.

SOR/94-384, s. 3; SOR/95-171, s. 6(E); SOR/2002-78, s. 7; SOR/2010-149, s. 2; SOR/2011-85, s. 3; SOR/2017-145, s. 3.

Letters of Credit

9.1 (1) The following definitions apply in this section.

acceptable rating means the rating, given by a credit rating agency to an issuer at the time of the issuance or renewal of a letter of credit, that is at least equal to one of the following ratings:

- (a) A, from Dominion Bond Rating Service Limited;
- (b) A, from Fitch Ratings;
- (c) A2, from Moody's Investors Service; and
- (d) A, from Standard & Poor's Ratings Services. (*note acceptable*)

ATB means Alberta Treasury Branches established under the *Alberta Treasury Branches Act* of the Province of Alberta. (*ATB*)

bank means a bank or authorized foreign bank, as defined in section 2 of the *Bank Act*. (*banque*)

(b) le ratio de solvabilité moyen du régime n'est pas inférieur à 1,0.

(14) Les paiements au régime se font de la manière suivante :

a) les coûts normaux du régime sont payés en versements égaux ou en tant que pourcentage de la rémunération censée être versée aux participants au cours de l'exercice, au moins mensuellement et au plus tard trente jours après la fin de la période à l'égard de laquelle est fait le versement;

b) les paiements spéciaux effectués au cours de l'exercice sont payés au moins mensuellement et au plus tard trente jours après la fin de la période à l'égard de laquelle est fait le versement;

c) les cotisations des participants sont remises à l'administrateur au plus tard trente jours après la fin de la période à l'égard de laquelle elles ont été déduites;

d) l'administrateur verse sans délai au fonds de pension tout montant qui lui a été remis;

e) la somme que l'employeur est tenu de verser au titre d'une disposition à cotisations déterminées est payée au moins mensuellement au plus tard le trentième jour suivant la fin de la période à l'égard de laquelle elle est exigible.

DORS/94-384, art. 3; DORS/95-171, art. 6(A); DORS/2002-78, art. 7; DORS/2010-149, art. 2; DORS/2011-85, art. 3; DORS/2017-145, art. 3.

Lettre de crédit

9.1 (1) Les définitions qui suivent s'appliquent au présent article.

ATB La société Alberta Treasury Branches établie aux termes de la loi de cette province intitulée *Alberta Treasury Branches Act*. (*ATB*)

banque Banque ou banque étrangère autorisée, au sens de l'article 2 de la *Loi sur les banques*. (*bank*)

coopérative de crédit Coopérative de crédit régie par la *Loi sur les associations coopératives de crédit* ou constituée en personne morale sous le régime d'une loi provinciale et régie par une telle loi. (*cooperative credit society*)

défaut Selon le cas :

- a) l'avis, prévu au paragraphe 29(5) de la Loi, informant par écrit le surintendant de l'intention de l'administrateur de faire cesser ou de liquider tout le régime;

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cooperative credit society means a cooperative credit society to which the *Cooperative Credit Associations Act* applies or a cooperative credit society that is incorporated and regulated by or under an Act of the legislature of a province. (*coopérative de crédit*)

default means the occurrence of one of the following:

(a) the written notification to the Superintendent that the administrator intends to terminate or wind up the whole of the pension plan under subsection 29(5) of the Act;

(b) the amendment of the plan, resolution by the employer or coming into force of any other measure that effects the termination of the whole of the plan;

(c) the Superintendent's declaration under subsection 29(2) or (2.1) of the Act that terminates the whole of the plan;

(d) the bankruptcy of the employer or the filing of an application or petition by or against the employer under the *Winding-up and Restructuring Act*;

(e) the non-renewal of a letter of credit for its full face value unless

(i) it has been replaced by another letter of credit for the same face value on or before the expiry of the letter of credit,

(ii) an amount equal to the face value of the letter of credit has been remitted to the pension fund on or before the expiry of the letter of credit, or

(iii) the face value of the letter of credit has been reduced in accordance with subsection (2), (3) or (4); and

(f) the failure by an employer to comply with a direction issued by the Superintendent under section 11 of the Act with respect to the face value a letter of credit referred to in subsection 9(13.1). (*défait*)

issuer means a bank, a cooperative credit society or an ATB, that has an acceptable rating by two credit rating agencies, is not an employer or affiliated with an employer within the meaning of subsection 2(2) of the *Canada Business Corporations Act* and is a member of the Canadian Payment Association. (*émetteur*)

(2) If the aggregate face value of the letters of credit held for the benefit of the plan exceeds 15% of the solvency

(b) toute modification du régime, résolution de l'employeur ou entrée en vigueur de toute autre mesure qui entraîne la cessation totale du régime;

(c) la déclaration de cessation totale du régime faite par le surintendant en vertu des paragraphes 29(2) ou (2.1) de la Loi;

(d) la faillite de l'employeur ou le dépôt de toute demande ou requête présentée par l'employeur ou contre lui en vertu de la *Loi sur les liquidations et les restructurations*;

(e) le non-renouvellement, pour sa valeur nominale totale, de la lettre de crédit, sauf dans les cas suivants :

(i) la lettre de crédit a été remplacée au plus tard à son échéance par une autre de même valeur nominale,

(ii) une somme égale à la valeur nominale de la lettre de crédit a été versée au fonds de pension au plus tard à l'échéance de la lettre de crédit,

(iii) la valeur nominale de la lettre de crédit a été réduite conformément aux paragraphes (2), (3) ou (4);

(f) le non-respect par l'employeur de la directive prise par le surintendant en vertu de l'article 11 de la Loi concernant la valeur nominale de toute lettre de crédit visée au paragraphe 9(13.1). (*défait*)

émetteur Banque, coopérative de crédit ou ATB qui détient une note acceptable de deux agences de notation, qui n'est ni l'employeur, ni un membre du même groupe — au sens du paragraphe 2(2) de la *Loi canadienne sur les sociétés par actions* — que l'employeur et qui est membre de l'Association canadienne des paiements. (*issuer*)

note acceptable Note attribuée par une agence de notation à un émetteur au moment de l'émission ou du renouvellement d'une lettre de crédit, qui est égale ou supérieure à l'une des notes suivantes :

(a) « A » de Dominion Bond Rating Service Limited;

(b) « A » de Fitch Ratings;

(c) « A2 » de Moody's Investors Service;

(d) « A » de Standard & Poor's Ratings Services. (*acceptable rating*)

(2) Lorsque la valeur nominale totale des lettres de crédit détenues pour le compte du régime excède 15 % du

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liabilities of the plan as determined at the valuation date and if, based on the most recent actuarial report,

(a) the average solvency ratio and the solvency ratio of the plan are 1.0 or more, the aggregate face value of the letters of credit may be reduced by the lesser of

(i) the amount by which the aggregate face value of the letters of credit exceeds 15% of the solvency liabilities of the plan as determined at the valuation date, and

(ii) the lesser of the solvency excess and the excess of the solvency assets over the solvency liabilities; and

(b) either the average solvency ratio or the solvency ratio of the plan is less than 1.0, the aggregate face value of the letters of credit may be reduced by the amount of the excess referred to in subparagraph a)(i) to the extent of the difference between

(i) the amount of the solvency special payment for the plan year following the valuation date, and

(ii) the amount of the solvency special payment that does not take into consideration the maximum referred to in the description of B of the definition *solvency assets* in subsection 2(1) for the plan year following the valuation date.

(3) An employer may reduce the face value of a letter of credit after making a payment to the pension fund of the amount of the reduction.

(4) The face value of a letter of credit may be reduced if, based on the most recent actuarial report,

(a) the solvency ratio of the plan would have been no less than 1.05 had the reduced face value been in effect at the valuation date; and

(b) the average solvency ratio of the plan would have been no less than 1.0 had the reduced face value been in effect at the valuation date.

(5) A letter of credit shall be an irrevocable and unconditional standby letter of credit that

(a) is in accordance with the rules of the *International Standby Practices* ISP98, International Chamber of Commerce Publication No. 590, as amended from time to time;

passif de solvabilité établi à la date d'évaluation, et que, selon le plus récent rapport actuariel :

a) le ratio de solvabilité moyen et le ratio de solvabilité du régime sont égaux ou supérieurs à 1,0, la valeur nominale totale des lettres de crédit peut être réduite du moindre des montants suivants :

(i) le montant de la valeur nominale totale des lettres de crédit duquel est soustrait 15 % du passif de solvabilité établi à la date d'évaluation,

(ii) l'excédent de solvabilité ou, s'il est moindre, l'excédent de l'actif de solvabilité sur le passif de solvabilité;

b) le ratio de solvabilité moyen ou le ratio de solvabilité est inférieur à 1,0, la valeur nominale totale des lettres de crédit peut être réduite du montant visé au sous-alinéa a)(i) si cette réduction n'est pas supérieure à la différence entre les montants suivants :

(i) le paiement spécial de solvabilité pour l'exercice suivant la date d'évaluation,

(ii) le paiement spécial de solvabilité qui ne tient pas compte du maximum prévu à l'élément B de la formule figurant à la définition de *actif de solvabilité* au paragraphe 2(1) pour l'exercice suivant la date d'évaluation.

(3) L'employeur peut réduire la valeur nominale d'une lettre de crédit après qu'il a versé au fonds de pension un paiement correspondant au montant de cette réduction.

(4) La valeur nominale de toute lettre de crédit peut être réduite si, selon le plus récent rapport actuariel :

a) le ratio de solvabilité du régime n'aurait pas été inférieur à 1,05 si la réduction de la valeur nominale de la lettre de crédit avait été en vigueur à la date d'évaluation;

b) le ratio de solvabilité moyen du régime n'aurait pas été inférieur à 1,0 si la réduction de la valeur nominale de la lettre de crédit avait été en vigueur à la date d'évaluation.

(5) La lettre de crédit est une lettre de crédit de soutien irrévocable et inconditionnelle qui satisfait aux exigences suivantes :

a) elle est conforme aux *Règles et pratiques internationales relatives aux standby* — *RPIS 98* (publication n° 590 de la Chambre de commerce internationale), avec leurs modifications successives;

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(b) specifies the date that it becomes effective, which can be no later than the date on which the instalment of the special payment that is being replaced is due, and the date that it expires, which shall be the day on which the plan year ends;

(c) provides that the issuer will pay the face value of the letter of credit on demand from the trustee without inquiring whether the trustee has a right to make the demand;

(d) is payable in Canadian currency;

(e) provides that

(i) the insolvency, liquidation or bankruptcy of the employer is to have no effect on the rights or the obligations of the issuer of the letter of credit or the trustee,

(ii) it will, in accordance with these Regulations, be renewed, replaced or allowed to expire without renewal or replacement, and

(iii) it may not be

(A) assigned except by the issuer to another issuer, or

(B) amended except

(I) on a renewal, to increase the face value or to decrease the face value,

(II) if a successor issuer has taken over the rights and obligations under it from a predecessor issuer, to change the name of that predecessor to the name of that successor,

(III) following an assignment, to reflect the change in issuer, and

(IV) to decrease the face value in accordance with these Regulations;

(f) provides that if the issuer assigns the letter of credit without the agreement of the employer or, after the issuance of the letter of credit, fails to meet the definition of an issuer, the issuer is still required to pay the face value of the letter of credit on demand from the trustee; and

(g) provides that any amendments to the letter of credit be provided to the employer within five days after the amendment is made.

b) elle précise, d'une part, la date de son entrée en vigueur, celle-ci ne pouvant être ultérieure à la date à laquelle le versement du paiement spécial qui est remplacé devient exigible, et, d'autre part, la date de son échéance, celle-ci étant le jour où se termine l'exercice;

c) elle prévoit que l'émetteur verse la valeur nominale de la lettre de crédit à la demande du fiduciaire sans s'enquérir du bien-fondé de la demande;

d) elle est libellée en dollars canadiens;

e) elle prévoit les modalités suivantes :

(i) l'insolvabilité, la liquidation ou la faillite de l'employeur n'a aucun effet sur les droits ou les obligations de l'émetteur de la lettre de crédit ou du fiduciaire,

(ii) la lettre de crédit est renouvelée, remplacée ou autorisée à arriver à échéance sans renouvellement ou remplacement conformément au présent règlement,

(iii) elle ne peut être :

(A) cédée, sauf d'un émetteur à un autre,

(B) modifiée, sauf dans les cas suivants :

(I) lors de son renouvellement, pour en augmenter ou en réduire la valeur nominale,

(II) lors de la prise en charge par un nouvel émetteur des droits et obligations qui y sont prévus, pour y changer le nom de l'émetteur,

(III) lors de sa cession, pour tenir compte du changement d'émetteur,

(IV) lors de toute réduction de sa valeur nominale en vertu du présent règlement;

f) elle prévoit que, si l'émetteur a cédé la lettre de crédit sans l'accord de l'employeur ou si, après l'émission de la lettre de crédit, il ne satisfait pas à la définition d'émetteur, l'émetteur doit malgré tout verser la valeur nominale de la lettre de crédit à la demande du fiduciaire;

g) elle prévoit que toute modification apportée à la lettre de crédit est signalée à l'employeur dans les cinq jours qui suivent.

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(6) The employer or, if the employer is not the administrator of the plan, the administrator shall enter into a trust agreement or may amend any existing trust agreement that they may have with the trustee regarding the letters of credit.

(7) If the employer is not the administrator, the administrator shall give a copy of the trust agreement to the employer within 10 business days after entering into or amending a trust agreement.

(8) The trust agreement shall provide that

(a) the trustee shall hold letters of credit in Canada in trust for the plan;

(b) the definition *default* in subsection (1) applies to the agreement;

(c) the employer shall immediately notify, in writing, the trustee and the Superintendent and, if the employer is not the administrator of the plan, the administrator of a default;

(d) if not otherwise notified under paragraph (c), the administrator shall notify, in writing, the trustee and the Superintendent of a default immediately after becoming aware of it;

(e) on receipt of the notice referred to in paragraph (c) or (d), the trustee shall immediately make a demand for payment of the face value of

(i) all of the letters of credit held for the benefit of the plan, if the default is one that is described in any of paragraphs (a) to (d) and (f) of the definition *default* in subsection (1), and

(ii) the letter of credit that has not been renewed, if the default is one that is described in paragraph (e) of that definition;

(f) on receipt of a written notice of default from any person other than the employer or the administrator, the trustee shall

(i) immediately notify, in writing, the employer, the administrator and the Superintendent of the notice, and

(ii) make a demand for payment of the face value of all of the letters of credit held for the benefit of the plan unless the administrator provides a written notice to the trustee within 30 days after receipt of the notice that the default has not occurred;

(6) L'employeur ou, si celui-ci n'est pas l'administrateur du régime, l'administrateur conclut avec le fiduciaire une convention de fiducie portant sur les lettres de crédit. Il peut aussi modifier une telle convention.

(7) L'administrateur, s'il n'est pas l'employeur, remet un exemplaire de la convention de fiducie à l'employeur au plus tard le dixième jour ouvrable suivant la signature ou la modification de celle-ci.

(8) La convention de fiducie prévoit les modalités suivantes :

a) le fiduciaire conserve en fiducie les lettres de crédit, au Canada, pour le compte du régime;

b) la définition de *défaut* au paragraphe (1) s'applique à la convention;

c) l'employeur avise sans délai par écrit le fiduciaire, le surintendant et, s'il n'est pas l'administrateur du régime, l'administrateur de tout défaut;

d) sauf dans le cas visé à l'alinéa c), l'administrateur avise, par écrit, le fiduciaire et le surintendant de tout défaut dès sa constatation;

e) sur réception de l'avis de défaut visé aux alinéas c) ou d), le fiduciaire demande sans délai le versement de la valeur nominale :

(i) de toutes les lettres de crédit détenues pour le compte du régime, dans le cas du défaut visé aux alinéas a) à d) et f) de la définition de *défaut* au paragraphe (1),

(ii) de la lettre de crédit qui n'a pas été renouvelée, dans le cas du défaut visé à l'alinéa e) de la même définition;

f) sur réception d'un avis écrit de défaut provenant d'une personne qui n'est ni l'administrateur ni l'employeur, le fiduciaire :

(i) en avise sans délai par écrit l'employeur, l'administrateur et le surintendant,

(ii) demande le versement de la valeur nominale de toutes les lettres de crédit détenues pour le compte du régime à moins que l'administrateur ne lui confirme par écrit au plus tard le trentième jour suivant la réception de l'avis qu'aucun défaut n'est survenu;

g) lorsque le fiduciaire demande le versement de la valeur nominale d'une lettre de crédit détenue pour le

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- (g)** when a trustee makes a demand for payment of the face value of a letter of credit held for the benefit of the plan, it shall notify, in writing, the employer, the administrator and the Superintendent that it has made the demand;
- (h)** the trustee shall immediately notify, in writing, the employer, the administrator and the Superintendent if the issuer does not pay the face value of a letter of credit after a demand for payment has been made;
- (i)** the trustee shall not make a demand for payment if a letter of credit expires without being renewed or if the face value is being reduced, in accordance with these Regulations; and
- (j)** the administrator shall notify the trustee of any circumstance in which a letter of credit may expire or when the face value of a letter of credit may be reduced, under these Regulations.
- (9)** The employer shall provide to the trustee
- (a)** the letter of credit, on its initial issuance, at least 15 days before the day on which the first instalment of a solvency deficiency payment to which the letter of credit relates is due;
- (b)** if a letter of credit is replacing another, the replacement letter of credit at least 15 days before the expiry of the letter of credit that is being replaced;
- (c)** if an expiring letter of credit is to be renewed, the renewed letter of credit at least 15 days before the day on which it would otherwise have expired; and
- (d)** if the letter of credit is being amended, the amended letter of credit within 15 days after the day on which the letter of credit was amended.
- (10)** Any demand made by the trustee in respect of a letter of credit shall be in writing or in any other form that the letter of credit provides.
- (11)** An issuer who assigns a letter of credit to another issuer shall inform the Superintendent, the employer, the administrator and the trustee of the transaction within 15 days after the assignment.
- compte du régime, il en avise par écrit l'employeur, l'administrateur et le surintendant;
- h)** lorsque l'émetteur ne verse pas la valeur nominale de la lettre de crédit à la suite d'une demande de versement, le fiduciaire en avise sans délai par écrit l'employeur, l'administrateur et le surintendant;
- i)** le fiduciaire ne peut demander le versement d'une lettre de crédit qui vient à échéance sans être renouvelée ou dont la valeur nominale est réduite en vertu du présent règlement;
- j)** l'administrateur avise le fiduciaire de toutes les circonstances dans lesquelles la lettre de crédit peut venir à échéance ou la valeur nominale d'une telle lettre peut être réduite en vertu du présent règlement.
- (9)** L'employeur remet au fiduciaire :
- a)** toute lettre de crédit qui est émise pour la première fois, au moins quinze jours avant la date d'exigibilité du premier versement au chapitre du déficit de solvabilité visé par la lettre;
- b)** lorsqu'une lettre de crédit en remplace une autre, la nouvelle lettre de crédit, au moins quinze jours avant la date d'échéance de la lettre de crédit qu'elle remplace;
- c)** lorsqu'une lettre de crédit arrivant à échéance doit être renouvelée, la lettre de crédit renouvelée, au moins quinze jours avant la date prévue d'échéance;
- d)** lorsqu'une lettre de crédit fait l'objet d'une modification, la lettre de crédit modifiée, dans les quinze jours suivant la modification.
- (10)** Le fiduciaire formule par écrit, ou sous toute autre forme prévue par la lettre de crédit, toute demande faite à l'égard de celle-ci.
- (11)** L'émetteur qui cède une lettre de crédit à un autre émetteur, en informe le surintendant, l'employeur, l'administrateur et le fiduciaire dans les quinze jours qui suivent.

SOR/2011-85, s. 4; SOR/2017-145, s. 4.

DORS/2011-85, art. 4; DORS/2017-145, art. 4.

Crown Corporations

9.2 A Crown corporation may reduce solvency special payments for a plan year under section 9.16 of the Act if

- (a) it is an agent of Her Majesty in right of Canada;
- (b) it has notified the Minister and the appropriate Minister, as defined in subsection 83(1) of the *Financial Administration Act*, of the decision to reduce its solvency special payments;
- (c) it obtains from the Minister and the appropriate Minister, as defined in subsection 83(1) of the *Financial Administration Act*, letters acknowledging that they have been informed that it intends to reduce its solvency special payments and that they do not object to the reduction; and
- (d) it files the information and documentation described in paragraphs (b) and (c) with the Superintendent within 60 days after the reduction is made.

SOR/2011-85, s. 4.

Void Amendment — Solvency Ratio

9.3 (1) For the purposes of paragraph 10.1(2)(c) of the Act, the prescribed solvency ratio level is 0.85.

(2) For the purposes of paragraph 10.1(2)(c) of the Act, the solvency ratio following the amendment is the solvency ratio set out in the most recent actuarial report adjusted to reflect

- (a) the effect on the solvency ratio of the increase in solvency liabilities as a result of the amendment, determined in accordance with subsection 9(13); and
- (b) the effect of any lump sum payment to the pension fund made before the later of
 - (i) the effective date of the amendment; and
 - (ii) the date when the actuarial report prepared in respect of the amendment was filed with the Superintendent.

(3) For the purposes of paragraph 10.1(2)(d) of the Act, the prescribed solvency ratio level is 1.0

- (a) during a negotiation period referred to in subsection 29.04(1) of the Act; and

Sociétés d'état

9.2 Une société d'État peut, en vertu de l'article 9.16 de la Loi, réduire les paiements spéciaux de solvabilité à verser pour un exercice, si elle remplit les conditions suivantes :

- a) elle est mandataire de Sa Majesté du chef du Canada;
- b) elle informe le ministre et le ministre de tutelle au sens du paragraphe 83(1) de la *Loi sur la gestion des finances publiques* de la décision de réduire ses paiements spéciaux de solvabilité;
- c) elle obtient du ministre et du ministre de tutelle au sens du paragraphe 83(1) de la *Loi sur la gestion des finances publiques* des lettres attestant qu'ils ont été informés de son intention de réduire ces paiements et qu'ils ne s'opposent pas à cette réduction;
- d) elle soumet les renseignements et les documents visés aux alinéas b) et c) au surintendant dans les soixante jours suivant la réduction.

DORS/2011-85, art. 4.

Nullité — seuil de solvabilité

9.3 (1) Pour l'application de l'alinéa 10.1(2)c) de la Loi, le seuil de solvabilité est de 0,85.

(2) Pour l'application de l'alinéa 10.1(2)c) de la Loi, le ratio de solvabilité, une fois la modification apportée, est celui qui figure dans le plus récent rapport actuariel et est rajusté pour tenir compte de ce qui suit :

- a) l'effet de l'accroissement du passif de solvabilité résultant de cette modification sur le ratio de solvabilité établi conformément au paragraphe 9(13);
- b) l'effet de tout paiement forfaitaire versé au fonds de pension avant celle des dates ci-après qui est postérieure à l'autre :
 - (i) la date de prise d'effet de la modification,
 - (ii) la date de dépôt auprès du surintendant du rapport actuariel faisant état de la modification.

(3) Pour l'application de l'alinéa 10.1(2)d) de la Loi, le seuil de solvabilité est de 1,0 :

- a) pendant la période de négociation prévue au paragraphe 29.04(1) de la Loi;

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(b) while a funding schedule approved by the Minister under section 29.3 of the Act is in effect.

SOR/2011-85, s. 4.

10 (1) An administrator who fails to pay into the fund any amount remitted to the administrator under subsection 9(14) is liable to the plan for the outstanding payment and interest on it.

(2) If an employer fails to make payments to the plan at the times set out in subsection 9(14) or fails to make payments in accordance with subsection 29(6) of the Act or if the administrator is liable under subsection (1), the interest rate shall be

(a) in respect of a going concern special payment, the one used to determine the going concern liabilities;

(b) in respect of a solvency special payment, the one used to determine the solvency liabilities;

(c) in respect of a normal cost, the one applicable in paragraph (a);

(d) in respect of any other payments, the one applicable in paragraph (b); and

(e) in respect of an amount required to be paid under a defined contribution provision, the greater of the rate of return of the fund as at the date that the amount was required to be paid and 0%.

SOR/2002-78, s. 8; SOR/2010-149, s. 3; SOR/2011-85, s. 5.

Distressed Pension Plan Workout Scheme

Election

10.1 An election under subsection 29.03(1) of the Act may only be made once every 48 months.

SOR/2011-85, s. 6.

10.2 For the purposes of subsection 29.03(3) of the Act,

(a) an employer that is not subject to proceedings under the *Companies' Creditors Arrangement Act* or Part III of the *Bankruptcy and Insolvency Act* shall make the declaration in Form 1 of Schedule VI if it is governed by a Board of Directors or in Form 2 of Schedule VI if it is not governed by a Board of Directors; or

b) pendant la période au cours de laquelle un calendrier de capitalisation approuvé par le ministre au titre de l'article 29.3 de la Loi est en vigueur.

DORS/2011-85, art. 4.

10 (1) L'administrateur qui omet de verser au fonds de pension un paiement qui lui est remis en vertu du paragraphe 9(14) est responsable envers le régime du paiement en souffrance et de l'intérêt afférent.

(2) Si l'employeur omet de verser les paiements au régime dans les délais prévus au paragraphe 9(14) ou les sommes visées au paragraphe 29(6) de la Loi, ou si l'administrateur est tenu pour responsable au titre du paragraphe (1), le taux d'intérêt est le suivant :

a) s'agissant des paiements spéciaux de continuité, le taux ayant servi au calcul du passif évalué en continuité;

b) s'agissant des paiements spéciaux de solvabilité, celui ayant servi au calcul du passif de solvabilité;

c) s'agissant des coûts normaux, celui visé à l'alinéa a);

d) s'agissant de tout autre paiement, celui visé à l'alinéa b);

e) s'agissant d'une somme à verser au titre d'une disposition à cotisations déterminées le taux de rendement du fonds à la date où cette somme devait être versée ou, si ce taux est négatif, 0 %.

DORS/2002-78, art. 8; DORS/2010-149, art. 3; DORS/2011-85, art. 5.

Mécanisme d'accommodement pour les régimes de pension en difficulté

Choix

10.1 Le choix prévu au paragraphe 29.03(1) de la Loi ne peut être fait qu'une fois tous les quarante-huit mois.

DORS/2011-85, art. 6.

10.2 Pour l'application du paragraphe 29.03(3) de la Loi :

a) l'employeur qui ne fait pas l'objet d'une procédure prévue par la *Loi sur les arrangements avec les créanciers des compagnies* ou par la partie III de la *Loi sur la faillite et l'insolvabilité*, fait sa déclaration, dans le cas où il est administré par un conseil d'administration, selon la formule 1 figurant à l'annexe VI,

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(b) an employer that is subject to proceedings under the *Companies' Creditors Arrangement Act* or Part III of the *Bankruptcy and Insolvency Act* shall make the declaration in Form 3 of Schedule VI if it is governed by Board of Directors and in Form 4 of Schedule VI if it is not governed by a Board of Directors.

SOR/2011-85, s. 6.

10.3 An election under section 29.03 of the Act shall not be made in respect of a plan that is subject to the *Air Canada Pension Plan Funding Regulations, 2014* or the *Canadian Press Pension Plan Solvency Deficiency Funding Regulations, 2010*.

SOR/2011-85, s. 6; SOR/2013-244, s. 13.

Information to be Provided to Members and Beneficiaries

10.4 The employer shall provide the following information to the members and beneficiaries within 10 days after the beginning of the negotiation period:

- (a)** notice that the employer has entered into a distressed pension plan workout scheme;
- (b)** a statement indicating that a request for approval by the Minister of a funding schedule may only be made if less than one third of the members and less than one third of the beneficiaries object;
- (c)** a statement indicating that a collective bargaining agent may object or consent to a proposed workout agreement on behalf of the members that it represents;
- (d)** a statement indicating that a court-appointed representative may consent to a proposed workout agreement if less than one third of the members or one third of the beneficiaries that they represent object to the agreement;
- (e)** a statement indicating that the Minister's approval is required to give effect to the funding schedule; and
- (f)** written notice of their right to examine the copies of the documents and information referred to in paragraph 28(1)(c) of the Act.

SOR/2011-85, s. 6.

dans le cas contraire, selon la formule 2 figurant à cette annexe;

(b) l'employeur qui fait l'objet d'une procédure prévue par la *Loi sur les arrangements avec les créanciers des compagnies* ou par la partie III de la *Loi sur la faillite et l'insolvabilité*, fait sa déclaration, dans le cas où il est administré par un conseil d'administration, selon la formule 3 figurant à l'annexe VI, dans le cas contraire, selon la formule 4 figurant à cette annexe.

DORS/2011-85, art. 6.

10.3 Le choix prévu à l'article 29.03 de la Loi ne peut être exercé à l'égard d'un régime qui est assujéti au *Règlement sur la capitalisation des régimes de pension d'Air Canada (2014)* ou au *Règlement de 2010 sur la capitalisation du déficit de solvabilité du régime de retraite de la Presse canadienne*.

DORS/2011-85, art. 6; DORS/2013-244, art. 13.

Renseignements à fournir aux participants et aux bénéficiaires

10.4 Au plus tard le dixième jour suivant le début de la période de négociation, l'employeur fournit aux participants et aux bénéficiaires :

- (a)** un avis selon lequel il s'est prévalu du mécanisme d'accommodement pour les régimes de pension en difficulté;
- (b)** une déclaration précisant que toute demande d'approbation du calendrier de capitalisation par le ministre ne pourra être présentée que si moins du tiers des participants et moins du tiers des bénéficiaires s'y opposent;
- (c)** une déclaration précisant que tout agent de négociation collective peut s'opposer à l'accord de sauvetage proposé ou y acquiescer au nom des participants qu'il représente;
- (d)** une déclaration précisant que tout représentant nommé par un tribunal peut acquiescer à l'accord de sauvetage proposé dans le cas où moins du tiers des participants ou moins du tiers des bénéficiaires qu'il représente s'y opposent;
- (e)** une déclaration précisant que l'approbation du ministre est nécessaire pour que prenne effet le calendrier de capitalisation;
- (f)** un avis écrit rappelant leur droit d'examiner les copies des documents visés à l'alinéa 28(1)c) de la Loi.

DORS/2011-85, art. 6.

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10.5 The representative, or the employer if the representative consents, shall, in writing, inform the members or beneficiaries that they represent of their representation within 10 business days after their appointment by the Federal Court or the court referred to in section 10.8.

SOR/2011-85, s. 6.

End of Negotiation Period

10.6 (1) For the purposes of subsection 29.04(1) of the Act, the negotiation period ends on the earlier of

- (a)** the day on which the funding schedule is approved by the Minister, and
- (b)** the date determined under subsection (2).

(2) The negotiation period ends

- (a)** if the declaration referred to in subsection 29.03(4) of the Act is filed in the six month period following the end of the plan year, on the last day of the ninth month following the end of the plan year; and
- (b)** in any other case, on the last day of the ninth month following the date on which the declaration referred to in subsection 29.03(4) is filed.

SOR/2011-85, s. 6.

Appointment of Representatives

10.7 For the purposes of subsection 29.08(3) of the Act, the representatives shall

- (a)** be capable of fairly and adequately representing the interests of the persons that they represent; and
- (b)** not have an interest that is in conflict with the interests of the persons represented.

SOR/2011-85, s. 6.

10.8 For the purposes of subsection 29.08(2) of the Act, the appropriate court is the court in which a notice of intention or a proposal is filed under Part III of the *Bankruptcy and Insolvency Act* or the court that issued the initial order under the *Companies' Creditors Arrangement Act*.

SOR/2011-85, s. 6.

10.5 Le représentant, ou si celui-ci y consent, l'employeur avise par écrit les participants et les bénéficiaires représentés de son rôle de représentant au plus tard le dixième jour ouvrable suivant sa nomination à ce titre par la Cour fédérale ou le tribunal visé à l'article 10.8.

DORS/2011-85, art. 6.

Fin de la période de négociation

10.6 (1) Pour l'application du paragraphe 29.04(1) de la Loi, la période de négociation prend fin :

- a)** à la date d'approbation par le ministre du calendrier de capitalisation
- b)** si elle est antérieure, à la date établie au paragraphe (2).

(2) La période de négociation prend fin :

- a)** dans le cas où la déclaration visée au paragraphe 29.03(4) de la Loi est dans les six mois qui suivent la fin de l'exercice, le dernier jour du neuvième mois suivant la fin de cet exercice;
- b)** dans les autres cas, le dernier jour du neuvième mois suivant la date du dépôt de la déclaration visée au paragraphe 29.03(4) de la Loi.

DORS/2011-85, art. 6.

Nomination des représentants

10.7 Pour l'application du paragraphe 29.08(3) de la Loi, les représentants doivent satisfaire aux conditions d'admissibilité suivantes :

- a)** ils sont en mesure de représenter de façon adéquate et équitable les intérêts des personnes qu'ils représentent;
- b)** ils n'ont pas d'intérêts incompatibles avec ceux des personnes qu'ils représentent.

DORS/2011-85, art. 6.

10.8 Est visé pour l'application du paragraphe 29.08(2) de la Loi le tribunal devant lequel un avis d'intention ou une proposition en application de la partie III de la *Loi sur la faillite et l'insolvabilité* a été déposé, ou celui qui a initialement rendu une ordonnance en application de la *Loi sur les arrangements avec les créanciers des compagnies*.

DORS/2011-85, art. 6.

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Information to be Provided to Representatives

10.9 (1) The administrator, or the employer if the administrator is not the employer, shall provide to a representative

(a) within 10 days after the representative's appointment under subsection 29.08(3) of the Act

(i) copies of the information return, the actuarial reports and the financial statements that have been filed with the Superintendent within the past three plan years under subsections 12(1) and (2) of the Act,

(ii) a copy of the plan,

(iii) a copy of the statement of investment policies and procedures of the plan established under section 7.1,

(iv) a list of the 10 largest asset holdings of the pension fund in descending order of asset value, along with the corresponding asset value, and

(v) the total face value of the letters of credit held in trust for the plan; and

(b) within 10 business days after a request of the representative, a copy of any document or information that members may examine under paragraph 28(1)(c) of the Act.

(2) If the representative is a bargaining agent, the administrator, or the employer if the administrator is not the employer, shall provide the documents and information required under paragraph (1)(a) to the representative within 30 days after the day on which the declaration is filed under subsection 29.03(4) of the Act.

SOR/2011-85, s. 6.

Disclosure Requirements — Proposed Workout Agreement

10.91 (1) For the purposes of subsection 29.2(1) of the Act, the members and beneficiaries shall be provided with the following information within 10 days after the day on which the employer and the representatives enter into the proposed workout agreement:

(a) written notice that the representatives and the employer have negotiated a proposed workout agreement respecting the funding schedule;

Renseignements à fournir au représentant

10.9 (1) L'administrateur ou, si celui-ci n'est pas l'employeur, l'employeur fournit les renseignements ci-après au représentant :

a) au plus tard le dixième jour suivant la nomination de celui-ci en vertu du paragraphe 29.08(3) de la Loi :

(i) la copie de tout état relatif au régime, de tout rapport actuariel et de tout état financier qui ont été déposés auprès du surintendant en vertu des paragraphes 12(1) et (2) de la Loi au cours des trois exercices précédents,

(ii) une copie du texte du régime,

(iii) une copie de l'énoncé des politiques et procédures de placement du régime établi conformément à l'article 7.1,

(iv) une liste des dix avoirs financiers les plus importants du fonds de pension, présentés en ordre décroissant de valeur, ainsi que la valeur de chacun d'eux,

(v) la valeur nominale totale des lettres de crédit détenues en fiducie pour le compte du régime;

b) au plus tard le dixième jour ouvrable suivant la demande du représentant, une copie de tous les documents que les participants peuvent examiner au titre de l'alinéa 28(1)c) de la Loi.

(2) Il fournit les renseignements visés à l'alinéa (1)a) au représentant qui est un agent négociateur au plus tard le trentième jour suivant la date où la déclaration est déposée au titre du paragraphe 29.03(4) de la Loi.

DORS/2011-85, art. 6.

Renseignements à fournir — accord de sauvetage proposé

10.91 (1) Pour l'application du paragraphe 29.2(1) de la Loi, les renseignements ci-après sont fournis aux participants et bénéficiaires au plus tard le dixième jour suivant la date à laquelle l'employeur et les représentants concluent un accord de sauvetage proposé :

a) un avis écrit précisant que les représentants et l'employeur ont négocié l'accord de sauvetage proposé concernant le calendrier de capitalisation;

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(b) the amount of the going concern deficit and of the solvency deficiency subject to the proposed workout agreement and the proposed funding schedule for those amounts;

(c) the special payments that would have been payable in the current plan year if the going concern deficit and the solvency deficiency had been funded in accordance with section 9;

(d) a written notice indicating that the funding schedule set out in the proposed workout agreement may only be submitted to the Minister for approval if less than one third of the members and less than one third of beneficiaries of the plan object; and

(e) if members and beneficiaries are represented by a representative that is not a bargaining agent, a description of how the members or beneficiaries may object to the proposed agreement and the period during which an objection may be made.

(2) For the purposes of subsection 29.09(1) of the Act, the employer and administrator shall provide the representatives with any information required to comply with subsection (1).

SOR/2011-85, s. 6.

Consent of Members and Beneficiaries

10.92 A period of 30 days beginning on the day on which the information is provided under section 10.91 is prescribed for the purposes of subsection 29.2(2) of the Act.

SOR/2011-85, s. 6.

10.93 A period of 40 days beginning on the day on which the information is provided under section 10.91 is prescribed for the purposes of subsection 29.3(2) of the Act.

SOR/2011-85, s. 6.

Request for Approval

10.94 For the purposes of subsection 29.3(3) of the Act, the request for approval of the funding schedule shall be submitted to the Minister within 15 days after the end of the period referred to in section 10.93 and shall be accompanied by a description of how the funding schedule addresses the criteria referred to in section 10.95.

SOR/2011-85, s. 6.

b) le montant du déficit évalué en continuité et du déficit de solvabilité visés tant par l'accord de sauvetage proposé que par le calendrier de capitalisation proposé;

c) les paiements spéciaux qui auraient été versés pendant l'exercice en cours si le déficit évalué en continuité et le déficit de solvabilité avaient été capitalisés conformément à l'article 9;

d) un avis écrit précisant que le calendrier de capitalisation figurant dans l'accord de sauvetage proposé ne peut être présenté au ministre pour approbation que si moins du tiers des participants et moins du tiers des bénéficiaires s'y opposent;

e) lorsque les participants et bénéficiaires sont représentés par un représentant qui n'est pas un agent négociateur, une description de la façon dont les participants ou les bénéficiaires peuvent s'opposer à l'accord de sauvetage proposé et le délai au cours duquel une telle objection peut être formulée.

(2) Pour l'application du paragraphe 29.09(1) de la Loi, l'employeur et l'administrateur fournissent aux représentants tout renseignement nécessaire pour que celui-ci puisse se conformer aux exigences du paragraphe (1).

DORS/2011-85, art. 6.

Consentement des participants et des bénéficiaires

10.92 Pour l'application du paragraphe 29.2(2) de la Loi, le délai visé est de trente jours à compter de la date de réception des renseignements visés à l'article 10.91.

DORS/2011-85, art. 6.

10.93 Pour l'application du paragraphe 29.3(2) de la Loi, le délai visé est de quarante jours à compter de la date de réception des renseignements visés à l'article 10.91.

DORS/2011-85, art. 6.

Demande d'approbation

10.94 Pour l'application du paragraphe 29.3(3) de la Loi, la demande d'approbation du calendrier de capitalisation est présentée au ministre dans les quinze jours suivant la fin du délai prévu à l'article 10.93 et est accompagnée d'une description de la façon dont le calendrier de capitalisation traite les critères prévus à l'article 10.95.

DORS/2011-85, art. 6.

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Ministerial Considerations

10.95 For the purposes of subsection 29.3(4) of the Act, the Minister shall consider

- (a) the extent to which the defined benefit provisions of the plan have been amended and the extent to which those amendments have changed the cost structure of the plan; and
- (b) the manner in which the proposed workout agreement addresses the sustainability of the plan with reference to such factors as the investment policies of the plan, the demographic profile of the plan's membership and the nature of the plan's benefits.

SOR/2011-85, s. 6.

Notification of Minister's Decision

10.96 The administrator, or the representative if the representative consents, shall notify all members and beneficiaries of the Minister's decision under subsection 29.3(4) of the Act within five business days after receiving notification from the Minister.

SOR/2011-85, s. 6.

Minimum Requirements for Funding Schedule

10.97 The funding schedule shall meet the following requirements:

- (a) the funding schedule shall only address the funding and liquidation of a solvency deficiency and an unfunded liability as determined at the latest valuation date minus special payments and other payments due to the plan before the start of the negotiation period;
- (b) the funding schedule shall specify the amounts of the going concern payments and solvency payments payable in each plan year that are used to fund the solvency deficiency and unfunded liability referred to in paragraph (a);
- (c) the payments shall be made to the plan in equal monthly instalments;
- (d) the aggregate present value, as at the end of the most recent plan year preceding the establishment of the funding schedule, of the going concern payments included in the funding schedule and the going concern special payments due to the plan before the start of the negotiation period shall be at least equal to the

Critères pris en compte par le ministre

10.95 Pour l'application du paragraphe 29.3(4) de la Loi, le ministre tient compte des critères suivants :

- a) l'étendue des modifications apportées aux dispositions à prestations déterminées du régime et leurs conséquences sur la structure de coûts de celui-ci;
- b) la manière dont l'accord de sauvetage proposé assure la viabilité du régime compte tenu de certains facteurs, notamment les politiques de placement du régime, le profil démographique des participants et la nature des prestations.

DORS/2011-85, art. 6.

Communication de la décision du ministre

10.96 L'administrateur ou le représentant, si ce dernier y consent, avise tous les participants et bénéficiaires de la décision prise par le ministre en application du paragraphe 29.3(4) de la Loi au plus tard le cinquième jour ouvrable suivant la réception de cette décision.

DORS/2011-85, art. 6.

Exigences minimales du calendrier de capitalisation

10.97 Le calendrier de capitalisation doit satisfaire aux exigences suivantes :

- a) il n'a pour objet que la capitalisation et la liquidation d'un déficit de solvabilité et d'un passif non capitalisé établis à la date de la dernière évaluation, réduits des paiements spéciaux et des autres paiements à verser au régime avant le début de la période de négociation;
- b) il précise les montants des paiements de continuité et des paiements de solvabilité à verser au cours de chaque exercice qu'il vise afin de capitaliser le déficit de solvabilité et le passif non capitalisé visés à l'alinéa a);
- c) les paiements sont versés au régime en versements mensuels égaux;
- d) le total de la valeur actualisée de tous les paiements de continuité qui figurent dans le calendrier de capitalisation et de tous les paiements spéciaux de continuité à verser au régime avant le début de la période de négociation — cette valeur étant établie à la fin de

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going concern deficit of the plan at the end of that year;

(e) the aggregate present value, as at the end of the most recent plan year preceding the establishment of the funding schedule, of the solvency payments and the going concern payments included in the funding schedule and the special payments due to the plan before the start of the negotiation period shall be at least equal to the solvency deficiency of the plan as at the end of the plan year preceding the plan year in which the payment is to be made;

(f) any annual going concern payment included in the funding schedule shall be no less than the annual amount of interest on the outstanding balance of the going concern deficit of the plan as at the end of the plan year preceding the plan year in which the payment is to be made;

(g) any annual solvency payment included in the funding schedule shall be no less than the annual amount of interest on the outstanding balance of the solvency deficiency as at the end of the plan year preceding the plan year in which the payment is to be made;

(h) the aggregate going concern payments to be made in the first half of the funding schedule shall be no less than 40% of the aggregate going concern payments for the entire duration of the funding schedule;

(i) the aggregate solvency payments to be made in the first five plan years of the funding schedule shall be no less than 40% of the aggregate solvency payments for the entire duration of the funding schedule;

(j) the interest rate used to determine the present value of going concern payments referred to in paragraph (d) and the interest rate used to calculate the amount of interest referred to in paragraph (f) is the same as the interest rate used to determine the going concern liabilities of the plan as at the valuation date; and

(k) the interest rate used to determine the present value of solvency payments referred to in paragraph (e) and the interest rate used to calculate the interest in accordance with paragraph (g) is the same as the interest rate used to determine the solvency liabilities of the plan as at the valuation date.

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l'exercice qui précède immédiatement l'établissement du calendrier — est égal ou supérieur au déficit de continuité du régime à la fin de cet exercice;

e) le total de la valeur actualisée de tous les paiements de solvabilité et des paiements de continuité qui figurent dans le calendrier de capitalisation et de tous les paiements spéciaux à verser au régime avant le début de la période de négociation — cette valeur étant établie à la fin de l'exercice qui précède immédiatement l'établissement du calendrier — est égal ou supérieur au déficit de solvabilité du régime à la fin de l'exercice qui précède celui au cours duquel le paiement spécial est à verser;

f) aucun paiement de continuité annuel qui figure dans le calendrier de capitalisation n'est inférieur au montant annuel des intérêts sur le solde impayé du déficit de continuité à la fin de l'exercice qui précède celui au cours duquel le paiement spécial est à verser;

g) aucun paiement de solvabilité annuel qui figure dans le calendrier de capitalisation n'est inférieur au montant annuel des intérêts sur le solde impayé du déficit de solvabilité à la fin de l'exercice qui précède celui au cours duquel le paiement est à verser;

h) le total des paiements de continuité à verser pendant la première moitié du calendrier de capitalisation est égal à au moins 40 % du total des mêmes paiements à verser pendant toute la durée de celui-ci;

i) le total des paiements de solvabilité à verser au cours des cinq premiers exercices visés par le calendrier de capitalisation est égal à au moins 40 % du total des mêmes paiements à verser pour toute la durée de celui-ci;

j) le taux d'intérêt servant à établir la valeur actualisée des paiements de continuité visée à l'alinéa d) et celui des intérêts visés à l'alinéa f) correspondent au taux d'intérêt utilisé pour établir le passif de continuité du régime à la date d'évaluation;

k) le taux d'intérêt servant à établir la valeur actualisée des paiements de solvabilité visée à l'alinéa e) et celui des intérêts visés à l'alinéa g) correspondent au taux d'intérêt utilisé pour établir le passif de solvabilité du régime à la date d'évaluation.

DORS/2011-85, art. 6.

Optional Requirements for Funding Schedule

10.98 A funding schedule may provide that if

(a) the funding schedule includes the funding of an unfunded liability or solvency deficiency and the unfunded liability or solvency deficiency is liquidated at a rate greater than the sum of payments set out in the funding schedule by the making of additional payments, the amount of a payment set out in a funding schedule for a subsequent year may be reduced if the outstanding balance of the unfunded liability that is being liquidated by the remaining payments set out in the funding schedule or the solvency deficiency that is being liquidated by those payments will at no time be greater than it would have been had the payments that were required to be made under the funding schedule in relation to the unfunded liability or solvency deficiency, whichever is applicable, been made;

(b) the funding schedule includes the funding of an unfunded liability and the aggregate of the present value of payments set out in the funding schedule and of going concern special payments, established in respect of a period after the valuation date, exceeds the going concern deficit, that excess may be applied to reduce the going concern payments that will become due at the latest dates in the approved funding schedule in such a way that the present value of those payments is reduced by the amount of reduction applied to the outstanding balance of the unfunded liability; and

(c) there is a solvency excess as described in subsection 10.991(2), the payments established to liquidate a solvency deficiency that will become due at the latest dates in the approved funding schedule may be eliminated or reduced in such a way that the present value of the remaining payments set out in the funding schedule to liquidate the solvency deficiency is reduced by the solvency excess.

SOR/2011-85, s. 6.

Exigences facultatives prévues au calendrier de capitalisation

10.98 Le calendrier de capitalisation peut prévoir ce qui suit :

a) si le calendrier de capitalisation tient compte de la capitalisation d'un passif non capitalisé ou d'un déficit de solvabilité et que le passif non capitalisé ou le déficit de solvabilité est liquidé au moyen du versement de paiements additionnels à un taux supérieur au montant des paiements qui figurent dans le calendrier de capitalisation, le montant de tout paiement qui figure dans le calendrier de capitalisation pour une année subséquente pourrait être réduit si le solde impayé du passif non capitalisé qui est liquidé par les paiements restants dans le calendrier de capitalisation ou du déficit de solvabilité qui est liquidé par les mêmes paiements n'est, à aucun moment, plus élevé qu'il ne l'aurait été si les paiements exigés selon le calendrier de capitalisation par rapport au passif non capitalisé ou au déficit de solvabilité, le cas échéant, avaient été versés;

b) si le calendrier de capitalisation tient compte de la capitalisation d'un passif non capitalisé et que le total de la valeur actualisée des paiements qui y figurent et des paiements spéciaux de continuité, établi à l'égard de toute période suivant la date d'évaluation, est supérieur au déficit de continuité, l'excédent peut être utilisé pour réduire les paiements de continuité qui seront à verser aux dates les plus éloignées du calendrier de capitalisation approuvé, de sorte que la valeur actualisée de ces paiements soit réduite de la somme qui a été réduite du solde du passif non capitalisé;

c) si l'excédent de solvabilité visé au paragraphe 10.991(2) survient, les paiements établis pour liquider le déficit de solvabilité qui seront à verser aux dates les plus éloignées du calendrier de capitalisation approuvé peuvent être éliminés ou réduits de sorte que la valeur actualisée du solde des paiements qui figurent dans le calendrier pour liquider le déficit de solvabilité est réduit de l'excédent de solvabilité.

DORS/2011-85, art. 6.

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Occurrence of Events After Approval of a Funding Schedule

10.99 For the purposes of section 9, an unfunded liability that emerges after the day on which the funding schedule was approved by the Minister under section 29.3 of the Act shall be calculated as the amount by which the going concern deficit of a plan as determined at the valuation date exceeds the aggregate of

- (a) the present value of going concern special payments established in respect of a period after the valuation date,
- (b) the present value of the going concern payments set out in the funding schedule, established in respect of a period after the valuation date, and
- (c) the present value of the solvency payments set out in the funding schedule, established in respect of a period after the valuation date.

SOR/2011-85, s. 6.

10.991 (1) For the purposes of section 9, a solvency deficiency that emerges after the day on which a funding schedule is approved by the Minister under section 29.3 of the Act shall be calculated as the amount by which the solvency liabilities exceed the aggregate of

- (a) the adjusted solvency asset amount,
- (b) the present value of the solvency payments set out in the funding schedule, established in respect of a period after the valuation date, and
- (c) the present value of the going concern payments set out in the funding schedule, established in respect of a period beginning after the valuation date and ending on the date of the last solvency payment referred to in paragraph (b).

(2) For the purposes of section 9, a solvency excess that emerges after the day on which a funding schedule is approved by the Minister under section 29.3 of the Act shall be calculated as the amount by which the aggregate of the following amounts exceeds the solvency liabilities:

- (a) the adjusted solvency asset amount,
- (b) the present value of the solvency payments set out in the funding schedule, established in respect of a period after the valuation date, and

Survenance d'événements après l'approbation du calendrier de capitalisation

10.99 Pour l'application de l'article 9, le passif non capitalisé qui survient après la date d'approbation du calendrier de capitalisation par le ministre au titre de l'article 29.3 de la Loi correspond à l'excédent du déficit évalué en continuité du régime, établi à la date d'évaluation, sur le total des valeurs suivantes :

- a) la valeur actualisée des paiements spéciaux de continuité, établie à l'égard de toute période suivant la date d'évaluation;
- b) la valeur actualisée des paiements de continuité qui figurent dans le calendrier de capitalisation, établie à l'égard de toute période suivant cette date;
- c) la valeur actualisée des paiements de solvabilité qui figurent dans le calendrier de capitalisation, établie à l'égard de toute période suivant cette date.

DORS/2011-85, art. 6.

10.991 (1) Pour l'application de l'article 9, le déficit de solvabilité qui survient après la date d'approbation du calendrier de capitalisation par le ministre au titre de l'article 29.3 de la Loi correspond à l'excédent du passif de solvabilité sur le total des montants suivants :

- a) le montant rajusté de l'actif de solvabilité;
- b) la valeur actualisée des paiements de solvabilité qui figurent dans le calendrier de capitalisation, établie à l'égard de toute période suivant la date d'évaluation;
- c) la valeur actualisée des paiements de continuité qui figurent dans le calendrier de capitalisation, établie à l'égard de toute période commençant après la date d'évaluation et se terminant à la date du dernier paiement de solvabilité visé à l'alinéa b).

(2) Pour l'application de l'article 9, l'excédent de solvabilité qui survient après la date d'approbation du calendrier de capitalisation par le ministre au titre de l'article 29.3 de la Loi correspond à l'excédent du total des montants ci-après sur le passif de solvabilité :

- a) le montant rajusté de l'actif de solvabilité;
- b) la valeur actualisée des paiements de solvabilité qui figurent dans le calendrier de capitalisation, établie à l'égard de toute période suivant la date d'évaluation;

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Distressed Pension Plan Workout Scheme
Occurrence of Events After Approval of a Funding Schedule
Sections 10.991-11

Règlement de 1985 sur les normes de prestation de pension
Mécanisme d'accommodement pour les régimes de pension en difficulté
Survénance d'événements après l'approbation du calendrier de capitalisation
Articles 10.991-11

(c) the present value of the going concern payments set out in the funding schedule, established in respect of a period beginning after the valuation date and ending on the date of the last solvency payment referred to in paragraph (b).

SOR/2011-85, s. 6.

Application for Registration

11 (1) An application for the registration of a plan shall include

(a) a copy of the plan, insurance contract, trust agreement, resolution, collective agreement on pensions, by-law and any other document that creates or supports the plan, the pension fund and any amendments to them;

(b) a copy of a written explanation referred to in subparagraph 28(1)(a)(i) of the Act;

(c) a cost certificate, prepared as of the effective date of the plan or, if a cost certificate has been prepared as of a date more recent than the effective date of the plan, the most recent cost certificate, in the case of

(i) a defined contribution plan where the contributions under the plan are allocated to individual plan members, and

(ii) a defined benefit plan that is an insured plan;

(d) an actuarial report, in the case of a plan, other than a plan described in paragraph (c), prepared as of the effective date of the plan or, if an actuarial report has been prepared as of a date more recent than the effective date of the plan, the most recent actuarial report;

(e) a written statement, signed by the administrator, as to whether a statement of investment policies and procedures referred to in subsection 7.1(1) has been established.

(f) [Repealed, SOR/2011-196, s. 31]

(g) [Repealed, SOR/2015-60, s. 4]

(2) A cost certificate referred to in paragraph (1)(c) shall be prepared by an actuary, accountant or other professional adviser and shall include

(a) the estimated cost of benefits under the plan and the contributions to the plan, showing separately

(c) la valeur actualisée des paiements de continuité qui figurent dans le calendrier de capitalisation, établie à l'égard de toute période commençant après la date d'évaluation et se terminant à la date du dernier paiement de solvabilité visé à l'alinéa b).

DORS/2011-85, art. 6.

Demande d'agrément

11 (1) La demande d'agrément d'un régime est accompagnée des documents suivants :

a) une copie du texte du régime, du contrat d'assurance, de la convention de fiducie, de la résolution, des dispositions de la convention collective relatives aux pensions, des règlements administratifs et de tout autre document constitutif ou à l'appui du régime, du fonds de pension et des modifications qui y sont apportées;

b) une copie de l'explication écrite visée au sous-alinéa 28(1)a)(i) de la Loi;

c) une copie du certificat de coûts établi à la date d'entrée en vigueur du régime, ou si un tel certificat a été établi après cette date, une copie du plus récent certificat de coûts, dans le cas :

(i) d'un régime à cotisations déterminées aux termes duquel les cotisations sont attribuées individuellement aux participants,

(ii) d'un régime à prestations déterminées qui est un régime assuré;

d) une copie du rapport actuariel dans le cas d'un régime non visé à l'alinéa c), établi à la date d'entrée en vigueur du régime, ou si un tel rapport a été établi après cette date, une copie du plus récent rapport actuariel;

e) une déclaration signée par l'administrateur, indiquant si l'énoncé des politiques et des procédures de placement mentionné au paragraphe 7.1(1) a été établi.

f) [Abrogé, DORS/2011-196, art. 31]

g) [Abrogé, DORS/2015-60, art. 4]

(2) Le certificat de coûts visé à l'alinéa (1)c) est établi par un actuaire, un comptable ou autre expert-conseil et contient les renseignements suivants :

a) le coût estimatif des prestations prévues par le régime et le montant des cotisations versées à celui-ci,

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Pension Benefits Standards Regulations, 1985
Application for Registration
Section 11

Règlement de 1985 sur les normes de prestation de pension
Demande d'agrément
Article 11

employer and plan member contributions during the plan year in respect of which the cost certificate is prepared; and

(b) the formula for computing the cost of benefits, showing the formula for allocating the cost between the employer and the plan members for subsequent plan years.

(3) An actuarial report referred to in paragraph (1)(d) shall be prepared by an actuary in accordance with the *Standard of Practice for Valuation of Pension Plans* published by the Canadian Institute of Actuaries in January 1994, as amended from time to time and shall include

(a) the estimated cost of benefits under the plan, showing separately employer and plan member contributions in respect of service

(i) for the plan year following the date as of which the report is prepared, where that date falls on the last day of a plan year, and

(ii) for the plan year in which the date as of which the report is prepared falls, where that date falls on any other day of a plan year;

(b) the formula for computing the cost of benefits, showing the formula for allocating the cost between the employer and the plan members in respect of service for that plan year and subsequent plan years;

(c) the outstanding amount of unfunded liabilities existing on the date as of which the report is prepared and the special payments to be made in accordance with paragraph 9(4)(b);

(d) a certification that the plan does not have a solvency deficiency or a determination of the solvency deficiency of the plan and the special payments to be made in accordance with paragraph 9(4)(c); and

(e) the solvency ratio of the plan and the method to be used to calculate the solvency ratio of the plan for the succeeding three plan years.

(4) Any actuarial report referred to in paragraph (1)(d) that is prepared in respect of a negotiated contribution plan shall, if the funding of the plan fails to meet the standards of solvency referred to in section 8, contain the options available in respect of such funding that would result in the funding of the plan meeting the standards for solvency.

(5) Where an actuarial report referred to in paragraph (1)(d) is prepared in respect of a plan that provides

les cotisations patronales et celles des participants au cours de l'exercice visé par le certificat étant indiquées séparément;

b) la formule de calcul du coût des prestations, y compris la formule de répartition des coûts entre l'employeur et les participants pour les exercices subséquents.

(3) Le rapport actuariel visé à l'alinéa (1)d) est établi par un actuaire selon la *Norme de pratique pour l'évaluation des régimes de retraite*, publiée par l'Institut canadien des actuaires en janvier 1994, et contient les renseignements suivants :

a) le coût estimatif des prestations prévues par le régime, les cotisations patronales et celles des participants étant indiquées séparément relativement aux services :

(i) pour l'exercice suivant la date d'établissement du rapport, si celle-ci correspond au dernier jour de l'exercice,

(ii) pour l'exercice où est comprise la date d'établissement du rapport, si celle-ci ne correspond pas au dernier jour de l'exercice;

b) la formule de calcul du coût des prestations, y compris la formule de répartition des coûts entre l'employeur et les participants à l'égard des services pour cet exercice et les exercices subséquents;

c) le solde en souffrance de tout passif non capitalisé existant à la date de l'établissement du rapport, ainsi que les paiements spéciaux à verser conformément à l'alinéa 9(4)b);

d) une attestation indiquant que le régime n'a pas de déficit de solvabilité, ou une détermination de son déficit de solvabilité et des paiements spéciaux à verser conformément à l'alinéa 9(4)c);

e) le ratio de solvabilité du régime ainsi que la méthode de calcul du ratio pour les trois exercices subséquents.

(4) Lorsqu'un rapport actuariel visé à l'alinéa (1)d) est établi à l'égard d'un régime à cotisations négociées, il fait état, si la capitalisation de celui-ci ne satisfait pas aux normes de solvabilité visées à l'article 8, des options disponibles à cet égard qui auraient pour résultat de la rendre conforme aux normes de solvabilité.

(5) Lorsqu'un rapport actuariel visé à l'alinéa (1)d) est établi à l'égard d'un régime qui prévoit des prestations

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Application for Registration
Sections 11-14

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benefits based on a rate of remuneration at the date of commencement of the payment of the pension benefit or on an average of the rates of remuneration over a specified and limited period, the current remuneration of each plan member shall be projected to estimate the remuneration on which the pension benefits payable at retirement will be based.

(6) Where an actuarial report referred to in paragraph (1)(d) is prepared in respect of a plan that provides for an increase in pension benefits after cessation of membership or after retirement, the actuarial report shall take into account the value of the increase in determining the value of pension benefits under the plan.

SOR/90-363, s. 3; SOR/93-109, s. 4(E); SOR/93-299, s. 3; SOR/2002-78, s. 9; SOR/2010-149, s. 4; SOR/2011-85, s. 7; SOR/2011-196, s. 31; SOR/2015-60, s. 4.

11.1 [Repealed, SOR/2015-60, s. 5]

11.2 [Repealed, SOR/2015-60, s. 5]

11.3 [Repealed, SOR/2015-60, s. 5]

Reporting

12 (1) An information return required under subsection 12(1) of the Act to be filed annually shall contain information in respect of a plan that is related to that plan year.

(2) An information return required under subsection 12(1) of the Act to be filed other than annually shall contain all the information in respect of a plan relating to that portion of a plan year up to and including the date on which the information return is prepared.

13 An information return referred to in subsection 12(1) of the Act shall contain the information set out in Form 2 of Schedule II.

14 (1) The Superintendent shall require an administrator to file a cost certificate, prepared by an actuary, accountant or other professional advisor as of the effective date of an amendment to the plan that alters the cost of benefits under the plan or alters the contributions to the plan, in the case of

(a) a defined contribution plan where the contributions under the plan are allocated to individual plan members; and

(b) a defined benefit plan that is an insured plan.

fondées sur le taux de rémunération à la date où commence le service des prestations de pension ou sur la moyenne des taux de rémunération au cours d'une période déterminée, le rapport doit contenir une projection de la rémunération courante de chaque participant afin de donner une estimation de la rémunération sur laquelle se fonderont les prestations de pension payables à la retraite.

(6) Lorsqu'un rapport actuariel visé à l'alinéa (1)d) est établi à l'égard d'un régime qui prévoit une augmentation des prestations de pension après la cessation de la participation ou après la retraite, le rapport doit tenir compte de la valeur des augmentations aux fins du calcul de la valeur des prestations de pension prévues par le régime.

DORS/90-363, art. 3; DORS/93-109, art. 4(A); DORS/93-299, art. 3; DORS/2002-78, art. 9; DORS/2010-149, art. 4; DORS/2011-85, art. 7; DORS/2011-196, art. 31; DORS/2015-60, art. 4.

11.1 [Abrogé, DORS/2015-60, art. 5]

11.2 [Abrogé, DORS/2015-60, art. 5]

11.3 [Abrogé, DORS/2015-60, art. 5]

Rapports

12 (1) L'état devant être déposé annuellement en vertu du paragraphe 12(1) de la Loi à l'égard d'un régime contient tous les renseignements qui se rapportent à l'exercice.

(2) L'état devant être déposé autrement qu'annuellement en vertu du paragraphe 12(1) de la Loi à l'égard d'un régime contient les renseignements qui se rapportent à la partie de l'exercice allant jusqu'à la date de l'établissement de l'état.

13 L'état visé au paragraphe 12(1) de la Loi à l'égard d'un régime contient les renseignements requis à la formule 2 de l'annexe II.

14 (1) Le surintendant doit exiger que l'administrateur dépose un certificat de coûts, établi par un actuaire, un comptable ou autre expert-conseil, à la date d'entrée en vigueur de toute modification apportée au régime qui influe sur le coût des prestations prévues par le régime ou sur les cotisations qui y sont versées, dans le cas :

a) d'un régime à cotisations déterminées aux termes duquel les cotisations sont attribuées individuellement aux participants;

b) d'un régime à prestations déterminées qui est un régime assuré.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Reporting
Sections 14-15

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Rapports
Articles 14-15

(2) A cost certificate referred to in subsection (1) shall include

(a) the estimated cost of benefits under the plan and the contributions to the plan, showing separately employer and plan member contributions

(i) for the plan year following the effective date of the amendment, where the effective date falls on the last day of the plan year, or

(ii) for the plan year in which the effective date of the amendment falls, where the effective date falls on any other day of the plan year; and

(b) the formula for computing the cost of benefits, showing the formula for allocating the cost between the employer and the plan members for subsequent plan years.

15 (1) The Superintendent may require the administrator to file, at such intervals or times as the Superintendent directs,

(a) subject to subsection (2), a list of assets held by the plan on the date directed by the Superintendent, showing

(i) the book value of each asset,

(ii) the market value of each asset, and

(iii) such information as will permit the verification of the market value attributed to an asset and the determination of whether the requirements of section 6 have been met;

(b) an appraisal that will permit the verification of the market value attributed to an asset held by the plan;

(c) if the plan is not an insured plan,

(i) a financial statement of the pension fund,

(ii) any information that the *Handbook of the Canadian Institute of Chartered Accountants* requires to be set out in a financial statement of a pension plan, and

(iii) an auditor's report of the pension fund;

(d) information concerning the investments of the pension fund, including the information set out in Form 2.1 of Schedule II;

(e) any information relating to the determination of the solvency and funding status of a pension plan;

(2) Le certificat de coûts contient les renseignements suivants :

a) le coût estimatif des prestations prévues par le régime et le montant des cotisations versées à celui-ci, les cotisations patronales et celles des participants étant indiquées séparément :

(i) pour l'exercice suivant la date d'entrée en vigueur de la modification, si celle-ci correspond au dernier jour de l'exercice,

(ii) pour l'exercice où est comprise la date d'entrée en vigueur de la modification, si celle-ci ne correspond pas au dernier jour de l'exercice;

b) la formule de calcul du coût des prestations, y compris la formule de répartition des coûts entre l'employeur et les participants pour les exercices subséquents.

15 (1) Le surintendant peut exiger que l'administrateur dépose, selon tout intervalle ou à tout moment fixé par le surintendant, les renseignements suivants :

a) sous réserve du paragraphe (2), la liste de l'actif détenu par le régime à la date fixée par le surintendant, indiquant :

(i) la valeur comptable de chaque élément d'actif,

(ii) la valeur marchande de chaque élément d'actif,

(iii) tout renseignement permettant de vérifier la valeur marchande attribuée à un élément d'actif et de déterminer si les exigences de l'article 6 sont remplies;

b) une évaluation permettant de vérifier la valeur marchande attribuée à un élément d'actif détenu par le régime;

c) si le régime de pension n'est pas un régime assuré :

(i) un état financier relatif au fonds de pension,

(ii) les renseignements qui, selon le *Manuel de l'Institut canadien des comptables agréés*, doivent figurer dans les états financiers d'un régime de pension,

(iii) le rapport d'un vérificateur concernant le fonds de pension;

d) des renseignements concernant les placements du fonds de pension, y compris les renseignements indiqués à la formule 2.1 de l'annexe II;

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Pension Benefits Standards Regulations, 1985
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Articles 15-16

- (f)** the location of any books, records or other documents relating to a pension plan or to any securities, obligations or other investments in which pension fund money is invested;
- (g)** the name of the collective bargaining agent, if any, who represents the pension plan members;
- (h)** the information necessary to identify the employers who participate in or who have ceased participation in the plan;
- (i)** a certificate of the administrator or any person preparing, compiling or filing any information on behalf of the administrator that certifies that the information submitted to the Superintendent is accurate;
- (j)** a record of, or any other document evidencing, any operating expenses paid from the plan fund or that are due or accrued from the plan fund, including the names of any payees, the purpose and amounts of any payments made or to be made to each payee, including the aggregate amounts; and
- (k)** a record of, or any other document evidencing, all direct and indirect compensation that a person received or that is due or accrued in relation to any service provided by the person in respect of the plan.
- (2)** A list of assets is not required in respect of a plan under which benefits are provided through
- (a)** a contract issued by a person authorized to carry on a life insurance business in Canada, other than a contract in respect of which separate and distinct funds are maintained by the person; or
- (b)** a contract issued by the Government of Canada.
- SOR/93-299, s. 4; SOR/95-171, s. 6; SOR/2002-78, s. 11.
- (e)** tout renseignement relatif à la détermination de la solvabilité et de la capitalisation du régime de pension;
- (f)** l'endroit où sont conservés les livres, dossiers ou autres documents relatifs au régime de pension ou à des valeurs, obligations ou autres placements dans lesquels sont investis les fonds du régime;
- (g)** le cas échéant, le nom de l'agent de négociation représentant les participants au régime de pension;
- (h)** tout renseignement nécessaire à l'identification des employeurs participant ou ayant participé au régime de pension;
- (i)** un certificat émanant de l'administrateur ou de toute personne ayant préparé, compilé ou produit un renseignement pour le compte de l'administrateur et attestant l'exactitude de l'information transmise au surintendant;
- (j)** un relevé intégral des frais liés à l'administration du régime payés ou à payer, ou les pièces justificatives afférentes, y compris la liste de tous les bénéficiaires, l'objet et le montant de tout paiement versé ou à verser à chacun de ces bénéficiaires, y compris les montants totaux;
- (k)** un relevé de toute rémunération, directe ou indirecte, qu'une personne a reçue ou qui lui est due en contrepartie de tout service fourni par celle-ci relativement au régime, ou les pièces justificatives afférentes.
- (2)** La liste de l'actif n'est pas requise à l'égard d'un régime aux termes duquel les prestations sont :
- (a)** soit prévues aux termes d'un contrat accordé par une personne autorisée à exploiter une entreprise d'assurance-vie au Canada, autre qu'un contrat à l'égard duquel elle maintient des caisses distinctes;
- (b)** soit prévues aux termes d'un contrat accordé par le gouvernement du Canada.
- DORS/93-299, art. 4; DORS/95-171, art. 6; DORS/2002-78, art. 11.

Refund of Surplus

[SOR/2001-222, s. 2(F)]

16 (1) For the purposes of the definition *surplus* in subsection 2(1) of the Act, the amount by which the assets of the plan exceeds its liabilities shall be determined by subtracting the liabilities of the plan from its assets, as those assets and liabilities are shown in an actuarial report

Paiement de l'excédent

[DORS/2001-222, art. 2(F)]

16 (1) Pour l'application de la définition de *excédent* au paragraphe 2(1) de la Loi, l'excédent de l'actif du régime sur son passif est déterminé par soustraction du passif de l'actif tels qu'ils figurent dans le rapport actuariel. Dans le cas d'un régime ne faisant pas l'objet d'une cessation totale, cet actif et ce passif correspondent aux

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Pension Benefits Standards Regulations, 1985
Refund of Surplus
Section 16

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Paiement de l'excédent
Article 16

and, in the case of a plan that has not been fully terminated, as those assets and liabilities are valued in the report according to a going concern valuation.

(2) A refund of all or part of a surplus may be made if

(a) in respect of a plan that has not been fully terminated, the surplus exceeds the greater of the following amounts that are attributable to the defined benefit provisions of the plan, namely,

(i) two times the employer's contribution to the normal cost of the plan, and

(ii) 25% of the liabilities of the plan, determined according to a solvency valuation;

(b) the administrator of the plan has given notice in writing to the plan members, former members and any other person who is entitled to a pension benefit under the terms of the plan that the employer intends to withdraw all or part of the surplus and that they may make any comments in writing to the Superintendent concerning the refund;

(c) 30 days have gone by after the day on which the administrator gave notice under paragraph (b);

(d) the Superintendent has consented to the refund of all or part of the surplus and has given notice of that consent in writing to the persons referred to in paragraph (b) who made comments in writing concerning the refund; and

(e) 40 days have gone by after the day on which the Superintendent gave notice under paragraph (d).

(3) For the purpose of this section, liabilities accrued under the defined contribution provisions of a plan as the result of a conversion of defined benefit provisions to defined contribution provisions are deemed not to be attributable to the defined benefit provisions of the plan.

(4) In respect of a plan that has not been fully terminated, the surplus or part of it that may be refunded may be no greater than the amount by which the surplus exceeds the greater of the following amounts that are attributable to the defined benefit provisions of the plan:

(a) two times the employer's contribution to the normal cost of the plan, and

(b) 25% of the liabilities of the plan, determined according to a solvency valuation.

montants établis selon l'évaluation en continuité qui figure dans le rapport.

(2) Le paiement de tout ou partie de l'excédent peut être effectué si les conditions suivantes sont réunies :

a) dans le cas d'un régime ne faisant pas l'objet d'une cessation totale, l'excédent dépasse la plus élevée des sommes ci-après attribuables aux dispositions à prestations déterminées du régime :

(i) une somme égale à deux fois les cotisations patronales destinées au paiement des coûts normaux du régime,

(ii) une somme égale à 25 % du passif du régime déterminé selon une évaluation de la solvabilité;

b) l'administrateur du régime a avisé par écrit les participants, actuels et anciens, et toute autre personne ayant droit à une prestation de pension au titre du régime, de l'intention de l'employeur de retirer tout ou partie de l'excédent et de leur droit de présenter par écrit au surintendant leurs observations au sujet du paiement;

c) trente jours se sont écoulés après la communication de l'avis prévu à l'alinéa b);

d) le surintendant a consenti au paiement de tout ou partie de l'excédent et il en a avisé par écrit les personnes mentionnées à l'alinéa b) qui lui ont présenté des observations par écrit au sujet de ce paiement;

e) quarante jours se sont écoulés après la date à laquelle le surintendant a donné l'avis prévu à l'alinéa d).

(3) Pour l'application du présent article, le passif découlant des dispositions à cotisations déterminées d'un régime par suite de la conversion de dispositions à prestations déterminées en dispositions à cotisations déterminées est réputé ne pas être attribuable aux dispositions à prestations déterminées du régime.

(4) Dans le cas d'un régime ne faisant pas l'objet d'une cessation totale, le paiement total ou partiel de l'excédent ne peut être supérieur à la différence entre l'excédent et la plus élevée des sommes ci-après attribuables aux dispositions à prestations déterminées du régime :

a) une somme égale à deux fois les cotisations patronales destinées au paiement des coûts normaux du régime;

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(5) The following classes of persons are prescribed for the purpose of paragraph 9.2(3)(b) of the Act:

- (a)** any persons who are entitled to pension benefits payable from the plan, but not including plan members;
- (b)** survivors, spouses, former spouses, common-law partners and former common-law partners of members or former members if the survivor, spouse, former spouse, common-law partner or former common-law partner is entitled to pension benefits or pension benefit credits payable from the plan; and
- (c)** any persons for whom the administrator has purchased annuities, other than life annuities purchased under section 26 of the Act, but not including plan members.

SOR/93-109, s. 5(F); SOR/95-171, s. 6; SOR/2001-222, s. 3; SOR/2010-149, s. 5(F); SOR/2011-85, s. 8; SOR/2015-60, s. 6.

16.1 (1) An employer shall notify the persons referred to in paragraph 9.2(3)(a) of the Act of the employer's proposal for a refund of a surplus or part of it by sending a notice to the current address of the person or, if the person is an employee, to their place of work.

(2) An employer shall notify the persons referred to in paragraph 9.2(3)(b) of the Act of the employer's proposal for a refund of a surplus or part of it

- (a)** by sending a notice to the person at their current address contained in the employer's records or at the address the employer reasonably believes to be their current address; or
- (b)** if the address of the person is unknown, by publishing a notice, in both official languages, once a week for two consecutive weeks, in one or more newspapers in general circulation in each province.

SOR/2001-222, s. 3.

Arbitration Relating to Refund of Surplus

16.2 (1) An arbitration under subsection 9.2(4) of the Act shall include procedures by which

- (a)** unionized members can make written representations to the executive of their union; and

b) une somme égale à 25 % du passif du régime déterminé selon une évaluation de la solvabilité.

(5) Les catégories de personnes suivantes sont établies pour l'application de l'alinéa 9.2(3)b) de la Loi :

- a)** les personnes, autres que les participants, qui ont droit à une prestation de pension au titre du régime;
- b)** les survivants, les époux, les conjoints de fait, les ex-époux et les anciens conjoints de fait d'un participant, actuel ou ancien, si le survivant, l'époux, le conjoint de fait, l'ex-époux ou l'ancien conjoint de fait a droit à une prestation de pension ou à un droit à pension au titre du régime;
- c)** les personnes, autres que les participants, pour lesquelles l'administrateur a acheté une rente autre que la prestation viagère visée à l'article 26 de la Loi.

DORS/93-109, art. 5(F); DORS/95-171, art. 6; DORS/2001-222, art. 3; DORS/2010-149, art. 5(F); DORS/2011-85, art. 8; DORS/2015-60, art. 6.

16.1 (1) L'employeur informe de son intention concernant tout ou partie de l'excédent la personne visée à l'alinéa 9.2(3)a) de la Loi en lui envoyant un avis à son adresse actuelle ou, si elle est un salarié, à son poste de travail.

(2) L'employeur informe de son intention concernant tout ou partie de l'excédent la personne visée à l'alinéa 9.2(3)b) de la Loi :

- a)** en envoyant un avis à l'adresse actuelle de la personne si elle figure au dossier de l'employeur ou à l'adresse que l'employeur est fondé à considérer comme son adresse actuelle;
- b)** si l'adresse de la personne est inconnue, en publiant un avis, dans les deux langues officielles, une fois par semaine pendant deux semaines consécutives dans au moins un journal à grand tirage dans chacune des provinces.

DORS/2001-222, art. 3.

Arbitrage concernant le paiement de l'excédent

16.2 (1) La procédure d'arbitrage visée au paragraphe 9.2(4) de la Loi prévoit notamment ce qui suit :

- a)** le droit des participants syndiqués de présenter leurs observations par écrit aux dirigeants du syndicat;

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Arbitration Relating to Refund of Surplus
Sections 16.2-17

Règlement de 1985 sur les normes de prestation de pension
Arbitrage concernant le paiement de l'excédent
Articles 16.2-17

- (b)** any person, other than a person described in paragraph (a), who is described in subsection 9.2(3) of the Act can make written representations to the arbitrator.
- (2)** For the purposes of subsection 9.2(7) of the Act, the prescribed period is one year beginning on the day on which the employer notifies the Superintendent and persons referred to in subsection 9.2(3) of the Act in accordance with subsection 9.2(4) or (5) of the Act, as the case may be.
- (3)** The arbitrator shall publish a notice of the date, time and place at which the arbitration will begin.
- (4)** The notice must include
- (a)** the mailing address from where the persons referred to in subsection 9.2(3) of the Act can obtain a copy of the procedures for the arbitration; and
- (b)** the mailing address where those persons may send their written representations.
- (5)** The notice must be published, in both official languages, once a week for two consecutive weeks, in one or more newspapers in general circulation in each province in which persons referred to in subsection 9.2(3) of the Act reside or, if a person's province of residence is not known, in each province.
- (6)** The last notice must be published not more than eight weeks and not less than four weeks before the day on which the arbitration begins.
- (b)** le droit des autres personnes visées au paragraphe 9.2(3) de la Loi de présenter leurs observations par écrit à l'arbitre.
- (2)** Pour l'application du paragraphe 9.2(7) de la Loi, le délai est d'un an à compter de la date à laquelle l'employeur a informé le surintendant et les personnes visées au paragraphe 9.2(3) de la Loi conformément au paragraphe 9.2(4) ou (5) de la Loi, selon le cas.
- (3)** L'arbitre fait publier un avis des date, heure et lieu d'ouverture de l'arbitrage.
- (4)** L'avis indique notamment :
- (a)** l'adresse postale où les personnes visées au paragraphe 9.2(3) de la Loi peuvent obtenir copie de la procédure d'arbitrage;
- (b)** l'adresse postale où elles peuvent faire parvenir leurs observations.
- (5)** L'avis est publié, dans les deux langues officielles, une fois par semaine pendant deux semaines consécutives dans au moins un journal à grand tirage dans chaque province où réside toute personne visée au paragraphe 9.2(3) de la Loi ou, si la province de résidence d'une personne est inconnue, dans chacune des provinces.
- (6)** L'avis est publié pour la dernière fois au moins quatre semaines et au plus huit semaines avant la date d'ouverture de l'arbitrage.

SOR/2001-222, s. 3; SOR/2011-196, s. 32.

DORS/2001-222, art. 3; DORS/2011-196, art. 32.

Indexation

17 The annual increase of the Consumer Price Index referred to in paragraph 21(6)(b) of the Act is the ratio of the aggregate of the Consumer Price Index for a current period of 12 consecutive months prior to the end of a plan year, or prior to the date the deferred pension benefit is adjusted as specified in the plan, if that date is other than the end of the plan year, to the aggregate of the Consumer Price Index for a corresponding period one year earlier, minus one.

Indexation

17 L'augmentation annuelle de l'indice des prix à la consommation, qui est visée à l'alinéa 21(6)b) de la Loi, est la fraction que représente l'indice des prix à la consommation global pour une période courante de 12 mois consécutifs antérieure à la fin d'un exercice ou précédant la date de la révision des prestations de pension différées prévue par le régime, si cette date ne correspond pas à la fin de l'exercice, par rapport à l'indice des prix à la consommation global pour la même période un an plus tôt, diminuée de un.

Portability of Pension Benefit Credits

18 (1) Subject to subsection (2), a pension benefit credit shall be determined in accordance with the *Recommendations for the Computation of Transfer Values from Registered Pension Plans* effective September 1, 1993 issued by the Canadian Institute of Actuaries, as amended from time to time.

(2) In the case of a defined contribution plan, where the contributions under the plan are allocated to an individual plan member, the pension benefit credit of a plan member or the survivor of a plan member shall be the value of the accumulated contributions made under the plan by or in respect of the plan member since the plan member became a plan member.

(3) A plan member or the survivor of a plan member who wishes to transfer the pension benefit credit of the plan member or the survivor shall notify the administrator thereof in the form set out in Form 3 of Schedule II.

(3.1) The consent referred to in subsection 26(2.1) of the Act shall be in Form 3.1 of Schedule II.

(4) A pension benefit credit shall be determined

(a) where a plan member retires or dies or the whole or part of the plan is terminated, as of the date of the retirement, death or termination;

(b) where a plan member ceases to be a plan member, as of the date that the plan member ceases to be a plan member; and

(c) where a plan member makes an assignment under subsection 25(4) of the Act, on the effective date of the assignment.

SOR/90-363, s. 4; SOR/94-384, s. 4; SOR/2001-194, ss. 1, 4; SOR/2002-78, s. 12; SOR/2015-60, s. 7.

19 (1) Where a plan has a solvency ratio that is less than one, any amount transferred out of the pension fund shall be considered to impair the solvency of the pension fund.

(2) Where a plan has a solvency ratio that is equal to one, any amount transferred out of the pension fund that would result in the plan having a solvency ratio of less than one shall be considered to impair the solvency of the pension fund.

19.1 For the purposes of sections 16.4 and 26 of the Act, a life income fund, a restricted life income fund and a locked-in registered retirement savings plan are

Transferts des droits à pension

18 (1) Sous réserve du paragraphe (2), les droits à pension sont déterminés conformément aux *Recommandations pour le calcul des valeurs de transfert des régimes de retraite agréés* de l'Institut canadien des actuaires, entrées en vigueur le 1^{er} septembre 1993, avec leurs modifications successives.

(2) Dans le cas d'un régime à cotisations déterminées aux termes duquel les cotisations sont attribuées individuellement aux participants, les droits à pension d'un participant ou de son survivant correspondent à la valeur des cotisations accumulées qui ont été versées au régime par le participant ou pour son compte depuis le début de sa participation.

(3) Le participant ou son survivant qui a l'intention de transférer les droits à pension du participant ou ceux du survivant en informe l'administrateur selon la formule 3 de l'annexe II.

(3.1) Le consentement visé au paragraphe 26(2.1) de la Loi est établi selon la formule 3.1 de l'annexe II.

(4) Les droits à pension sont déterminés, selon le cas :

a) à la date de la retraite ou du décès du participant, ou de la cessation totale ou partielle du régime;

b) à la date où le participant met fin à sa participation au régime;

c) à la date d'entrée en vigueur de toute cession faite en vertu du paragraphe 25(4) de la Loi.

DORS/90-363, art. 4; DORS/94-384, art. 4; DORS/2001-194, art. 1 et 4; DORS/2002-78, art. 12; DORS/2015-60, art. 7.

19 (1) Lorsqu'un régime a un ratio de solvabilité inférieur à un, tout transfert de montants hors du fonds de pension est considéré comme risquant de porter atteinte à la solvabilité du régime.

(2) Lorsqu'un régime a un ratio de solvabilité égal à un, tout transfert de montants hors du fonds de pension qui entraînerait la réduction du ratio à moins de un est considéré comme risquant de porter atteinte à la solvabilité du régime.

19.1 Pour l'application des articles 16.4 et 26 de la Loi, le fonds de revenu viager, le fonds de revenu viager restreint et le régime enregistré d'épargne-retraite

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Portability of Pension Benefit Credits
Sections 19.1-20

Règlement de 1985 sur les normes de prestation de pension
Transferts des droits à pension
Articles 19.1-20

retirement savings plans into which a pension benefit credit may be transferred.

SOR/95-551, s. 2; SOR/2008-144, s. 2; SOR/2015-60, s. 8.

20 (1) A locked-in registered retirement savings plan shall provide that

(a) the funds may only be

(i) transferred to another locked-in registered retirement savings plan,

(ii) transferred to a plan, including any pension plan referred to in subsection 26(5) of the Act, if the plan permits such a transfer and if the plan administers the benefit attributed to the transferred funds as if the benefit were that of a plan member with two years of membership in the plan,

(iii) used to purchase an immediate life annuity or a deferred life annuity, or

(iv) transferred to a life income fund or to a restricted life income fund;

(b) on the death of the holder of the locked-in registered retirement savings plan, the funds shall be paid to the survivor of the holder by

(i) transferring the funds to another locked-in registered retirement savings plan,

(ii) transferring the funds to a plan, including any pension plan referred to in subsection 26(5) of the Act, if the plan permits such a transfer and if the plan administers the benefit attributed to the transferred funds as if the benefit were that of a plan member with two years membership in the plan,

(iii) using the funds to purchase an immediate life annuity or a deferred life annuity, or

(iv) transferring the funds to a life income fund or to a restricted life income fund;

(c) except as provided in subsection 25(4) of the Act, the funds shall not be assigned, charged, anticipated or given as security and any transaction purporting to assign, charge, anticipate or give the funds as security is void;

(d) the holder of the locked-in registered retirement savings plan may withdraw an amount from that plan up to the lesser of the amount determined by the formula set out in subsection (1.1) and 50% of the Year's Maximum Pensionable Earnings minus any amount withdrawn in the calendar year under this paragraph

immobilisée sont des régimes d'épargne-retraite auxquels peuvent être transférés des droits à pension.

DORS/95-551, art. 2; DORS/2008-144, art. 2; DORS/2015-60, art. 8.

20 (1) Tout régime enregistré d'épargne-retraite immobilisée prévoit que :

a) les fonds ne peuvent être que transférés ou utilisés de l'une des façons suivantes :

(i) transférés à un autre régime enregistré d'épargne-retraite immobilisée,

(ii) transférés à un régime, notamment un régime de pension visé au paragraphe 26(5) de la Loi, pourvu que le régime permette un tel transfert et considère les prestations imputables aux fonds transférés comme celles d'un participant comptant deux années de participation au régime,

(iii) utilisés pour l'achat d'une prestation viagère immédiate ou d'une prestation viagère différée,

(iv) transférés à un fonds de revenu viager ou à un fonds de revenu viager restreint;

b) au décès du détenteur du régime enregistré d'épargne-retraite immobilisée, les fonds sont versés au survivant :

(i) soit par leur transfert à un autre régime enregistré d'épargne-retraite immobilisée,

(ii) soit par leur transfert à un régime, notamment un régime de pension visé au paragraphe 26(5) de la Loi, pourvu que celui-ci permette un tel transfert et considère les prestations imputables aux fonds transférés comme celles d'un participant comptant deux années de participation au régime,

(iii) soit par leur utilisation pour l'achat d'une prestation viagère immédiate ou d'une prestation viagère différée,

(iv) soit par leur transfert à un fonds de revenu viager ou à un fonds de revenu viager restreint;

c) sauf dans les cas prévus au paragraphe 25(4) de la Loi, les fonds ne peuvent être cédés, grevés ou faire l'objet d'une promesse de paiement ou d'une garantie, et toute transaction visant à céder les fonds, à les grever ou à en faire l'objet d'une promesse de paiement ou d'une garantie est nulle;

d) le détenteur du régime enregistré d'épargne-retraite immobilisée peut retirer de celui-ci au plus le moindre de la somme calculée selon la formule

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Portability of Pension Benefit Credits
Section 20

Règlement de 1985 sur les normes de prestation de pension
Transferts des droits à pension
Article 20

— from any locked-in registered retirement savings plan — or under paragraph 20.1(1)(m), 20.2(1)(e) or 20.3(1)(m)

(i) if the holder certifies that the holder has not made a withdrawal in the calendar year under this paragraph — from any locked-in registered retirement savings plan — or under paragraph 20.1(1)(m), 20.2(1)(e) or 20.3(1)(m) other than within the last 30 days before this certification,

(ii) if, in the event that the value of M in subsection (1.1) is greater than zero,

(A) the holder certifies that the holder expects to make expenditures on medical or disability-related treatment or adaptive technology for the calendar year in excess of 20% of the holder's total expected income for that calendar year determined in accordance with the *Income Tax Act*, excluding withdrawals in the calendar year under this paragraph — from any locked-in registered retirement savings plan — or under paragraph 20.1(1)(m), 20.2(1)(e) or 20.3(1)(m), and

(B) a physician certifies that such medical or disability-related treatment or adaptive technology is required, and

(iii) if the holder gives a copy of Form 1 and Form 2 of Schedule V to the financial institution with whom the contract or arrangement for the locked-in registered retirement savings plan was entered into;

(e) the holder of the locked-in registered retirement savings plan who has ceased to be a resident of Canada for at least two years may withdraw any amount from that plan; and

(f) in the calendar year in which the holder of the locked-in registered retirement savings plan reaches 55 years of age or in any subsequent calendar year the funds may be paid to the holder in a lump sum if

(i) the holder certifies that the total value of all assets in all locked-in registered retirement savings plans, life income funds, restricted locked-in savings plans and restricted life income funds that were created as a result of a transfer of pension benefit credits under section 16.4 or 26 of the Act, a transfer under these Regulations or a transfer under section 50, 53 or 54 of the *Pooled Registered Pension Plans Act* or *Pooled Registered Pension Plans Regulations*, is less than or equal to 50% of the Year's Maximum Pensionable Earnings, and

figurant au paragraphe (1.1) et de celle représentant 50 % du maximum des gains annuels ouvrant droit à pension, diminuée dans ce dernier cas des sommes retirées pendant l'année civile en vertu du présent alinéa de tout régime enregistré d'épargne-retraite immobilisée ou retirées en vertu des alinéas 20.1(1)(m), 20.2(1)(e) ou 20.3(1)(m), si les conditions ci-après sont réunies :

(i) il certifie qu'il n'a fait ni retrait en vertu du présent alinéa d'un régime enregistré d'épargne-retraite immobilisée, ni retrait en vertu des alinéas 20.1(1)(m), 20.2(1)(e) ou 20.3(1)(m), pendant l'année civile, sauf au cours de trente jours précédant la date de la certification,

(ii) dans le cas où la valeur de l'élément M de la formule figurant au paragraphe (1.1) est supérieure à zéro :

(A) il certifie que, pendant l'année civile, il prévoit engager, pour un traitement médical, un traitement médical relié à une invalidité ou une technologie d'adaptation, des dépenses supérieures à 20 % du revenu total qu'il prévoit toucher pour l'année civile, calculé conformément à la *Loi de l'impôt sur le revenu* sans tenir compte des sommes retirées au cours de cette année en vertu du présent alinéa de tout régime enregistré d'épargne-retraite immobilisée ou retirées en vertu des alinéas 20.1(1)(m), 20.2(1)(e) ou 20.3(1)(m),

(B) un médecin certifie que le traitement ou la technologie d'adaptation est nécessaire,

(iii) il remet à l'institution financière qui est partie au contrat ou à l'arrangement établissant le régime enregistré d'épargne-retraite immobilisée les formules 1 et 2 de l'annexe V;

(e) le détenteur du régime enregistré d'épargne-retraite immobilisée peut retirer des fonds de celui-ci s'il a cessé de résider au Canada depuis au moins deux ans;

(f) pendant l'année civile au cours de laquelle le détenteur du régime enregistré d'épargne-retraite immobilisée atteint l'âge de 55 ans ou toute année civile subséquente, les fonds du régime peuvent lui être versées en une somme globale si les conditions ci-après sont réunies :

(i) il certifie que la valeur totale de l'actif de tous les régimes enregistrés d'épargne-retraite immobilisée, fonds de revenu viager, régimes d'épargne immobilisée restreints et fonds de revenu viager restreints

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Portability of Pension Benefit Credits
Section 20

Règlement de 1985 sur les normes de prestation de pension
Transferts des droits à pension
Article 20

(ii) the holder gives a copy of Form 2 and Form 3 of Schedule V to the financial institution with whom the contract or arrangement for the locked-in registered retirement savings plan was entered into.

créés en raison d'un transfert de droits à pension fait en vertu des articles 16.4 ou 26 de la Loi ou d'un transfert fait en vertu du présent règlement ou des articles 50, 53 ou 54 de la *Loi sur les régimes de pension agréés collectifs* ou en vertu du *Règlement sur les régimes de pension agréés collectifs* est d'au plus 50 % du maximum des gains annuels ouvrant droit à pension,

(ii) il remet à l'institution financière qui est partie au contrat ou à l'arrangement établissant le régime enregistré d'épargne-retraite immobilisée les formules 2 et 3 de l'annexe V.

(1.1) The amount referred to in paragraph (1)(d), 20.1(1)(m), 20.2(1)(e) or 20.3(1)(m) is determined by the following formula:

$$M + N$$

where

M is the total amount of the expenditures that the holder expects to make on medical or disability-related treatment or adaptive technology for the calendar year, and

N is the greater of zero and the amount determined by the formula

$$P - Q$$

where

P is 50% of the Year's Maximum Pensionable Earnings, and

Q is two thirds of the holder's total expected income for the calendar year determined in accordance with the *Income Tax Act*, excluding withdrawals in the calendar year under paragraph (1)(d), 20.1(1)(m), 20.2(1)(e) or 20.3(1)(m).

(2) Where a pension benefit credit transferred into a locked-in registered retirement savings plan was not varied according to the sex of the plan member, an immediate life annuity or a deferred life annuity purchased by the funds accumulated in the locked-in registered retirement savings plan shall not differentiate as to sex.

(3) A locked-in registered retirement savings plan shall contain a statement as to whether or not the pension benefit credit transferred pursuant to section 26 of the Act was varied according to the sex of the plan member.

(4) A locked-in registered retirement savings plan shall provide that, where a physician certifies that owing to mental or physical disability the life expectancy of the

(1.1) La somme visée aux alinéas (1)d), 20.1(1)m), 20.2(1)e) ou 20.3(1)m), est calculée selon la formule suivante :

$$M + N$$

où :

M représente le total des dépenses que le détenteur prévoit engager pour le traitement médical, le traitement relié à une invalidité ou la technologie d'adaptation pendant l'année civile,

N zéro ou, s'il est plus élevé, le résultat de la formule suivante :

$$P - Q$$

où :

P représente 50 % du maximum des gains annuels ouvrant droit à pension;

Q les deux tiers du revenu total que le détenteur prévoit toucher pour l'année civile, calculé conformément à la *Loi de l'impôt sur le revenu* sans tenir compte des sommes retirées au cours de cette année en vertu des alinéas (1)d), 20.1(1)m), 20.2(1)e) ou 20.3(1)m).

(2) Lorsque les droits à pension transférés à un régime enregistré d'épargne-retraite immobilisée n'ont pas varié selon le sexe du participant, la prestation viagère immédiate ou la prestation viagère différée qui est achetée au moyen des fonds du régime ne peut faire de distinctions fondées sur le sexe.

(3) Le texte du régime enregistré d'épargne-retraite immobilisée précise si les droits à pension transférés conformément à l'article 26 de la Loi ont varié selon le sexe du participant.

(4) Le régime enregistré d'épargne-retraite immobilisée prévoit que, si un médecin certifie que l'espérance de vie du détenteur est susceptible d'être considérablement abrégée en raison d'une invalidité mentale ou physique,

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Portability of Pension Benefit Credits
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holder of the plan is likely to be shortened considerably, the funds may be paid to the holder in a lump sum.

(5) The contract or arrangement establishing a locked-in registered retirement savings plan shall set out the method of determining the value of the plan, including the valuation method used to establish its value on the death of the holder of the plan or on the transfer of assets from the plan.

SOR/93-109, s. 9(F); SOR/95-551, s. 3; SOR/2001-194, s. 4; SOR/2008-144, s. 3; SOR/2011-85, s. 14(F); SOR/2017-145, s. 5.

20.1 (1) The contract or arrangement establishing a life income fund shall

(a) set out the method of determining the value of the life income fund, including the valuation method used to establish its value on the death of the holder of the life income fund or on the transfer of assets from the life income fund;

(b) provide that the holder of the life income fund shall, at the beginning of each calendar year or at any other time agreed on by the financial institution with whom the contract or arrangement was entered into, decide the amount to be paid out of the life income fund in that year;

(c) provide that in the event that the holder of the life income fund does not decide the amount to be paid out of the life income fund in a calendar year, the minimum amount determined in accordance with the *Income Tax Act* shall be paid out of the life income fund in that year;

(d) provide that, for any calendar year before the calendar year in which the holder of the life income fund reaches 90 years of age, the amount of income paid out of the life income fund shall not exceed the amount determined by the formula

C/F

where

C is the balance in the life income fund

(i) at the beginning of the calendar year, or

(ii) if the amount determined in subparagraph (i) is zero, at the date when the initial amount was transferred into the life income fund, and

F is the value, as at the beginning of the calendar year, of a pension benefit of which the annual payment is \$1, payable on January 1 of each year between the beginning of that calendar year and December 31 of the year in which the holder reaches 90 years of age, established using an interest rate that

les fonds peuvent être versés au détenteur en une somme globale.

(5) Le contrat ou l'arrangement établissant un régime enregistré d'épargne-retraite immobilisée prévoit la méthode à utiliser pour établir la valeur du régime, notamment celle à utiliser pour établir sa valeur au moment du décès du détenteur du régime ou du transfert d'éléments d'actif du régime.

DORS/93-109, art. 9(F); DORS/95-551, art. 3; DORS/2001-194, art. 4; DORS/2008-144, art. 3; DORS/2011-85, art. 14(F); DORS/2017-145, art. 5.

20.1 (1) Le contrat ou l'arrangement établissant un fonds de revenu viager prévoit ce qui suit :

a) la méthode utilisée pour déterminer la valeur du fonds, y compris la méthode d'évaluation utilisée pour établir sa valeur au moment du décès du détenteur du fonds ou du transfert d'éléments d'actif du fonds;

b) le détenteur du fonds décide, soit au début de chaque année civile, soit à un autre moment convenu avec l'institution financière qui est partie au contrat ou à l'arrangement, du montant qui sera prélevé sur le fonds au cours de l'année;

c) si le détenteur du fonds ne décide pas du montant à prélever sur le fonds au cours d'une année civile, le montant minimal déterminé aux termes de la *Loi de l'impôt sur le revenu* est prélevé sur le fonds au cours de cette année;

d) le montant du revenu prélevé sur le fonds au cours de toute année civile précédant celle où le détenteur du fonds atteint quatre-vingt-dix ans ne peut dépasser le montant déterminé selon la formule suivante :

C/F

où :

C représente le solde du fonds à l'une des dates suivantes :

(i) le début de l'année civile,

(ii) si le montant établi selon le sous-alinéa (i) est zéro, la date à laquelle le montant initial a été transféré au fonds,

F la valeur, au début de l'année civile, d'une prestation de pension annuelle de 1 \$, payable le 1^{er} janvier de chaque année comprise entre le début de cette année civile et le 31 décembre de l'année où le détenteur atteint l'âge de quatre-vingt-dix ans, établie par application d'un taux d'intérêt qui :

(i) pour les quinze premières années qui suivent le 1^{er} janvier de l'année où le fonds est évalué, est inférieur ou égal au rendement

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- (i)** for the first 15 years after January 1 of the year in which the life income fund is valued, is less than or equal to the monthly average yield on Government of Canada marketable bonds of maturity over 10 years, as published by the Bank of Canada, for the month of November before the beginning of the calendar year, and
- (ii)** for any subsequent year, is not more than 6%;
- (d.1)** provide that, for the calendar year in which the holder of the life income fund reaches 90 years of age and for all subsequent calendar years, the amount of income paid out of the life income fund shall not exceed the value of the funds held in the fund immediately before the time of the payment;
- (e)** provide that, for the calendar year in which the contract or arrangement was entered into, the amount determined under paragraph (d) or (d.1), as the case may be, shall be multiplied by the number of months remaining in that year and then divided by 12, with any part of an incomplete month counting as one month;
- (f)** provide that if, at the time the life income fund was established, part of the life income fund was composed of funds that had been held in another life income fund of the holder earlier in the calendar year in which the fund was established, the amount determined under paragraph (d) or (d.1), as the case may be, is deemed to be zero in respect of that part of the life income fund for that calendar year;
- (g)** provide that the funds in the life income fund may only be
- (i)** transferred to another life income fund or to a restricted life income fund,
 - (ii)** transferred to a locked-in registered retirement savings plan, or
 - (iii)** used to purchase an immediate life annuity or a deferred life annuity;
- (h)** [Repealed, SOR/2006-208, s. 1]
- (i)** provide that, on the death of the holder of the life income fund, the funds in the life income fund shall be paid to the survivor of the holder by
- (i)** transferring the funds to another life income fund or to a restricted life income fund,
 - (ii)** using the funds to purchase an immediate life annuity or a deferred life annuity, or
- mensuel moyen, publié par la Banque du Canada, des obligations négociables du gouvernement du Canada d'un terme de plus de dix ans, pour le mois de novembre précédant le début de l'année civile,
- (ii)** pour les années subséquentes, est inférieur ou égal à 6 pour cent;
- d.1)** le montant du revenu prélevé sur le fonds dans l'année civile où le détenteur du fonds atteint quatre-vingt-dix ans et pour les années subséquentes ne peut dépasser la valeur des sommes détenues dans le fonds immédiatement avant le moment du versement;
- e)** pour l'année civile initiale du contrat ou de l'arrangement, le montant déterminé selon les alinéas d) ou d.1) est multiplié par le quotient de la division du nombre de mois non encore écoulés dans l'année par douze, toute partie d'un mois incomplet comptant pour un mois;
- f)** si, au moment où le fonds a été constitué, il a été composé en partie de sommes qui, plus tôt dans l'année civile en cause, étaient détenues dans un autre fonds de revenu viager du détenteur du fonds, le montant déterminé selon les alinéas d) et d.1) est réputé égal à zéro à l'égard de cette partie pour cette année;
- g)** les sommes du fonds ne peuvent être que transférées ou utilisées de l'une des façons suivantes :
- (i)** transférées à un autre fonds de revenu viager ou à un fonds de revenu viager restreint,
 - (ii)** transférées à un régime enregistré d'épargne-retraite immobilisée,
 - (iii)** utilisées pour l'achat d'une prestation viagère immédiate ou d'une prestation viagère différée;
- h)** [Abrogé, DORS/2006-208, art. 1]
- i)** au décès du détenteur du fonds, les sommes du fonds sont versées au survivant :
- (i)** soit par leur transfert à un autre fonds de revenu viager ou à un fonds de revenu viager restreint,
 - (ii)** soit par leur utilisation pour l'achat d'une prestation viagère immédiate ou d'une prestation viagère différée,
 - (iii)** soit par leur transfert à un régime enregistré d'épargne-retraite immobilisée;
- j)** sous réserve du paragraphe 25(4) de la Loi, les sommes du fonds ne peuvent être cédées, grevées ou

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- (iii) transferring the funds to a locked-in registered retirement savings plan;
- (j) provide that, subject to subsection 25(4) of the Act, the funds in the life income fund shall not be assigned, charged, anticipated or given as security and that any transaction purporting to assign, charge, anticipate or give the funds as security is void;
- (k) state whether or not any pension benefit credit transferred pursuant to section 26 of the Act was varied according to the sex of the plan member;
- (l) provide that, in the calendar year in which the holder of the life income fund reaches 55 years of age or in any subsequent calendar year, the funds may be paid to the holder in a lump sum if
- (i) the holder certifies that the total value of all assets in all locked-in registered retirement savings plans, life income funds, restricted locked-in savings plans and restricted life income funds that were created as a result of a transfer of pension benefit credits under section 16.4 or 26 of the Act, a transfer under these Regulations or a transfer under section 50, 53 or 54 of the *Pooled Registered Pension Plans Act* or *Pooled Registered Pension Plans Regulations*, is less than or equal to 50% of the Year's Maximum Pensionable Earnings, and
- (ii) if the holder gives a copy of Form 2 and Form 3 of Schedule V to the financial institution with whom the contract or arrangement for the life income fund was entered into;
- (m) provide that the holder of the life income fund may withdraw an amount from that fund up to the lesser of the amount determined by the formula set out in subsection 20(1.1) and 50% of the Year's Maximum Pensionable Earnings minus any amount withdrawn in the calendar year under this paragraph — from any life income fund — or under paragraph 20(1)(d), 20.2(1)(e) or 20.3(1)(m)
- (i) if the holder certifies that the holder has not made a withdrawal in the calendar year under this paragraph — from any life income fund — or under paragraph 20(1)(d), 20.2(1)(e) or 20.3(1)(m) other than within the last 30 days before this certification,
- (ii) if, in the event that the value of M in subsection 20(1.1) is greater than zero,
- (A) the holder certifies that the holder expects to make expenditures on medical or disability-related treatment or adaptive technology for the calendar year in excess of 20% of the holder's
- faire l'objet d'une promesse de paiement ou d'une garantie, et toute transaction visant à les céder, à les grever ou à en faire l'objet d'une promesse de paiement ou d'une garantie est nulle;
- (k) la mention que les droits à pension transférés conformément à l'article 26 de la Loi ont varié ou non selon le sexe du participant;
- (l) pendant l'année civile au cours de laquelle le détenteur du fonds atteint l'âge de 55 ans ou toute année civile subséquente, les fonds peuvent lui être versés en une somme globale si les conditions ci-après sont réunies :
- (i) il certifie que la valeur totale de l'actif de tous les régimes enregistrés d'épargne-retraite immobilisée, fonds de revenu viager, régimes d'épargne immobilisée restreints et fonds de revenu viager restreints créés en raison d'un transfert de droits à pension fait en vertu des articles 16.4 ou 26 de la Loi ou d'un transfert fait en vertu du présent règlement ou des articles 50, 53 ou 54 de la *Loi sur les régimes de pension agréés collectifs* ou en vertu du *Règlement sur les régimes de pension agréés collectifs* est d'au plus 50 % du maximum des gains annuels ouvrant droit à pension,
- (ii) il remet à l'institution financière qui est partie au contrat ou à l'arrangement établissant le fonds de revenu viager les formules 2 et 3 de l'annexe V;
- (m) le détenteur du fonds peut retirer de celui-ci au plus le moindre de la somme calculée selon la formule figurant au paragraphe 20(1.1) et de celle représentant 50 % du maximum des gains annuels ouvrant droit à pension, diminuée dans ce dernier cas des sommes retirées pendant l'année civile en vertu du présent alinéa de tout fonds de revenu viager ou retirées en vertu des alinéas 20(1)d), 20.2(1)e) ou 20.3(1)m), si les conditions ci-après sont réunies :
- (i) il certifie qu'il n'a fait ni retrait en vertu du présent alinéa d'un fonds de revenu viager, ni retrait en vertu des alinéas 20(1)d), 20.2(1)e) ou 20.3(1)m), pendant l'année civile, sauf au cours des trente jours précédant la date de la certification,
- (ii) dans le cas où la valeur de l'élément M de la formule figurant au paragraphe 20(1.1) est supérieure à zéro :
- (A) il certifie que, pendant l'année civile, il prévoit engager, pour un traitement médical, un traitement médical relié à une invalidité ou une

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total expected income for that calendar year determined in accordance with the *Income Tax Act*, excluding withdrawals in the calendar year under this paragraph — from any life income fund — or under paragraph 20(1)(d), 20.2(1)(e) or 20.3(1)(m), and

(B) a physician certifies that such medical or disability-related treatment or adaptive technology is required, and

(iii) if the holder gives a copy of Form 1 and Form 2 of Schedule V to the financial institution with whom the contract or arrangement for the life income fund was entered into; and

(n) provide that the holder of the life income fund who has ceased to be a resident of Canada for at least two years may withdraw any amount from that fund.

(2) Where a pension benefit credit transferred to a life income fund was not varied according to the sex of the plan member, an immediate life annuity or a deferred life annuity purchased with the funds accumulated in the life income fund shall not differentiate as to sex.

(3) A life income fund shall provide that, where a physician certifies that, owing to mental or physical disability, the life expectancy of the holder of the life income fund is likely to be shortened considerably, the funds in the life income fund may be paid to the holder in a lump sum.

SOR/95-551, s. 4; SOR/97-448, s. 1; SOR/2001-194, s. 4; SOR/2006-208, s. 1; SOR/2008-144, s. 4; SOR/2011-85, s. 14(F); SOR/2015-60, s. 9; SOR/2017-145, s. 6.

20.2 (1) A restricted locked-in savings plan shall provide that

(a) the funds may only be

(i) transferred to another restricted locked-in savings plan,

(ii) transferred to a plan, including any pension plan referred to in subsection 26(5) of the Act, if the plan permits such a transfer and if the plan administers the benefit attributed to the transferred funds as if the benefit were that of a plan member with two years' membership in the plan,

(iii) used to purchase an immediate life annuity or a deferred life annuity, or

(iv) transferred to a restricted life income fund;

(b) on the death of the holder of the restricted locked-in savings plan, the funds shall be paid to the survivor of the holder by

technologie d'adaptation, des dépenses supérieures à 20 % du revenu total qu'il prévoit toucher pour l'année civile, calculé conformément à la *Loi de l'impôt sur le revenu*, sans tenir compte des sommes retirées au cours de cette année en vertu du présent alinéa de tout fonds de revenu viager ou retirées en vertu des alinéas 20(1)(d), 20.2(1)(e) ou 20.3(1)(m),

(B) un médecin certifie que le traitement ou la technologie d'adaptation est nécessaire,

(iii) il remet à l'institution financière qui est partie au contrat ou à l'arrangement établissant le fonds de revenu viager les formules 1 et 2 de l'annexe V;

n) le détenteur du fonds de revenu viager peut retirer des fonds de celui-ci s'il a cessé de résider au Canada depuis au moins deux ans.

(2) Lorsque les droits à pension transférés à un fonds de revenu viager n'ont pas varié selon le sexe du participant, la prestation viagère immédiate ou la prestation viagère différée qui est achetée au moyen du fonds ne peut faire de distinctions fondées sur le sexe.

(3) Le fonds de revenu viager prévoit que, si un médecin certifie que l'espérance de vie du détenteur est susceptible d'être considérablement abrégée en raison d'une incapacité mentale ou physique, les fonds peuvent être versés au détenteur en une somme globale.

DORS/95-551, art. 4; DORS/97-448, art. 1; DORS/2001-194, art. 4; DORS/2006-208, art. 1; DORS/2008-144, art. 4; DORS/2011-85, art. 14(F); DORS/2015-60, art. 9; DORS/2017-145, art. 6.

20.2 (1) Tout régime d'épargne immobilisée restreint prévoit ce qui suit :

a) les fonds ne peuvent être :

(i) que transférés à un autre régime d'épargne immobilisée restreint,

(ii) que transférés à un régime, notamment un régime de pension visé au paragraphe 26(5) de la Loi, pourvu que le régime permette un tel transfert et considère les prestations imputables aux fonds transférés comme celles d'un participant comptant deux années de participation au régime,

(iii) qu'utilisés pour l'achat d'une prestation viagère immédiate ou d'une prestation viagère différée,

(iv) que transférés à un fonds de revenu viager restreint;

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- (i)** transferring the funds to another restricted locked-in savings plan or to a locked-in registered retirement savings plan,
- (ii)** transferring the funds to a plan, including any pension plan referred to in subsection 26(5) of the Act, if the plan permits such a transfer and if the plan administers the benefit attributed to the transferred funds as if the benefit were that of a plan member with two years' membership in the plan,
- (iii)** using the funds to purchase an immediate life annuity or a deferred life annuity, or
- (iv)** transferring the funds to a life income fund or to a restricted life income fund;
- (c)** except as provided in subsection 25(4) of the Act, the funds shall not be assigned, charged, anticipated or given as security and any transaction purporting to assign, charge, anticipate or give the funds as security is void;
- (d)** in the calendar year in which the holder of the restricted locked-in savings plan reaches 55 years of age or in any subsequent calendar year, the funds may be paid to the holder in a lump sum if
- (i)** the holder certifies that the total value of all assets in all locked-in registered retirement savings plans, life income funds, restricted locked-in savings plans and restricted life income funds that were created as a result of the transfer of pension benefit credits under section 16.4 or 26 of the Act, a transfer under these Regulations or a transfer under section 50, 53 or 54 of the *Pooled Registered Pension Plans Act* or the *Pooled Registered Pension Plans Regulations*, is less than or equal to 50% of the Year's Maximum Pensionable Earnings, and
- (ii)** if the holder gives a copy of Form 2 and Form 3 of Schedule V to the financial institution with whom the contract or arrangement for the restricted locked-in savings plan was entered into;
- (e)** the holder of the restricted locked-in savings plan may withdraw an amount from that plan up to the lesser of the amount determined by the formula set out in subsection 20(1.1) and 50% of the Year's Maximum Pensionable Earnings minus any amount withdrawn in the calendar year under this paragraph — from any restricted locked-in savings plan — or under paragraph 20(1)(d), 20.1(1)(m) or 20.3(1)(m)
- (i)** if the holder certifies that the holder has not made a withdrawal in the calendar year under this paragraph — from any restricted locked-in savings
- b)** au décès du détenteur du régime d'épargne immobilisée restreint, les fonds sont versés au survivant :
- (i)** soit par leur transfert à un autre régime d'épargne immobilisée restreint ou à un régime enregistré d'épargne-retraite immobilisée,
- (ii)** soit par leur transfert à un régime, notamment un régime de pension visé au paragraphe 26(5) de la Loi, pourvu que celui-ci permette un tel transfert et considère les prestations imputables aux fonds transférés comme celles d'un participant comptant deux années de participation au régime,
- (iii)** soit par leur utilisation pour l'achat d'une prestation viagère immédiate ou différée,
- (iv)** soit par leur transfert à un fonds de revenu viager ou à un fonds de revenu viager restreint;
- c)** sauf dans les cas prévus au paragraphe 25(4) de la Loi, les sommes du régime ne peuvent être cédées, grevées ou faire l'objet d'une promesse de paiement ou d'une garantie, et toute transaction visant à les céder, à les grever ou à en faire l'objet d'une promesse de paiement ou d'une garantie est nulle;
- d)** pendant l'année civile au cours de laquelle le détenteur du régime d'épargne immobilisée restreint atteint l'âge de 55 ans ou toute année civile subséquente, les sommes du régime peuvent lui être versées en une somme globale si les conditions ci-après sont réunies :
- (i)** il certifie que la valeur totale de l'actif de tous les régimes enregistrés d'épargne-retraite immobilisée, fonds de revenu viager, régimes d'épargne immobilisée restreints et fonds de revenu viager restreints créés en raison d'un transfert de droits à pension fait en vertu des articles 16.4 ou 26 de la Loi ou d'un transfert fait en vertu du présent règlement ou des articles 50, 53 ou 54 de la *Loi sur les régimes de pension agréés collectifs* ou en vertu du *Règlement sur les régimes de pension agréés collectifs* est d'au plus 50 % du maximum des gains annuels ouvrant droit à pension,
- (ii)** il remet à l'institution financière qui est partie au contrat ou à l'arrangement établissant le régime d'épargne immobilisée restreint les formules 2 et 3 de l'annexe V;
- e)** le détenteur du régime d'épargne immobilisée restreint peut retirer de celui-ci au plus le moindre de la somme calculée selon la formule figurant au paragraphe 20(1.1) et de celle représentant 50 % du maximum des gains annuels ouvrant droit à pension, diminuée dans ce dernier cas des sommes retirées pendant

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plan — or under paragraph 20(1)(d), 20.1(1)(m) or 20.3(1)(m) other than within the last 30 days before this certification,

(ii) if, in the event that the value of M in subsection 20(1.1) is greater than zero,

(A) the holder certifies that the holder expects to make expenditures on medical or disability-related treatment or adaptive technology for the calendar year in excess of 20% of the holder's total expected income for that calendar year determined in accordance with the *Income Tax Act*, excluding withdrawals in the calendar year under this paragraph — from any restricted locked-in savings plan — or under paragraph 20(1)(d), 20.1(1)(m) or 20.3(1)(m), and

(B) a physician certifies that such medical or disability-related treatment or adaptive technology is required, and

(iii) if the holder gives a copy of Form 1 and Form 2 of Schedule V to the financial institution with whom the contract or arrangement for the restricted locked-in savings plan was entered into; and

(f) the holder of the restricted locked-in savings plan who has ceased to be a resident of Canada for at least two years may withdraw any amount from that plan.

(2) If a pension benefit credit transferred into a restricted locked-in savings plan was not varied according to the sex of the plan member, an immediate life annuity or a deferred life annuity purchased with funds accumulated in the plan shall not differentiate as to sex.

(3) A restricted locked-in savings plan shall contain a statement as to whether or not the pension benefit credit transferred under section 26 of the Act was varied according to the sex of the plan member.

(4) A restricted locked-in savings plan shall provide that, if a physician certifies that owing to mental or physical disability the life expectancy of the holder of the plan is likely to be shortened considerably, the funds may be paid to the holder in a lump sum.

l'année civile en vertu du présent alinéa de tout régime d'épargne immobilisée restreint ou retirées en vertu des alinéas 20(1)d), 20.1(1)m) ou 20.3(1)m), si les conditions ci-après sont réunies :

(i) il certifie qu'il n'a fait ni retrait en vertu du présent alinéa d'un régime d'épargne-retraite immobilisée restreint, ni retrait en vertu des alinéas 20(1)d), 20.1(1)m) ou 20.3(1)m), pendant l'année civile, sauf au cours des trente jours précédant la date de la certification,

(ii) dans le cas où la valeur de l'élément M de la formule figurant au paragraphe 20(1.1) est supérieure à zéro :

(A) il certifie que, pendant l'année civile, il prévoit engager, pour un traitement médical, un traitement médical relié à une invalidité ou une technologie d'adaptation, des dépenses supérieures à 20 % du revenu total qu'il prévoit toucher pour l'année civile, calculé conformément à la *Loi de l'impôt sur le revenu* sans tenir compte des sommes retirées au cours de cette année en vertu du présent alinéa de tout régime d'épargne immobilisée restreint ou retirées en vertu des alinéas 20(1)d), 20.1(1)m) ou 20.3(1)m),

(B) un médecin certifie que le traitement ou la technologie d'adaptation est nécessaire,

(iii) il remet à l'institution financière qui est partie au contrat ou à l'arrangement établissant le régime d'épargne immobilisée restreint les formules 1 et 2 de l'annexe V;

f) le détenteur du régime d'épargne immobilisée restreint peut retirer des fonds de celui-ci s'il a cessé de résider au Canada depuis au moins deux ans.

(2) Si les droits à pension transférés à un régime d'épargne immobilisée restreint n'ont pas varié selon le sexe du participant, la prestation viagère immédiate ou différée qui est achetée au moyen de fonds du régime ne peut faire de distinctions fondées sur le sexe.

(3) Le contrat ou l'arrangement établissant le régime d'épargne immobilisée restreint précise si les droits à pension transférés conformément à l'article 26 de la Loi ont varié selon le sexe du participant.

(4) Le régime d'épargne immobilisée restreint prévoit que, si un médecin certifie que l'espérance de vie du détenteur est susceptible d'être considérablement abrégée en raison d'une incapacité mentale ou physique, les fonds peuvent être versés au détenteur en une somme globale.

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(5) The contract or arrangement establishing a restricted locked-in savings plan shall set out the method of determining the value of the plan, including the valuation method used to establish its value on the death of the holder of the plan or on the transfer of assets from the plan.

SOR/2008-144, s. 5; SOR/2011-85, s. 14(F); SOR/2015-60, s. 10; SOR/2017-145, s. 7.

20.3 (1) The contract or arrangement establishing a restricted life income fund shall

(a) set out the method of determining the value of the restricted life income fund, including the valuation method used to establish its value on the death of the holder of the fund or on the transfer of assets from the fund;

(b) provide that the holder of the restricted life income fund shall, at the beginning of each calendar year or at any other time agreed on by the financial institution with whom the contract or arrangement was entered into, decide the amount to be paid out of the fund in that year;

(c) provide that, in the event that the holder of the restricted life income fund does not decide the amount to be paid out of the fund in a calendar year, the minimum amount determined in accordance with the *Income Tax Act* shall be paid out in that year;

(d) provide that, for any calendar year before the calendar year in which the holder of the restricted life income fund reaches 90 years of age, the amount of income paid out of the fund shall not exceed the amount determined by the formula

C/F

where

C is the balance in the restricted life income fund

(i) at the beginning of the calendar year, or

(ii) if the amount determined under subparagraph (i) is zero, on the day on which the initial amount is transferred into the fund; and

F is the value, at the beginning of the calendar year, of a pension benefit whose annual payment is \$1, payable on January 1 of each year between the beginning of that calendar year and December 31 of the year in which the holder reaches 90 years of age, established using an interest rate that,

(i) for the first 15 years after January 1 of the year in which the restricted life income fund is valued, is less than or equal to the monthly average yield on Government of Canada marketable bonds of maturity over 10 years, as

(5) Le contrat ou l'arrangement établissant le régime d'épargne immobilisée restreint prévoit la méthode à utiliser pour établir la valeur du régime, notamment celle à utiliser pour établir la valeur au moment du décès du détenteur ou du transfert d'éléments d'actif du régime.

DORS/2008-144, art. 5; DORS/2011-85, art. 14(F); DORS/2015-60, art. 10; DORS/2017-145, art. 7.

20.3 (1) Le contrat ou l'arrangement établissant un fonds de revenu viager restreint :

a) établit la méthode à utiliser pour établir la valeur du fonds, notamment celle à utiliser pour établir sa valeur au moment du décès du détenteur ou du transfert d'éléments d'actif du fonds;

b) prévoit que le détenteur du fonds doit décider soit au début de chaque année civile, soit à un autre moment convenu avec l'institution financière qui est partie au contrat ou à l'arrangement, de la somme qui sera prélevée sur le fonds au cours de l'année;

c) prévoit que, si le détenteur du fonds ne décide pas de la somme qui sera prélevée sur le fonds au cours d'une année civile, la somme minimale déterminée aux termes de la *Loi de l'impôt sur le revenu* sera prélevée sur le fonds au cours de cette année;

d) prévoit que le montant du revenu prélevé sur le fonds au cours de toute année civile précédant celle où le détenteur du fonds atteint l'âge de 90 ans ne peut dépasser la somme déterminée selon la formule suivante :

C / F

où :

C représente :

(i) soit le solde du fonds au début de l'année civile,

(ii) soit, si ce solde est de zéro, le solde à la date à laquelle la somme initiale a été transférée au fonds,

F la valeur, au début de l'année civile, d'une prestation de pension annuelle de 1 \$, payable le 1^{er} janvier de chaque année comprise entre le début de cette année civile et le 31 décembre de l'année où le détenteur atteint l'âge de 90 ans, établie par application d'un taux d'intérêt qui :

(i) pour les quinze premières années qui suivent le 1^{er} janvier de l'année où le fonds est évalué, est inférieur ou égal au rendement mensuel moyen, publié par la Banque du Canada, des obligations négociables du gouvernement du Canada d'un terme de plus de dix

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published by the Bank of Canada, for the month of November before the beginning of the calendar year, and

(ii) for any subsequent year, is not more than 6%;

(e) provide that, for the calendar year in which the holder of the restricted life income fund reaches 90 years of age and for all subsequent calendar years, the amount of income paid out of the fund shall not exceed the value of the funds held in the fund immediately before the time of the payment;

(f) provide that, for the calendar year in which the contract or arrangement was entered into, the amount determined under paragraph (d) or (e), as the case may be, shall be multiplied by the number of months remaining in that year and then divided by 12, with any part of an incomplete month counting as one month;

(g) provide that if, at the time the restricted life income fund was established, part of the fund was composed of funds that had been held in another restricted life income fund of the holder earlier in the calendar year in which the fund was established, the amount determined under paragraph (d) or (e), as the case may be, is deemed to be zero in respect of that part of the fund for that calendar year;

(h) provide that the funds in the restricted life income fund may only be

(i) transferred to another restricted life income fund,

(ii) transferred to a restricted locked-in savings plan, or

(iii) used to purchase an immediate life annuity or a deferred life annuity;

(i) provide that, on the death of the holder of the restricted life income fund, the funds in that fund shall be paid to the survivor of the holder by

(i) transferring the funds to another restricted life income fund or to a life income fund,

(ii) transferring the funds to a locked-in registered retirement savings plan or to a restricted locked-in savings plan, or

(iii) using the funds to purchase an immediate life annuity or a deferred life annuity;

ans, pour le mois de novembre précédant le début de l'année civile,

(ii) pour les années subséquentes, est d'au plus 6 % ;

e) prévoit que le montant du revenu prélevé sur le fonds au cours de l'année civile où le détenteur du fonds atteint l'âge de 90 ans et des années civiles subséquentes ne peut dépasser la valeur des sommes détenues dans le fonds immédiatement avant le moment du versement;

f) prévoit que, pour l'année civile initiale du contrat ou de l'arrangement, le montant déterminé selon les alinéas d) ou e) est multiplié par le quotient de la division du nombre de mois non encore écoulés dans l'année par douze, toute partie d'un mois incomplet comptant pour un mois;

g) prévoit que si, au moment où le fonds a été constitué, il a été composé en partie de sommes qui, plus tôt dans l'année civile en cause, étaient détenues dans un autre fonds de revenu viager restreint du détenteur du fonds, le montant déterminé selon les alinéas d) ou e) est réputé, pour cette année, égal à zéro à l'égard de la partie provenant de cet autre fonds;

h) prévoit que les sommes du fonds ne peuvent être :

(i) que transférées à un autre fonds de revenu viager restreint,

(ii) que transférées à un régime d'épargne immobilisée restreint,

(iii) qu'utilisées pour l'achat d'une prestation viagère immédiate ou d'une prestation viagère différée;

i) prévoit qu'au décès du détenteur du fonds, les sommes qui se trouvent dans celui-ci sont versées au survivant :

(i) soit par leur transfert à un autre fonds de revenu viager restreint ou à un fonds de revenu viager,

(ii) soit par leur transfert à un régime enregistré d'épargne-retraite immobilisée ou à un régime d'épargne immobilisée restreint,

(iii) soit par leur utilisation pour l'achat d'une prestation viagère immédiate ou différée;

j) prévoit que, sauf dans les cas prévus au paragraphe 25(4) de la Loi, les sommes du fonds ne peuvent être cédées, grevées ou faire l'objet d'une promesse de paiement ou d'une garantie, et toute transaction visant

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(j) provide that, except as provided in subsection 25(4) of the Act, the funds in the restricted life income fund shall not be assigned, charged, anticipated or given as security and that any transaction purporting to assign, charge, anticipate or give the funds as security is void;

(k) state whether or not any pension benefit credit transferred under section 26 of the Act was varied according to the sex of the plan member;

(l) provide that, in the calendar year in which the holder of the restricted life income fund reaches 55 years of age or in any subsequent calendar year, the funds may be paid to the holder in a lump sum if

(i) the holder certifies that the total value of all assets in all locked-in registered retirement savings plans, life income funds, restricted locked-in savings plans and restricted life income funds that were created as a result of the transfer of pension benefit credits under section 16.4 or 26 of the Act, a transfer under these Regulations or a transfer under section 50, 53 or 54 of the *Pooled Registered Pension Plans Act* or the *Pooled Registered Pension Plans Regulations*, is less than or equal to 50% of the Year's Maximum Pensionable Earnings, and

(ii) if the holder gives a copy of Form 2 and Form 3 of Schedule V to the financial institution with whom the contract or arrangement for the restricted life income fund was entered into;

(m) provide that the holder of the restricted life income fund may withdraw an amount from that fund up to the lesser of the amount determined by the formula set out in subsection 20(1.1) and 50% of the Year's Maximum Pensionable Earnings minus any amount withdrawn in the calendar year under this paragraph — from any restricted life income fund — or under paragraph 20(1)(d), 20.1(1)(m) or 20.2(1)(e)

(i) if the holder certifies that the holder has not made a withdrawal in the calendar year under this paragraph — from any restricted life income fund — or under paragraph 20(1)(d), 20.1(1)(m) or 20.2(1)(e) other than within the last 30 days before this certification,

(ii) if, in the event that the value of M in subsection 20(1.1) is greater than zero,

(A) the holder certifies that the holder expects to make expenditures on medical or disability-related treatment or adaptive technology for the calendar year in excess of 20% of the holder's total expected income for that calendar year determined in accordance with the *Income Tax Act*,

à les céder, à les grever ou à en faire l'objet d'une promesse de paiement ou d'une garantie est nulle;

(k) précise si les droits à pension transférés conformément à l'article 26 de la Loi ont varié selon le sexe du participant;

(l) prévoit que pendant l'année civile au cours de laquelle le détenteur du fonds atteint l'âge de 55 ans ou toute année civile subséquente, les sommes du fonds peuvent lui être versées en une somme globale si les conditions ci-après sont réunies :

(i) il certifie que la valeur totale de l'actif de tous les régimes enregistrés d'épargne-retraite immobilisée, fonds de revenu viager, régimes d'épargne immobilisée restreints et fonds de revenu viager restreints créés en raison d'un transfert de droits à pension fait en vertu des articles 16.4 ou 26 de la Loi ou d'un transfert fait en vertu du présent règlement ou des articles 50, 53 ou 54 de la *Loi sur les régimes de pension agréés collectifs* ou en vertu du *Règlement sur les régimes de pension agréés collectifs* est d'au plus 50 % du maximum des gains annuels ouvrant droit à pension,

(ii) il remet à l'institution financière qui est partie au contrat ou à l'arrangement établissant le fonds de revenu viager restreint les formules 2 et 3 de l'annexe V;

(m) prévoit que le détenteur du fonds peut retirer de celui-ci au plus le moindre de la somme calculée selon la formule figurant au paragraphe 20 (1.1) et de celle représentant 50 % du maximum des gains annuels ouvrant droit à pension, diminuée dans ce dernier cas des sommes retirées pendant l'année civile en vertu du présent alinéa de tout fonds de revenu viager restreint ou retirées en vertu des alinéas 20(1)d), 20.1(1)m) ou 20.2(1)e), si les conditions ci-après sont réunies :

(i) il certifie qu'il n'a fait ni retrait en vertu du présent alinéa d'un fonds de revenu viager restreint, ni retrait en vertu des alinéas 20(1)d), 20.1(1)m) ou 20.2(1)e) pendant l'année civile, sauf au cours des trente jours précédant la date de certification,

(ii) dans le cas où la valeur de l'élément M de la formule figurant au paragraphe 20(1.1) est supérieure à zéro :

(A) il certifie que, pendant l'année civile, il prévoit engager, pour un traitement médical, un traitement médical relié à une invalidité ou une technologie d'adaptation, des dépenses supérieures à 20 % du revenu total qu'il prévoit toucher pour l'année civile, calculé conformément à

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excluding withdrawals in the calendar year under this paragraph — from any restricted life income fund — or under paragraph 20(1)(d), 20.1(1)(m) or 20.2(1)(e), and

(B) a physician certifies that such medical or disability-related treatment or adaptive technology is required, and

(iii) if the holder gives a copy of Form 1 and Form 2 of Schedule V to the financial institution with whom the contract or arrangement for the restricted life income fund was entered into;

(n) provide that, if the restricted life income fund is established in the calendar year in which the holder of the fund reaches 55 years of age or in any subsequent calendar year, the holder of the fund may transfer 50% of the funds in that fund to a registered retirement savings plan or a registered retirement income fund within 60 days after the establishment of the restricted life income fund if

(i) the restricted life income fund was created as the result of the transfer of a pension benefit credit under section 16.4 or 26 of the Act or a transfer from a locked-in registered retirement savings plan, a life income fund or a PRPP, and

(ii) if the holder gives a copy of Form 2 of Schedule V to the financial institution with whom the contract or arrangement for the restricted life income fund was entered into; and

(o) provide that the holder of the restricted life income fund who has ceased to be a resident of Canada for at least two years may withdraw any amount from that fund.

(2) If a pension benefit credit transferred to a restricted life income fund was not varied according to the sex of the plan member, an immediate life annuity or a deferred life annuity purchased with funds accumulated in the fund shall not differentiate as to sex.

(3) A restricted life income fund shall provide that, if a physician certifies that owing to mental or physical disability the life expectancy of the holder of the fund is likely to be shortened considerably, the funds in that fund may be paid to the holder in a lump sum.

SOR/2008-144, s. 5; SOR/2011-85, s. 14(F); SOR/2015-60, s. 11; SOR/2017-145, s. 8.

21 (1) For the purposes of paragraphs 26(1)(c) and (2)(c) and subparagraphs 26(3)(a)(iii) and (b)(iii) of the Act, an immediate life annuity or a deferred life annuity that is purchased with a pension benefit credit or with

la *Loi de l'impôt sur le revenu* sans tenir compte des sommes retirées au cours de cette année en vertu du présent alinéa de tout fonds de revenu viager restreint ou retirées en vertu des alinéas 20(1)d), 20.1(1)m) ou 20.2(1)e),

(B) un médecin certifie que le traitement ou la technologie d'adaptation est nécessaire,

(iii) il remet à l'institution financière qui est partie au contrat ou à l'arrangement établissant le fonds de revenu viager restreint les formules 1 et 2 de l'annexe V;

n) prévoit que si le fonds est établi pendant l'année civile au cours de laquelle son détenteur atteint l'âge de 55 ans ou toute année civile subséquente, celui-ci peut transférer 50 % des sommes du fonds dans un régime enregistré d'épargne-retraite ou dans un fonds enregistré de revenu de retraite dans les soixante jours suivant l'établissement du fonds de revenu viager restreint, si les conditions ci-après sont réunies :

(i) le fonds de revenu viager restreint est créé en raison du transfert de droits à pension fait en vertu des articles 16.4 ou 26 de la Loi ou d'un transfert d'un régime enregistré d'épargne-retraite immobilisée, d'un fonds de revenu viager ou d'un RPAC,

(ii) le détenteur remet à l'institution financière qui est partie au contrat ou à l'arrangement établissant le fonds de revenu viager restreint la formule 2 de l'annexe V;

o) prévoit que le détenteur du fonds de revenu viager restreint peut retirer des fonds de celui-ci s'il a cessé de résider au Canada depuis au moins deux ans.

(2) Si les droits à pension transférés à un fonds de revenu viager restreint n'ont pas varié selon le sexe du participant, la prestation viagère immédiate ou différée qui est achetée au moyen du fonds ne peut faire de distinctions fondées sur le sexe.

(3) Le fonds de revenu viager restreint prévoit que, si un médecin certifie que l'espérance de vie du détenteur est susceptible d'être considérablement abrégée en raison d'une incapacité mentale ou physique, les fonds peuvent être versés au détenteur en une somme globale.

DORS/2008-144, art. 5; DORS/2011-85, art. 14(F); DORS/2015-60, art. 11; DORS/2017-145, art. 8.

21 (1) Pour l'application des alinéas 26(1)c) et (2)c) et des sous-alinéas 26(3)a)(iii) et b)(iii) de la Loi, la prestation viagère immédiate ou différée qui est achetée au moyen de droits à pension ou des fonds d'un régime

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the funds of a locked-in registered retirement savings plan, a restricted locked-in savings plan, a life income fund or a restricted life income fund shall provide that

(a) except as provided in subsection 25(4) of the Act, no benefit provided under the annuity shall be assigned, charged, anticipated or given as security and any transaction purporting to assign, charge, anticipate or give the benefit as security is void;

(b) except in the case of the unexpired period of a guaranteed annuity where the annuitant is deceased, no benefit provided under the annuity shall be surrendered or commuted during the lifetime of the annuitant or the spouse or common-law partner of the annuitant and any transaction purporting to surrender or commute such a benefit is void; and

(c) where the annuitant has a spouse or common-law partner at the time that annuity benefits commence to be paid, the annuity benefit shall be paid in the form of a joint and survivor pension benefit, subject to the provisions of section 22 of the Act.

(2) A deferred life annuity referred to in subsection (1) that is purchased with a pension benefit credit or with the funds of a locked-in registered retirement savings plan, a restricted locked-in savings plan, a life income fund or a restricted life income fund shall provide that

(a) if the annuitant dies prior to the time that the annuity payments commence, the survivor is entitled, on the death of the annuitant, to an amount equal to the commuted value of the deferred life annuity; and

(b) any amount to which the survivor is entitled shall be

(i) transferred to a locked-in registered retirement savings plan,

(ii) transferred to a plan, including any pension plan referred to in subsection 26(5) of the Act, if the plan permits such a transfer and administers the benefit attributed to the transferred funds as if the benefit were that of a plan member with two years of membership in the plan,

(iii) used to purchase an immediate life annuity or a deferred life annuity, or

(iv) transferred to a life income fund or to a restricted life income fund.

enregistré d'épargne-retraite immobilisée, d'un régime d'épargne immobilisée restreint, d'un fonds de revenu viager ou d'un fonds de revenu viager restreint prévoit que :

a) sauf dans les cas prévus au paragraphe 25(4) de la Loi, aucune prestation prévue par la prestation viagère ne peut être cédée, grevée ou faire l'objet d'une promesse de paiement ou d'une garantie, et toute transaction visant à céder la prestation, à la grever ou à en faire l'objet d'une promesse de paiement ou d'une garantie est nulle;

b) sauf dans le cas de la période qui reste à courir d'une prestation viagère garantie lorsque le rentier meurt, aucune prestation prévue dans le cadre de la prestation viagère ne peut être rachetée pendant la vie du rentier ou de son époux ou conjoint de fait et toute transaction visant le rachat d'une telle prestation est nulle;

c) si le prestataire a un époux ou conjoint de fait à la date du début du service de la prestation, la prestation viagère doit être versée sous forme de prestation de pension réversible et est à ce titre assujettie à l'article 22 de la Loi.

(2) La prestation viagère différée visée au paragraphe (1) qui est achetée au moyen de droits à pension ou des fonds d'un régime enregistré d'épargne-retraite immobilisée, d'un régime d'épargne immobilisée restreint, d'un fonds de revenu viager ou d'un fonds de revenu viager restreint prévoit que :

a) si le rentier décède avant le début du service de la prestation, son survivant a droit, dès la date du décès, à un montant égal à la valeur escomptée de la prestation viagère différée;

b) tout montant auquel le survivant a droit est transféré ou utilisé de l'une des façons suivantes :

(i) transféré à un régime enregistré d'épargne-retraite immobilisée,

(ii) transféré à un régime, notamment un régime de pension visé au paragraphe 26(5) de la Loi, pourvu que celui-ci permette un tel transfert et considère les prestations imputables aux fonds transférés comme celles d'un participant comptant deux années de participation au régime,

(iii) utilisé pour l'achat d'une prestation viagère immédiate ou d'une prestation viagère différée,

(iv) transféré à un fonds de revenu viager ou à un fonds de revenu viager restreint.

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(3) [Repealed, SOR/95-551, s. 5]

(4) For the purposes of subsection (2), the commuted value of the deferred life annuity shall be determined in accordance with the *Recommendations for the Computation of Transfer Values from Registered Pension Plans* effective September 1, 1993 issued by the Canadian Institute of Actuaries, as amended from time to time.

SOR/93-109, ss. 6, 9(F); SOR/94-384, s. 5; SOR/95-551, s. 5; SOR/2001-194, ss. 4, 5; SOR/2002-78, s. 13; SOR/2008-144, s. 6; SOR/2011-85, s. 14(F); SOR/2017-145, s. 9.

Variable Benefit

21.1 (1) A member or former member who has elected to receive a variable benefit may decide the amount that they are to receive as a variable benefit for any calendar year.

(2) The variable benefit shall be not less than the minimum amount determined under subsection 8506(5) of the *Income Tax Regulations* and, for any calendar year before the year in which the former member or their survivor, as the case may be, reaches 90 years of age, not more than the amount determined by the formula

C / F

where

C is the balance in the former member's account

- (a)** at the beginning of the calendar year, or
- (b)** if the balance at the beginning of the calendar year is zero, on the day on which the election was made; and

F is the value, at the beginning of the calendar year, of a pension benefit of which the annual payment is \$1, payable on January 1 of each year between the beginning of that calendar year and December 31 of the year in which the member, former member or their survivor, as the case may be, reaches 90 years of age, established using an interest rate that is

- (a)** for each of the first 15 years, not more than the monthly average yield on Government of Canada marketable bonds of maturity over 10 years, as published by the Bank of Canada, for the month of November before the beginning of the calendar year, and
- (b)** for any subsequent year, not more than 6%.

(3) For the calendar year in which the former member or their survivor, as the case may be, reaches 90 years of age and for all subsequent calendar years, the amount of the

(3) [Abrogé, DORS/95-551, art. 5]

(4) Pour l'application du paragraphe (2), la valeur escomptée de la prestation viagère différée est déterminée conformément aux *Recommandations pour le calcul des valeurs de transfert des régimes de retraite agréés*, entrées en vigueur le 1^{er} septembre 1993, avec leurs modifications successives.

DORS/93-109, art. 6 et 9(F); DORS/94-384, art. 5; DORS/95-551, art. 5; DORS/2001-194, art. 4 et 5; DORS/2002-78, art. 13; DORS/2008-144, art. 6; DORS/2011-85, art. 14(F); DORS/2017-145, art. 9.

Prestation variable

21.1 (1) Le participant ou l'ancien participant qui a choisi de recevoir une prestation variable peut décider de la somme à recevoir à titre de prestation variable pour toute année civile.

(2) La prestation variable n'est pas inférieure au minimum déterminé selon le paragraphe 8506(5) du *Règlement de l'impôt sur le revenu* et, pour toute année civile antérieure à l'année où l'ancien participant ou son survivant, selon le cas, atteint l'âge de quatre-vingt-dix ans, n'est pas supérieure à la somme calculée selon la formule suivante :

C / F

où :

C représente le solde du compte de l'ancien participant :

- a)** soit au début de l'année civile;
- b)** soit, s'il est alors de zéro, à la date à laquelle le choix est fait;

F la valeur, au début de l'année civile, d'une prestation de pension annuelle de 1 \$, payable le 1^{er} janvier de chaque année comprise entre le début de cette année civile et le 31 décembre de l'année où le participant, l'ancien participant ou son survivant, selon le cas, atteint l'âge de quatre-vingt-dix ans, établie par l'application d'un taux d'intérêt qui :

- a)** pour les quinze premières années, est inférieur ou égal au rendement mensuel moyen, publié par la Banque du Canada, des obligations négociables du gouvernement du Canada d'un terme de plus de dix ans, pour le mois de novembre précédant le début de l'année civile;
- b)** pour les années subséquentes, est inférieur ou égal à 6 %.

(3) Le montant de prestation variable versé au cours de l'année civile où l'ancien participant ou son survivant, selon le cas, atteint l'âge de quatre-vingt-dix ans et pour les

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variable benefit shall not exceed the value of the funds held in the fund immediately before the time of the payment.

(4) The minimum amount determined under subsection 8506(5) of the *Income Tax Regulations* shall be paid as a variable benefit for a calendar year if

(a) the member or former member or their survivor, as the case may be, has not notified the administrator of the amount to be paid as a variable benefit for a calendar year by the beginning of that year, or

(b) the amount determined by the formula set out in subsection (2) for that year is less than that minimum amount.

(5) If, for the calendar year in which the variable benefit is established, part of the account was composed of funds that had been held in a life income fund of the holder earlier in the calendar year in which the variable benefit was established, the amount determined by the formula set out in subsection (2) and the value of the funds referred to in subsection (3) is deemed to be zero in respect of that part of the account for that calendar year.

(6) For the first calendar year that the variable benefit is paid, the amount to be paid shall be multiplied by the number of months remaining in that year and then divided by 12, with any part of an incomplete month counting as one month.

SOR/2015-60, s. 12; SOR/2017-145, s. 10(E).

Information to Be Provided

22 The written explanation, information and written statement to be provided pursuant to paragraphs 28(1)(a) and (b) of the Act shall be addressed to the plan member or the employee and that person's spouse or common-law partner as shown on the records of the administrator and shall be

(a) given to the plan member or the employee at the place of employment; or

(b) mailed to the residence of the plan member or employee.

SOR/95-171, s. 6(F); SOR/2001-194, s. 5.

22.1 For the purpose of subparagraph 28(1)(a)(ii) of the Act, the written explanation shall include, in the case of a negotiated contribution plan, a description of the funding arrangement, including an indication that

années subséquentes ne peut dépasser la valeur des sommes détenues dans le fonds immédiatement avant le versement.

(4) Le montant de la prestation variable à payer pour une année civile correspond au minimum déterminé selon le paragraphe 8506(5) du *Règlement de l'impôt sur le revenu* dans les cas suivants :

a) le participant, l'ancien participant ou son survivant, selon le cas, n'avise pas l'administrateur du montant de la prestation variable à payer pour l'année civile avant le début de celle-ci;

b) la somme calculée selon la formule prévue au paragraphe (2) pour cette année est inférieure à ce minimum.

(5) Si, au cours de l'année civile pendant laquelle le participant ou l'ancien participant choisit de recevoir la prestation variable, le compte a été composé en partie de sommes qui, plus tôt dans l'année, étaient détenues dans un autre fonds de revenu viager de son détenteur, la somme calculée selon la formule prévue au paragraphe (2) et la valeur des sommes visées au paragraphe (3) sont réputées égales à zéro à l'égard de cette partie pour cette année.

(6) Pour la première année civile à l'égard de laquelle la prestation variable est versée, le montant est multiplié par le quotient du nombre de mois non encore écoulés dans l'année par douze, tout mois incomplet comptant pour un mois.

DORS/2015-60, art. 12; DORS/2017-145, art. 10(A).

Informations à fournir

22 L'explication écrite, les renseignements et le relevé devant être fournis conformément aux alinéas 28(1)a) et b) de la Loi sont adressés au participant ou au salarié et à son époux ou conjoint de fait, d'après les noms et adresses figurant aux registres de l'administrateur, et sont :

a) soit remis au participant ou au salarié au lieu de travail;

b) soit envoyés par la poste à la résidence du participant ou du salarié.

DORS/95-171, art. 6(F); DORS/2001-194, art. 5.

22.1 L'explication écrite visée au sous-alinéa 28(1)a)(ii) de la Loi comprend, dans le cas d'un régime à cotisations négociées, les modalités de financement, y compris :

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
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(a) pension benefits or pension benefit credits may need to be reduced if negotiated contributions are insufficient to meet prescribed solvency standards; and

(b) the administrator may amend the plan to reduce, subject to the Superintendent's authorization, pension benefits or pension benefit credits.

SOR/2015-60, s. 13.

23 (1) The written statement to be provided in accordance with paragraph 28(1)(b) of the Act shall include

(a) the name of the plan member;

(b) the period to which the statement applies;

(c) the date of birth of the plan member;

(d) the period that has been credited to the plan member for the purpose of calculating the pension benefit of the plan member;

(e) the date on which the plan member attains pensionable age;

(f) the date on which the plan member is first entitled to an immediate pension benefit pursuant to subsection 16(2) of the Act;

(g) the name of the spouse or common-law partner of the plan member listed on the records of the administrator;

(h) the name of any person on the records of the administrator designated as the beneficiary of the pension benefit of the member;

(i) the additional voluntary contributions of the plan member made for the plan year and the accumulated additional voluntary contributions of the plan member as of the end of the plan year;

(j) the required contributions of the plan member made for the plan year and the accumulated required contributions of the plan member as of the end of the plan year;

(k) in the case of a plan with a defined contribution provision, the contributions of the employer in respect of the plan member made for the plan year and the accumulated contributions of the employer in respect of the plan member as of the end of the plan year;

(l) the amount of any funds transferred to the plan in respect of the plan member and the benefit under the plan attributable to that amount or the length of

a) le fait que les prestations de pension ou les droits à pension pourraient devoir être réduits si les cotisations négociées ne permettent pas au régime de satisfaire aux normes de solvabilité réglementaires;

b) le fait que l'administrateur peut modifier le régime afin de les réduire, sous réserve de l'autorisation du surintendant.

DORS/2015-60, art. 13.

23 (1) Le relevé devant être fourni conformément à l'alinéa 28(1)b) de la Loi indique :

a) le nom du participant;

b) la période à laquelle le relevé s'applique;

c) la date de naissance du participant;

d) la période qui a été portée au crédit du participant aux fins du calcul de sa prestation de pension;

e) la date à laquelle le participant atteindra l'âge admissible;

f) la date à laquelle le participant aura droit pour la première fois à une prestation de pension immédiate en application du paragraphe 16(2) de la Loi;

g) le nom de l'époux ou du conjoint de fait du participant figurant aux registres de l'administrateur;

h) le nom de toute personne désignée, selon les registres de l'administrateur, comme bénéficiaire de la prestation de pension du participant;

i) le montant des cotisations facultatives versées par le participant pour l'exercice et la valeur cumulative de ses cotisations facultatives à la fin de l'exercice;

j) le montant des cotisations obligatoires versées par le participant pour l'exercice et la valeur cumulative de ses cotisations obligatoires à la fin de l'exercice;

k) dans le cas d'un régime comportant une disposition à cotisations déterminées, les cotisations patronales versées à l'égard du participant pendant l'exercice et la valeur cumulative des cotisations patronales à l'égard du participant à la fin de l'exercice;

l) tout montant transféré au régime à l'égard du participant et la prestation imputable au montant ou la durée du service portée au crédit du participant à l'égard de ce montant;

m) dans le cas d'un régime autre qu'un régime à cotisations déterminées :

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

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service credited to the plan member in respect of that amount;

(m) in the case of a plan other than a defined contribution plan,

(i) the annual amount of the pension benefit accrued in respect of the plan member at the end of the plan year and payable at pensionable age,

(ii) the total value of solvency assets and solvency liabilities of the plan on the valuation date, and

(iii) the total employer payments made to the plan for the plan year;

(n) if applicable, the interest rates credited to the contributions of the plan member for the plan year;

(o) the benefit payable on the death of the plan member and the extent to which that benefit would be reduced by a payment under a group life insurance plan;

(p) a statement setting out the right to access the documents described in paragraph 28(1)(c) of the Act;

(q) in respect of the defined benefit provisions of an uninsured defined benefit plan,

(i) if the ratio as calculated in accordance with paragraph (b) of the definition ***solvency ratio*** in subsection 2(1) is less than one,

(A) the value and description of the ratio, the valuation date and the date of the next valuation,

(B) a description of the measures the administrator has implemented or will implement to bring that ratio to one, and

(C) the extent to which the member's benefit would be reduced if the plan were terminated and wound up with that solvency ratio; and

(ii) in any other case, the value and description of the ratio, the valuation date and the date of the next valuation;

(r) for the assets of a plan that are not held in respect of member choice accounts,

(i) a list of the 10 largest asset holdings based on market value, each expressed as a percentage of the total assets, and

(ii) the target asset allocation expressed as a percentage of the total assets; and

(i) la valeur cumulative annuelle à l'égard du participant, à la fin de l'exercice, des prestations de pension payables à l'âge admissible,

(ii) la valeur totale de l'actif de solvabilité et du passif de solvabilité du régime à la date d'évaluation,

(iii) le total des paiements que l'employeur a versés au régime à l'égard de l'exercice;

n) s'il y a lieu, les taux d'intérêt appliqués aux cotisations du participant pour l'exercice;

o) la prestation payable au décès du participant et le montant dont elle serait réduite si un paiement était fait aux termes d'un régime collectif d'assurance-vie;

p) une déclaration faisant état du droit des personnes visées à l'alinéa 28(1)c) de la Loi de prendre connaissance des documents visés à cet alinéa;

q) relativement aux dispositions concernant les prestations déterminées d'un régime à prestations déterminées non assuré :

(i) si le ratio — déterminé conformément à l'alinéa b) de la définition de ***ratio de solvabilité*** prévue au paragraphe 2(1) — est inférieur à un :

(A) la valeur et la description du ratio, la date d'évaluation ainsi que la date de la prochaine évaluation,

(B) une description des mesures prises ou à prendre par l'administrateur pour que ce ratio soit égal à un,

(C) la mesure dans laquelle la prestation du participant serait réduite si le régime était liquidé selon ce ratio,

(ii) dans tout autre cas, la valeur et une explication du ratio, la date d'évaluation ainsi que la date de la prochaine évaluation;

r) relativement à la portion des actifs du régime qui ne constitue pas un compte accompagné de choix :

(i) les dix actifs les plus importants, selon la valeur marchande de chacun exprimée en pourcentage des actifs totaux,

(ii) la répartition des actifs cibles exprimée en pourcentage des actifs totaux;

s) dans le cas d'un régime à cotisations négociées, les modalités de financement, y compris :

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
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(s) in the case of a negotiated contribution plan, a description of the funding arrangement, including an indication that

(i) pension benefits or pension benefit credits may need to be reduced if negotiated contributions are insufficient to meet prescribed solvency standards; and

(ii) the administrator may amend the plan to reduce, subject to the Superintendent's authorization, pension benefits or pension benefit credits.

(1.1) The written statement to be given in accordance with paragraph 28(1)(b.1) of the Act shall show

(a) the name of the former member;

(b) the period to which the statement applies;

(c) the name of the spouse or common-law partner of the former member listed on the records of the administrator;

(d) the name of any person on the records of the administrator designated as the beneficiary;

(e) in the case of a plan other than a defined contribution plan,

(i) the total employer payments made to the plan for the plan year, and

(ii) the total value of solvency assets and solvency liabilities of the plan on the valuation date;

(f) in respect of the defined benefit provisions of an uninsured defined benefit plan,

(i) if the ratio as calculated in accordance with paragraph (b) of the definition ***solvency ratio*** in subsection 2(1) is less than one,

(A) the value and description of the ratio, the valuation date and the date of the next valuation,

(B) a description of the measures that the administrator has implemented or will implement to bring that ratio to one, and

(C) the extent to which the former member's benefit would be reduced if the plan were terminated and wound up with that solvency ratio, or

(ii) in any other case, the value and description of the ratio, its valuation date and the date of the next valuation;

(i) le fait que les prestations de pension ou les droits à pension pourraient devoir être réduits si les cotisations négociées ne permettent pas au régime de satisfaire aux normes de solvabilité réglementaires,

(ii) le fait que l'administrateur peut modifier le régime afin de les réduire, sous réserve de l'autorisation du surintendant.

(1.1) Le relevé devant être fourni conformément à l'alinéa 28(1)b.1) de la Loi contient :

a) le nom de l'ancien participant;

b) la période à laquelle le relevé s'applique;

c) le nom de l'époux ou du conjoint de fait de l'ancien participant figurant aux registres de l'administrateur;

d) le nom de toute personne désignée, selon les registres de l'administrateur, comme bénéficiaire;

e) dans le cas d'un régime autre qu'un régime à cotisations déterminées :

(i) le total des paiements que l'employeur a versés au régime à l'égard de l'exercice,

(ii) la valeur totale de l'actif de solvabilité et du passif de solvabilité du régime à la date d'évaluation;

f) relativement aux dispositions à prestations déterminées d'un régime à prestations déterminées non assuré :

(i) si le ratio — déterminé conformément à l'alinéa b) de la définition de ***ratio de solvabilité*** figurant au paragraphe 2(1) — est inférieur à un :

(A) la valeur et une explication du ratio, la date d'évaluation ainsi que la date de la prochaine évaluation,

(B) un énoncé des mesures prises ou à prendre par l'administrateur pour que ce ratio soit de un,

(C) la mesure dans laquelle la prestation de l'ancien participant serait réduite si le régime faisait l'objet d'une cessation et d'une liquidation selon ce ratio,

(ii) dans tout autre cas, la valeur et une explication du ratio, la date d'évaluation ainsi que la date de la prochaine évaluation;

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- (g)** for the assets of a plan that are not held in respect of member choice accounts,
- (i)** a list of the 10 largest asset holdings based on market value, each expressed as a percentage of the total assets, and
 - (ii)** the target asset allocation expressed as a percentage of the total assets;
- (h)** in the case of a negotiated contribution plan, a description of the funding arrangement, including an indication that
- (i)** pension benefits or pension benefit credits may need to be reduced if negotiated contributions are insufficient to meet prescribed solvency standards, and
 - (ii)** the administrator may amend the plan to reduce, subject to the Superintendent's authorization, pension benefits or pension benefit credits;
- (i)** for a former member who is receiving a variable benefit,
- (i)** the date of birth used to determine the minimum variable benefit payable for the year,
 - (ii)** the date the variable benefit began to be paid,
 - (iii)** the minimum and maximum allowable variable benefit payable, as well as the amount that the former member is receiving,
 - (iv)** the investment from which the variable benefit was paid,
 - (v)** the payment frequency over the year,
 - (vi)** an indication of how the former member may change their election regarding the amount to be paid during the year and the investment from which the variable benefit is to be paid, and
 - (vii)** a list of the transfer options available under subsection 16.4(1) of the Act; and
- (j)** a statement setting out the right to access the documents described in paragraph 28(1)(c) of the Act.
- (2)** A written statement referred to in paragraph 28(1)(d) of the Act, in the case of a member who has retired from
- (g)** relativement à la portion des actifs du régime qui ne constitue pas un compte accompagné de choix :
- (i)** les dix actifs les plus importants selon la valeur marchande de chacun exprimée en pourcentage des actifs totaux,
 - (ii)** la répartition de ses actifs cibles exprimée en pourcentage des actifs totaux;
- (h)** dans le cas d'un régime à cotisations négociées, les modalités de financement, y compris :
- (i)** le fait que les prestations de pension ou les droits à pension pourraient devoir être réduits si les cotisations négociées ne permettent pas au régime de satisfaire aux normes de solvabilité réglementaires,
 - (ii)** le fait que l'administrateur peut modifier le régime afin de les réduire, sous réserve de l'autorisation du surintendant;
- (i)** dans le cas de l'ancien participant qui reçoit une prestation variable :
- (i)** la date de naissance utilisée pour calculer le montant minimal de la prestation à l'égard de l'année,
 - (ii)** la date à laquelle le versement de la prestation a débuté,
 - (iii)** la prestation minimale et la prestation maximale qui peuvent être versées, ainsi que la prestation qu'il reçoit,
 - (iv)** le placement sur lequel la prestation a été versée,
 - (v)** la fréquence des paiements au cours de l'année,
 - (vi)** la manière dont il peut modifier son choix au sujet de la somme à verser pendant l'année et le placement sur lequel cette somme doit être prélevée,
 - (vii)** la liste des options de transfert disponibles au titre du paragraphe 16.4(1) de la Loi;
- (j)** un énoncé selon lequel les personnes visées à l'alinéa 28(1)c) de la Loi ont le droit de prendre connaissance des documents visés à cet alinéa.
- (2)** Le relevé visé à l'alinéa 28(1)d) de la Loi doit, dans le cas où le participant met fin à sa participation au régime, être conforme à la formule 1 de l'annexe IV.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Information to Be Provided
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a plan, shall be in the form set out in Form 1 of Schedule IV.

(3) The written statement referred to in paragraph 28(1)(d) of the Act, in the case of a plan member who ceases to be a member of the plan for any reason other than the termination of the whole or part of the plan or retirement, shall be given in Form 2 of Schedule IV.

(4) The written statement referred to in paragraph 28(1)(e) of the Act shall be given in Form 3 of Schedule IV.

(5) [Repealed, SOR/2015-60, s. 14]

SOR/2001-194, s. 5; SOR/2002-78, s. 14; SOR/2015-60, s. 14.

23.1 For the purposes of paragraph 28(1)(c) of the Act, each person referred to in that paragraph may examine the written statement of investment policies and procedures in respect of the plan's portfolio of investments and loans as described in subsection 7.1(1).

SOR/2002-78, s. 15.

Information to Be Provided — Phased Retirement Benefits

23.2 The administrator of a plan that provides for the payment of a phased retirement benefit shall give, in written form, to the person to whom the benefit is to be paid, and to their spouse or common-law partner, before the person enters into an agreement referred to in paragraph 16.1(3)(a) of the Act

(a) if the person is a member before the phased retirement period begins, the statements shown in Forms 1 and 5 of Schedule IV; and

(b) if, before that period begins, the person is a former member who has retired, the statement shown in Form 5.1 of Schedule IV.

SOR/2009-100, s. 1.

Information To Be Provided — Variable Benefits

23.3 The notification of consent of the spouse or common-law partner required under paragraph 16.2(2)(a) of the Act shall be made in Form 5.2 of Schedule IV.

SOR/2015-60, s. 15.

(3) Le relevé visé à l'alinéa 28(1)d) de la Loi est remis, dans le cas où la participation du participant prend fin pour une raison autre que la cessation totale ou partielle du régime ou la retraite, au moyen de la formule 2 de l'annexe IV.

(4) Le relevé visé à l'alinéa 28(1)e) de la Loi est établi au moyen de la formule 3 de l'annexe IV.

(5) [Abrogé, DORS/2015-60, art. 14]

DORS/2001-194, art. 5; DORS/2002-78, art. 14; DORS/2015-60, art. 14.

23.1 Pour l'application de l'alinéa 28(1)c) de la Loi, les personnes qui y sont visées peuvent examiner le texte des politiques et des procédures de placement régissant le portefeuille de placement et de prêt du régime visé au paragraphe 7.1(1).

DORS/2002-78, art. 15.

Informations à fournir — prestations de retraite progressive

23.2 L'administrateur d'un régime qui prévoit le versement de prestations de retraite progressive remet, sous forme écrite, à la personne à qui elles seront versées, de même qu'à son époux ou à son conjoint de fait, avant qu'elle conclue l'entente visée à l'alinéa 16.1(3)a) de la Loi :

a) si elle est un participant avant le début de la période de retraite progressive, les relevés qui figurent aux formules 1 et 5 de l'annexe IV;

b) si elle est alors un participant ancien qui a pris sa retraite, le relevé qui figure à la formule 5.1 de l'annexe IV.

DORS/2009-100, art. 1.

Renseignements à fournir — prestation variable

23.3 Le consentement de l'époux ou du conjoint de fait exigé à l'alinéa 16.2(2)a) de la Loi est notifié au moyen de la formule 5.2 de l'annexe IV.

DORS/2015-60, art. 15.

Information on Plan Termination

23.4 (1) The written statement required under paragraph 28(2.1)(a) of the Act shall be given in Form 2.1 of Schedule IV.

(2) The written statement required under paragraph 28(2.1)(b) of the Act shall be given in Form 2.2 of Schedule IV.

SOR/2015-60, s. 16.

Report on Termination of Plan

24 A report filed pursuant to subsection 29(9) of the Act on the termination of a plan or part of a plan shall be prepared

(a) by an actuary, accountant or other professional advisor, in the case of

(i) a defined contribution plan where the contributions under the plan are allocated to individual plan members, or

(ii) a defined benefit plan that is an insured plan; and

(b) by an actuary, in the case of any other plan.

24.1 (1) For the purposes of this section, ***solvency deficit*** means the amount by which the solvency liabilities as at the date of termination of a plan or the valuation date, as the case may be, exceeds the sum of the solvency assets at that date and the amounts required to be paid under subsection 29(6) of the Act.

(2) For the purposes of subsection 29(6.1) of the Act,

(a) an employer shall pay an amount equal to the solvency deficit as at the date of termination of the plan either in a lump sum or by equal annual payments sufficient to liquidate the solvency deficit over a period of five years from the date of termination;

(b) the interest rate used to determine the annual payments is the same as the interest rate used to determine the solvency liabilities of the plan at the date of termination; and

(c) the annual payments shall be paid by equal monthly instalments no later than 30 days after the end of each month.

Renseignements à fournir — cessation

23.4 (1) L'avis de l'administrateur exigé à l'alinéa 28(2.1)a) de la Loi est remis au moyen de la formule 2.1 de l'annexe IV.

(2) Le relevé exigé à l'alinéa 28(2.1)b) de la Loi est remis au moyen de la formule 2.2 de l'annexe IV.

DORS/2015-60, art. 16.

Rapport lors de la cessation

24 Le rapport relatif à la cessation totale ou partielle d'un régime qui doit être déposé conformément au paragraphe 29(9) de la Loi est établi :

a) par un actuaire, un comptable ou autre expert-conseil, dans le cas :

(i) d'un régime à cotisations déterminées aux termes duquel les cotisations sont attribuées individuellement aux participants;

(ii) d'un régime à prestations déterminées qui est un régime assuré;

b) par un actuaire, dans le cas de tout autre régime.

24.1 (1) Pour l'application du présent article, ***déficit de solvabilité*** s'entend de l'excédent du passif de solvabilité, établi à la date de cessation du régime ou à la date d'évaluation, selon le cas, sur le total de l'actif de solvabilité établi à la même date et des sommes à verser au titre du paragraphe 29(6) de la Loi.

(2) Pour l'application du paragraphe 29(6.1) de la Loi :

a) la somme que l'employeur est tenu de verser est égale au déficit de solvabilité établi à la date de cessation du régime et consiste en un paiement forfaitaire ou en paiements annuels égaux suffisants pour éliminer le déficit sur une période de cinq ans à partir de la date de cessation;

b) le taux d'intérêt servant au calcul des paiements annuels est le même que celui ayant servi au calcul du passif de solvabilité du régime à la date de cessation;

c) les paiements annuels sont faits en versements mensuels égaux au plus tard le trentième jour suivant la fin de chaque mois.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Report on Termination of Plan
Sections 24.1-25

Règlement de 1985 sur les normes de prestation de pension
Rapport lors de la cessation
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(3) The annual payment determined under paragraph (2)(a) that is to be paid in the plan year in which the plan is terminated may be reduced by the amounts required to be paid under subsection 29(6) of the Act.

(4) An actuarial report, filed after termination of the plan but before it is wound up, shall set out the remaining solvency assets, solvency liabilities, solvency deficit and remaining payments required to liquidate the solvency deficit as at the valuation date. The solvency assets and solvency deficit shall not include the face value of any letters of credit.

(5) If the present value of remaining payments determined in accordance with paragraph (2)(a) exceeds the remaining solvency deficit established as at the valuation date in accordance with the actuarial report referred to in subsection (4), the payments remaining to be made in respect of the solvency deficit are reduced *pro rata*.

(6) If the remaining solvency deficit established as at the valuation date in accordance with the actuarial report referred to in subsection (4) exceeds the present value of remaining payments determined in accordance with paragraph (2)(a), the remaining payments are increased *pro rata* such that the remaining payments will liquidate the remaining solvency deficit over the remainder of the five-year period beginning on the date of termination.

(7) Any solvency deficit that arises five or more years after the date of termination of the plan shall be immediately paid down.

(8) For the purposes of subsection 29(6.3) of the Act, the portion of the remaining amount that is attributable to the payments made under subsection 29(6.1) of the Act is equal to the lesser of

(a) the amount remaining in the pension fund at the date of winding-up, and

(b) the accumulated value at the date of winding-up, with interest at the rates earned by the pension fund, of the payments made under subsection 29(6.1) of the Act.

SOR/2011-85, s. 9.

Electronic Communications

25 (1) For the purposes of paragraph 31.1(1)(a) of the Act, the addressee may consent in writing, in paper or electronic form, or orally.

(2) Before an addressee consents, the administrator shall notify the addressee

(3) Le paiement annuel établi en vertu de l'alinéa (2)a), qui doit être effectué au cours de l'exercice visé par la cessation du régime, peut être réduit des montants à verser aux termes du paragraphe 29(6) de la Loi.

(4) Tout rapport actuariel déposé après la date de cessation du régime mais avant sa liquidation fait état, à la date d'évaluation, du solde de l'actif de solvabilité, du passif de solvabilité et du déficit de solvabilité ainsi que du solde des paiements à verser pour éliminer le déficit de solvabilité. L'actif de solvabilité et le déficit de solvabilité ne tiennent pas compte de la valeur nominale des lettres de crédits.

(5) Si la valeur actualisée du solde des paiements restants établie conformément à l'alinéa (2)a) dépasse le solde du déficit de solvabilité établi à la date d'évaluation selon le rapport actuariel visé au paragraphe (4), le solde des paiements à verser au chapitre du déficit de solvabilité est réduit en proportion.

(6) Si le solde du déficit de solvabilité établi à la date d'évaluation selon le rapport actuariel visé au paragraphe (4) dépasse la valeur actualisée du solde des paiements à verser, établie conformément à l'alinéa (2)a), le solde des paiements à verser est augmenté, en proportion, de manière à liquider le solde du déficit de solvabilité sur le reste de la période de cinq ans qui commence à la date de cessation.

(7) Si un déficit de solvabilité survient au cours de la cinquième année suivant la cessation du régime ou ultérieurement, il doit être remboursé sans délai en totalité.

(8) Pour l'application du paragraphe 29(6.3) de la Loi, la partie du solde qui est attribuable aux paiements versés en application du paragraphe 29(6.1) de la Loi est égale au moindre des montants suivants :

a) le solde du fonds de pension à la date de liquidation du régime;

b) la valeur cumulative à la date de liquidation, majorée de l'intérêt couru par le fonds de pension, des paiements versés en application du paragraphe 29(6.1) de la Loi.

DORS/2011-85, art. 9.

Communications électroniques

25 (1) Pour l'application de l'alinéa 31.1(1)a) de la Loi, le destinataire peut donner son consentement par écrit, sur support papier ou électronique, ou oralement.

(2) Avant que le destinataire donne son consentement, l'administrateur l'informe :

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Electronic Communications
Sections 25-26

Règlement de 1985 sur les normes de prestation de pension
Communications électroniques
Articles 25-26

(a) of the addressee's right to revoke their consent at any time;

(b) of the addressee's responsibility to inform the administrator of any changes the addressee makes to the designated information system, including any changes made to the contact information for the designated information system; and

(c) of the date when the consent takes effect.

(3) The addressee shall revoke their consent in writing, in paper or electronic form, or orally.

SOR/2015-60, s. 17.

25.1 If an electronic document is provided on a generally accessible information system, such as a website, the administrator shall provide to the addressee written notice, in paper or electronic form, of the electronic document's availability and location.

SOR/2015-60, s. 17.

25.2 An electronic document is considered to have been provided to an addressee when it is entered into or made available on the information system designated by the addressee.

SOR/2015-60, s. 17.

25.3 (1) If an administrator has reason to believe that an addressee has not received an electronic document or the notice required under section 25.1, the administrator shall mail a paper copy of the document to the addressee.

(2) The mailing of a paper copy does not affect when the electronic document is considered to have been provided under section 25.2.

SOR/2015-60, s. 17.

General

26 (1) A pension benefit that is being paid under a plan shall not be reduced as a consequence of an increase in the benefits being paid under the *Old Age Security Act*, the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of the *Canada Pension Plan*.

(2) A pension benefit to which a plan member or former member is entitled under a plan shall not cease or be reduced as a consequence of the eligibility of that plan member or former member on account of age for a benefit payable before the age of 65 under the *Old Age Security Act*, the *Canada Pension Plan* or a provincial pension plan as defined in section 3 of the *Canada Pension Plan*, unless the plan member or former member has made an

a) de la possibilité de le révoquer en tout temps;

b) de sa responsabilité de signaler à l'administrateur tout changement qu'il apporte au système d'information désigné, y compris aux coordonnées de celui-ci;

c) de la date de la prise d'effet du consentement.

(3) Il peut révoquer son consentement par écrit, sur support papier ou électronique, ou oralement.

DORS/2015-60, art. 17.

25.1 Si un document électronique est fourni à un système d'information accessible au public, notamment à un site Web, l'administrateur donne au destinataire un avis écrit, sur support papier ou électronique, de la disponibilité du document électronique et de l'endroit où il se trouve.

DORS/2015-60, art. 17.

25.2 Le document électronique est considéré comme ayant été fourni au destinataire au moment où il est saisi par le système d'information désigné par le destinataire ou est rendu disponible sur ce système.

DORS/2015-60, art. 17.

25.3 (1) L'administrateur, s'il a des raisons de croire que le destinataire n'a pas reçu le document électronique ou l'avis exigé à l'article 25.1, lui en transmet, par courrier, une version papier.

(2) La présomption établie à l'article 25.2 continue de s'appliquer.

DORS/2015-60, art. 17.

Dispositions générales

26 (1) Aucune prestation de pension dont le service a débuté ne peut être réduite par suite de l'augmentation des prestations versées en vertu de la *Loi sur la sécurité de la vieillesse*, du *Régime de pensions du Canada* ou d'un régime provincial de pensions au sens de l'article 3 du *Régime de pensions du Canada*.

(2) La prestation de pension à laquelle un participant ou un participant ancien est admissible aux termes d'un régime ne peut, à moins que celui-ci n'ait fait le choix visé au paragraphe 16(6) de la Loi, être réduite ou cesser en raison du fait que ce dernier a droit, à cause de son âge, à une prestation payable avant l'âge de 65 ans en vertu de

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
General
Sections 26-28.2

Règlement de 1985 sur les normes de prestation de pension
Dispositions générales
Articles 26-28.2

election to vary the pension benefit under subsection 16(6) of the Act.

27 For the purposes of the Act,

(a) a pension benefit granted after December 31, 1986 in respect of membership in a plan prior to January 1, 1987 shall be attributed to membership in the plan after December 31, 1986; and

(b) where a pension benefit is based on a rate of remuneration of a plan member as of the date the plan member retires, or is based on an average of the rates of remuneration of a plan member over a specified and limited period, up to and including the date the plan member retires, the portion of the pension benefit attributable to membership in a plan after December 31, 1986 is

(i) the pension benefit,

less

(ii) the pension benefit calculated as of December 31, 1986 using the rate of remuneration of the plan member as of the date the member ceases membership in the plan or retires, or the average of the rates of remuneration of the plan member over a specified and limited period, as of the date the member ceases membership in the plan or retires, as the case may be.

28 Where a plan provides for pension benefits for an employee who is not employed in included employment and the employee is employed in a designated province referred to in section 3, the plan is exempt from the application of the Act in respect of any benefits for the employee.

28.1 A pension plan that was established by a provincial statute in respect of a work, undertaking or business that is within the exclusive legislative authority of that province and in which an employee who is employed in included employment participates is exempt from the application of the Act.

SOR/93-109, s. 7.

28.2 A pension plan that was established in respect of a telephone company that was not registered under the Act or under the *Pension Benefits Standards Act*, chapter P-7 of the Revised Statutes of Canada, 1985 before August 14, 1989 is exempt from the application of the Act in respect of any benefits that are derived from membership in the pension plan before that date.

SOR/93-109, s. 7.

la *Loi sur la sécurité de la vieillesse*, du *Régime de pensions du Canada* ou d'un régime provincial de pensions au sens de l'article 3 du *Régime de pensions du Canada*.

27 Pour l'application de la Loi :

a) toute prestation de pension accordée après le 31 décembre 1986 à l'égard de la participation à un régime antérieure au 1^{er} janvier 1987 est imputable à la participation au régime postérieure au 31 décembre 1986;

b) lorsque la prestation de pension se fonde sur le taux de rémunération du participant à la date à laquelle il prend sa retraite ou sur la moyenne des taux de rémunération du participant pour une période déterminée s'étendant jusqu'à la date de la retraite, la partie de la prestation de pension imputable à la participation au régime postérieure au 31 décembre 1986 est la différence entre les montants suivants :

(i) la prestation de pension,

(ii) la prestation de pension calculée au 31 décembre 1986 à l'aide du taux de rémunération du participant, à la date à laquelle le participant met fin à sa participation au régime ou prend sa retraite, selon le cas, ou à l'aide de la moyenne des taux de rémunération du participant pour une période déterminée, à la même date.

28 Lorsqu'un régime prévoit des prestations de pension à l'intention d'un salarié qui n'occupe pas un emploi inclus et que le salarié travaille dans une province désignée qui est visée à l'article 3, le régime est exempté de l'application de la Loi en ce qui concerne les prestations de pension à l'intention du salarié.

28.1 Un régime de pension établi par une loi provinciale à l'égard de tout ouvrage, entreprise ou activité qui relève de la compétence législative exclusive de la province et auquel participe un salarié occupant un emploi inclus est exclu de l'application de la Loi.

DORS/93-109, art. 7.

28.2 Un régime de pension établi à l'égard d'une compagnie de téléphone qui, avant le 14 août 1989, n'était pas enregistré ou agréé en application de la Loi ou de la *Loi sur les normes des prestations de pension*, L.R.C. 1985, ch. P-7, est exclu de l'application de la Loi en ce qui concerne les prestations liées à la participation au régime de pension avant cette date.

DORS/93-109, art. 7.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
General
Sections 28.3-31

Règlement de 1985 sur les normes de prestation de pension
Dispositions générales
Articles 28.3-31

28.3 Section 18 of the Act does not apply in respect of an amount of a pension benefit credit that exceeds the maximum transfer that may be made from a pension plan to another pension plan or to a registered retirement savings plan under the *Income Tax Act*.

SOR/93-109, s. 7.

28.4 (1) Where a plan provides pension benefits for a plan member or former member who has ceased to be a resident of Canada for at least two calendar years and has ceased employment with the employer who is a party to the plan or ceased membership in a multi-employer pension plan, the pension benefits or pension benefit credits applicable to that member or former member are exempt from the application of section 18 of the Act.

(2) For the purposes of this section, a plan member or former member shall be deemed to have been a resident of Canada throughout a calendar year if that member or former member has sojourned in Canada in the year for a period of, or periods the total of which is, 183 days or more.

SOR/94-384, s. 6.

28.5 A supplemental pension plan is exempt from the application of the Act if, under the terms of the pension plan to which it is supplemental, all the members of the supplemental pension plan are entitled to benefits at least equal to the maximum benefit or contribution limit under the *Income Tax Act*.

SOR/94-384, s. 6; SOR/2002-78, s. 16.

28.6 Bridging benefits are exempt from the application of sections 22 and 23 of the Act.

SOR/94-384, s. 6.

29 An employee who is receiving a pension benefit from a plan is exempt from the application of sections 14 and 15 of the Act in respect of that plan.

30 The Superintendent may request an administrator to provide to the Superintendent an up-to-date consolidation of a plan and any amendments thereto.

Forms

30.1 A written consent referred to in paragraph 16.1(3)(b) of the Act shall be in the form set out in Form 6 of Schedule IV.

SOR/2009-100, s. 2.

31 A written agreement referred to in subsection 22(5) of the Act shall be in the form set out in Form 4 of Schedule II.

28.3 Tout montant de droits à pension qui excède la valeur maximale de transfert d'un régime de pension à un autre régime de pension ou à un régime enregistré d'épargne-retraite selon la *Loi de l'impôt sur le revenu* est exclu de l'application de l'article 18 de la Loi.

DORS/93-109, art. 7.

28.4 (1) Si un régime prévoit le versement de prestations de pension à un participant ou à un participant ancien qui a cessé de résider au Canada depuis au moins deux années civiles et qui a mis fin à son emploi auprès de l'employeur qui cotise au régime ou à sa participation à un régime interentreprises, les prestations de pension ou les droits à pension de ce participant ou de ce participant ancien sont exclus de l'application de l'article 18 de la Loi.

(2) Pour l'application du présent article, le participant ou le participant ancien qui a séjourné au Canada au cours de l'année civile pendant une période ou des périodes dont l'ensemble est de 183 jours ou plus est réputé avoir résidé au Canada tout au long de l'année.

DORS/94-384, art. 6.

28.5 Un régime de pension complémentaire est exclu de l'application de la Loi si le régime dont il est le complément prévoit que tous les participants au régime complémentaire ont droit à des prestations au moins égales aux prestations maximales ou au plafond des cotisations prévus par la *Loi de l'impôt sur le revenu*.

DORS/94-384, art. 6; DORS/2002-78, art. 16.

28.6 Les prestations de raccordement sont exclues de l'application des articles 22 et 23 de la Loi.

DORS/94-384, art. 6.

29 Le salarié qui reçoit une prestation de pension d'un régime est, relativement à ce régime, exempté de l'application des articles 14 et 15 de la Loi.

30 Le surintendant peut exiger qu'un administrateur lui fournisse une consolidation à jour du régime et des modifications y afférentes.

Formules

30.1 Le consentement écrit visé à l'alinéa 16.1(3)b) de la Loi est établi selon la formule 6 de l'annexe IV.

DORS/2009-100, art. 2.

31 Le consentement écrit visé au paragraphe 22(5) de la Loi est établi selon la formule 4 de l'annexe II.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
Forms
Sections 32-33

Règlement de 1985 sur les normes de prestation de pension
Formules
Articles 32-33

32 A notice of objection referred to in subsection 32(1) of the Act shall be in the form set out in Form 5 of Schedule II and shall be served by registered mail or delivery to the Superintendent of Financial Institutions.

SOR/2002-78, s. 17.

33 A notice of appeal referred to in subsection 33(2) of the Act shall be in the form set out in Form 6 of Schedule II.

32 L'avis d'opposition visé au paragraphe 32(1) de la Loi est établi selon la formule 5 de l'annexe II et doit être signifié par courrier recommandé ou par livraison au surintendant des institutions financières.

DORS/2002-78, art. 17.

33 L'avis d'appel visé au paragraphe 33(2) de la Loi est établi selon la formule 6 de l'annexe II.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE I Employment Excepted from Included Employment

SCHEDULE I

(Section 4)

Employment Excepted from Included Employment

1 Employment with any Board, Commission, Corporation or other body forming part of the Public Service and listed in Parts I or II of Schedule I to the *Public Service Superannuation Act*, other than

(a) the employment of employees to whom that Act does not apply; and

(b) employment with the Cape Breton Development Corporation.

2 Employment with any Board, Commission or Corporation or other body where employees are deemed by statute to be employed in the Public Service for the purposes of the *Public Service Superannuation Act*.

3 Employment with the Canadian National Railways of employees who are subject to the *Intercolonial and Prince Edward Island Railways Employees' Provident Fund Act*.

SOR/94-384, s. 7; SOR/98-302, s. 1.

Règlement de 1985 sur les normes de prestation de pension
ANNEXE I Emplois exclus des emplois inclus

ANNEXE I

(article 4)

Emplois exclus des emplois inclus

1 Emplois au service d'un office, d'un conseil, d'un bureau, d'une commission, d'une personne morale ou d'un autre organisme faisant partie de la fonction publique et énumérés aux parties I ou II de l'annexe I de la *Loi sur la pension de la fonction publique*, sauf :

a) ceux occupés par des salariés non assujettis à cette loi;

b) les emplois au service de la Société de développement du Cap-Breton.

2 Emplois au service d'un office, d'un conseil, d'un bureau, d'une commission, d'une société, d'une corporation ou d'un autre organisme, occupés par des personnes qui sont réputées, selon une loi, faire partie de la fonction publique pour l'application de la *Loi sur la pension de la fonction publique*.

3 Emplois au service de la Compagnie des chemins de fer nationaux du Canada, occupés par des personnes assujetties à la *Loi de la caisse de prévoyance des employés des chemins de fer Intercolonial et de l'Île-du-Prince-Édouard*.

DORS/94-384, art. 7; DORS/98-302, art. 1.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE II

Règlement de 1985 sur les normes de prestation de pension
ANNEXE II (anglais)

SCHEDULE II**FORM 1**

[Repealed, SOR/95-171, s. 6]

FORM 2

(Section 13)

Required Information

- 1** Name, address and telephone number of the administrator.
- 2** Name and address of the pension fund custodian or trustee together with any applicable policy or account number.
- 3** Name and address of the external auditor.
- 4** Total membership in the plan at plan year end.
- 5** List of all members of a board of trustees or pension committee of the plan.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE II

Règlement de 1985 sur les normes de prestation de pension
ANNEXE II (anglais)

FORM 2.1

(Section 15)

Investment Information Return

1 Are all of the benefits provided by an insured plan or by a pension plan in respect of which an annuity contract has been issued by the Government of Canada?

_____ Yes _____ No

2 Are all of the pension plan's assets held in an unallocated general fund of a person authorized to carry on a life insurance business in Canada?

_____ Yes _____ No

(If the answer to Question 1 and 2 is "No", complete the following.)

3 As at the end of the last plan year, had the administrator established a written statement of investment policies and procedures in accordance with subsection 7.1(1) to the *Pension Benefits Standards Regulations, 1985*?

_____ Yes _____ No

4 If a statement of investment policies and procedures had been established as at the end of the plan year preceding the last plan year, did the administrator review it during the last plan year?

_____ Yes _____ No

5 If a statement of investment policies and procedures had been established as at the end of the plan year preceding the last plan year, was the statement amended during the last plan year?

_____ Yes _____ No

6 If a statement of investment policies and procedures was established or amended during the last plan year, were the pension council, if one exists, and the actuary to the plan, if the pension plan is a defined benefit plan, given a copy of the statement or amendments in accordance with subsection 7.1(3) or 7.2(2) of the *Pension Benefits Standards Regulations, 1985*?

_____ Yes _____ No

7 During the last plan year, were the moneys of the pension fund invested in accordance with section 6 of the *Pension Benefits Standards Regulations, 1985*?

_____ Yes _____ No

Certification

I hereby certify that, to the best of my knowledge and belief, the information entered on this Investment Information Return, and any other information that has been requested by the Superintendent of Financial Institutions and is attached to this Return, is true and correct.

Administrator's Signature

Name(s) (Use block letters)

(If the administrator is a board of trustees or other similar body, all trustees or members of the body must sign)

Date: _____

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

FORM 3

(Subsection 18(3))

Application To Transfer Pension Benefit Credits Under Sections 16.4 and 26 of the Pension Benefits Standards Act, 1985

1 Applicant

I, _____, am a (member, former member, survivor) _____ of the registered pension plan known as _____

and I apply to

2 Transfer or Purchase (check one)

- (a) _____ transfer my pension benefit credit to a locked-in registered retirement savings plan of the kind described in section 20 of the *Pension Benefits Standards Regulations, 1985*;
- (b) _____ transfer my pension benefit credit to a life income fund of the kind described in section 20.1 of the *Pension Benefits Standards Regulations, 1985*;
- (c) _____ transfer my pension benefit credit to a restricted life income fund of the kind described in section 20.3 of the *Pension Benefits Standards Regulations, 1985*;
- (d) _____ use my pension benefit credit to purchase an immediate life annuity of the kind described in section 21 of the *Pension Benefits Standards Regulations, 1985*;
- (e) _____ use my pension benefit credit to purchase a deferred life annuity of the kind described in section 21 of the *Pension Benefits Standards Regulations, 1985*;
- (f) _____ transfer my pension benefit credit to a pension plan of which I am currently a member, which is known as _____; or
- (g) _____ transfer my pension benefit credit to a PRPP.

3 Signatures

Signature of member (or former member or survivor) _____

Name of member (or former member or survivor) _____

Signature of witness _____

Name of witness _____

Address of witness _____

Signed at _____ on _____, 20____.

4 Confirmation of the request received by the financial institution for (check one)

- (a) _____ a transfer of the funds to a locked-in registered retirement savings plan of the kind described in section 20 of the *Pension Benefits Standards Regulations, 1985*;
- (b) _____ a transfer of the funds to a life income fund of the kind described in section 20.1 of the *Pension Benefits Standards Regulations, 1985*;
- (c) _____ a transfer of the funds to a restricted life income fund of the kind described in section 20.3 of the *Pension Benefits Standards Regulations, 1985*;
- (d) _____ the use of the funds to purchase a deferred life annuity of the kind described in section 21 of the *Pension Benefits Standards Regulations, 1985*; or
- (e) _____ the use of the funds to purchase an immediate life annuity of the kind described in section 21 of the *Pension Benefits Standards Regulations, 1985*, the funds of which shall be only used to purchase another immediate life annuity that meets the requirements of those Regulations.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE II

Règlement de 1985 sur les normes de prestation de pension
ANNEXE II (anglais)

5 Signatures

Signature of applicant _____

Name of applicant _____

Signature of officer of financial institution _____

Name of financial institution _____

Signed at _____ on _____, 20__.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE II

Règlement de 1985 sur les normes de prestation de pension
ANNEXE II (anglais)

FORM 3.1

(Subsection 18(3.1))

Spouse's or Common-Law Partner's Consent for the Transfer of a Pension Benefit Credit

I, _____, hereby certify that I am the spouse or common-law partner as defined by the *Pension Benefits Standards Act, 1985*, of _____.

I understand that my spouse or common-law partner has elected to transfer their pension benefit credit and that my written consent is required to enable my spouse or common-law partner to do so.

I understand that

- (a) transferring the pension benefit credit will allow my spouse or common-law partner to manage their own pension fund and will allow flexibility in determining the amount that will be paid to my spouse or common-law partner in each calendar year;
- (b) the transferred funds may be used to purchase a life annuity at a later date, but there is no requirement that the funds be used to purchase a life annuity;
- (c) if the transferred funds are used to purchase a life annuity, the life annuity must be in the joint and survivor form unless I waive my entitlements by signing a separate waiver form within 90 days before the day on which the annuity payments begin.

I further understand that transferring the pension benefit credit to a retirement savings plan of the prescribed kind will allow my spouse or common-law partner to withdraw some of the funds each year, subject to any minimum and maximum withdrawal limits. I understand, however, that the amount of pension income or survivor benefit available to me in later years may be significantly reduced if

- (a) my spouse or common-law partner elects to withdraw the maximum amount permitted each year; or
- (b) the investment performance is poor.

Nevertheless, I consent to the transfer of the pension benefit credit to a retirement savings plan of the prescribed kind and certify that

- (a) I have read this form and understand it;
- (b) neither my spouse or common-law partner nor anyone else has put any pressure on me to sign this form;
- (c) I realize that
 - (i) this form only gives a general description of the legal rights I have under the *Pension Benefits Standards Act, 1985* and the *Pension Benefits Standards Regulations, 1985*, and
 - (ii) if I wish to understand exactly what my legal rights are I must read the *Pension Benefits Standards Act, 1985* and the *Pension Benefits Standards Regulations, 1985* or seek legal advice; and
- (d) I realize that I am entitled to keep a copy of this consent form.

To consent to the transfer, I sign this consent form at _____ on _____, 20__.

Name and registration number of pension plan of my spouse or common-law partner _____

Signature of spouse or common-law partner _____

Address of spouse or common-law partner _____

(home telephone number) _____

(work telephone number) _____

STATEMENT OF WITNESS

I certify that

- (a) My full name is _____
- (b) My address is _____
- (c) I witnessed _____ sign this waiver.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE II

Règlement de 1985 sur les normes de prestation de pension
ANNEXE II (anglais)

Signature of witness _____
(home telephone number) _____
(work telephone number) _____

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE II

Règlement de 1985 sur les normes de prestation de pension
ANNEXE II (anglais)

FORM 4

(Section 31)

Agreement of Spouse or Common-Law Partner to Pension Benefit Reduction on Death of Member or Former Member

I, _____, hereby certify that I, am (a) the spouse or (b) the common-law partner, as defined in section 2 of the *Pension Benefits Standards Act, 1985* of _____, a (member) (former member) of the pension plan known as _____.

Under the terms of that pension plan,

(a) the amount of pension benefit payable to my spouse or common-law partner as a (member) (former member) is \$ _____ per _____ (period), and

(b) the amount of the pension benefit payable to me on the death of my spouse or common-law partner is \$ _____ per _____ (period), this amount being not less than 60 per cent of the pension benefit payable to my spouse or common-law partner in accordance with subsection 22(2) of the *Pension Benefits Standards Act, 1985*.

Based on the above, and in accordance with subsection 22(5) of the *Pension Benefits Standards Act, 1985*, I hereby agree to waive:

- | | | |
|---|--|------------------|
| | | <u>Check one</u> |
| 1 | my entitlement to any pension benefit payable to me on the death of my spouse or common-law partner, or | _____ |
| 2 | a portion of the pension benefit payable to me on the death of my spouse or common-law partner so that my pension benefit is \$ _____ per _____ (period), this amount being less than the minimum 60 per cent of the pension benefit payable to my spouse or common-law partner to which I would otherwise be entitled | _____ |

Signed at _____ on the _____ day of _____, 19____

Signature of Witness (other than
the member or former member)

Signature of Spouse or common-law
partner

Name of Witness

Address of Spouse or common-law
partner

Address of Witness

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE II

Règlement de 1985 sur les normes de prestation de pension
ANNEXE II (anglais)

FORM 5

(Section 32)

Notice of Objection

To: The Superintendent of Financial Institutions, Ottawa.

Name of Administrator

Mailing Address in Canada

Pursuant to section 32 of the *Pension Benefits Standards Act, 1985*, notice of objection is hereby given to the action of the Superintendent of Financial Institutions in (refusing registration) (revoking registration and cancelling the certificate of registration) of the pension plan known as

as evidenced by the Superintendent's notification dated the _____ day of _____, 19_____.

The reasons for objection and the facts relevant thereto are as follows:

_____	_____
Date	Signature
_____	_____
	Title or Position

NOTE:

- 1 This form is for the use of an administrator who, pursuant to section 32(1) of the Act, wishes to make a formal objection to the action of the Superintendent of Financial Institutions in refusing registration or revoking the registration and cancelling the certificate of registration of a pension plan.
- 2 TWO copies of the objection are to be sent by REGISTERED MAIL to the Superintendent of Financial Institutions, Office of the Superintendent of Financial Institutions, Ottawa, K1A 0H2, Canada. For the notice of objection to have effect, the envelope containing the objection must be postmarked within 60 days after the date that the Superintendent of Financial Institutions mailed the notification that registration had been refused or that registration had been revoked and the certificate of registration cancelled, as the case may be.
- 3 The NOTICE OF OBJECTION must be signed by the administrator.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE II

Règlement de 1985 sur les normes de prestation de pension
ANNEXE II (anglais)

FORM 6

(Section 33)

Notice of Appeal in the Federal Court of Canada

In Re the *Pension Benefits Standards Act, 1985*

BETWEEN

Appellant

-and-

Respondent

NOTICE OF APPEAL

NOTICE OF APPEAL is hereby given from the decision of the Superintendent of Financial Institutions to (refuse) (revoke) registration of the pension plan known as

.....

as evidenced by the notifications of the Superintendent dated the _____ day of _____, 19____, and the _____ day of _____, 19_____.

A Statement of Facts

(Insert a brief statement of the facts, including the date and a brief résumé of the particulars of the application for registration or the circumstances surrounding the revocation of the registration of the pension plan.)

B The statutory provisions upon which the Appellant relies and the Reasons that the Appellant intends to submit:

C Name and Address of Appellant’s Solicitor (if any):

Dated at _____ this _____ day of _____, 19 _____.

(Appellant)

SOR/90-363, ss. 6, 7; SOR/93-109, ss. 8(F), 10(E); SOR/93-299, s. 5; SOR/95-171, s. 6; SOR/95-551, s. 6; SOR/2001-194, ss. 2, 4, 5; SOR/2002-78, ss. 18, 19; SOR/2008-144, s. 7; SOR/2015-60, ss. 18, 19.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE II (French)

Règlement de 1985 sur les normes de prestation de pension
ANNEXE II

ANNEXE II**FORMULE 1**

[Abrogée, DORS/95-171, art. 6]

FORMULE 2

(article 13)

Renseignements exigés

- 1** Nom, adresse et numéro de téléphone de l'administrateur
- 2** Nom et adresse du dépositaire ou du fiduciaire du fonds de pension, ainsi que tout numéro de police ou de compte utile
- 3** Nom et adresse du vérificateur externe
- 4** Nombre total de participants au régime à la fin de l'exercice
- 5** Liste des membres du conseil de fiducie ou du comité de pensions du régime

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FORMULE 2.1

(article 15)

État des renseignements sur les placements

1 L'ensemble des prestations proviennent-elles d'un régime assuré ou d'un régime de pension pour lequel le gouvernement du Canada a émis un contrat de rente?

_____ Oui _____ Non

2 L'ensemble des éléments d'actif du régime de pension sont-ils détenus dans un fonds général non réparti d'une personne autorisée à effectuer des opérations d'assurance-vie au Canada?

_____ Oui _____ Non

(Si la réponse aux questions 1 et 2 est « Non », répondre aux questions suivantes.)

3 À la fin du dernier exercice, l'administrateur avait-il établi par écrit l'énoncé des politiques et des procédures de placement mentionné au paragraphe 7.1(1) du *Règlement de 1985 sur les normes de prestation de pension*?

_____ Oui _____ Non

4 Si l'énoncé des politiques et des procédures de placement était établi à la fin de l'exercice précédant le dernier exercice, l'administrateur l'a-t-il revu au cours du dernier exercice?

_____ Oui _____ Non

5 Si l'énoncé des politiques et des procédures de placement était établi à la fin de l'exercice précédant le dernier exercice, a-t-il été modifié au cours du dernier exercice?

_____ Oui _____ Non

6 Si l'énoncé des politiques et des procédures de placement a été établi ou modifié au cours du dernier exercice, une copie de l'énoncé ou des modifications a-t-elle été remise au conseil des pensions, s'il existe, et à l'actuaire du régime, si le régime de pension est un régime à prestations déterminées, conformément au paragraphe 7.1(3) ou au paragraphe 7.2(2) du *Règlement de 1985 sur les normes de prestation de pension*?

_____ Oui _____ Non

7 Au cours du dernier exercice, les sommes versées au fonds de pension ont-elles été investies conformément à l'article 6 du *Règlement de 1985 sur les normes de prestations de pension*?

_____ Oui _____ Non

Attestation

J'atteste, au mieux de ma connaissance et de ma croyance, que les renseignements fournis dans le présent État des renseignements sur les placements, ainsi que les autres renseignements demandés par le surintendant des institutions financières et joints au présent état, sont véridiques et exacts.

Signature de l'administrateur

Nom (en lettres moulées)

(Si l'administrateur est un conseil d'administration ou un autre organisme du genre, tous les membres du conseil ou de l'organisme doivent signer.)

Date : _____

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FORMULE 3

(paragraphe 18(3))

Demande de transfert des droits à pension en vertu des articles 16.4 et 26 de la Loi de 1985 sur les normes de prestation de pension

1 Demandeur

Moi, _____, je suis (le participant, l'ancien participant ou le survivant) _____ au régime agréé connu sous le nom de _____

et demande :

2 Transfert ou Achat (*cocher une case seulement*)

- a) _____ de transférer mes droits à pension à un régime enregistré d'épargne-retraite immobilisée du type prévu à l'article 20 du *Règlement de 1985 sur les normes de prestation de pension*.
- b) _____ de transférer mes droits à pension à un fonds de revenu viager du type prévu à l'article 20.1 du *Règlement de 1985 sur les normes de prestation de pension*.
- c) _____ de transférer mes droits à pension à un fonds de revenu viager restreint du type prévu à l'article 20.3 du *Règlement de 1985 sur les normes de prestation de pension*.
- d) _____ d'utiliser mes droits à pension pour l'achat d'une prestation viagère immédiate du type prévu à l'article 21 du *Règlement de 1985 sur les normes de prestation de pension*.
- e) _____ d'utiliser mes droits à pension pour l'achat d'une prestation viagère différée du type prévu à l'article 21 du *Règlement de 1985 sur les normes de prestation de pension*.
- f) _____ de transférer mes droits à pension au régime de pension auquel je participe actuellement qui est connu sous le nom de _____
- g) _____ de transférer mes droits à pension à un RPAC.

3 Signatures

Signature du participant, de l'ancien participant ou du survivant _____

Nom du participant, de l'ancien participant ou du survivant _____

Signature du témoin _____

Nom du témoin _____

Adresse du témoin _____

Fait à _____, le _____ 20__.

4 Confirmation par l'institution financière de la réception de la demande en vue (*cochez une case seulement*)

- a) _____ du transfert des fonds à un régime enregistré d'épargne-retraite immobilisée du type prévu à l'article 20 du *Règlement de 1985 sur les normes de prestation de pension*.
- b) _____ du transfert des fonds à un fonds de revenu viager du type prévu à l'article 20.1 du *Règlement de 1985 sur les normes de prestation de pension*.
- c) _____ du transfert des fonds à un fonds de revenu viager restreint du type prévu à l'article 20.3 du *Règlement de 1985 sur les normes de prestation de pension*.
- d) _____ de l'utilisation des fonds pour l'achat d'une prestation viagère différée du type prévu à l'article 21 du *Règlement de 1985 sur les normes de prestation de pension*.
- e) _____ de l'utilisation des fonds pour l'achat d'une prestation viagère immédiate du type prévu à l'article 21 du *Règlement de 1985 sur les normes de prestation de pension*, les fonds ne pouvant être utilisés que pour l'achat d'une autre prestation viagère immédiate satisfaisant aux exigences de ce règlement.

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5 Signatures

Signature du demandeur _____

Nom du demandeur _____

Signature de l'agent de l'institution financière _____

Nom de l'institution financière _____

Fait à _____, le _____ 20__.

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FORMULE 3.1

(paragraphe 18(3.1))

Consentement de l'époux ou du conjoint de fait au transfert de droits à pension

Moi, _____, je certifie être l'époux ou le conjoint de fait, au sens de la *Loi de 1985 sur les normes de prestation de pension*, de _____.

Je comprends que mon époux ou mon conjoint de fait a choisi de transférer son droit à pension et que mon consentement écrit est requis à cette fin.

Je comprends que :

- a)** le transfert du droit à pension permettra à mon époux ou conjoint de fait de gérer ses propres fonds de pension et lui confère une certaine latitude quant à la détermination du montant qui lui sera versé au cours de chaque année civile;
- b)** les fonds transférés pourront être affectés à l'achat d'une prestation viagère à une date ultérieure, mais que rien n'exige que les fonds transférés soient affectés à l'achat d'une prestation viagère;
- c)** si les fonds transférés sont affectés à l'achat d'une prestation viagère, celle-ci doit être une prestation réversible, sauf si je renonce à mes droits en signant une formule de renonciation distincte au plus tard quatre-vingt-dix jours précédant le premier versement de la prestation.

Je comprends également que le fait de transférer le droit à pension à un régime d'épargne-retraite prévu par règlement permettra à mon époux ou conjoint de fait d'en retirer des fonds chaque année, sous réserve des limites de retrait minimal et de retrait maximal. Cependant, je comprends que le montant du revenu de pension ou de la prestation au survivant auquel j'aurai droit ultérieurement pourrait être considérablement réduit dans les cas suivants :

- a)** mon époux ou conjoint de fait choisit de retirer le montant maximal permis chaque année;
- b)** le rendement du placement est faible.

Néanmoins, je consens au transfert du droit à pension à un régime d'épargne-retraite prévu par règlement et je certifie que :

- a)** j'ai lu la présente formule et je la comprends;
- b)** ni mon époux ou mon conjoint de fait, ni personne d'autre n'a exercé de pression afin que je signe la présente formule;
- c)** je suis conscient que :
 - (i)** la présente formule ne constitue qu'une description générale de mes droits au titre de la *Loi de 1985 sur les normes de prestation de pension* et du *Règlement de 1985 sur les normes de prestation de pension*,
 - (ii)** si je souhaite comprendre précisément tous mes droits, je dois lire la *Loi de 1985 sur les normes de prestation de pension* et le *Règlement de 1985 sur les normes de prestation de pension* ou demander l'avis d'un conseiller juridique;
- d)** je sais que j'ai le droit de conserver une copie de la présente formule de consentement.

Je signe la présente formule pour donner mon consentement au transfert à _____, le _____ 20__.

Le nom et le numéro d'agrément du régime de pension de mon époux ou conjoint de fait sont _____.

Signature de l'époux ou du conjoint de fait _____

Adresse de l'époux ou du conjoint de fait _____

(Numéro de téléphone à la maison) _____

(Numéro de téléphone au travail) _____

DÉCLARATION DU TÉMOIN

J'atteste ce qui suit :

- a)** mon nom complet est _____

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b) mon adresse est _____

c) j'ai été témoin de la signature du présent consentement par _____.

Signature du témoin _____

(Numéro de téléphone à la maison) _____

(Numéro de téléphone au travail) _____

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FORMULE 4

(article 31)

Consentement de l'époux ou du conjoint de fait à la réduction de la prestation de pension au décès du participant ou du participant ancien

Moi, _____, je certifie être a) l'époux ou b) le conjoint de fait, au sens du paragraphe 2(1) de la *Loi de 1985 sur les normes de prestation de pension*, de _____, (participant) (participant ancien) au régime de pension connu sous le nom de _____.

Selon les modalités du régime de pension :

a) la prestation de pension payable à mon époux ou conjoint de fait (participant) (participant ancien) est de _____ \$ par _____ (période), et

b) la prestation de pension payable au décès de mon époux ou conjoint de fait sera _____ \$ par _____ (période), ce montant étant

d'au moins 60 pour cent de la prestation de pension payable à mon époux ou conjoint de fait conformément au paragraphe 22(2) de la *Loi de 1985 sur les normes de prestation de pension*.

En considération de ce qui précède et en conformité avec le paragraphe 22(5) de la *Loi de 1985 sur les normes de prestation de pension*, je consens par la présente à renoncer à :

Cocher un espace

- | | | |
|---|---|-------|
| 1 | mon droit à toute prestation de pension qui me sera payable au décès de mon époux ou conjoint de fait, | _____ |
| 2 | une partie de la prestation de pension qui me sera payable au décès de mon époux ou conjoint de fait, de sorte que ma prestation de pension sera de _____ \$ par _____ (période), ce montant étant inférieur à 60 pour cent de la prestation de pension payable à mon époux ou conjoint de fait à laquelle j'aurais par ailleurs été admissible | _____ |

Fait à _____, le _____ jour de _____, 19_____

 Signature du témoin (autre que le participant ou le participant ancien)

 Signature de l'époux ou du conjoint de fait

 Nom du témoin

 Adresse de l'époux ou du conjoint de fait

 Adresse du témoin

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FORMULE 5

(article 32)

Avis d'opposition

Au surintendant des institutions financières, Ottawa

Nom de l'administrateur

Adresse postale au Canada

En vertu de l'article 32 de la *Loi de 1985 sur les normes de prestation de pension*, avis est donné que je m'oppose à la décision du surintendant des institutions financières de (refuser l'agrément) (révoquer l'agrément et annuler le certificat correspondant) du régime de pension connu sous le nom de

dont fait état l'avis du surintendant en date du _____, 19_____.

Voici les motifs de l'opposition ainsi que les faits en cause :

Signature

Date

Titre ou poste

REMARQUES :

- 1 La présente formule est destinée à l'usage de l'administrateur qui, conformément à l'article 32(1) de la Loi, désire s'opposer formellement à une décision du surintendant des institutions financières de refuser l'agrément d'un régime de pension ou d'en révoquer l'agrément et d'annuler le certificat correspondant.
- 2 DEUX exemplaires de l'avis d'opposition doivent être envoyés par COURRIER RECOMMANDÉ au surintendant des institutions financières, Bureau du surintendant des institutions financières, Ottawa, KIA OH2, Canada. Pour que l'avis d'opposition soit valide, l'enveloppe qui le contient doit être oblitérée par la poste dans un délai de 60 jours à compter de la date de la mise à la poste de l'avis du surintendant des institutions financières indiquant que l'agrément du régime de pension a été refusé ou révoqué et que le certificat a été annulé, selon le cas.
- 3 L'AVIS D'OPPOSITION doit être signé par l'administrateur du régime de pension.

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FORMULE 6

(article 33)

Avis d'appel à la Cour fédérale du Canada

Relativement à la *Loi de 1985 sur les normes de prestation de pension*

ENTRE

appellant

-et-

intimé

AVIS D'APPEL

APPEL est par les présentes interjeté à l'égard de la décision du surintendant des institutions financières de (refuser) (révoquer) l'agrément du régime de pension connu sous le nom de

.....

dont font état les avis du surintendant en date du _____ 19____, et du _____ 19_____.

A Exposé des faits

(Donner un bref exposé des faits en cause, y compris la date et un court résumé des détails de la demande d'agrément ou des circonstances relatives à la révocation de l'agrément du régime de pension)

B Les dispositions sur lesquelles s'appuie l'appelant et les motifs qu'il a l'intention d'alléguer :**C Nom et adresse de l'avocat de l'appelant (s'il y a lieu) :**

Fait à _____, le _____ 19_____

 Appellant

DORS/90-363, art. 6 et 7; DORS/93-109, art. 8(F) et 10(A); DORS/93-299, art. 5; DORS/95-171, art. 6; DORS/95-551, art. 6; DORS/2001-194, art. 2, 4 et 5; DORS/2002-78, art. 18 et 19; DORS/2008-144, art. 7; DORS/2015-60, art. 18 et 19.

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SCHEDULE III

(Section 6)

Permitted Investments

Interpretation

1 In this Schedule,

child, in respect of a person, means

- (a) the child of the person,
- (b) the child of the person's spouse or common-law partner, or
- (c) the spouse or common-law partner of a child of the person; (*enfant*)

debt obligation means a bond, debenture, note or other evidence of indebtedness of an entity; (*titre de créance*)

entity means

- (a) a corporation, trust, partnership or fund or an unincorporated association or organization, or
- (b) Her Majesty in right of Canada or of a province or the government of a foreign country or of a political subdivision of a foreign country, or an agency thereof; (*entité*)

investment corporation, in respect of a plan, means a corporation that

- (a) is limited in its investments to those that are authorized for the plan under this Schedule,
- (b) holds at least 98 per cent of its assets in cash, investments and loans,
- (c) does not issue debt obligations,
- (d) obtains at least 98 per cent of its income from investments and loans, and
- (e) does not lend any of its assets to, or invest any of its moneys in, a related party of the plan; (*société de placement*)

loan includes a deposit, financial lease, conditional sales contract, repurchase agreement and any other similar arrangement for obtaining money or credit, but does not include investments in securities or the making of an acceptance, endorsement or other guarantee; (*prêt*)

market terms and conditions, in respect of a transaction, means terms and conditions, including those relating to price, rent or interest rate, that would apply to a similar transaction in an open market under conditions requisite to a fair transaction between parties who are at arm's length and acting

ANNEXE III

(article 6)

Placements admissibles

Définitions et interprétation

1 Les définitions qui suivent s'appliquent à la présente annexe.

action avec droit de vote Action d'une personne morale comportant — quelle qu'en soit la catégorie — un droit de vote en tout état de cause ou en raison soit de la survenance d'un fait qui demeure, soit de la réalisation d'une condition. (*voting share*)

apparenté À l'égard d'un régime, se dit de la personne qui, selon le cas :

- a) est l'administrateur du régime ou un membre du comité des pensions, du conseil d'administration ou d'un autre organisme ayant qualité d'administrateur du régime;
- b) est un dirigeant, un administrateur ou un employé de l'administrateur du régime;
- c) est chargée de détenir ou d'investir l'actif du régime, ou est un dirigeant, un administrateur ou un employé de cette personne;
- d) est une association ou un syndicat représentant des employés de l'employeur, ou est un dirigeant ou un employé de cette association ou de ce syndicat;
- e) est un employeur qui participe au régime ou l'un de ses employés, dirigeants ou administrateurs;
- f) est un participant du régime;
- g) dans le cas où l'employeur est une personne morale, détient, directement ou indirectement, seule ou avec son époux ou conjoint de fait ou son enfant, plus de 10 pour cent des actions avec droit de vote comportant plus de 10 pour cent des droits de vote attachés à l'ensemble des titres avec droit de vote de la personne morale;
- h) est l'époux ou le conjoint de fait ou l'enfant de toute personne visée à l'un des alinéas a) à g);
- i) dans le cas où l'employeur est une personne morale, fait partie du groupe de l'employeur;
- j) est une personne morale contrôlée directement ou indirectement par une personne visée à l'un des alinéas a) à h);
- k) est une entité dans laquelle une personne visée aux alinéas a), b), e) ou g) ou l'époux ou le conjoint de fait ou l'enfant d'une telle personne a un intérêt de groupe financier;

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ANNEXE III Placements admissibles

prudently, knowledgeably and willingly; (*conditions du marché*)

person includes an entity; (*personne*)

public exchange [Repealed, SOR/2015-60, s. 20]

real estate corporation means a corporation incorporated to acquire, hold, maintain, improve, lease or manage real property other than real property that yields petroleum or natural gas; (*société immobilière*)

real property includes a leasehold interest in real property; (*biens immeubles*)

related party, in respect of a plan, means a person who is

(a) the administrator of the plan or who is a member of a pension committee, board of trustees or other body that is the administrator of the plan,

(b) an officer, director or employee of the administrator of the plan,

(c) a person responsible for holding or investing the assets of the plan, or any officer, director or employee thereof,

(d) an association or union representing employees of the employer, or an officer or employee thereof,

(e) an employer who participates in the plan, or an employee, officer or director thereof,

(f) a member of the plan,

(g) where the employer is a corporation, a person who directly or indirectly holds, or together with the spouse or common-law partner or a child of the person holds, more than 10 per cent of the voting shares carrying more than 10 per cent of the voting rights attached to all voting securities of the corporation,

(h) the spouse or common-law partner or a child of any person referred to in any of paragraphs (a) to (g),

(i) where the employer is a corporation, an affiliate of the employer,

(j) a corporation that is directly or indirectly controlled by a person referred to in any of paragraphs (a) to (h),

(k) an entity in which a person referred to in paragraph (a), (b), (e) or (g), or the spouse or common-law partner or a child of such a person, has a substantial investment, or

(l) an entity that holds a substantial investment in the employer,

but does not include Her Majesty in right of Canada or of a province, or an agency thereof, or a bank, trust company or other financial institution that holds the assets of the plan, where that person is not the administrator of the plan; (*apparenté*)

(l) est une entité qui a un intérêt de groupe financier dans l'employeur.

Sont exclus de la présente définition Sa Majesté du chef du Canada ou d'une province et ses organismes, ainsi que toute banque, société de fiducie ou autre institution financière qui détient l'actif du régime sans être l'administrateur du régime. (*related party*)

biens immeubles Sont assimilés aux biens immeubles les droits découlant des baux immobiliers. (*real property*)

bourse [Abrogée, DORS/2015-60, art. 20]

conditions du marché Dans le cas d'une transaction, s'entend des conditions — notamment en matière de prix, loyer ou taux d'intérêt — normales pour une transaction semblable sur un marché libre dans les conditions nécessaires à une transaction équitable entre des parties sans lien de dépendance qui agissent prudemment, en toute liberté et en pleine connaissance de cause. (*market terms and conditions*)

enfant À l'égard d'un individu :

a) son enfant;

b) l'enfant de son époux ou de son conjoint de fait;

c) l'époux ou le conjoint de fait de l'un des enfants visés aux alinéas a) ou b). (*child*)

entité

a) Personne morale, fiducie, société de personnes, fonds ou tout organisme ou association non doté de la personnalité morale;

b) Sa Majesté du chef du Canada ou d'une province, le gouvernement d'un pays étranger ou de l'une de ses subdivisions politiques, ou un organisme de l'un de ceux-ci. (*entity*)

opération [Abrogée, DORS/2011-85, art. 10]

personne Est assimilée à une personne l'entité. (*person*)

prêt Sont assimilés à un prêt le dépôt, le crédit-bail, le contrat de vente conditionnelle, la convention de rachat et tout autre arrangement pour obtenir des fonds ou du crédit. La présente définition ne vise pas cependant les placements dans les valeurs mobilières, les acceptations, les endossements et autres garanties. (*loan*)

société de placement À l'égard d'un régime, s'entend d'une personne morale :

a) dont les placements sont limités à ceux autorisés pour le régime selon la présente annexe;

b) dont au moins 98 pour cent de l'actif est constitué d'espèces, de placements et de prêts;

c) qui n'émet pas de titres de créance;

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resource corporation means a corporation that has, at all times since the date on which it was incorporated,

(a) limited its activities to acquiring, holding, exploring, developing, maintaining, improving, managing, operating or disposing of Canadian resource properties,

(b) restricted its investments and loans, other than investments in Canadian resource properties or property to be used in connection with Canadian resource properties owned by it and loans secured by Canadian resource properties to persons resident in Canada for the exploration or development of such properties, to investments and loans authorized for a plan under this Schedule, and

(c) not borrowed money other than for the purpose of earning income from Canadian resource properties; (*société minière*)

security means

(a) in respect of a corporation, a share of any class of shares of the corporation or a debt obligation of the corporation, and includes a warrant of the corporation, but does not include a deposit with a financial institution or an instrument evidencing such a deposit, and

(b) in respect of any other entity, any ownership interest in or debt obligation of the entity; (*titre ou valeur mobilière*)

transaction includes

(a) the making of an investment in securities,

(b) the taking of an assignment of, or otherwise acquiring, a loan made by a third party,

(c) the taking of a security interest in securities or a hypothec on securities, and

(d) any modification, renewal or extension of a prior transaction,

but does not include a payment of pension benefits or other benefits, a transfer of pension benefit credits or a withdrawal of contributions from a plan; (*transaction*)

voting share means a share of any class of shares of a corporation that carries voting rights under all circumstances, by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled. (*action avec droit de vote*)

(d) dont au moins 98 pour cent du revenu provient de placements et de prêts;

(e) qui ne prête pas ses fonds à une personne apparentée au régime ou ne les investit pas dans une telle personne. (*investment corporation*)

société immobilière Personne morale constituée dans le but d'acquérir, de détenir, d'entretenir, d'améliorer, de donner à bail ou de gérer des biens immeubles autres que ceux procurant du pétrole ou du gaz naturel. (*real estate corporation*)

société minière Personne morale qui, depuis la date de sa constitution, a toujours :

(a) limité ses activités à l'acquisition, la détention, l'exploration, l'exploitation, l'entretien, l'amélioration, la gestion, l'utilisation ou l'aliénation d'avoirs miniers canadiens;

(b) restreint ses placements et ses prêts — sauf les placements dans des avoirs miniers canadiens ou des biens devant servir relativement à des avoirs miniers canadiens dont elle est propriétaire, et les prêts consentis à des personnes résidant au Canada pour l'exploration ou l'exploitation d'avoirs miniers canadiens et garantis par ces avoirs — à ceux autorisés pour un régime selon la présente annexe;

(c) emprunté dans le seul but de gagner un revenu d'avoirs miniers canadiens. (*resource corporation*)

titre ou valeur mobilière

(a) Dans le cas d'une personne morale, action de toute catégorie ou titre de créance sur cette dernière, ainsi que le bon de souscription correspondant, mais à l'exclusion des dépôts effectués auprès d'une institution financière ou des documents les attestant;

(b) dans le cas de toute autre entité, titre de participation ou titre de créance y afférents. (*security*)

titre de créance Tout document attestant l'existence d'une créance sur une entité et notamment une obligation, une débenture ou un billet. (*debt obligation*)

transaction Vise notamment :

(a) tout placement dans des valeurs mobilières;

(b) l'acquisition, notamment par cession, d'un prêt consenti par un tiers;

(c) la constitution d'une sûreté sur des titres;

(d) la modification, le renouvellement ou la prolongation d'une transaction antérieure.

Ne sont pas visés par la présente définition le versement de prestations de pension ou autres, le transfert de droits à pension et le retrait de cotisations d'un régime. (*transaction*)

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2 For the purposes of this Schedule, the making, holding or acquiring of an investment indirectly by an administrator on behalf of a plan, the holding, acquiring or owning of property indirectly by an administrator on behalf of a plan or the lending of money indirectly by an administrator on behalf of a plan includes the holding, making, acquiring, owning or lending of an investment, a property or money, as the case may be, by

(a) a real estate corporation, resource corporation or investment corporation in which the moneys of the plan have been invested in accordance with section 12, 13 or 14;

(b) a real estate corporation, resource corporation or investment corporation of which a corporation referred to in paragraph (a) holds securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the real estate corporation, resource corporation or investment corporation; or

(c) an investment fund, a segregated fund or a trust fund in which the moneys of the plan have been invested.

3 (1) For the purposes of this Schedule,

(a) a person or plan controls a corporation if securities of the corporation to which are attached more than 50 per cent of the votes that may be cast to elect the directors of the corporation are beneficially owned by the person or plan and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the corporation;

(b) a person or plan controls an unincorporated entity, other than a limited partnership, if more than 50 per cent of the ownership interests into which the unincorporated entity is divided are beneficially owned by the person or plan and the person or plan is able to direct the business and affairs of the unincorporated entity;

(c) the general partner of a limited partnership controls the limited partnership; and

(d) a trustee of a trust controls the trust.

(2) For the purposes of this Schedule, a person or plan who controls an entity controls any other entity that is controlled by the entity.

4 [Repealed, SOR/2015-60, s. 22]

5 For the purposes of this Schedule, one entity is affiliated with another entity if the entity is controlled by the other entity or if both entities are controlled by the same person.

6 For the purposes of this Schedule, a person or plan has a substantial investment in

(a) an unincorporated entity if the person, the plan or an entity controlled by the person or plan beneficially owns more than 25 per cent of the ownership interests in the unincorporated entity; and

(b) a corporation if

2 Pour l'application de la présente annexe, l'administrateur d'un régime, pour le compte du régime, fait, détient ou acquiert indirectement un placement, détient ou acquiert indirectement un bien ou en est indirectement le propriétaire, ou prête indirectement des sommes, notamment dans les cas où l'entité qui, effectivement, fait, détient ou acquiert le placement, détient ou acquiert le bien ou en est propriétaire, ou prête les sommes, est :

a) une société immobilière, une société minière ou une société de placement dans laquelle l'administrateur a investi conformément aux articles 12, 13 ou 14;

b) une société immobilière, une société minière ou une société de placement dans laquelle une société visée à l'alinéa a) détient des titres lui conférant plus de 30 pour cent des droits de vote requis pour élire les administrateurs de la société;

c) un fonds de placement, une caisse séparée ou un fonds en fiducie dans lesquels les fonds du régime ont été investis.

3 (1) Pour l'application de la présente annexe :

a) a le contrôle d'une personne morale la personne ou le régime qui détient la propriété effective de titres de la personne morale lui conférant plus de 50 pour cent des droits de vote dont l'exercice lui permet d'élire la majorité des administrateurs de la personne morale;

b) a le contrôle d'une entité non constituée en personne morale, à l'exception d'une société en commandite, la personne ou le régime qui en détient, à titre de véritable propriétaire, plus de 50 pour cent des titres de participation et qui a la capacité d'en diriger tant les activités commerciales que les affaires internes;

c) a le contrôle d'une société en commandite le commandité;

d) a le contrôle d'une fiducie le fiduciaire.

(2) Pour l'application de la présente annexe, la personne ou le régime qui contrôle une entité est réputé contrôler toute autre entité contrôlée par celle-ci.

4 [Abrogée, DORS/2015-60, art. 22]

5 Pour l'application de la présente annexe, sont du même groupe les entités dont l'une est contrôlée par l'autre ou les entités qui sont contrôlées par la même personne.

6 Pour l'application de la présente annexe, une personne ou un régime a un intérêt de groupe financier :

a) dans une entité non constituée en personne morale, si l'un ou l'autre ou une entité qu'il contrôle détient la propriété effective de plus de 25 pour cent de l'ensemble des titres de participation de l'entité non constituée en personne morale;

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(i) the voting rights attached to voting shares of the corporation that are beneficially owned by the person or plan, or by an entity controlled by the person or plan, exceed 10 per cent of the voting rights attached to all of the outstanding voting shares of the corporation, or

(ii) shares of the corporation that are beneficially owned by the person or plan, or by an entity controlled by the person or plan, represent ownership of more than 25 per cent of the shareholders' equity of the corporation.

7 For the purposes of this Schedule, a person or plan is associated with

(a) a corporation that the person or plan controls and every affiliate of every such corporation;

(b) a person who controls the person or plan;

(c) a partner who has a substantial investment in a partnership in which the person or plan has a substantial investment;

(d) a trust or estate in which the person or plan has a substantial investment or for which the person or plan serves as trustee or in a similar capacity to a trustee;

(e) the spouse or common-law partner of the person; and

(f) a brother, sister or child or other descendant of the person, or the spouse or common-law partner thereof.

Application

8 This Schedule does not apply in respect of

(a) an insured plan or a plan in respect of which all benefits are provided through an annuity contract issued by the Government of Canada; or

(b) investments held in an unallocated general fund of a person authorized to carry on a life insurance business in Canada.

Quantitative Limits

9 (1) The administrator of a plan shall not, directly or indirectly, lend or invest moneys of the plan to or in any one person, any associated persons or any affiliated corporations if

(a) 10% or more of the total market value of the plan's assets has already been lent or invested, in total, to or in the person, the associated persons or the affiliated corporations; or

(b) 10% or more of the total market value of the plan's assets would be lent or invested, in total, to or in the person, the associated persons or the affiliated corporations as a result of the loan or investment.

b) dans une personne morale, si l'un ou l'autre ou une entité qu'il contrôle détient la propriété effective :

(i) soit d'un nombre total d'actions avec droit de vote de la personne morale comportant plus de 10 pour cent des droits de vote attachés à l'ensemble des actions avec droit de vote en circulation de celle-ci,

(ii) soit d'un nombre total d'actions de la personne morale représentant plus de 25 pour cent de l'avoir des actionnaires de celle-ci.

7 Pour l'application de la présente annexe, une personne ou un régime est réputé associé, selon le cas :

a) à toute personne morale qu'il contrôle et à toutes les entités membres du groupe de cette personne morale;

b) à toute personne qui le contrôle;

c) à tout associé qui a un intérêt de groupe financier dans une société de personnes dans laquelle la personne ou le régime a un intérêt de groupe financier;

d) à toute fiducie ou succession dans laquelle il a un intérêt de groupe financier ou pour laquelle il agit comme fiduciaire ou assume des fonctions analogues;

e) à son époux ou conjoint de fait;

f) à ses frères, sœurs, enfants ou autres descendants ou à leur époux ou conjoint de fait.

Application

8 La présente annexe ne s'applique pas :

a) aux régimes assurés et aux régimes dont toutes les prestations sont versées au moyen d'un contrat de rente émis par le gouvernement du Canada;

b) aux placements détenus dans un fonds général non réparti d'une personne autorisée à effectuer des opérations d'assurance-vie au Canada.

Plafonds

9 (1) L'administrateur d'un régime ne peut faire un placement, directement ou indirectement, auprès d'une seule personne, de personnes associés ou de personnes morales faisant partie du même groupe — ou leur faire un prêt — si, selon le cas :

a) 10 % ou plus du total de la valeur marchande des actifs du régime fait déjà l'objet d'un placement ou d'un prêt à l'égard de ces personnes;

b) en raison du placement ou du prêt, 10% ou plus du total de la valeur marchande des actifs du régime ferait l'objet d'un placement ou d'un prêt à l'égard de ces personnes.

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(1.1) The administrator of a plan shall not, directly or indirectly, lend or invest funds that are in a member choice account to or in any one person, any associated persons or any affiliated corporations if

(a) 10% or more of the total market value of the account's assets has already been lent or invested, in total, to or in the person, the associated persons or the affiliated corporations; or

(b) 10% or more of the total market value of the account's assets would be lent or invested, in total, to or in the person, the associated persons or the affiliated corporations as a result of the loan or investment.

(2) Subsections (1) and (1.1) do not apply in respect of moneys of a plan held by a bank, trust company or other financial institution to the extent that the moneys are fully insured by the Canada Deposit Insurance Corporation, by Assuris or by any similar provincial body established for the purpose of providing insurance against loss of deposits with trust companies or other financial institutions.

(3) Subsections (1) and (1.1) do not apply in respect of investments in

(a) an investment fund or a segregated fund that complies with

(i) in the case of investments applicable to a member choice account, section 11 of this Schedule, and

(ii) in the case of any other investments, the requirements applicable to a plan that are set out in this Schedule;

(b) an unallocated general fund of a person authorized to carry on a life insurance business in Canada;

(c) an investment corporation, real estate corporation or resource corporation;

(d) securities issued or fully guaranteed by the Government of Canada, the government of a province, or an agency thereof;

(e) a fund composed of mortgage-backed securities that are fully guaranteed by the Government of Canada, the government of a province, or an agency thereof; or

(f) a fund that replicates the composition of a widely recognized index of a broad class of securities traded at a marketplace.

(4) Subsections (1) and (1.1) do not apply in respect of investments that involve the purchase of a contract or agreement in respect of which the return is based on the performance of a widely recognized index of a broad class of securities traded at a marketplace.

10 [Repealed, SOR/2010-149, s. 6]

(1.1) L'administrateur d'un régime ne peut placer, directement ou indirectement, des fonds d'un compte accompagné de choix auprès d'une seule personne, de personnes associés ou de personnes morales faisant partie du même groupe — ou leur prêter — si, selon le cas :

a) 10 % ou plus du total de la valeur marchande des actifs de ce compte fait déjà l'objet d'un placement ou d'un prêt à l'égard de ces personnes;

b) en raison du placement ou du prêt, 10% ou plus du total de la valeur marchande des actifs de ce compte accompagné de choix ferait l'objet d'un placement ou d'un prêt à l'égard de ces personnes.

(2) Les paragraphes (1) et (1.1) ne s'appliquent pas aux fonds d'un régime détenus par une banque, une société de fiducie ou une autre institution financière si ces fonds sont entièrement assurés par la Société d'assurance-dépôts du Canada, par Assuris ou par un organisme provincial analogue constitué pour fournir une assurance contre les risques de perte des dépôts auprès de sociétés de fiducie ou d'autres institutions financières.

(3) Les paragraphes (1) et (1.1) ne s'appliquent pas aux placements effectués :

a) dans un fonds de placement ou une caisse séparée qui satisfait :

(i) dans le cas de placements dans un compte accompagné de choix, à l'article 11 de la présente annexe,

(ii) dans le cas de tout autre placement, aux exigences applicables à un régime prévues à la présente annexe;

b) dans un fonds général non réparti d'une personne autorisée à effectuer des opérations d'assurance-vie au Canada;

c) dans une société de placement, une société immobilière ou une société minière;

d) dans des titres émis ou entièrement garantis par le gouvernement du Canada ou d'une province ou par un de ses organismes;

e) dans un fonds composé de titres hypothécaires entièrement garantis par le gouvernement du Canada ou d'une province ou par un de ses organismes;

f) dans un fonds dont la composition reproduit à celle d'un indice généralement reconnu comptant une vaste gamme de titres négociés sur un marché.

(4) Les paragraphes (1) et (1.1) ne s'appliquent pas aux placements effectués dans l'achat d'un contrat ou d'un accord à l'égard desquels le rendement est fondé sur un indice généralement reconnu comptant une vaste gamme de titres négociés sur un marché.

10 [Abrogé, DORS/2010-149, art. 6]

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11 (1) Subject to subsection (2), the administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of the corporation.

(2) Subsection (1) does not apply in respect of investments in securities of

- (a)** a real estate corporation;
- (b)** a resource corporation; or
- (c)** an investment corporation.

12 (1) The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a real estate corporation to which are attached more than 30% of the votes that may be cast to elect the directors of the corporation, unless the administrator obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will

- (a)** file with the Superintendent, at such intervals or times as the Superintendent directs,
 - (i)** copies of its annual financial statements,
 - (ii)** copies of its audited financial statements in respect of fiscal years ending after December 31, 1994,
 - (iii)** a list clearly identifying the assets of the corporation and the market value of each asset,
 - (iv)** a list of the names of its officers, directors and shareholders, and
 - (v)** a certificate stating that the corporation is complying with its undertaking;
- (b)** permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records;
- (c)** limit its activities to acquiring, holding, maintaining, improving, leasing or managing real property other than real property that yields petroleum or natural gas;
- (d)** not carry on the activities referred to in paragraph (c) in respect of any real property that is not owned by, or on behalf of, or mortgaged to,
 - (i)** the plan,
 - (ii)** the corporation,
 - (iii)** any other real estate corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation have been invested in by, or on behalf of, the plan pursuant to this subsection, or
 - (iv)** any other real estate corporation in which securities to which are attached more than 30 per cent of the

11 (1) Sous réserve du paragraphe (2), l'administrateur d'un régime ne peut investir, directement ou indirectement, les fonds du régime dans les valeurs mobilières d'une personne morale comportant plus de 30 pour cent des droits de vote requis pour élire les administrateurs de la personne morale.

(2) Le paragraphe (1) ne s'applique pas aux placements faits dans les valeurs mobilières :

- a)** de sociétés immobilières;
- b)** de sociétés minières;
- c)** de sociétés de placement.

12 (1) L'administrateur d'un régime ne peut investir, directement ou indirectement, les fonds du régime dans les titres d'une société immobilière comportant plus de 30 % des droits de vote dont l'exercice permet d'élire les administrateurs de la société, à moins d'avoir obtenu et remis au surintendant un engagement de la société par lequel celle-ci s'engage, pour la durée de la détention de tels titres :

- a)** à déposer auprès du surintendant, aux intervalles ou aux moments fixés par celui-ci :
 - (i)** des copies de ses états financiers annuels,
 - (ii)** des copies de ses états financiers vérifiés à l'égard des exercices se terminant après le 31 décembre 1994,
 - (iii)** une liste exposant clairement ses éléments d'actif ainsi que la valeur marchande de chacun d'eux,
 - (iv)** la liste des noms de ses dirigeants, administrateurs et actionnaires,
 - (v)** une attestation établissant qu'elle remplit son engagement;
- b)** à permettre au surintendant ou à un membre autorisé du personnel de celui-ci de se rendre à son siège social et d'examiner ses livres et registres;
- c)** à limiter ses activités à l'acquisition, la détention, l'entretien, l'amélioration, la location à bail ou la gestion de biens immeubles autres que ceux procurant du pétrole ou du gaz naturel;
- d)** à n'exercer aucune des activités mentionnées à l'alinéa c) à l'égard de biens immeubles dont la propriété n'est pas détenue par l'une des entités suivantes ou pour son compte ou qui ne sont pas grevés d'une hypothèque souscrite par l'une d'elles :
 - (i)** le régime,
 - (ii)** la société,
 - (iii)** une autre société immobilière dont les titres comportant plus de 30 pour cent des droits de vote requis pour élire les administrateurs de celle-ci ont été acquis par le régime ou pour le compte de celui-ci à titre de placement aux termes du présent paragraphe,

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votes that may be cast to elect the directors of that corporation are owned by the corporation or by a real estate corporation referred to in subparagraph (iii);

(e) procure, at the request of the Superintendent and at its own expense, an appraisal by one or more accredited appraisers of any parcel of real property owned by it or on its behalf;

(f) not lend any of its assets to, or invest any of its moneys in, a related party of the plan;

(g) restrict its investments and loans, other than investments in real property or in the securities of other real estate corporations, to those authorized for the plan under this Schedule; and

(h) not invest, or hold an investment, in securities of any other real estate corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other real estate corporation not to invest, or hold an investment, in the securities of any other real estate corporation.

(2) A list of assets referred to in subparagraph (1)(a)(iii)

(a) shall not include any asset, other than an asset referred to in paragraph (1)(g), that is not authorized under this Schedule; and

(b) shall value any securities that are included in the assets of the corporation at a value not exceeding the market value thereof.

(3) Any financial statement of a plan filed under subsection 12(2) of the Act shall value the common shares of the real estate corporation held by, or on behalf of, the plan at a value not greater than the amount obtained by multiplying

(a) an amount equal to the total assets of the corporation less the sum of its total liabilities and its preferred capital stock

by

(b) the number of common shares of the corporation held by, or on behalf of, the plan divided by the total number of the issued and outstanding common shares of the corporation.

13 (1) The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of a resource corporation to which are attached more than 30% of the votes that may be cast to elect the directors of the corporation, unless the administrator obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will

(iv) une autre société immobilière dont les titres comportant plus de 30 pour cent des droits de vote requis pour élire les administrateurs de celle-ci appartiennent à la société ou à une société immobilière visée au sous-alinéa (iii);

e) à fournir à ses frais, à la demande du surintendant, une évaluation de tout bien immeuble dont la propriété est détenue par elle ou pour son compte, faite par un ou plusieurs évaluateurs accrédités;

f) à ne prêter aucun de ses éléments d'actif à une personne apparentée au régime et à ne pas investir ses fonds dans une telle personne;

g) à restreindre ses placements et ses prêts, autres que les placements dans des biens immeubles ou des valeurs mobilières d'autres sociétés immobilières, à ceux qui sont autorisés pour le régime aux termes de la présente annexe;

h) à ne pas faire ni détenir de placement dans les titres d'une autre société immobilière comportant plus de 30 pour cent des droits de vote requis pour élire les administrateurs de celle-ci, à moins d'avoir préalablement obtenu et remis au surintendant un engagement de cette autre société immobilière par lequel celle-ci s'engage à ne pas faire ni détenir de placement dans les titres d'une autre société immobilière.

(2) La liste visée au sous-alinéa (1)a)(iii) :

a) ne peut comprendre aucun élément d'actif, à l'exception des éléments d'actif visés à l'alinéa (1)g), qui n'est pas autorisé selon la présente annexe;

b) indique la valeur des titres compris dans l'actif de la société, laquelle valeur ne peut dépasser leur valeur marchande.

(3) Tout état financier d'un régime déposé aux termes du paragraphe 12(2) de la Loi indique la valeur des actions ordinaires de la société immobilière détenues par le régime ou pour son compte, laquelle valeur ne peut dépasser le produit du montant visé à l'alinéa a) par la fraction visée à l'alinéa b) :

a) le montant de l'excédent de l'actif de la société sur la somme de son passif et de son capital-actions privilégié;

b) la fraction que représente le nombre d'actions ordinaires de la société détenues par le régime ou pour son compte par rapport au nombre total d'actions ordinaires émises et en circulation de la société.

13 (1) L'administrateur d'un régime ne peut investir, directement ou indirectement, les fonds du régime dans les titres d'une société minière comportant plus de 30 % des droits de vote dont l'exercice permet d'élire les administrateurs de la société, à moins d'avoir obtenu et remis au surintendant un engagement de la société par lequel celle-ci s'engage, pour la durée de la détention de tels titres :

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- (a)** file with the Superintendent, at such intervals or times as the Superintendent directs,
- (i)** copies of its annual financial statements,
 - (ii)** copies of its audited financial statements in respect of fiscal years ending after December 31, 1994,
 - (iii)** a list clearly identifying the assets of the corporation and the market value of each asset,
 - (iv)** a list of the names of its officers, directors and shareholders, and
 - (v)** a certificate stating that the corporation is complying with its undertaking;
- (b)** permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records;
- (c)** limit its activities to acquiring, holding, exploring, developing, maintaining, improving, managing, operating or disposing of Canadian resource properties;
- (d)** not carry on the activities referred to in paragraph (c) in respect of any Canadian resource property that is not owned by, or on behalf of,
- (i)** the plan,
 - (ii)** the corporation,
 - (iii)** any other resource corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation have been invested in by, or on behalf of, the plan pursuant to this subsection, or
 - (iv)** any other resource corporation in which securities to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation are owned by the corporation or by a resource corporation referred to in subparagraph (iii);
- (e)** procure, at the request of the Superintendent and at its own expense, an appraisal by one or more accredited appraisers of any Canadian resource property owned by it;
- (f)** not lend any of its assets to, or invest any of its moneys in, a related party of the plan;
- (g)** restrict its investments and loans, other than investments in Canadian resource property or properties to be used in connection with Canadian resource properties owned by it, loans secured by Canadian resource properties to persons resident in Canada for the exploration or development of such properties and investments in the securities of other resource corporations, to investments and loans authorized for the plan under this Schedule;
- (h)** not borrow money other than for the purpose of earning income from Canadian resource properties; and
- a)** à déposer auprès du surintendant, aux intervalles ou aux moments fixés par celui-ci :
- (i)** des copies de ses états financiers annuels,
 - (ii)** des copies de ses états financiers vérifiés à l'égard des exercices se terminant après le 31 décembre 1994,
 - (iii)** une liste exposant clairement ses éléments d'actif ainsi que la valeur marchande de chacun d'eux,
 - (iv)** la liste des noms de ses dirigeants, administrateurs et actionnaires,
 - (v)** une attestation établissant qu'elle remplit son engagement;
- b)** à permettre au surintendant ou à un membre autorisé du personnel de celui-ci de se rendre à son siège social et d'examiner ses livres et registres;
- c)** à limiter ses activités à l'acquisition, la détention, l'exploration, l'exploitation, l'entretien, l'amélioration, la gestion, l'utilisation ou l'aliénation d'avoirs miniers canadiens;
- d)** à n'exercer aucune des activités mentionnées à l'alinéa c) à l'égard d'avoirs miniers canadiens dont la propriété n'est pas détenue par l'une des entités suivantes ou pour son compte :
- (i)** le régime,
 - (ii)** la société,
 - (iii)** une autre société minière dont les titres comportant plus de 30 pour cent des droits de vote requis pour élire les administrateurs de celle-ci ont été acquis par le régime ou pour son compte à titre de placement aux termes du présent paragraphe,
 - (iv)** une autre société minière dont les titres comportant plus de 30 pour cent des droits de vote requis pour élire les administrateurs de celle-ci appartiennent à la société ou à une société minière visée au sous-alinéa (iii);
- e)** à fournir à ses frais, à la demande du surintendant, une évaluation de tout avoir minier canadien dont elle est propriétaire, faite par un ou plusieurs évaluateurs accrédités;
- f)** à ne prêter aucun de ses éléments d'actif à une personne apparentée au régime et à ne pas investir ses fonds dans une telle personne;
- g)** à restreindre ses placements et ses prêts — sauf les placements dans des avoirs miniers canadiens ou des biens devant servir relativement à des avoirs miniers canadiens dont elle est propriétaire, les placements dans les valeurs mobilières d'autres sociétés minières et les prêts consentis à des personnes résidant au Canada pour l'exploration ou l'exploitation d'avoirs miniers canadiens et garantis par ces avoirs — à ceux autorisés pour le régime selon la présente annexe;

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- (i)** not invest, or hold an investment, in securities of any other resource corporation to which are attached more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other resource corporation not to invest, or hold an investment, in the securities of any other resource corporation.
- (2)** A list of assets referred to in subparagraph (1)(a)(iii)
- (a)** shall not include any asset, other than an asset referred to in paragraph (1)(g), that is not authorized under this Schedule; and
- (b)** shall value any securities that are included in the assets of the corporation at a value not exceeding the market value.
- (3)** Any financial statement of the plan filed under subsection 12(2) of the Act shall value the common shares of the resource corporation held by, or on behalf of, the plan at a value not greater than the amount obtained by multiplying
- (a)** an amount equal to the total assets of the corporation set out in the balance sheet less the sum of its liabilities and its preferred capital stock
- by
- (b)** the number of common shares of the corporation held by, or on behalf of, the plan divided by the total number of the issued and outstanding common shares of the corporation.
- 14** The administrator of a plan shall not, directly or indirectly, invest the moneys of the plan in the securities of an investment corporation to which are attached more than 30% of the votes that may be cast to elect the directors of the corporation, unless the administrator obtains and deposits with the Superintendent an undertaking by the corporation that, while those securities are held, the corporation will
- (a)** file with the Superintendent, at such intervals or times as the Superintendent directs,
- (i)** copies of its annual financial statements,
- (ii)** copies of its audited financial statements in respect of fiscal years ending after December 31, 1994,
- (iii)** a list clearly identifying the assets of the corporation and the market value of each asset,
- (iv)** a list of the names of its officers, directors and shareholders, and
- (v)** a certificate stating that the corporation is complying with its undertaking;
- (h)** à emprunter dans le seul but de gagner un revenu d'avoirs miniers canadiens;
- (i)** à ne pas faire ni détenir de placement dans les titres d'une autre société minière comportant plus de 30 pour cent des droits de vote requis pour élire les administrateurs de celle-ci, à moins d'avoir préalablement obtenu et remis au surintendant un engagement de cette autre société minière par lequel celle-ci s'engage à ne pas faire ni détenir de placement dans les titres d'une autre société minière.
- (2)** La liste visée au sous-alinéa (1)a(iii) :
- (a)** ne peut comprendre aucun élément d'actif, à l'exception des éléments d'actif visés à l'alinéa (1)g, qui n'est pas autorisé selon la présente annexe;
- (b)** indique la valeur des titres compris dans l'actif de la société, laquelle valeur ne peut dépasser leur valeur marchande.
- (3)** Tout état financier d'un régime déposé aux termes du paragraphe 12(2) de la Loi indique la valeur des actions ordinaires de la société minière détenues par le régime ou pour son compte, laquelle valeur ne peut dépasser le produit du montant visé à l'alinéa a) par la fraction visée à l'alinéa b) :
- (a)** le montant de l'excédent de l'actif de la société sur la somme de son passif et de son capital-actions privilégié;
- (b)** la fraction que représente le nombre d'actions ordinaires de la société détenues par le régime ou pour son compte — par rapport au nombre total d'actions ordinaires émises et en circulation de la société.
- 14** L'administrateur d'un régime ne peut investir, directement ou indirectement, les fonds du régime dans les titres d'une société de placement comportant plus de 30 % des droits de vote dont l'exercice permet d'élire les administrateurs de la société, à moins d'avoir obtenu et remis au surintendant un engagement de la société par lequel celle-ci s'engage, pour la durée de la détention de tels titres :
- (a)** à déposer auprès du surintendant, aux intervalles ou aux moments fixés par celui-ci :
- (i)** des copies de ses états financiers annuels,
- (ii)** des copies de ses états financiers vérifiés à l'égard des exercices se terminant après le 31 décembre 1994,
- (iii)** une liste exposant clairement ses éléments d'actif ainsi que la valeur marchande de chacun d'eux,
- (iv)** la liste des noms de ses dirigeants, administrateurs et actionnaires,
- (v)** une attestation établissant qu'elle remplit son engagement;

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- (b)** permit the Superintendent or an authorized member of the Superintendent's staff to visit its head office and to examine its books and records;
- (c)** hold at least 98 per cent of its assets in cash, investments and loans;
- (d)** not issue debt obligations;
- (e)** obtain at least 98 per cent of its income from investments and loans;
- (f)** not lend any of its assets to, or invest any of its moneys in, a related party of the plan; and
- (g)** not invest, or hold an investment, in securities of any other investment corporation if there are attached to those securities more than 30 per cent of the votes that may be cast to elect the directors of that corporation, unless the corporation first obtains and deposits with the Superintendent an undertaking by the other investment corporation not to invest, or hold an investment, in the securities of any other investment corporation.

15 For the purposes of sections 16 and 17,

(a) where a transaction is entered into by, or on behalf of, a plan with a person who the administrator of the plan, or any person acting on the administrator's behalf, knows will become a related party to the plan, the person shall be considered to be a related party of the plan in respect of the transaction; and

(b) the fulfilment of an obligation under the terms of any transaction, including the payment of interest on a loan or deposit, is part of the transaction and not a separate transaction.

16 (1) Subject to sections 17 and 18, the administrator of a plan shall not, directly or indirectly,

(a) lend the moneys of the plan to a related party or use those moneys to hold an investment in the securities of a related party; or

(b) enter into a transaction with a related party on behalf of the plan.

(2) Subject to sections 17 and 18, during the period of twelve months after the day on which a person ceases to be a related party of a plan, the administrator of the plan shall not, directly or indirectly,

(a) lend the moneys of the plan to that person or invest those moneys in the securities of that person; or

(b) enter into a transaction with that person on behalf of the plan.

17 (1) The administrator of a plan may enter into a transaction with a related party for the operation or administration of the plan if

b) à permettre au surintendant ou à un membre autorisé du personnel de celui-ci de se rendre au siège social et d'examiner ses livres et registres;

c) à détenir au moins 98 pour cent de son actif en espèces, en placements et en prêts;

d) à ne pas émettre de titres de créance;

e) à tirer au moins 98 pour cent de son revenu de placements et de prêts;

f) à ne prêter aucun de ses éléments d'actif à une personne apparentée au régime et à ne pas investir ses fonds dans une telle personne;

g) à ne pas faire ni détenir de placement dans les titres d'une autre société de placement comportant plus de 30 pour cent des droits de vote requis pour élire les administrateurs de celle-ci, à moins d'avoir préalablement obtenu et remis au surintendant un engagement de cette autre société de placement par lequel celle-ci s'engage à ne pas faire ni détenir de placement dans les titres d'une autre société de placement.

15 Pour l'application des articles 16 et 17 :

a) lorsque le régime, ou quiconque agit pour celui-ci, prend part à une transaction avec une personne dont l'administrateur, ou quiconque agit pour celui-ci, sait qu'elle deviendra apparentée au régime, cette personne est réputée y être apparentée en ce qui touche la transaction;

b) l'exécution d'une obligation liée à une transaction, y compris le paiement d'intérêts sur un prêt ou un dépôt, fait partie de celle-ci et ne constitue pas une transaction distincte.

16 (1) Sous réserve des articles 17 et 18, l'administrateur d'un régime ne peut, directement ou indirectement :

a) prêter les fonds du régime à un apparenté ou les détenir dans les titres de celui-ci;

b) prendre part à une transaction avec un apparenté pour le compte du régime.

(2) Sous réserve des articles 17 et 18, l'administrateur d'un régime ne peut, directement ou indirectement, dans les 12 mois suivant la date où une personne cesse d'être apparentée au régime :

a) prêter les fonds du régime à cette personne ou les investir dans les valeurs mobilières de celle-ci;

b) prendre part à une transaction avec cette personne pour le compte du régime.

17 (1) L'administrateur d'un régime peut prendre part à une transaction avec un apparenté pour la gestion ou le fonctionnement du régime, pourvu que la transaction :

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- (a)** it is under terms and conditions that are not less favourable to the plan than market terms and conditions; and
- (b)** it does not involve the making of loans to, or investments in, the related party.
- (2)** Section 16 does not apply in respect of investments
- (a)** in an investment fund or a segregated fund in which investors other than the administrator and its affiliates may invest and that complies with
- (i)** in the case of investments applicable to a member choice account, section 11 of this Schedule, and
- (ii)** in the case of any other investments, the requirements applicable to a plan that are set out in section 9 and 11 of this Schedule;
- (b)** in an unallocated general fund of a person authorized to carry on a life insurance business in Canada;
- (c)** in securities issued or fully guaranteed by the Government of Canada, the government of a province, or an agency of either one of them;
- (d)** in a fund composed of mortgage-backed securities that are fully guaranteed by the Government of Canada, the government of a province, or an agency of either one of them;
- (e)** in a fund that replicates the composition of a widely recognized index of a broad class of securities traded at a marketplace; or
- (f)** that involve the purchase of a contract or agreement in respect of which the return is based on the performance of a widely recognized index of a broad class of securities traded at a marketplace.
- (3)** The administrator of a plan may enter into a transaction with a related party on behalf of the plan if the value of the transaction is nominal or the transaction is immaterial to the plan.
- (4)** For the purposes of subsection (3), in assessing whether the value of a transaction is nominal or whether a transaction is immaterial, two or more transactions with the same related party shall be considered as a single transaction.
- (5)** If an administrator of a plan is in contravention of section 16 as a result of a transaction that was entered into by someone other than the administrator or an entity controlled by the administrator, the administrator has five years to comply with section 16 from the day of the contravention.
- 17.1** An administrator of a plan who does not comply with section 16 on the day on which this section comes into force shall comply with that section before the end of the five-year period that begins on that day.
- a)** soit effectuée à des conditions aussi favorables que celles du marché pour le régime;
- b)** n'implique pas un prêt à l'apparenté ou un investissement auprès de ce dernier.
- (2)** L'article 16 ne s'applique pas aux placements effectués, selon le cas :
- a)** dans un fonds de placement ou une caisse séparée — qui est offert aux investisseurs autres que l'administrateur et les entités faisant partie de son groupe — qui satisfait :
- (i)** dans le cas d'investissements dans un compte accompagné de choix, à l'article 11 de la présente annexe,
- (ii)** dans le cas de tout autre placement, aux exigences applicables à un régime prévues aux articles 9 et 11 de la présente annexe;
- b)** dans un fonds général non réparti d'une personne autorisée à effectuer des opérations d'assurance-vie au Canada;
- c)** dans des valeurs mobilières émises ou entièrement garanties par le gouvernement du Canada ou d'une province ou par un de ses organismes;
- d)** dans un fonds composé de titres hypothécaires entièrement garantis par le gouvernement du Canada ou d'une province ou par un de ses organismes;
- e)** dans un fonds dont la composition reproduit celle d'un indice généralement reconnu comptant une vaste gamme de titres négociés sur un marché;
- f)** dans l'achat d'un contrat ou d'un accord à l'égard duquel le rendement est fondé sur un indice généralement reconnu comptant une vaste gamme de titres négociés sur un marché.
- (3)** L'administrateur d'un régime peut, pour le compte du régime, prendre part à une transaction avec un apparenté si la transaction est peu importante pour le régime.
- (4)** Pour l'application du paragraphe (3), deux ou plusieurs transactions avec le même apparenté sont considérées comme une seule transaction lorsqu'il s'agit de déterminer si la transaction est peu importante.
- (5)** L'administrateur qui, par suite d'une transaction — autre qu'une transaction à laquelle lui ou une entité dont il a le contrôle prend part —, se trouve en contravention de l'article 16 dispose de cinq années à compter de la date de celle-ci pour se conformer à nouveau à cet article.
- 17.1** L'administrateur d'un régime qui, à la date d'entrée en vigueur du présent article, ne satisfait pas aux exigences de l'article 16 a cinq ans pour y satisfaire.

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General

18 Sections 9 to 16 do not apply in respect of

(a) investments in a corporation that are held by, or on behalf of, a plan as a result of an arrangement, within the meaning of subsection 192(1) of the *Canada Business Corporations Act*, for the reorganization or liquidation of the corporation or for the amalgamation of the corporation with another corporation, if the investments are to be exchanged for shares or debt obligations;

(b) assets that are acquired by, or on behalf of, a plan through the realization of a security interest held by, or on behalf of, the plan and that are held for a period not exceeding two years from the day on which the assets were acquired.

SOR/90-363, s. 8; SOR/93-299, s. 6; 1994, c. 24, s. 34(F); SOR/2001-194, ss. 3, 5; SOR/2010-149, s. 6; SOR/2011-85, ss. 10 to 12, 14(F); SOR/2015-60, ss. 20 to 28.

Dispositions générales

18 Les articles 9 à 16 ne s'appliquent pas :

a) aux placements dans une personne morale qui sont détenus par un régime ou pour son compte dans le cadre d'un arrangement, au sens du paragraphe 192(1) de la *Loi canadienne sur les sociétés par actions*, de réorganisation ou de liquidation de la personne morale ou d'une convention de fusion de la personne morale avec une autre, s'ils doivent être échangés contre des actions ou des titres de créance;

b) aux éléments d'actif qui sont acquis par le régime ou pour son compte par l'effet de la réalisation d'une sûreté détenue par le régime ou pour son compte, et qui sont détenus pendant une période maximale de deux ans suivant la date de leur acquisition.

DORS/90-363, art. 8; DORS/93-299, art. 6; 1994, ch. 24, art. 34(F); DORS/2001-194, art. 3 et 5; DORS/2010-149, art. 6; DORS/2011-85, art. 10 à 12 et 14(F); DORS/2015-60, art. 20 à 28.

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SCHEDULE IV

FORM 1

(Subsection 23(2) and paragraph 23.2(a))

Statement To Be Provided to a Retiring Member

Statement date _____

Member's name _____ Date of birth _____

Spouse's or common-law partner's name _____ Date of birth _____

Designated beneficiary _____

Date employment began _____

Date credited service began _____

Date pensionable age reached _____

Date of first entitlement to early retirement pension _____

Credited service _____

Additional voluntary contributions of member

(a) made during the plan year \$ _____

(b) accumulated to date of retirement \$ _____

Required contributions of member

(a) made during the plan year \$ _____

(b) accumulated to date of retirement \$ _____

Employer contributions, in respect of a defined contribution provision, if any,

(a) made during the plan year \$ _____

(b) accumulated to date of retirement \$ _____

Transfers into the pension plan

(a) lump sum amounts \$ _____

(b) benefit attributable to such transfers \$ _____

(c) service credited to such transfers _____

Pension benefit payable to the member

(a) attributable to the benefit formula \$ _____

(b) attributable to additional voluntary contributions \$ _____

(c) attributable to the "50% rule" \$ _____

(d) attributable to any other lump sum amount \$ _____

(e) total pension benefit payable \$ _____

Pension benefit payable for a limited period

(a) amount \$ _____

(b) from _____ to _____

Survivor benefit \$ _____

Solvency ratio _____

Formula, if any, for indexing the pension benefit _____

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FORM 2

(Subsection 23(3))

Statement To Be Provided if a Member Ceases To Be a Member of the Plan for Any Reason Other than the Termination of the Whole or Part of the Plan or Retirement

Statement date _____

Member's name _____ Date of birth _____

Spouse's or common-law partner's name _____ Date of birth _____

Designated beneficiary _____

Date employment began _____

Date credited service began _____

Date pensionable age reached _____

Date of first entitlement to early retirement pension _____

Credited service _____

Additional voluntary contributions of member

(a) made during the plan year \$ _____

(b) accumulated to date of cessation of membership \$ _____

Required contributions of member

(a) made during the plan year \$ _____

(b) accumulated to date of cessation of membership \$ _____

Employer contributions, in respect of a defined contribution provision, if any,

(a) made during the plan year \$ _____

(b) accumulated to date of cessation of membership \$ _____

Transfers into the pension plan

(a) lump sum amounts \$ _____

(b) benefit attributable to such transfers \$ _____

(c) service credited to such transfers _____

Pension benefit payable to the member

(a) attributable to the benefit formula \$ _____

(b) attributable to additional voluntary contributions \$ _____

(c) attributable to the "50% rule" \$ _____

(d) attributable to any other lump sum amount \$ _____

(e) total pension benefit payable \$ _____

Pension benefit payable for a limited period

(a) amount \$ _____

(b) from _____ to _____

Survivor benefit prior to retirement

(a) total benefit \$ _____

(b) group insurance offset \$ _____

(c) net benefit \$ _____

Pension benefit credit for transfer purposes

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(a) attributable to the benefit formula \$ _____
 (b) attributable to additional voluntary contributions \$ _____
 (c) attributable to the "50% rule" \$ _____
 (d) attributable to any other lump sum amount \$ _____
 (e) total pension benefit credit payable \$ _____

Solvency ratio _____

Schedule of transfer payments (if solvency ratio is less than 1) _____

Formula, if any, for indexing the pension benefit or for calculating the pension benefit credit _____

Portability options available (transfer to another pension plan, a locked-in registered retirement savings plan, a life income fund or restricted life income fund, or purchase of an immediate or deferred life annuity) _____

FORM 2.1

(Subsection 23.4(1))

Statement To Be Provided Within 30 Days After the Termination of the Whole of the Plan

Statement date _____

Plan termination date _____

Member's or former member's name _____ Date of birth _____

Spouse's or common-law partner's name _____ Date of birth _____

Designated beneficiary _____

Each member, former member and the spouse or common-law partner of each member or former member may examine, at the plan administrator's offices, or order photocopies of, on condition of payment of any reasonable fee that the administrator may fix, all documents that have been filed with the Superintendent under subsection 10(1) or 10.1(1) or section 12 of the *Pension Benefits Standards Act, 1985* or any regulations made under paragraph 39(i) of that Act.

Pension benefits will continue to be paid to retirees as they fall due.

Other pension benefits cannot be distributed until the termination report is approved by the Superintendent.

FORM 2.2

(Subsection 23.4(2))

Statement To Be Provided Within 120 Days After the Termination of the Whole of the Plan

Statement date _____

Member's or former member's name _____ Date of birth _____

Spouse's or common-law partner's name _____ Date of birth _____

Designated beneficiary _____

Date employment began _____

Date credited service began _____

Date pensionable age reached _____

Date of first entitlement to early retirement pension _____

Credited service _____

Additional voluntary contributions of member _____

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(a) made during the plan year \$ _____

(b) accumulated to date of cessation of membership \$ _____

Required contributions of member

(a) made during the plan year \$ _____

(b) accumulated to date of cessation of membership \$ _____

Employer contributions, in respect of a defined contribution provision, if any,

(a) made during the plan year \$ _____

(b) accumulated to date of cessation of membership \$ _____

Transfers into the pension plan

(a) lump sum amounts \$ _____

(b) benefit attributable to such transfers \$ _____

(c) service credited to such transfers _____

Pension benefit payable to the member

(a) attributable to the benefit formula \$ _____

(b) attributable to additional voluntary contributions \$ _____

(c) attributable to the "50% rule" \$ _____

(d) attributable to any other lump sum amount \$ _____

(e) total pension benefit payable \$ _____

Pension benefit payable for a limited period

(a) amount \$ _____

(b) from _____ to _____

Survivor benefit prior to retirement

(a) total benefit \$ _____

(b) group insurance offset \$ _____

(c) net benefit \$ _____

Pension benefit credit for transfer purposes

(a) attributable to the benefit formula \$ _____

(b) attributable to additional voluntary contributions \$ _____

(c) attributable to the "50% rule" \$ _____

(d) attributable to any other lump sum amount \$ _____

(e) total pension benefit credit payable \$ _____

Solvency ratio _____

Schedule of transfer payments (if solvency ratio is less than 1) _____

Formula, if any, for indexing the pension benefit or for calculating the pension benefit credit _____

Portability options available (transfer to another pension plan, a locked-in registered retirement savings plan, a life income fund or restricted life income fund, or purchase of an immediate or deferred life annuity) _____

The member or former member must give notice of the transfer option that they have chosen.

A description of any adjustments to benefits and the reasons for these adjustments _____

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FORM 3

(Subsection 23(4))

Statement To Be Provided when a Member or Former Member Dies

Statement date _____

Member's or former member's name _____ Date of birth _____

Spouse's or common-law partner's name _____ Date of birth _____

Designated beneficiary _____

Date employment began _____

Date credited service began _____

Credited service _____

Additional voluntary contributions of member

(a) made during the plan year \$ _____

(b) accumulated to date of member's death \$ _____

Required contributions of member

(a) made during the plan year \$ _____

(b) accumulated to date of member's death \$ _____

Employer contributions, in respect of a defined contribution provision, if any,

(a) made during the plan year \$ _____

(b) accumulated to date of member's death \$ _____

Transfers into the pension plan

(a) lump sum amounts \$ _____

(b) benefit attributable to such transfers \$ _____

(c) service credited to such transfers _____

Pension benefit credit payable to the member's or former member's spouse or common-law partner

(a) attributable to the benefit formula \$ _____

(b) attributable to additional voluntary contributions \$ _____

(c) attributable to the "50% rule" \$ _____

(d) attributable to any other lump sum amount \$ _____

(e) total pension benefit or pension benefit credit payable \$ _____

Solvency ratio _____

Schedule of transfer payments (if solvency ratio is less than 1) _____

Formula, if any, for indexing benefit or for calculating the pension benefit credit _____

Portability options available (transfer to another pension plan, a locked-in registered retirement savings plan, a life income fund or restricted life income fund, or purchase of an immediate or deferred life annuity) _____

FORM 4

[Repealed, SOR/2015-60, s. 29]

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FORM 5

(Paragraph 23.2(a))

Statement To Be Provided to a Member to Whom a Phased Retirement Benefit Is To Be Paid and to the Member's Spouse or Common-Law Partner

Statement date _____

Member's name _____

Date of birth _____

Spouse's or common-law partner's name _____

Date of birth _____

Phased retirement benefit:

Phased retirement benefit payable, expressed as

(a) a percentage of the accrued pension benefit as of the date on which the agreement referred to in paragraph 16.1(3)(a) of the Act takes effect _____%

(b) an annual amount \$ _____

Frequency and terms of adjustment, if any, to the phased retirement benefit during the phased retirement period to reflect pension benefit accrued during that period _____

Formula, if any, for indexing the phased retirement benefit _____

Bridging benefit, payable from _____ to _____, expressed as

(a) a percentage of the accrued pension benefit to date _____%

(b) an annual amount \$ _____

Pension benefit payable at retirement:

Formula for calculating the pension benefit payable at retirement _____

Formula for determining the contributions payable during the phased retirement period and the pension benefit accrual during that period and, if applicable, the proportion of part-time service for which the member will be credited _____

FORM 5.1

(Paragraph 23.2(b))

Statement To Be Provided to a Former Member to Whom a Phased Retirement Benefit Is To Be Paid and to the Former Member's Spouse or Common-Law Partner

Statement date _____

Former member's name _____

Date of birth _____

Spouse's or common-law partner's name _____

Date of birth _____

Phased retirement benefit:

Phased retirement benefit payable, expressed as

(a) a percentage of the pension benefit being received prior to phased retirement period _____%

(b) an annual amount \$ _____

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Frequency and terms of adjustment, if any, to the phased retirement benefit during the phased retirement period to reflect pension benefit accrued during that period _____

Formula, if any, for indexing the phased retirement benefit _____

Bridging benefit, payable from _____ to _____, expressed as

(a) a percentage of the accrued pension benefit to date _____%

(b) an annual amount \$ _____

Pension benefit payable at retirement:

Formula for calculating the pension benefit payable at retirement _____

Formula for determining the contributions payable during the phased retirement period and the pension benefit accrual during that period and, if applicable, the proportion of part-time service for which the member will be credited _____

NOTE: Under paragraph 16.1(4)(g) of the *Pension Benefits Standards Act, 1985*, if the former member is receiving an immediate pension benefit from a pension plan that provides for the payment of a phased retirement benefit, the administrator of that pension plan shall cease paying the immediate pension benefit when payment of a phased retirement benefit begins and an existing waiver of the joint and survivor pension benefit is void, except if the waiver was made under a court order or agreement relating to the distribution of property on divorce, annulment, separation or breakdown of a common-law partnership. When payment of an immediate pension benefit is to commence following the phased retirement period, a new election as to the form of that benefit may be made in accordance with subsection 22(5) of the *Pension Benefits Standards Act, 1985*.

FORM 5.2

(Section 23.3)

Spouse's or Common-Law Partner's Consent to the Election To Receive a Variable Benefit from a Defined Contribution Provision

I, _____, hereby certify that I am the spouse or the common-law partner, as defined in the *Pension Benefits Standards Act, 1985*, of _____.

I understand that my spouse or common-law partner has elected to receive a variable benefit directly from the pension plan, and that my written consent is required to enable my spouse or common-law partner to do so.

I understand that

- (a) electing to receive a variable benefit directly from the pension plan will allow my spouse or common-law partner to manage his or her own pension fund and will allow some flexibility in determining the amount that will be paid as a variable benefit in each calendar year;
- (b) the remaining funds may be used to purchase a life annuity at a later date, but there is no requirement that the remaining funds be used to purchase a life annuity;
- (c) if the remaining funds are used to purchase a life annuity, the life annuity must be joint unless I waive my entitlements by signing a separate waiver form within 90 days before the day on which the annuity payments begin; and
- (d) a variable benefit paid directly from the pension plan is not paid in the joint and survivor form.

I further understand that before purchasing a life annuity, the pension plan will allow my spouse or common-law partner to withdraw some of the funds each year, subject to minimum and maximum withdrawal limits. I understand, however, that the amount of pension income or survivor benefit available to me in later years may be significantly reduced if

- (a) my spouse or common-law partner elects to withdraw the maximum amount permitted each year; or
- (b) the investment performance is poor.

Nevertheless, I consent to the receipt of variable benefits directly from the pension plan, and certify that

- (a) I have read this form and understand it;
- (b) neither my spouse or common-law partner nor anyone else has put any pressure on me to sign this form;
- (c) I realize that

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(i) this form only gives a general description of the legal rights I have under the *Pension Benefits Standards Act, 1985* and the *Pension Benefits Standards Regulations, 1985*, and

(ii) if I wish to understand exactly what my legal rights are I must read the *Pension Benefits Standards Act, 1985* and the *Pension Benefits Standards Regulations, 1985* or seek legal advice; and

(d) I realize that I am entitled to a copy of this consent form.

To consent to the transfer, I sign this consent form at _____ on _____, 20__.

Signature of spouse or common-law partner _____

Address of spouse or common-law partner _____

(home telephone number) _____

(work telephone number) _____

STATEMENT OF WITNESS

I certify that

(a) My full name is _____

(b) My address is _____

(c) I witnessed _____ sign this waiver.

(home telephone number) _____

(work telephone number) _____

FORM 6

(Section 30.1)

Consent of Spouse or Common-Law Partner to the Cessation of the Payment of the Joint and Survivor Pension Benefit

I, _____, hereby certify that I am (a) the spouse or (b) the common-law partner, as defined in subsection 2(1) of the *Pension Benefits Standards Act, 1985*, of _____, a retired former member of the pension plan known as _____.

Under the terms of that pension plan

(a) the amount of the joint and survivor pension benefit payable to my spouse or common-law partner as a retired former member is \$ _____ per year; and

(b) the amount of the survivor benefit that would be payable to me on the death of my spouse or common-law partner is \$ _____ per year.

I understand that:

My consent to the cessation of the payment of the joint and survivor pension benefit described in paragraph (a) is required to allow the payment of a phased retirement benefit to my spouse or common-law partner.

By giving my consent, I am no longer entitled to the survivor benefit described in paragraph (b) that currently would be payable to me on the death of my spouse or common-law partner.

If my spouse or common-law partner dies while receiving a phased retirement benefit, the survivor benefit will be payable to the person who is at that time his or her spouse or common-law partner.

A new election as to the form of the immediate pension benefit that will commence after the phased retirement period may be made when that benefit commences, in accordance with subsection 22(5) of the *Pension Benefits Standards Act, 1985*.

Based on the above, and in accordance with paragraph 16.1(3)(b) of the *Pension Benefits Standards Act, 1985*, I hereby consent to the cessation of the payment of the joint and survivor pension benefit described in paragraph (a).

Signed at _____ on the _____ day of _____, 20_____

Name of spouse or common-law partner _____

Signature of spouse or common-law partner _____

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Name of witness (other than the former member) _____

Signature of witness _____

SOR/2001-194, ss. 5, 6; SOR/2009-100, ss. 3, 4; SOR/2015-60, ss. 29, 30(F), 31.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

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FORMULE 1

(paragraphe 23(2) et alinéa 23.2a))

Relevé à remettre au participant qui prend sa retraite

Date du relevé _____

Nom du participant _____ Date de naissance _____

Nom de l'époux ou du conjoint de fait _____ Date de naissance _____

Bénéficiaire désigné _____

Date du début de l'emploi _____

Date du début du service crédité _____

Date où est atteint l'âge admissible _____

Date d'acquisition du droit à une pension de retraite anticipée _____

Service crédité _____

Cotisations facultatives du participant :

a) versées durant l'exercice _____ \$

b) accumulées à la date de la retraite _____ \$

Cotisations obligatoires :

a) versées durant l'exercice _____ \$

b) accumulées à la date de la retraite _____ \$

Cotisations patronales, relativement à une disposition à cotisations déterminées, le cas échéant :

a) versées durant l'exercice _____ \$

b) accumulées à la date de la retraite _____ \$

Transferts au régime de pension :

a) montants globaux _____ \$

b) prestation attribuable à de tels transferts _____ \$

c) service crédité au titre de tels transferts _____ \$

Prestation de pension payable au participant :

a) attribuable à la formule de prestation _____ \$

b) attribuable aux cotisations facultatives _____ \$

c) attribuable à la « règle de 50 % » _____ \$

d) attribuable à tout autre montant global _____ \$

e) total de la prestation de pension payable _____ \$

Prestation de pension payable pour une période déterminée :

a) montant _____ \$

b) de _____ à _____

Prestation au survivant _____ \$

Ratio de solvabilité _____

Formule d'indexation de la prestation de pension (s'il y a lieu) _____

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FORMULE 2

(paragraphe 23(3))

Relevé à remettre au participant dont la participation prend fin pour une raison autre que la cessation totale ou partielle du régime ou la retraite

Date du relevé _____

Nom du participant _____ Date de naissance _____

Nom de l'époux ou du conjoint de fait _____ Date de naissance _____

Bénéficiaire désigné _____

Date du début de l'emploi _____

Date du début du service crédité _____

Date où est atteint l'âge admissible _____

Date d'acquisition du droit à une pension de retraite anticipée _____

Service crédité _____

Cotisations facultatives du participant :

a) versées durant l'exercice _____ \$

b) accumulées à la date de cessation de la participation _____ \$

Cotisations obligatoires du participant :

a) versées durant l'exercice _____ \$

b) accumulées à la date de cessation de la participation _____ \$

Cotisations patronales, relativement à une disposition à cotisations déterminées, le cas échéant :

a) versées durant l'exercice _____ \$

b) accumulées à la date de cessation de la participation _____ \$

Transferts au régime de pension :

a) montants globaux _____ \$

b) prestation attribuable à de tels transferts _____ \$

c) service crédité au titre de tels transferts _____ \$

Prestation de pension payable au participant :

a) attribuable à la formule de prestation _____ \$

b) attribuable aux cotisations facultatives _____ \$

c) attribuable à la « règle de 50 % » _____ \$

d) attribuable à tout autre montant global _____ \$

e) total de la prestation de pension payable _____ \$

Prestation de pension payable pour une période déterminée :

a) montant _____ \$

b) de _____ à _____

Prestation au survivant avant la retraite :

a) prestation totale _____ \$

b) compensation au titre du régime collectif d'assurance _____ \$

c) prestation nette _____ \$

Droits à pension aux fins de transfert :

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- a)** attribuables à la formule de prestation _____ \$
- b)** attribuables aux cotisations facultatives _____ \$
- c)** attribuables à la « règle de 50 % » _____ \$
- d)** attribuables à tout autre montant global _____ \$
- e)** total des droits à pension payables _____ \$

Ratio de solvabilité _____

Barème des paiements de transfert (si le ratio de solvabilité est inférieur à 1) _____

Formule d'indexation de la prestation de pension ou formule de calcul des droits à pension (s'il y a lieu) _____

Options de transfert disponibles (transfert à un autre régime de pension, à un régime enregistré d'épargne-retraite immobilisé, à un fonds de revenu viager ou à un fonds de revenu viager restreint ou achat d'une prestation viagère immédiate ou différée) _____

FORMULE 2.1

(paragraphe 23.4(1))

Avis à remettre dans les trente jours suivant la cessation totale du régime

Date de l'avis _____

Date de cessation du régime _____

Nom du participant ou de l'ancien participant _____ Date de naissance _____

Nom de l'époux ou du conjoint de fait _____ Date de naissance _____

Bénéficiaire désigné _____

Le participant, l'ancien participant, leur époux ou conjoint de fait peuvent examiner, dans les bureaux de l'administrateur du régime, tous les documents déposés auprès du surintendant aux termes des paragraphes 10(1) ou 10.1(1) ou de l'article 12 de la *Loi de 1985 sur les normes de prestation de pension* ou de tout règlement pris en vertu de l'alinéa 39i) de cette loi ou en commander des copies, en acquittant les frais raisonnables que l'administrateur a établis.

Les prestations de pension continueront d'être versées aux retraités à échéance.

Les autres prestations de pension ne peuvent être réparties avant que le surintendant n'ait approuvé le rapport sur la cessation.

FORMULE 2.2

(paragraphe 23.4(2))

Relevé à remettre dans les cent vingt jours suivant la cessation totale du régime

Date du relevé _____

Nom du participant ou de l'ancien participant _____ Date de naissance _____

Nom de l'époux ou du conjoint de fait _____ Date de naissance _____

Bénéficiaire désigné _____

Date du début de l'emploi _____

Date du début du service crédité _____

Date où est atteint l'âge admissible _____

Date d'acquisition du droit à une pension de retraite anticipée _____

Service crédité _____

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Cotisations facultatives du participant :

- a)** versées durant l'exercice _____ \$
b) accumulées à la date de cessation de la participation _____ \$

Cotisations obligatoires du participant :

- a)** versées durant l'exercice _____ \$
b) accumulées à la date de cessation de la participation _____ \$

Cotisations patronales, relativement à une disposition à cotisations déterminées, le cas échéant :

- a)** versées durant l'exercice _____ \$
b) accumulées à la date de cessation de la participation _____ \$

Transferts au régime de pension :

- a)** montants globaux _____ \$
b) prestation attribuable à de tels transferts _____ \$
c) service crédité au titre de tels transferts _____

Prestation de pension payable au participant :

- a)** attribuable à la formule de prestation _____ \$
b) attribuable aux cotisations facultatives _____ \$
c) attribuable à la « règle de 50 % » _____ \$
d) attribuable à tout autre montant global _____ \$
e) total de la prestation de pension à payer _____ \$

Prestation de pension à payer pour une période déterminée :

- a)** montant _____ \$
b) de _____ à _____

Prestation au survivant avant la retraite :

- a)** prestation totale _____ \$
b) compensation au titre du régime collectif d'assurance _____ \$
c) prestation nette _____ \$

Droits à pension aux fins de transfert :

- a)** attribuables à la formule de prestation _____ \$
b) attribuables aux cotisations facultatives _____ \$
c) attribuables à la « règle de 50 % » _____ \$
d) attribuables à tout autre montant global _____ \$
e) total des droits à pension à payer _____ \$

Ratio de solvabilité _____

Barème des paiements de transfert (si le ratio de solvabilité est inférieur à 1) _____

Formule d'indexation de la prestation de pension ou formule de calcul des droits à pension (s'il y a lieu) _____

Options de transfert disponibles (transfert à un autre régime de pension, à un régime enregistré d'épargne-retraite immobilisé, à un fonds de revenu viager ou à un fonds de revenu viager restreint ou achat d'une prestation viagère immédiate ou différée) _____

Le participant ou l'ancien participant fait connaître son choix quant aux options de transfert.

Description des ajustements éventuels des prestations ainsi que les motifs des ajustements _____

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FORMULE 3

(paragraphe 23(4))

Relevé à remettre en cas de décès du participant ou de l'ancien participant

Date du relevé _____

Nom du participant ou de l'ancien participant _____ Date de naissance _____

Nom de l'époux ou du conjoint de fait _____ Date de naissance _____

Bénéficiaire désigné _____

Date du début de l'emploi _____

Date du début du service crédité _____

Service crédité _____

Cotisations facultatives du participant :

a) versées durant l'exercice _____ \$

b) accumulées à la date de décès du participant _____ \$

Cotisations obligatoires du participant :

a) versées durant l'exercice _____ \$

b) accumulées à la date de décès du participant _____ \$

Cotisations patronales, relativement à une disposition à cotisations déterminées, le cas échéant :

a) versées durant l'exercice _____ \$

b) accumulées à la date de décès du participant _____ \$

Transferts au régime de pension :

a) montants globaux _____ \$

b) prestation attribuable à de tels transferts _____ \$

c) service crédité au titre de tels transferts _____

Droits à pension payables à l'époux ou au conjoint de fait du participant ou de l'ancien participant :

a) attribuables à la formule de prestation _____ \$

b) attribuables aux cotisations facultatives _____ \$

c) attribuables à la « règle de 50 % » _____ \$

d) attribuables à tout autre montant global _____ \$

e) total de la prestation de pension ou des droits à pension à payer _____ \$

Ratio de solvabilité _____

Barème des paiements de transfert (si le ratio de solvabilité est inférieur à 1) _____

Formule d'indexation de la prestation de pension ou formule de calcul des droits à pension (s'il y a lieu) _____

Options de transfert disponibles (transfert à un autre régime de pension, à un régime enregistré d'épargne-retraite immobilisé, à un fonds de revenu viager ou à un fonds de revenu viager restreint ou achat d'une prestation viagère immédiate ou différée) _____

FORMULE 4

[Abrogée, DORS/2015-60, art. 29]

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FORMULE 5

(alinéa 23.2a))

Relevé à remettre au participant à qui seront versées des prestations de retraite progressive, de même qu'à son époux ou à son conjoint de fait

Date du relevé _____

Nom du participant _____

Date de naissance _____

Nom de l'époux ou du conjoint de fait _____

Date de naissance _____

Prestation de retraite progressive :

Prestation de retraite progressive à verser, exprimée :

a) en pourcentage de la prestation de pension accumulée à la prise d'effet de l'entente visée à l'alinéa 16.1(3)a) de la Loi _____%

b) en une somme annuelle _____ \$

Fréquence et modalités selon lesquelles la prestation de retraite progressive sera rajustée, le cas échéant, pendant la période de retraite progressive pour tenir compte de la prestation de pension accumulée durant cette période _____

Formule d'indexation de la prestation de retraite progressive, s'il y a lieu _____

Prestation de raccordement, à verser du _____ au _____, exprimée :

a) en pourcentage de la prestation de pension accumulée jusqu'à aujourd'hui _____%

b) en une somme annuelle _____ \$

Prestation de pension à verser à la retraite :

Formule de calcul de la prestation de pension à verser à la retraite _____

Formule d'établissement des cotisations à verser durant la période de retraite progressive, de la prestation de pension accumulée durant cette période et, s'il y a lieu, de la proportion du service à temps partiel qui sera portée au crédit du participant _____

FORMULE 5.1

(alinéa 23.2b))

Relevé à remettre à l'ancien participant à qui seront versées des prestations de retraite progressive, de même qu'à son époux ou à son conjoint de fait

Date du relevé _____

Nom de l'ancien participant _____

Date de naissance _____

Nom de l'époux ou du conjoint de fait _____

Date de naissance _____

Prestation de retraite progressive :

Prestation de retraite progressive à verser, exprimée :

a) en pourcentage de la prestation de pension perçue avant la période de retraite progressive _____%

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b) en une somme annuelle _____ \$

Fréquence et modalités selon lesquelles la prestation de retraite progressive sera rajustée, le cas échéant, pendant la période de retraite progressive pour tenir compte de la prestation de pension accumulée pendant cette période

Formule d'indexation de la prestation de retraite progressive, s'il y a lieu _____

Prestation de raccordement, à verser du _____ au _____, exprimée :

a) en pourcentage de la prestation de pension accumulée jusqu'à aujourd'hui _____ %

b) en une somme annuelle _____ \$

Prestation de pension à verser à la retraite :

Formule de calcul de la prestation de pension à verser à la retraite _____

Formule d'établissement des cotisations à verser durant la période de retraite progressive, de la prestation de pension accumulée durant cette période et, s'il y a lieu, de la proportion du service à temps partiel qui sera portée au crédit du participant _____

REMARQUE : Aux termes de l'alinéa 16.1(4)g) de la *Loi de 1985 sur les normes de prestation de pension*, si l'ancien participant reçoit une prestation de pension immédiate au titre d'un régime de pension qui prévoit le versement d'une prestation de retraite progressive, l'administrateur du régime cesse de verser la prestation de pension immédiate lorsque le versement de la prestation de retraite progressive débute, et la renonciation applicable à la prestation réversible est nulle, sauf si elle a été accordée conformément à une ordonnance du tribunal ou à une entente relative à la répartition des biens lors du divorce, de l'annulation du mariage, de la séparation ou de l'échec de l'union de fait. Si le versement d'une prestation de pension immédiate doit débiter après la période de retraite progressive, un nouveau choix peut être fait quant à la forme de cette prestation, aux termes du paragraphe 22(5) de la *Loi de 1985 sur les normes de prestation de pension*.

FORMULE 5.2

(article 23.3)

Consentement de l'époux ou du conjoint de fait au choix de recevoir une prestation variable au titre d'une disposition à cotisations déterminées

Moi, _____, je certifie être l'époux ou le conjoint de fait, au sens de la *Loi de 1985 sur les normes de prestation de pension*, de _____.

Je comprends que mon époux ou mon conjoint de fait a choisi de recevoir une prestation variable directement du régime de pension et que mon consentement écrit est requis pour que mon époux ou mon conjoint de fait puisse toucher cette prestation.

Je comprends que :

- le fait de recevoir une prestation variable directement du régime de pension permettra à mon époux ou à mon conjoint de fait de gérer ses propres fonds de pension et lui confère une certaine latitude quant à la détermination du montant de la prestation variable qui sera versée chaque année civile;
- le solde des fonds pourrait servir à l'achat d'une prestation viagère à une date ultérieure, mais que rien n'exige que ces fonds servent à l'achat d'une prestation viagère;
- la prestation viagère achetée avec le solde des fonds doit être une prestation réversible, sauf si je renonce à mes droits en signant un formulaire de renonciation distinct dans les quatre-vingt-dix jours précédant le premier versement de la prestation viagère;
- une prestation variable versée directement d'un régime de pension n'est pas réversible.

Je comprends également que, préalablement à l'achat d'une prestation viagère, le régime de pension permettra à mon époux ou à mon conjoint de fait d'en retirer des fonds chaque année, sous réserve des limites de retrait maximal et de retrait minimal. Cependant, je comprends que le montant du revenu de pension ou de la prestation de survivant auquel j'aurai droit ultérieurement pourrait être considérablement réduit dans les cas suivants :

- mon époux ou conjoint de fait choisit de retirer le montant maximal permis chaque année;
- le rendement du placement est faible.

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Néanmoins, je consens au versement de prestations variables provenant directement du régime de pension et je certifie que :

- a) j'ai lu la présente formule et que je la comprends;
- b) ni mon époux ou mon conjoint de fait, ni personne d'autre n'a exercé de pression afin que je signe la présente formule;
- c) je suis conscient que :
 - (i) la présente formule ne constitue qu'une description générale de mes droits au titre de la *Loi de 1985 sur les normes de prestation de pension* et du *Règlement de 1985 sur les normes de prestation de pension*,
 - (ii) si je souhaite comprendre précisément tous mes droits, je dois lire la *Loi de 1985 sur les normes de prestation de pension* et le *Règlement de 1985 sur les normes de prestation de pension* ou demander l'avis d'un conseiller juridique;
- d) je sais que j'ai le droit de conserver une copie de la présente formule de consentement.

Je signe la présente formule pour donner mon consentement au transfert à _____, le _____ 20__.

Signature de l'époux ou du conjoint de fait _____

Adresse de l'époux ou du conjoint de fait _____

(Numéro de téléphone à la maison) _____

(Numéro de téléphone au travail) _____

DÉCLARATION DU TÉMOIN

J'atteste ce qui suit :

- a) mon nom complet est _____
- b) mon adresse est _____
- c) j'ai été témoin de la signature du présent consentement par _____.

Signature du témoin _____

(Numéro de téléphone à la maison) _____

(Numéro de téléphone au travail) _____

FORMULE 6

(article 30.1)

Consentement de l'époux ou du conjoint de fait à la cessation du versement de la prestation réversible

Moi, _____, je certifie être a) l'époux ou b) le conjoint de fait, au sens du paragraphe 2(1) de la *Loi de 1985 sur les normes de prestation de pension*, de _____, participant ancien au régime de pension connu sous le nom de _____, qui a pris sa retraite.

Ce régime de pension prévoit ce qui suit :

- a) le montant de la prestation réversible à verser à mon époux ou à mon conjoint de fait en sa qualité de participant ancien qui a pris sa retraite est de _____ \$ par année;
- b) le montant de la prestation au survivant qui me serait versée au décès de mon époux ou de mon conjoint de fait est de _____ \$ par année.

Je comprends :

que je dois consentir à la cessation du paiement de la prestation réversible mentionnée en a) pour qu'une prestation de retraite progressive puisse être versée à mon époux ou à mon conjoint de fait;

qu'en donnant mon consentement, je renonce à la prestation au survivant mentionnée en b) qui, à l'heure actuelle, me serait versée si mon époux ou mon conjoint de fait décédait;

que si mon époux ou mon conjoint de fait décède durant la période de versement de la prestation de retraite progressive, la prestation au survivant sera versée à la personne qui est alors son époux ou son conjoint de fait;

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qu'un nouveau choix quant à la forme de la prestation qui débutera après la période de retraite progressive pourra être fait lorsque cette prestation débutera, conformément au paragraphe 22(5) de la *Loi de 1985 sur les normes de prestation de pension*.

Compte tenu de ce qui précède, et conformément à l'alinéa 16.1(3)b) de la *Loi de 1985 sur les normes de prestation de pension*, je consens par les présentes à la cessation du paiement de la prestation réversible mentionnée en a).

Signé à _____ le _____ 20 _____

Nom de l'époux ou du conjoint de fait _____

Signature de l'époux ou du conjoint de fait _____

Nom du témoin (ne peut être le participant ancien) _____

Signature du témoin _____

DORS/2001-194, art. 5 et 6; DORS/2009-100, art. 3 et 4; DORS/2015-60, art. 29, 30(F) et 31.

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Règlement de 1985 sur les normes de prestation de pension
ANNEXE V (anglais)

SCHEDULE V

(Sections 20, 20.1, 20.2 and 20.3)

FORM 1

Attestation Regarding Withdrawal Based on Financial Hardship

1 To: (insert name of financial institution) _____

2 List of applicable federally regulated locked-in plans: (Please identify any locked-in registered retirement savings plan, life income fund, restricted locked-in savings plan or restricted life income fund that is held by the financial institution identified above and from which you intend to withdraw or transfer funds.)

(a) _____

(b) _____

(c) _____

3 Attestation

I, (insert name) _____, of (insert address) _____, in the city of _____, in the province of _____, attest to the following:

I own the federally regulated locked-in plan(s) identified in item 2. On the day on which I sign this Attestation (choose all that apply):

(A) Withdrawal for Expenditures on Medical or Disability-related Treatment or Adaptive Technology

(a) _____ My total expected income for the calendar year, determined in accordance with the *Income Tax Act* (excluding the withdrawal referred to in line G below and any withdrawal made under paragraph 20(1)(d), 20.1(1)(m), 20.2(1)(e) or 20.3(1)(m) of the *Pension Benefits Standards Regulations, 1985* within the last 30 days before this application) is \$ _____;

(b) _____ I submit a letter signed by a physician certifying that medical or disability-related treatment or adaptive technology is required;

(c) _____ I expect to make expenditures on the medical or disability-related treatment or adaptive technology specified in the physician's certificate in the amount of \$ _____, which is greater than 20% of my total expected income for the calendar year;

(d) _____ I have not made any other withdrawal, other than within the last 30 days before this application, during the calendar year under paragraph 20(1)(d), 20.1(1)(m), 20.2(1)(e) or 20.3(1)(m) of the *Pension Benefits Standards Regulations, 1985*; and

(B) Withdrawal Based on Low Income

_____ My total expected income for the calendar year, determined in accordance with the *Income Tax Act* (excluding the withdrawal referred to in line G below and any withdrawal made under paragraph 20(1)(d), 20.1(1)(m), 20.2(1)(e) or 20.3(1)(m) of the *Pension Benefits Standards Regulations, 1985* within the last 30 days before this application), is less than three quarters of the Year's Maximum Pensionable Earnings as defined in the *Pension Benefits Standards Act, 1985*.

4 Amount Sought for Withdrawal

A	Expected income in the calendar year determined in accordance with the <i>Income Tax Act</i> .	\$ _____		
B	Total financial hardship withdrawals made during the calendar year from all federally regulated locked-in registered retirement savings plans, life income funds, restricted life income funds and restricted locked-in savings plans.	\$ _____		
	B(i): total low income component of B is	\$ _____		
	B(ii): total medical and disability-related income component of B is	\$ _____		
C	50% of the Year's Maximum Pensionable Earnings as defined in the <i>Pension Benefits Standards Act, 1985</i> .	\$ _____		
Calculation of Low Income Component of Withdrawal (To be completed only if seeking withdrawal under this component.)				

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D	Low income withdrawal component.			
		D(i) A - B	\$ ____	
		D(ii) 66.6% of D(i)	\$ ____	
		D(iii) C - D(ii)	\$ ____	
		D(iv) D(iii) - B(i)	\$ ____	
	Enter amount from D(iv) if greater than zero, otherwise enter "0"			\$ ____
Calculation of Medical and Disability-Related Component of Withdrawal (To be completed only if seeking withdrawal under this component.)				
E	E(i) Total expected medical and disability-related expenditures in the calendar year that a medical doctor certifies are required.		\$ ____	
		E(ii) A - B	\$ ____	
		E(iii) 20% of E(ii)	\$ ____	
		E(iv) If E(i) is greater than or equal to E(iii), enter E(i), otherwise enter "0"	\$ ____	
	E(v) Total expected medical and disability-related expenditures for which unlocking is being sought.	Enter the lesser of E(iv) and C	\$ ____	
	Enter amount from E(v)			\$ ____
Calculation of Financial Hardship Withdrawal				
F	Total amount eligible for financial hardship withdrawal.			
		F(i) D + E	\$ ____	
		F(ii) C - B	\$ ____	
		F(iii) Enter the lesser of F(i) and F(ii)	\$ ____	
	Enter amount from F(iii)			\$ ____
G	Total amount sought for withdrawal. Enter F or a lesser amount			\$ ____

5 Signatures

Sworn before me, on the _____ day of _____, 20 _____ at _____, in the province of _____.

Signature of applicant _____

A notary public, commissioner or other person authorized to take affidavits

FORM 2**Attestation(s) Regarding Spouse/Common-Law Partner****1 To:** (insert name of financial institution) _____**2 List of applicable federally regulated locked-in plans:** (Please identify any locked-in registered retirement savings plan, life income fund, restricted locked-in savings plan or restricted life income fund that is held by the financial institution identified above and from which you intend to withdraw or transfer funds.)

(a) _____

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(b) _____

(c) _____

3 Attestation of applicant

I, (insert name) _____, of (insert address) _____, in the city of _____, in the province of _____, attest to the following:

I own the federally regulated locked-in plan(s) identified in item 2. I intend to withdraw or transfer \$ _____ from the plan(s). On the day on which I sign this Attestation (check one):

- (a) _____ I do not have a spouse or common-law partner, as defined in section 2 of the *Pension Benefits Standards Act, 1985*;
- (b) _____ I have a spouse or common-law partner, as defined in section 2 of the *Pension Benefits Standards Act, 1985*, and my spouse or common-law partner consents to the withdrawal of the amount specified above from the locked-in plan(s) identified in item 2. (If you check this box, your spouse or common-law partner must complete the *Attestation of Spouse or Common-law Partner*, in item 6 below.)

4 Acknowledgements

I understand that when funds are withdrawn or transferred from any federally regulated locked-in plan, the funds may lose the creditor protection provided by the *Pension Benefits Standards Act, 1985* and the *Pension Benefits Standards Regulations, 1985*.

I understand that when funds are withdrawn or transferred from any federally regulated locked-in plan, the funds may be taxable under the *Income Tax Act* or other legislation.

I understand that I may need to seek professional advice about the financial and legal implications of such a withdrawal or transfer.

5 Signatures

Sworn before me, on the _____ day of _____,

_____, 20 _____

at _____, in the province of _____.

Signature of applicant _____

A notary public, commissioner or other person authorized to take affidavits

6 Attestation of Spouse or Common-law Partner

I, (insert name) _____, of (insert address) _____, in the city of _____, in the Province of _____, attest to the following:

I am the spouse or common-law partner of the owner of the locked-in plan(s) identified in item 2.

I understand that

(a) the applicant intends to withdraw or transfer funds from the federally regulated locked-in plans identified in item 2, which withdrawal or transfer is not permitted under the *Pension Benefits Standards Act, 1985* unless the applicant obtains my consent;

(b) as long as these funds are kept in that federally regulated locked-in plan, I may have a right to a share of these funds if there is a breakdown in our relationship or if the owner dies;

(c) if any funds are withdrawn or transferred from that federally regulated locked-in plan, I may lose any right that I have to a share of the funds withdrawn or transferred;

(d) when funds are withdrawn or transferred from any federally regulated locked-in plan the funds may lose the creditor protection provided by the *Pension Benefits Standards Act, 1985* and the *Pension Benefits Standards Regulations, 1985*;

(e) when funds are withdrawn or transferred from any federally regulated locked-in plan the funds may be taxable under the *Income Tax Act* or other legislation; and

(f) I may need to seek professional advice about the financial and legal implications of such a withdrawal or transfer.

7 Consent of Spouse or Common-law Partner

I consent to the withdrawal or transfer specified in item 3.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE V

Règlement de 1985 sur les normes de prestation de pension
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8 Signatures

Sworn before me, on the _____ day of

_____, 20 _____

at _____, in the province of

_____.

Signature of spouse or common-law partner _____

A notary public, commissioner or other person authorized to take affidavits

FORM 3

Attestation of Total Amount Held in Federally Regulated Locked-In Plans

1 To: *(insert name of financial institution)* _____

2 List of applicable federally regulated locked-in plans: *(Please identify all locked-in registered retirement savings plan, life income fund, restricted locked-in savings plan or restricted life income fund which you own including any that are held by financial institutions other than the one identified above.)*

(a) _____

(b) _____

(c) _____

3 Attestation

I, (insert name) _____, of (insert address) _____, in the city of _____, in the province of _____, attest to the following:

I own the federally regulated locked-in plans identified in item 2. On the day on which I sign this Attestation the total value of all of the locked-in plan(s) identified in item 2 is \$_____.

On the day on which I sign this Attestation the total value of all of the locked-in plan(s) identified in item 2 is \$_____.

The total value of all locked-in plan(s) identified in item 2 is less than 50% of the Year's Maximum Pensionable Earnings as defined in the *Pension Benefits Standards Act, 1985*.

4 Signatures

Sworn before me, on the _____ day of

_____, 20 _____

at _____, in the province of

_____.

Signature of applicant _____

A notary public, commissioner or other person authorized to take affidavits

SOR/2008-144, s. 8; SOR/2015-60, s. 32.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE V (French)Règlement de 1985 sur les normes de prestation de pension
ANNEXE V

ANNEXE V

(articles 20, 20.1, 20.2 et 20.3)

FORMULE 1

Retrait fondé sur des difficultés financières

1 Institution financière concernée : (inscrire le nom de l'institution financière)**2 Régimes immobilisés régis par une loi fédérale** (Veuillez indiquer tous les régimes enregistrés d'épargne-retraite immobilisée, fonds de revenu viager, régimes d'épargne immobilisée restreints ou fonds de revenu viager restreint qui sont déposés auprès de l'institution financière indiquée à l'article 1 et desquels vous avez l'intention de retirer ou de transférer des fonds) :

- a) _____
 b) _____
 c) _____

3 Attestation

Moi, (nom du demandeur) _____, au (adresse du demandeur) _____, ville de _____, (province de) _____, je certifie ce qui suit :

Je détiens les régimes immobilisés indiqués à l'article 2. À la date où je signe la présente attestation (cochez toutes les affirmations applicables) :

A) Retrait pour des dépenses liées à des frais de traitement médical, de traitement relié à une invalidité ou de technologie d'adaptation :

- a) _____ le revenu total que je prévois toucher pour l'année civile, calculé conformément à la *Loi de l'impôt sur le revenu* (sans tenir compte du retrait visé au point G ci-dessous ni d'aucune somme retirée en vertu des alinéas 20(1)d), 20.1(1)m), 20.2(1)e) ou 20.3(1)m) du *Règlement de 1985 sur les normes de prestation de pension* au cours des trente jours précédant cette demande) est de _____ \$.
- b) _____ je produis un certificat signé par un médecin indiquant que le traitement médical, le traitement relié à une invalidité ou la technologie d'adaptation est nécessaire.
- c) _____ je prévois engager des dépenses liées au traitement médical, au traitement relié à une invalidité ou à la technologie d'adaptation mentionnée dans le certificat d'un montant de _____ \$, ce qui représente plus de 20 % du revenu total que je prévois toucher pour l'année civile.
- d) _____ je n'ai fait aucun retrait en vertu des alinéas 20(1)d), 20.1(1)m), 20.2(1)e) ou 20.3(1)m) du *Règlement de 1985 sur les normes de prestation de pension* pendant l'année civile, sauf les retraits effectués au cours des trente jours précédant cette demande.

B) Retrait fondé sur un faible revenu

_____ le revenu total que je prévois toucher pour l'année civile, calculé conformément à la *Loi de l'impôt sur le revenu* (sans tenir compte du retrait visé au point G ci-dessous ni d'aucune somme retirée en vertu des alinéas 20(1)d), 20.1(1)m), 20.2(1)e) ou 20.3(1)m) du *Règlement de 1985 sur les normes de prestation de pension* au cours des trente jours précédant cette demande) est inférieur aux trois quarts du maximum des gains annuels ouvrant droit à pension au sens de la *Loi de 1985 sur les normes de prestation de pension*.

4 Montant du retrait demandé

A	Revenu prévu pour l'année civile, calculé conformément à la <i>Loi de l'impôt sur le revenu</i> .	_____ \$		
B	Total des retraits effectués, pendant l'année civile, en raison de difficultés financières, de régimes régis par une loi fédérale : régime enregistré d'épargne-retraite immobilisée, fonds de revenu viager, régime d'épargne immobilisée restreint, fonds de revenu viager restreint.	_____ \$		
	B(i) : partie du total indiquée en B constituant des retraits effectués en raison de faibles revenus	_____ \$		
	B(ii) : partie du total indiquée en B constituant des retraits effectués pour des raisons médicales ou d'invalidité	_____ \$		

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SCHEDULE V (French)Règlement de 1985 sur les normes de prestation de pension
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C	Somme correspondant à 50 % du maximum des gains annuels ouvrant droit à pension au sens de la <i>Loi de 1985 sur les normes de prestation de pension</i> .	_____ \$		
Calcul de la partie du retrait effectuée en raison de faibles revenus (Remplir seulement en cas de retrait pour des raisons de faibles revenus.)				
D	Partie du retrait effectuée en raison de faibles revenus			
	D(i) A - B	_____ \$		
	D(ii) 66,6 % de D(i)	_____ \$		
	D(iii) C - D(ii)	_____ \$		
	D(iv) D(iii) - B(i)	_____ \$		
	Reportez le montant inscrit au point D(iv) s'il est supérieur à 0, sinon inscrivez 0			_____ \$
Calcul de la partie du retrait effectuée pour des raisons médicales ou d'invalidité (Remplir seulement en cas de retrait demandé pour ces raisons.)				
E	E(i) Montant estimatif des dépenses prévues pour des raisons médicales ou reliées à l'invalidité au cours de l'année civile et pour lesquelles un certificat médical est nécessaire.		_____ \$	
	E(ii) A - B	_____ \$		
	E(iii) 20 % de E(ii)	_____ \$		
	E(iv) Si E(i) est supérieur ou égal à E(iii), inscrivez E(i), sinon inscrivez 0	_____ \$		
	E(v) Montant estimatif des dépenses prévues pour des raisons médicales ou reliées à l'invalidité et pour lesquelles un retrait d'un régime immobilisé est demandé.	Inscrivez le moins élevé de E(iv) et C	_____ \$	
	Reportez le montant inscrit à E(v)			_____ \$
Calcul de l'ensemble des retraits effectués en raison de difficultés financières				
F	Montant total admissible des retraits liés aux difficultés financières			
	F(i) D + E	_____ \$		
	F(ii) C - B	_____ \$		
	F(iii) Inscrivez le moins élevé de F(i) et F(ii)	_____ \$		
	Reportez le montant inscrit à F(iii)			_____ \$
G	Montant total du retrait demandé Inscrivez F ou un montant inférieur			_____ \$

5 Signatures

Assermenté devant moi _____ le _____ 20 _____

à _____, dans la province de _____

Signature du demandeur _____

Notaire public, commissaire à l'assermentation ou toute autre personne autorisée à faire prêter serment.

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

FORMULE 2

Affirmation(s) concernant l'époux ou le conjoint de fait

1 Institution financière concernée : (insérer le nom de l'institution financière)

2 Régimes immobilisés régis par une loi fédérale (Veuillez indiquer tous les régimes enregistrés d'épargne-retraite immobilisée, fonds de revenu viager, régime d'épargne immobilisée restreint ou fonds de revenu viager restreint qui sont déposés auprès de l'institution financière indiquée à l'article 1 et desquels vous avez l'intention de retirer ou de transférer des fonds) :

- a) _____
 b) _____
 c) _____

3 Attestation du demandeur

Moi, (nom du demandeur) _____, du (adresse du demandeur) _____, ville de _____, (province de) _____, je certifie ce qui suit :

Je détiens les régimes immobilisés régis par une loi fédérale indiqués à l'article 2. J'ai l'intention de retirer ou de transférer _____ \$ de ces régimes.

À la date où je signe la présente attestation (cochez une seule affirmation) :

- a) _____ je n'ai pas d'époux ou de conjoint de fait, au sens de l'article 2 de la *Loi de 1985 sur les normes de prestation de pension*.
 b) _____ j'ai un époux ou un conjoint de fait, au sens de l'article 2 de la *Loi de 1985 sur les normes de prestation de pension*, et il consent à ce que je retire des fonds du régime immobilisé indiqué à l'article 2. (Si vous cochez cette affirmation, votre époux ou conjoint de fait devra remplir la section au point 6 ci-dessous « Attestation de l'époux ou du conjoint de fait ».)

4 Reconnaissance des faits

Je comprends que, lorsque des fonds sont retirés ou transférés de régimes immobilisés régis par une loi fédérale, il se pourrait qu'ils ne soient plus à l'abri des créanciers puisqu'ils ne bénéficient plus de la protection prévue par la *Loi de 1985 sur les normes de prestation de pension* et par le *Règlement de 1985 sur les normes de prestation de pension*.

Je comprends que, lorsque des fonds sont retirés ou transférés de régimes immobilisés régis par une loi fédérale, il se peut qu'ils constituent des revenus imposables en vertu de la *Loi de l'impôt sur le revenu* ou de toute autre loi applicable.

Je comprends qu'il serait judicieux de recourir à un spécialiste en mesure de me renseigner sur les conséquences financières ou légales des tels retraits ou transferts.

5 Signatures

Assermenté devant moi _____ le _____ 20 _____

à _____, dans la province de _____

Signature du demandeur _____

Notaire public, commissaire à l'assermentation ou toute autre personne autorisée à faire prêter serment.

6 Attestation de l'époux ou du conjoint de fait

Moi, _____ du (adresse) _____ ville de _____, (province de) _____, je certifie ce qui suit :

Je suis l'époux ou le conjoint de fait du détenteur des régimes immobilisés indiqués à l'article 2 :

Je comprends :

- a) que le demandeur a l'intention de retirer ou de transférer des fonds des régimes immobilisés régis par une loi fédérale indiqués à l'article 2, ce qu'il ne peut faire sans mon consentement aux termes de la *Loi de 1985 sur les normes de prestation de pension*;

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ANNEXE V

- b)** que tant que les fonds demeurent dans les régimes immobilisés régis par une loi fédérale, je peux avoir droit à une part de ces fonds dans l'éventualité d'un échec de notre union ou du décès du détenteur;
- c)** que si des fonds sont retirés ou transférés des régimes immobilisés régis par une loi fédérale, il se pourrait que je perde mes droits sur la portion des fonds retirés qui me serait revenue;
- d)** que si les fonds sont retirés ou transférés des régimes immobilisés régis par une loi fédérale, il se pourrait qu'ils ne soient plus à l'abri des créanciers puisqu'ils ne bénéficient plus de la protection prévue par la *Loi de 1985 sur les normes de prestation de pension* et par le *Règlement de 1985 sur les normes de prestation de pension*;
- e)** que si des fonds sont retirés ou transférés des régimes immobilisés régis par une loi fédérale, il se peut qu'ils constituent des revenus imposables en vertu de la *Loi de l'impôt sur le revenu* ou de toute autre loi applicable;
- f)** que je peux avoir besoin de recourir à un spécialiste en mesure de me renseigner sur les conséquences financières et légales de tels retraits ou transferts.

7 Consentement de l'époux ou conjoint de fait

Je consens à ce que le détenteur retire ou transfère du régime immobilisé le montant indiqué à l'article 3.

8 Signatures

Assermenté devant moi _____ le _____ 20 _____
à _____, dans la province de

Signature de l'époux ou du conjoint de fait _____

Notaire public, commissaire à l'assermentation ou toute autre personne autorisée à faire prêter serment.

FORMULE 3

Attestation des sommes totales détenues dans des régimes immobilisés régis par une loi fédérale

1 Institution financière concernée : (insérer le nom de l'institution financière)

2 Régimes immobilisés régis par une loi fédérale (Veuillez indiquer tous les régimes enregistrés d'épargne-retraite immobilisée, fonds de revenu viager, régimes d'épargne immobilisée restreint ou fonds de revenu viager restreint que vous détenez dans toute institution financière, en plus de celle indiquée à l'article 1, et desquels vous avez l'intention de retirer ou de transférer des fonds) :

- a)** _____
b) _____
c) _____

3 Attestation

Moi, (nom du demandeur) _____, du (adresse du demandeur)
_____ de _____ ville)
_____, (province) _____ de)
_____, je certifie ce qui suit :

Je détiens les régimes immobilisés régis par une loi fédérale indiqués à l'article 2. À la date où je signe la présente attestation, la valeur totale des fonds qui se trouvent dans ces régimes est de _____ \$.

Cette valeur totale de l'actif est inférieure à 50 % des gains annuels ouvrant droit à pension au sens de la *Loi de 1985 sur les normes de prestation de pension*.

4 Signatures

Assermenté devant moi _____ le _____ 20 _____
à _____, dans la province de

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

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Signature du demandeur _____

Notaire public, commissaire à l'assermentation ou toute autre personne autorisée à faire prêter serment.
DORS/2008-144, art. 8; DORS/2015-60, art. 32.

SCHEDULE VI

(Section 10.2)

FORM 1**Declaration of Employer Who Is Not Subject to Proceedings Under the Companies' Creditors Arrangement Act or Part III of the Bankruptcy and Insolvency Act and Who Is Governed by a Board of Directors**

I, the undersigned, an officer of the employer, having been duly authorized by the Board of Directors, declare that

- (a)** the employer does not anticipate being able to remit the special payments required under subsection 9(1.1) of the *Pension Benefits Standards Act, 1985* without seriously impairing the ability of the employer to continue in operation; and
- (b)** the employer intends to negotiate with the representatives of the members and former members with the purpose of entering into a workout agreement.

FORM 2**Declaration of Employer Who Is Not Subject to Proceedings Under the Companies' Creditors Arrangement Act or Part III of the Bankruptcy and Insolvency Act and Who Is Not Governed by a Board of Directors**

I, the undersigned, an officer of the employer, having been duly authorized by the persons who have the authority to direct or authorize the actions of that body, declare that

ANNEXE VI

(article 10.2)

FORMULE 1**Déclaration de l'employeur qui ne fait pas l'objet de procédures prévues par la Loi sur les arrangements avec les créanciers des compagnies ou par la partie III de la Loi sur la faillite et l'insolvabilité et qui est administré par un conseil d'administration**

Je, soussigné, un cadre de l'employeur, ayant été dûment autorisé par le conseil d'administration, déclare que l'employeur :

- a)** ne prévoit pas être en mesure de verser les paiements spéciaux exigés en vertu du paragraphe 9(1.1) de la *Loi de 1985 sur les normes de prestation de pension* sans compromettre gravement sa capacité de poursuivre ses activités;
- b)** a l'intention de négocier avec les représentants des participants et des participants anciens dans le but de conclure un accord de sauvetage.

FORMULE 2**Déclaration de l'employeur qui ne fait pas l'objet de procédures prévues par la Loi sur les arrangements avec les créanciers des compagnies ou par la partie III de la Loi sur la faillite et l'insolvabilité et qui n'est pas administré par un conseil d'administration**

Je, soussigné, un cadre de l'employeur, ayant été dûment autorisé par les personnes ayant le pouvoir de diriger ou d'autoriser les activités de cette organisation, déclare que l'employeur :

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(a) the employer does not anticipate being able to remit the special payments required under subsection 9(1.1) of the *Pension Benefits Standards Act, 1985* without seriously impairing the ability of the employer to continue in operation; and

(b) the employer intends to negotiate with the representatives of the members and former members with the purpose of entering into a workout agreement.

a) ne prévoit pas être en mesure de verser les paiements spéciaux exigés en vertu du paragraphe 9(1.1) de la *Loi de 1985 sur les normes de prestation de pension* sans compromettre gravement sa capacité de poursuivre ses activités;

b) a l'intention de négocier avec les représentants des participants et des participants anciens dans le but de conclure un accord de sauvetage.

FORM 3

Declaration of Employer Who Is Subject to Proceedings Under the Companies' Creditors Arrangement Act or Part III of the Bankruptcy and Insolvency Act and Who Is Governed by a Board of Directors

I, the undersigned, an officer of the employer, having been duly authorized by the Board of Directors, declare that

(a) the employer is subject to proceedings under the *Companies' Creditors Arrangement Act* or Part III of the *Bankruptcy and Insolvency Act*; and

(b) the employer intends to negotiate with the representatives of the members and former members with the purpose of entering into a workout agreement.

FORMULE 3

Déclaration de l'employeur qui fait l'objet de procédures prévues par la Loi sur les arrangements avec les créanciers des compagnies ou par la partie III de la Loi sur la faillite et l'insolvabilité et qui est administré par un conseil d'administration

Je, soussigné, un cadre de l'employeur, ayant été dûment autorisé par le conseil d'administration, déclare que l'employeur :

a) fait l'objet de procédures prévues par la *Loi sur les arrangements avec les créanciers des compagnies* ou par la partie III de la *Loi sur la faillite et l'insolvabilité*;

b) a l'intention de négocier avec les représentants des participants et des participants anciens dans le but de conclure un accord de sauvetage.

FORM 4

Declaration of Employer Who Is Subject to Proceedings Under the Companies' Creditors Arrangement Act or Part III of the Bankruptcy and Insolvency Act and Who Is Not Governed by a Board of Directors

I, the undersigned, an officer of the employer, having been duly authorized by the persons who have the

FORMULE 4

Déclaration de l'employeur qui fait l'objet de procédures prévues par la Loi sur les arrangements avec les créanciers des compagnies ou par la partie III de la Loi sur la faillite et l'insolvabilité et qui n'est pas administré par un conseil d'administration

Je, soussigné, un cadre de l'employeur, ayant été dûment autorisé par les personnes ayant le pouvoir de

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
SCHEDULE VI

authority to direct or authorize the actions of that body, declare that

(a) the employer is subject to proceedings under the *Companies' Creditors Arrangement Act* or Part III of the *Bankruptcy and Insolvency Act*; and

(b) the employer intends to negotiate with the representatives of the members and former members with the purpose of entering into a workout agreement.

SOR/2011-85, s. 13, err., Vol. 145, No. 9.

Règlement de 1985 sur les normes de prestation de pension
ANNEXE VI

diriger ou d'autoriser les activités de cette organisation, déclare que l'employeur :

a) fait l'objet de procédures prévues par la *Loi sur les arrangements avec les créanciers des compagnies* ou par la partie III de la *Loi sur la faillite et l'insolvabilité*;

b) a l'intention de négocier avec les représentants des participants et des participants anciens dans le but de conclure un accord de sauvetage.

DORS/2011-85, art. 13, err., Vol. 145, n° 9.

RELATED PROVISIONS

— SOR/2008-144, s. 9

9 (1) Despite sections 3 and 4, a contract or arrangement for a locked-in registered retirement savings plan or a life income fund that is entered into within six months after the day on which these Regulations come into force may be made under sections 20 and 20.1 of the *Pension Benefits Standards Regulations, 1985* respectively, as those sections read on the day before the day on which these Regulations come into force.

(2) Form 3 of Schedule II to the *Pension Benefits Standards Regulations, 1985*, as it read before the day on which these Regulations come into force, may continue to be used for the purpose referred to in subsection 18(3) of those Regulations for six months after the day on which these Regulations come into force.

— SOR/2010-149, s. 27

27 A plan may continue to be funded under section 9 of the *Pension Benefits Standards Regulations, 1985*, as they read immediately before this section comes into force, until the day on which the first actuarial report is filed after this section comes into force.

— SOR/2010-149, s. 28

28 A reference to an “unfunded liability” in these Regulations includes a reference to an “initial unfunded liability” as defined in subsection 9(1) of the *Pension Benefits Standards Regulations, 1985*, as it read immediately before this section comes into force.

— SOR/2010-149, s. 29

29 (1) For the purpose of determining the average solvency ratio for the first actuarial report required to be filed after this section comes into force, the solvency ratio that is determined on the valuation date, without the adjustments made under subsections 9(8) and 9(9), may be used as the solvency ratio for

(a) the prior valuation date and the prior second valuation date; or

(b) the prior second valuation date.

(2) If the average solvency ratio is determined under paragraph (1)(a), the **solvency assets** means the value of the assets of the plan, determined on the basis of market value or of a value related to the market value by means of a method using market values over a period of not more than five years to stabilize short-term fluctuations.

(3) For the purpose of determining the average solvency ratio for the second actuarial report required to be filed after this section comes into force, if the average solvency ratio for the first actuarial report was determined under paragraph (1)(a),

DISPOSITIONS CONNEXES

— DORS/2008-144, art. 9

9 (1) Malgré les articles 3 et 4, le contrat ou l'arrangement établissant un régime enregistré d'épargne-retraite immobilisée ou un fond de revenu viager qui est conclu dans les six mois suivant la date d'entrée en vigueur du présent règlement peut l'être en vertu des articles 20 ou 20.1 du *Règlement de 1985 sur les normes de prestation de pension* dans leur version antérieure à l'entrée en vigueur du présent règlement.

(2) La formule 3 de l'annexe II du *Règlement de 1985 sur les normes de prestation de pension*, dans sa version antérieure à l'entrée en vigueur du présent règlement, peut continuer d'être utilisée, pour l'application du paragraphe 18(3) du *Règlement de 1985 sur les normes de prestation de pension*, pendant une période de six mois suivant la date d'entrée en vigueur du présent règlement.

— DORS/2010-149, art. 27

27 La capitalisation de tout régime peut se poursuivre en application l'article 9 du *Règlement de 1985 sur les normes de prestation de pension*, dans sa version antérieure à l'entrée en vigueur du présent article, jusqu'au dépôt du premier rapport actuariel après l'entrée en vigueur du présent article.

— DORS/2010-149, art. 28

28 La mention de « passif non capitalisé » dans le présent règlement vaut mention de « passif initial non capitalisé » au sens du paragraphe 9(1) du *Règlement de 1985 sur les normes de prestation de pension*, dans sa version antérieure à l'entrée en vigueur du présent article.

— DORS/2010-149, art. 29

29 (1) Dans le calcul du ratio de solvabilité moyen pour le premier rapport actuariel à déposer après l'entrée en vigueur du présent article, le ratio de solvabilité qui est établi à la date d'évaluation compte non tenu des rajustements prévus aux paragraphes 9(8) et (9) peut être utilisé comme ratio de solvabilité, selon le cas :

a) à la date d'évaluation antérieure et à la deuxième date d'évaluation antérieure;

b) à la deuxième date d'évaluation antérieure.

(2) Si le ratio de solvabilité moyen est établi au titre de l'alinéa (1)a), l'**actif de solvabilité** s'entend de la valeur de l'actif du régime, calculée en fonction de la valeur marchande ou d'une valeur s'y rattachant, au moyen d'une méthode qui emploie les valeurs marchandes sur une période d'au plus cinq ans afin de stabiliser les fluctuations à court terme.

(3) Dans le calcul du ratio de solvabilité moyen du deuxième rapport actuariel à déposer après l'entrée en vigueur du présent article, le ratio de solvabilité établi à la date d'évaluation compte on tenu des rajustements prévus aux paragraphes

Pension Benefits Standards Regulations, 1985, 1985, SOR/87-19

Pension Benefits Standards Regulations, 1985
RELATED PROVISIONS

the solvency ratio that is determined on the valuation date, without the adjustments made under subsections 9(8) and 9(9), may be used as the solvency ratio for the prior second valuation date.

— SOR/2010-149, s. 30

30 These Regulations do not apply to a plan to which the *Canadian Press Pension Plan Solvency Deficiency Funding Regulations* apply.

Règlement de 1985 sur les normes de prestation de pension
DISPOSITIONS CONNEXES

9(8) et (9) peut être utilisé comme ratio de solvabilité à la deuxième date d'évaluation antérieure.

— DORS/2010-149, art. 30

30 Le présent règlement ne s'applique pas au régime capitalisé en application du *Règlement sur la capitalisation du déficit de solvabilité du régime de retraite de la Presse canadienne*.



CANADA

CONSOLIDATION

CODIFICATION

**Companies' Creditors
Arrangement Act**

**Loi sur les arrangements avec
les créanciers des compagnies**

R.S.C., 1985, c. C-36

L.R.C. (1985), ch. C-36

Current to December 11, 2017

À jour au 11 décembre 2017

Last amended on February 26, 2015

Dernière modification le 26 février 2015

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OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

NOTE

This consolidation is current to December 11, 2017. The last amendments came into force on February 26, 2015. Any amendments that were not in force as of December 11, 2017 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité – lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

NOTE

Cette codification est à jour au 11 décembre 2017. Les dernières modifications sont entrées en vigueur le 26 février 2015. Toutes modifications qui n'étaient pas en vigueur au 11 décembre 2017 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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Companies' Creditors Arrangement
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R.S.C., 1985, c. C-36

L.R.C., 1985, ch. C-36

An Act to facilitate compromises and arrangements between companies and their creditors

Loi facilitant les transactions et arrangements entre les compagnies et leurs créanciers

Short Title

Titre abrégé

Short title

1 This Act may be cited as the *Companies' Creditors Arrangement Act*.

R.S., c. C-25, s. 1.

Titre abrégé

1 *Loi sur les arrangements avec les créanciers des compagnies*.

S.R., ch. C-25, art. 1.

Interpretation

Définitions et application

Definitions

2 (1) In this Act,

aircraft objects [Repealed, 2012, c. 31, s. 419]

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a company; (*agent négociateur*)

bond includes a debenture, debenture stock or other evidences of indebtedness; (*obligation*)

cash-flow statement, in respect of a company, means the statement referred to in paragraph 10(2)(a) indicating the company's projected cash flow; (*état de l'évolution de l'encaisse*)

claim means any indebtedness, liability or obligation of any kind that would be a claim provable within the meaning of section 2 of the *Bankruptcy and Insolvency Act*; (*réclamation*)

collective agreement, in relation to a debtor company, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the debtor company and a bargaining agent; (*convention collective*)

Définitions

2 (1) Les définitions qui suivent s'appliquent à la présente loi.

accord de transfert de titres pour obtention de crédit
Accord aux termes duquel une compagnie débitrice transfère la propriété d'un bien en vue de garantir le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible. (*title transfer credit support agreement*)

actionnaire S'agissant d'une compagnie ou d'une fiducie de revenu assujetties à la présente loi, est assimilée à l'actionnaire la personne ayant un intérêt dans cette compagnie ou détenant des parts de cette fiducie. (*shareholder*)

administrateur S'agissant d'une compagnie autre qu'une fiducie de revenu, toute personne exerçant les fonctions d'administrateur, indépendamment de son titre, et, s'agissant d'une fiducie de revenu, toute personne exerçant les fonctions de fiduciaire, indépendamment de son titre. (*director*)

agent négociateur Syndicat ayant conclu une convention collective pour le compte des employés d'une compagnie. (*bargaining agent*)

biens aéronautiques [Abrogée, 2012, ch. 31, art. 419]

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Companies' Creditors Arrangement
Interpretation
Section 2

Arrangements avec les créanciers des compagnies
Définitions et application
Article 2

company means any company, corporation or legal person incorporated by or under an Act of Parliament or of the legislature of a province, any incorporated company having assets or doing business in Canada, wherever incorporated, and any income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, railway or telegraph companies, insurance companies and companies to which the *Trust and Loan Companies Act* applies; (*compagnie*)

court means

(a) in Nova Scotia, British Columbia and Prince Edward Island, the Supreme Court,

(a.1) in Ontario, the Superior Court of Justice,

(b) in Quebec, the Superior Court,

(c) in New Brunswick, Manitoba, Saskatchewan and Alberta, the Court of Queen's Bench,

(c.1) in Newfoundland and Labrador, the Trial Division of the Supreme Court, and

(d) in Yukon and the Northwest Territories, the Supreme Court, and in Nunavut, the Nunavut Court of Justice; (*tribunal*)

debtor company means any company that

(a) is bankrupt or insolvent,

(b) has committed an act of bankruptcy within the meaning of the *Bankruptcy and Insolvency Act* or is deemed insolvent within the meaning of the *Winding-up and Restructuring Act*, whether or not proceedings in respect of the company have been taken under either of those Acts,

(c) has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, or

(d) is in the course of being wound up under the *Winding-up and Restructuring Act* because the company is insolvent; (*compagnie débitrice*)

director means, in the case of a company other than an income trust, a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called; (*administrateur*)

eligible financial contract means an agreement of a prescribed kind; (*contrat financier admissible*)

compagnie Toute personne morale constituée par une loi fédérale ou provinciale ou sous son régime et toute personne morale qui possède un actif ou exerce des activités au Canada, quel que soit l'endroit où elle a été constituée, ainsi que toute fiducie de revenu. La présente définition exclut les banques, les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*, les compagnies de chemin de fer ou de télégraphe, les compagnies d'assurances et les sociétés auxquelles s'applique la *Loi sur les sociétés de fiducie et de prêt*. (*company*)

compagnie débitrice Toute compagnie qui, selon le cas :

a) est en faillite ou est insolvable;

b) a commis un acte de faillite au sens de la *Loi sur la faillite et l'insolvabilité* ou est réputée insolvable au sens de la *Loi sur les liquidations et les restructurations*, que des procédures relatives à cette compagnie aient été intentées ou non sous le régime de l'une ou l'autre de ces lois;

c) a fait une cession autorisée ou à l'encontre de laquelle une ordonnance de faillite a été rendue en vertu de la *Loi sur la faillite et l'insolvabilité*;

d) est en voie de liquidation aux termes de la *Loi sur les liquidations et les restructurations* parce que la compagnie est insolvable. (*debtor company*)

contrat financier admissible Contrat d'une catégorie réglementaire. (*eligible financial contract*)

contrôleur S'agissant d'une compagnie, la personne nommée en application de l'article 11.7 pour agir à titre de contrôleur des affaires financières et autres de celle-ci. (*monitor*)

convention collective S'entend au sens donné à ce terme par les règles de droit applicables aux négociations collectives entre la compagnie débitrice et l'agent négociateur. (*collective agreement*)

créancier chirographaire Tout créancier d'une compagnie qui n'est pas un créancier garanti, qu'il réside ou soit domicilié au Canada ou à l'étranger. Un fiduciaire pour les détenteurs d'obligations non garanties, lesquelles sont émises en vertu d'un acte de fiducie ou autre acte fonctionnant en faveur du fiduciaire, est réputé un créancier chirographaire pour toutes les fins de la présente loi sauf la votation à une assemblée des créanciers relativement à ces obligations. (*unsecured creditor*)

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Companies' Creditors Arrangement
Interpretation
Section 2

Arrangements avec les créanciers des compagnies
Définitions et application
Article 2

equity claim means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (*réclamation relative à des capitaux propres*)

equity interest means

- (a) in the case of a company other than an income trust, a share in the company — or a warrant or option or another right to acquire a share in the company — other than one that is derived from a convertible debt, and
- (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (*intérêt relatif à des capitaux propres*)

financial collateral means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits,
- (b) securities, a securities account, a securities entitlement or a right to acquire securities, or
- (c) a futures agreement or a futures account; (*garantie financière*)

income trust means a trust that has assets in Canada if

- (a) its units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act, or
- (b) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the day on which proceedings commence under this Act; (*fiducie de revenu*)

créancier garanti Détenteur d'hypothèque, de gage, charge, nantissement ou privilège sur ou contre l'ensemble ou une partie des biens d'une compagnie débitrice, ou tout transport, cession ou transfert de la totalité ou d'une partie de ces biens, à titre de garantie d'une dette de la compagnie débitrice, ou un détenteur de quelque obligation d'une compagnie débitrice garantie par hypothèque, gage, charge, nantissement ou privilège sur ou contre l'ensemble ou une partie des biens de la compagnie débitrice, ou un transport, une cession ou un transfert de tout ou partie de ces biens, ou une fiducie à leur égard, que ce détenteur ou bénéficiaire réside ou soit domicilié au Canada ou à l'étranger. Un fiduciaire en vertu de tout acte de fiducie ou autre instrument garantissant ces obligations est réputé un créancier garanti pour toutes les fins de la présente loi sauf la votation à une assemblée de créanciers relativement à ces obligations. (*secured creditor*)

demande initiale La demande faite pour la première fois en application de la présente loi relativement à une compagnie. (*initial application*)

état de l'évolution de l'encaisse Relativement à une compagnie, l'état visé à l'alinéa 10(2)a) portant, projections à l'appui, sur l'évolution de l'encaisse de celle-ci. (*cash-flow statement*)

fiducie de revenu Fiducie qui possède un actif au Canada et dont les parts sont inscrites à une bourse de valeurs mobilières visée par règlement à la date à laquelle des procédures sont intentées sous le régime de la présente loi, ou sont détenues en majorité par une fiducie dont les parts sont inscrites à une telle bourse à cette date. (*income trust*)

garantie financière S'il est assujéti soit à un intérêt ou, dans la province de Québec, à un droit garantissant le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible, soit à un accord de transfert de titres pour obtention de crédit, l'un ou l'autre des éléments suivants :

- a) les sommes en espèces et les équivalents de trésorerie — notamment les effets négociables et dépôts à vue;
- b) les titres, comptes de titres, droits intermédiés et droits d'acquérir des titres;
- c) les contrats à terme ou comptes de contrats à terme. (*financial collateral*)

intérêt relatif à des capitaux propres

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initial application means the first application made under this Act in respect of a company; (*demande initiale*)

monitor, in respect of a company, means the person appointed under section 11.7 to monitor the business and financial affairs of the company; (*contrôleur*)

net termination value means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions; (*valeurs nettes dues à la date de résiliation*)

prescribed means prescribed by regulation; (*Version anglaise seulement*)

secured creditor means a holder of a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, all or any property of a debtor company as security for indebtedness of the debtor company, or a holder of any bond of a debtor company secured by a mortgage, hypothec, pledge, charge, lien or privilege on or against, or any assignment, cession or transfer of, or a trust in respect of, all or any property of the debtor company, whether the holder or beneficiary is resident or domiciled within or outside Canada, and a trustee under any trust deed or other instrument securing any of those bonds shall be deemed to be a secured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds; (*créancier garanti*)

shareholder includes a member of a company — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies; (*actionnaire*)

Superintendent of Bankruptcy means the Superintendent of Bankruptcy appointed under subsection 5(1) of the *Bankruptcy and Insolvency Act*; (*surintendant des faillites*)

Superintendent of Financial Institutions means the Superintendent of Financial Institutions appointed under subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*; (*surintendant des institutions financières*)

title transfer credit support agreement means an agreement under which a debtor company has provided title to property for the purpose of securing the payment or performance of an obligation of the debtor company in respect of an eligible financial contract; (*accord de transfert de titres pour obtention de crédit*)

unsecured creditor means any creditor of a company who is not a secured creditor, whether resident or

a) S'agissant d'une compagnie autre qu'une fiducie de revenu, action de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle action et ne provenant pas de la conversion d'une dette convertible;

b) s'agissant d'une fiducie de revenu, part de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle part et ne provenant pas de la conversion d'une dette convertible. (*equity interest*)

obligation Sont assimilés aux obligations les débetures, stock-obligations et autres titres de créance. (*bond*)

réclamation S'entend de toute dette, de tout engagement ou de toute obligation de quelque nature que ce soit, qui constituerait une réclamation prouvable au sens de l'article 2 de la *Loi sur la faillite et l'insolvabilité*. (*claim*)

réclamation relative à des capitaux propres Réclamation portant sur un intérêt relatif à des capitaux propres et visant notamment :

a) un dividende ou un paiement similaire;

b) un remboursement de capital;

c) tout droit de rachat d'actions au gré de l'actionnaire ou de remboursement anticipé d'actions au gré de l'émetteur;

d) des pertes pécuniaires associées à la propriété, à l'achat ou à la vente d'un intérêt relatif à des capitaux propres ou à l'annulation de cet achat ou de cette vente;

e) une contribution ou une indemnité relative à toute réclamation visée à l'un des alinéas a) à d). (*equity claim*)

surintendant des faillites Le surintendant des faillites nommé au titre du paragraphe 5(1) de la *Loi sur la faillite et l'insolvabilité*. (*Superintendent of Bankruptcy*)

surintendant des institutions financières Le surintendant des institutions financières nommé en application du paragraphe 5(1) de la *Loi sur le Bureau du surintendant des institutions financières*. (*Superintendent of Financial Institutions*)

tribunal

a) Dans les provinces de la Nouvelle-Écosse, de la Colombie-Britannique et de l'Île-du-Prince-Édouard, la Cour suprême;

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domiciled within or outside Canada, and a trustee for the holders of any unsecured bonds issued under a trust deed or other instrument running in favour of the trustee shall be deemed to be an unsecured creditor for all purposes of this Act except for the purpose of voting at a creditors' meeting in respect of any of those bonds. (*créancier chirographaire*)

Meaning of related and dealing at arm's length

(2) For the purpose of this Act, section 4 of the *Bankruptcy and Insolvency Act* applies for the purpose of determining whether a person is related to or dealing at arm's length with a debtor company.

R.S., 1985, c. C-36, s. 2; R.S., 1985, c. 27 (2nd Suppl.), s. 10; 1990, c. 17, s. 4; 1992, c. 27, s. 90; 1993, c. 34, s. 52; 1996, c. 6, s. 167; 1997, c. 12, s. 120(E); 1998, c. 30, s. 14; 1999, c. 3, s. 22, c. 28, s. 154; 2001, c. 9, s. 575; 2002, c. 7, s. 133; 2004, c. 25, s. 193; 2005, c. 3, s. 15, c. 47, s. 124; 2007, c. 29, s. 104, c. 36, ss. 61, 105; 2012, c. 31, s. 419; 2015, c. 3, s. 37.

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than \$5,000,000 or any other amount that is prescribed.

Affiliated companies

(2) For the purposes of this Act,

(a) companies are affiliated companies if one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person; and

(b) two companies affiliated with the same company at the same time are deemed to be affiliated with each other.

Company controlled

(3) For the purposes of this Act, a company is controlled by a person or by two or more companies if

a.1) dans la province d'Ontario, la Cour supérieure de justice;

b) dans la province de Québec, la Cour supérieure;

c) dans les provinces du Nouveau-Brunswick, du Manitoba, de la Saskatchewan et d'Alberta, la Cour du Banc de la Reine;

c.1) dans la province de Terre-Neuve-et-Labrador, la Section de première instance de la Cour suprême;

d) au Yukon et dans les Territoires du Nord-Ouest, la Cour suprême et, au Nunavut, la Cour de justice du Nunavut. (*court*)

valeurs nettes dues à la date de résiliation La somme nette obtenue après compensation des obligations mutuelles des parties à un contrat financier admissible effectuée conformément à ce contrat. (*net termination value*)

Définition de personnes liées

(2) Pour l'application de la présente loi, l'article 4 de la *Loi sur la faillite et l'insolvabilité* s'applique pour établir si une personne est liée à une compagnie débitrice ou agit sans lien de dépendance avec une telle compagnie.

L.R. (1985), ch. C-36, art. 2; L.R. (1985), ch. 27 (2^o suppl.), art. 10; 1990, ch. 17, art. 4; 1992, ch. 27, art. 90; 1993, ch. 34, art. 52; 1996, ch. 6, art. 167; 1997, ch. 12, art. 120(A); 1998, ch. 30, art. 14; 1999, ch. 3, art. 22, ch. 28, art. 154; 2001, ch. 9, art. 575; 2002, ch. 7, art. 133; 2004, ch. 25, art. 193; 2005, ch. 3, art. 15, ch. 47, art. 124; 2007, ch. 29, art. 104, ch. 36, art. 61 et 105; 2012, ch. 31, art. 419; 2015, ch. 3, art. 37.

Application

3 (1) La présente loi ne s'applique à une compagnie débitrice ou aux compagnies débitrices qui appartiennent au même groupe qu'elle que si le montant des réclamations contre elle ou les compagnies appartenant au même groupe, établi conformément à l'article 20, est supérieur à cinq millions de dollars ou à toute autre somme prévue par les règlements.

Application

(2) Pour l'application de la présente loi :

a) appartiennent au même groupe deux compagnies dont l'une est la filiale de l'autre ou qui sont sous le contrôle de la même personne;

b) sont réputées appartenir au même groupe deux compagnies dont chacune appartient au groupe d'une même compagnie.

Application

(3) Pour l'application de la présente loi, ont le contrôle d'une compagnie la personne ou les compagnies :

(a) securities of the company to which are attached more than fifty per cent of the votes that may be cast to elect directors of the company are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those companies; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the company.

Subsidiary

(4) For the purposes of this Act, a company is a subsidiary of another company if

(a) it is controlled by

(i) that other company,

(ii) that other company and one or more companies each of which is controlled by that other company, or

(iii) two or more companies each of which is controlled by that other company; or

(b) it is a subsidiary of a company that is a subsidiary of that other company.

R.S., 1985, c. C-36, s. 3; 1997, c. 12, s. 121; 2005, c. 47, s. 125.

PART I

Compromises and Arrangements

Compromise with unsecured creditors

4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

R.S., c. C-25, s. 4.

Compromise with secured creditors

5 Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and,

a) qui détiennent — ou en sont bénéficiaires —, autrement qu'à titre de garantie seulement, des valeurs mobilières conférant plus de cinquante pour cent du maximum possible des voix à l'élection des administrateurs de la compagnie;

b) dont lesdites valeurs mobilières confèrent un droit de vote dont l'exercice permet d'élire la majorité des administrateurs de la compagnie.

Application

(4) Pour l'application de la présente loi, une compagnie est la filiale d'une autre compagnie dans chacun des cas suivants :

a) elle est contrôlée :

(i) soit par l'autre compagnie,

(ii) soit par l'autre compagnie et une ou plusieurs compagnies elles-mêmes contrôlées par cette autre compagnie,

(iii) soit par des compagnies elles-mêmes contrôlées par l'autre compagnie;

b) elle est la filiale d'une filiale de l'autre compagnie.

L.R. (1985), ch. C-36, art. 3; 1997, ch. 12, art. 121; 2005, c. 47, art. 125.

PARTIE I

Transactions et arrangements

Transaction avec les créanciers chirographaires

4 Lorsqu'une transaction ou un arrangement est proposé entre une compagnie débitrice et ses créanciers chirographaires ou toute catégorie de ces derniers, le tribunal peut, à la requête sommaire de la compagnie, d'un de ces créanciers ou du syndic en matière de faillite ou liquidateur de la compagnie, ordonner que soit convoquée, de la manière qu'il prescrit, une assemblée de ces créanciers ou catégorie de créanciers, et, si le tribunal en décide ainsi, des actionnaires de la compagnie.

S.R., ch. C-25, art. 4.

Transaction avec les créanciers garantis

5 Lorsqu'une transaction ou un arrangement est proposé entre une compagnie débitrice et ses créanciers garantis ou toute catégorie de ces derniers, le tribunal peut, à la requête sommaire de la compagnie, d'un de ces créanciers ou du syndic en matière de faillite ou liquidateur de la compagnie, ordonner que soit convoquée, de la

if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

R.S., c. C-25, s. 5.

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(a) relate to contractual rights of one or more creditors; or

(b) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

Powers of court

(3) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.

Resignation or removal of directors

(4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the debtor company shall be deemed to be a director for the purposes of this section.

1997, c. 12, s. 122.

Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

manière qu'il prescrit, une assemblée de ces créanciers ou catégorie de créanciers, et, si le tribunal en décide ainsi, des actionnaires de la compagnie.

S.R., ch. C-25, art. 5.

Transaction — réclamations contre les administrateurs

5.1 (1) La transaction ou l'arrangement visant une compagnie débitrice peut comporter, au profit de ses créanciers, des dispositions relativement à une transaction sur les réclamations contre ses administrateurs qui sont antérieures aux procédures intentées sous le régime de la présente loi et visent des obligations de celle-ci dont ils peuvent être, ès qualités, responsables en droit.

Restriction

(2) La transaction ne peut toutefois viser des réclamations portant sur des droits contractuels d'un ou de plusieurs créanciers ou fondées sur la fausse représentation ou la conduite injustifiée ou abusive des administrateurs.

Pouvoir du tribunal

(3) Le tribunal peut déclarer qu'une réclamation contre les administrateurs ne peut faire l'objet d'une transaction s'il est convaincu qu'elle ne serait ni juste ni équitable dans les circonstances.

Démission ou destitution des administrateurs

(4) Si tous les administrateurs démissionnent ou sont destitués par les actionnaires sans être remplacés, quiconque dirige ou supervise les activités commerciales et les affaires internes de la compagnie débitrice est réputé un administrateur pour l'application du présent article.

1997, ch. 12, art. 122.

Homologation par le tribunal

6 (1) Si une majorité en nombre représentant les deux tiers en valeur des créanciers ou d'une catégorie de créanciers, selon le cas, — mise à part, sauf ordonnance contraire du tribunal, toute catégorie de créanciers ayant des réclamations relatives à des capitaux propres — présents et votant soit en personne, soit par fondé de pouvoir à l'assemblée ou aux assemblées de créanciers respectivement tenues au titre des articles 4 et 5, acceptent une transaction ou un arrangement, proposé ou modifié à cette ou ces assemblées, la transaction ou l'arrangement peut être homologué par le tribunal et, le cas échéant, lie :

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

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(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for that class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(b) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

Court may order amendment

(2) If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

Restriction — certain Crown claims

(3) Unless Her Majesty agrees otherwise, the court may sanction a compromise or arrangement only if the compromise or arrangement provides for the payment in full to Her Majesty in right of Canada or a province, within six months after court sanction of the compromise or arrangement, of all amounts that were outstanding at the time of the application for an order under section 11 or 11.02 and that are of a kind that could be subject to a demand under

(a) subsection 224(1.2) of the *Income Tax Act*;

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

a) tous les créanciers ou la catégorie de créanciers, selon le cas, et tout fiduciaire pour cette catégorie de créanciers, qu'ils soient garantis ou chirographaires, selon le cas, ainsi que la compagnie;

b) dans le cas d'une compagnie qui a fait une cession autorisée ou à l'encontre de laquelle une ordonnance de faillite a été rendue en vertu de la *Loi sur la faillite et l'insolvabilité* ou qui est en voie de liquidation sous le régime de la *Loi sur les liquidations et les restructurations*, le syndic en matière de faillite ou liquidateur et les contributeurs de la compagnie.

Modification des statuts constitutifs

(2) Le tribunal qui homologue une transaction ou un arrangement peut ordonner la modification des statuts constitutifs de la compagnie conformément à ce qui est prévu dans la transaction ou l'arrangement, selon le cas, pourvu que la modification soit légale au regard du droit fédéral ou provincial.

Certaines réclamations de la Couronne

(3) Le tribunal ne peut, sans le consentement de Sa Majesté, homologuer la transaction ou l'arrangement qui ne prévoit pas le paiement intégral à Sa Majesté du chef du Canada ou d'une province, dans les six mois suivant l'homologation, de toutes les sommes qui étaient dues lors de la demande d'ordonnance visée aux articles 11 ou 11.02 et qui pourraient, de par leur nature, faire l'objet d'une demande aux termes d'une des dispositions suivantes :

a) le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*;

b) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi ainsi que des intérêts, pénalités ou autres charges afférents;

c) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, et qui prévoit la perception d'une somme, ainsi que des intérêts, pénalités ou autres charges afférents, laquelle somme :

(i) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a *provincial pension plan* as defined in that subsection.

Restriction — default of remittance to Crown

(4) If an order contains a provision authorized by section 11.09, no compromise or arrangement is to be sanctioned by the court if, at the time the court hears the application for sanction, Her Majesty in right of Canada or a province satisfies the court that the company is in default on any remittance of an amount referred to in subsection (3) that became due after the time of the application for an order under section 11.02.

Restriction — employees, etc.

(5) The court may sanction a compromise or an arrangement only if

(a) the compromise or arrangement provides for payment to the employees and former employees of the company, immediately after the court's sanction, of

(i) amounts at least equal to the amounts that they would have been qualified to receive under paragraph 136(1)(d) of the *Bankruptcy and Insolvency Act* if the company had become bankrupt on the day on which proceedings commenced under this Act, and

(ii) wages, salaries, commissions or compensation for services rendered after proceedings commence under this Act and before the court sanctions the compromise or arrangement, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the company's business during the same period; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(ii) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est une province instituant un régime général de pensions au sens du paragraphe 3(1) de cette loi et si la loi provinciale a institué un régime provincial de pensions au sens de ce paragraphe.

Défaut d'effectuer un versement

(4) Lorsqu'une ordonnance comporte une disposition autorisée par l'article 11.09, le tribunal ne peut homologuer la transaction ou l'arrangement si, lors de l'audition de la demande d'homologation, Sa Majesté du chef du Canada ou d'une province le convainc du défaut de la compagnie d'effectuer un versement portant sur une somme visée au paragraphe (3) et qui est devenue exigible après le dépôt de la demande d'ordonnance visée à l'article 11.02.

Restriction — employés, etc.

(5) Le tribunal ne peut homologuer la transaction ou l'arrangement que si, à la fois :

a) la transaction ou l'arrangement prévoit le paiement aux employés actuels et anciens de la compagnie, dès son homologation, de sommes égales ou supérieures, d'une part, à celles qu'ils seraient en droit de recevoir en application de l'alinéa 136(1)d) de la *Loi sur la faillite et l'insolvabilité* si la compagnie avait fait faillite à la date à laquelle des procédures ont été introduites sous le régime de la présente loi à son égard et, d'autre part, au montant des gages, salaires, commissions ou autre rémunération pour services fournis entre la date de l'introduction des procédures et celle de l'homologation, y compris les sommes que le voyageur de commerce a régulièrement déboursées dans le cadre de l'exploitation de la compagnie entre ces dates;

b) il est convaincu que la compagnie est en mesure d'effectuer et effectuera les paiements prévus à l'alinéa a).

Restriction — régime de pension

(6) Si la compagnie participe à un régime de pension réglementaire institué pour ses employés, le tribunal ne peut homologuer la transaction ou l'arrangement que si, à la fois :

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

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(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

a) la transaction ou l'arrangement prévoit que seront effectués des paiements correspondant au total des sommes ci-après qui n'ont pas été versées au fonds établi dans le cadre du régime de pension :

(i) les sommes qui ont été déduites de la rémunération des employés pour versement au fonds,

(ii) dans le cas d'un régime de pension réglementaire régi par une loi fédérale :

(A) les coûts normaux, au sens du paragraphe 2(1) du *Règlement de 1985 sur les normes de prestation de pension*, que l'employeur est tenu de verser au fonds,

(B) les sommes que l'employeur est tenu de verser au fonds au titre de toute disposition à cotisations déterminées au sens du paragraphe 2(1) de la *Loi de 1985 sur les normes de prestation de pension*,

(C) les sommes que l'employeur est tenu de verser à l'administrateur d'un régime de pension agréé collectif au sens du paragraphe 2(1) de la *Loi sur les régimes de pension agréés collectifs*,

(iii) dans le cas de tout autre régime de pension réglementaire :

(A) la somme égale aux coûts normaux, au sens du paragraphe 2(1) du *Règlement de 1985 sur les normes de prestation de pension*, que l'employeur serait tenu de verser au fonds si le régime était régi par une loi fédérale,

(B) les sommes que l'employeur serait tenu de verser au fonds au titre de toute disposition à cotisations déterminées au sens du paragraphe 2(1) de la *Loi de 1985 sur les normes de prestation de pension* si le régime était régi par une loi fédérale,

(C) les sommes que l'employeur serait tenu de verser à l'égard du régime s'il était régi par la *Loi sur les régimes de pension agréés collectifs*;

b) il est convaincu que la compagnie est en mesure d'effectuer et effectuera les paiements prévus à l'alinéa a).

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PARTIE I Transactions et arrangements
Articles 6-8

Non-application of subsection (6)

(7) Despite subsection (6), the court may sanction a compromise or arrangement that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(8) No compromise or arrangement that provides for the payment of an equity claim is to be sanctioned by the court unless it provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

R.S., 1985, c. C-36, s. 6; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 123; 2004, c. 25, s. 194; 2005, c. 47, s. 126, 2007, c. 36, s. 106; 2009, c. 33, s. 27; 2012, c. 16, s. 82.

Court may give directions

7 Where an alteration or a modification of any compromise or arrangement is proposed at any time after the court has directed a meeting or meetings to be summoned, the meeting or meetings may be adjourned on such term as to notice and otherwise as the court may direct, and those directions may be given after as well as before adjournment of any meeting or meetings, and the court may in its discretion direct that it is not necessary to adjourn any meeting or to convene any further meeting of any class of creditors or shareholders that in the opinion of the court is not adversely affected by the alteration or modification proposed, and any compromise or arrangement so altered or modified may be sanctioned by the court and have effect under section 6.

R.S., c. C-25, s. 7.

Scope of Act

8 This Act extends and does not limit the provisions of any instrument now or hereafter existing that governs the rights of creditors or any class of them and has full force and effect notwithstanding anything to the contrary contained in that instrument.

R.S., c. C-25, s. 8.

Non-application du paragraphe (6)

(7) Par dérogation au paragraphe (6), le tribunal peut homologuer la transaction ou l'arrangement qui ne prévoit pas le versement des sommes mentionnées à ce paragraphe s'il est convaincu que les parties en cause ont conclu un accord sur les sommes à verser et que l'autorité administrative responsable du régime de pension a consenti à l'accord.

Paiement d'une réclamation relative à des capitaux propres

(8) Le tribunal ne peut homologuer la transaction ou l'arrangement qui prévoit le paiement d'une réclamation relative à des capitaux propres que si, selon les termes de celle-ci, le paiement intégral de toutes les autres réclamations sera effectué avant le paiement de la réclamation relative à des capitaux propres.

L.R. (1985), ch. C-36, art. 6; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 123; 2004, ch. 25, art. 194; 2005, ch. 47, art. 126, 2007, ch. 36, art. 106; 2009, ch. 33, art. 27; 2012, ch. 16, art. 82.

Le tribunal peut donner des instructions

7 Si une modification d'une transaction ou d'un arrangement est proposée après que le tribunal a ordonné qu'une ou plusieurs assemblées soient convoquées, cette ou ces assemblées peuvent être ajournées aux conditions que peut prescrire le tribunal quant à l'avis et autrement, et ces instructions peuvent être données tant après qu'avant l'ajournement de toute ou toutes assemblées, et le tribunal peut, à sa discrétion, prescrire qu'il ne sera pas nécessaire d'ajourner quelque assemblée ou de convoquer une nouvelle assemblée de toute catégorie de créanciers ou actionnaires qui, selon l'opinion du tribunal, n'est pas défavorablement atteinte par la modification proposée, et une transaction ou un arrangement ainsi modifié peut être homologué par le tribunal et être exécutoire en vertu de l'article 6.

S.R., ch. C-25, art. 7.

Champ d'application de la loi

8 La présente loi n'a pas pour effet de limiter mais d'étendre les stipulations de tout instrument actuellement ou désormais existant relativement aux droits de créanciers ou de toute catégorie de ces derniers, et elle est pleinement exécutoire et effective nonobstant toute stipulation contraire de cet instrument.

S.R., ch. C-25, art. 8.

PART II

Jurisdiction of Courts

Jurisdiction of court to receive applications

9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

Single judge may exercise powers, subject to appeal

(2) The powers conferred by this Act on a court may, subject to appeal as provided for in this Act, be exercised by a single judge thereof, and those powers may be exercised in chambers during term or in vacation.

R.S., c. C-25, s. 9.

Form of applications

10 (1) Applications under this Act shall be made by petition or by way of originating summons or notice of motion in accordance with the practice of the court in which the application is made.

Documents that must accompany initial application

- (2)** An initial application must be accompanied by
- (a)** a statement indicating, on a weekly basis, the projected cash flow of the debtor company;
 - (b)** a report containing the prescribed representations of the debtor company regarding the preparation of the cash-flow statement; and
 - (c)** copies of all financial statements, audited or unaudited, prepared during the year before the application or, if no such statements were prepared in that year, a copy of the most recent such statement.

Publication ban

(3) The court may make an order prohibiting the release to the public of any cash-flow statement, or any part of a cash-flow statement, if it is satisfied that the release would unduly prejudice the debtor company and the making of the order would not unduly prejudice the company's creditors, but the court may, in the order, direct that the cash-flow statement or any part of it be made

PARTIE II

Juridiction des tribunaux

Le tribunal a juridiction pour recevoir des demandes

9 (1) Toute demande prévue par la présente loi peut être faite au tribunal ayant juridiction dans la province où est situé le siège social ou le principal bureau d'affaires de la compagnie au Canada, ou, si la compagnie n'a pas de bureau d'affaires au Canada, dans la province où est situé quelque actif de la compagnie.

Un seul juge peut exercer les pouvoirs, sous réserve d'appel

(2) Les pouvoirs conférés au tribunal par la présente loi peuvent être exercés par un seul de ses juges, sous réserve de l'appel prévu par la présente loi. Ces pouvoirs peuvent être exercés en chambre, soit durant une session du tribunal, soit pendant les vacances judiciaires.

S.R., ch. C-25, art. 9.

Forme des demandes

10 (1) Les demandes prévues par la présente loi peuvent être formulées par requête ou par voie d'assignation introductive d'instance ou d'avis de motion conformément à la pratique du tribunal auquel la demande est présentée.

Documents accompagnant la demande initiale

- (2)** La demande initiale doit être accompagnée :
- a)** d'un état portant, projections à l'appui, sur l'évolution hebdomadaire de l'encaisse de la compagnie débitrice;
 - b)** d'un rapport contenant les observations réglementaires de la compagnie débitrice relativement à l'établissement de cet état;
 - c)** d'une copie des états financiers, vérifiés ou non, établis au cours de l'année précédant la demande ou, à défaut, d'une copie des états financiers les plus récents.

Interdiction de mettre l'état à la disposition du public

(3) Le tribunal peut, par ordonnance, interdire la communication au public de tout ou partie de l'état de l'évolution de l'encaisse de la compagnie débitrice s'il est convaincu que sa communication causerait un préjudice indu à celle-ci et que sa non-communication ne causerait pas de préjudice indu à ses créanciers. Il peut toutefois préciser dans l'ordonnance que tout ou partie de cet état

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available to any person specified in the order on any terms or conditions that the court considers appropriate.

R.S., 1985, c. C-36, s. 10; 2005, c. 47, s. 127.

General power of court

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

R.S., 1985, c. C-36, s. 11; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 124; 2005, c. 47, s. 128.

Rights of suppliers

11.01 No order made under section 11 or 11.02 has the effect of

(a) prohibiting a person from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided after the order is made; or

(b) requiring the further advance of money or credit.

2005, c. 47, s. 128.

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 30 days,

(a) staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

peut être communiqué, aux conditions qu'il estime indiquées, à la personne qu'il nomme.

L.R. (1985), ch. C-36, art. 10; 2005, ch. 47, art. 127.

Pouvoir général du tribunal

11 Malgré toute disposition de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*, le tribunal peut, dans le cas de toute demande sous le régime de la présente loi à l'égard d'une compagnie débitrice, rendre, sur demande d'un intéressé, mais sous réserve des restrictions prévues par la présente loi et avec ou sans avis, toute ordonnance qu'il estime indiquée.

L.R. (1985), ch. C-36, art. 11; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 1997, ch. 12, art. 124; 2005, ch. 47, art. 128.

Droits des fournisseurs

11.01 L'ordonnance prévue aux articles 11 ou 11.02 ne peut avoir pour effet :

a) d'empêcher une personne d'exiger que soient effectués sans délai les paiements relatifs à la fourniture de marchandises ou de services, à l'utilisation de biens loués ou faisant l'objet d'une licence ou à la fourniture de toute autre contrepartie de valeur qui ont lieu après l'ordonnance;

b) d'exiger le versement de nouvelles avances de fonds ou de nouveaux crédits.

2005, ch. 47, art. 128.

Suspension : demande initiale

11.02 (1) Dans le cas d'une demande initiale visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période maximale de trente jours qu'il estime nécessaire :

a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*;

b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;

c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.

Suspension : demandes autres qu'initiales

(2) Dans le cas d'une demande, autre qu'une demande initiale, visant une compagnie débitrice, le tribunal peut, par ordonnance, aux conditions qu'il peut imposer et pour la période qu'il estime nécessaire :

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(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

(a) the applicant satisfies the court that circumstances exist that make the order appropriate; and

(b) in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Restriction

(4) Orders doing anything referred to in subsection (1) or (2) may only be made under this section.

2005, c. 47, s. 128, 2007, c. 36, s. 62(F).

Stays – directors

11.03 (1) An order made under section 11.02 may provide that no person may commence or continue any action against a director of the company on any claim against directors that arose before the commencement of proceedings under this Act and that relates to obligations of the company if directors are under any law liable in their capacity as directors for the payment of those obligations, until a compromise or an arrangement in respect of the company, if one is filed, is sanctioned by the court or is refused by the creditors or the court.

Exception

(2) Subsection (1) does not apply in respect of an action against a director on a guarantee given by the director relating to the company's obligations or an action seeking injunctive relief against a director in relation to the company.

Persons deemed to be directors

(3) If all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of

a) suspendre, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime des lois mentionnées à l'alinéa (1)a);

b) surseoir, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;

c) interdire, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie.

Preuve

(3) Le tribunal ne rend l'ordonnance que si :

a) le demandeur le convainc que la mesure est opportune;

b) dans le cas de l'ordonnance visée au paragraphe (2), le demandeur le convainc en outre qu'il a agi et continue d'agir de bonne foi et avec la diligence voulue.

Restriction

(4) L'ordonnance qui prévoit l'une des mesures visées aux paragraphes (1) ou (2) ne peut être rendue qu'en vertu du présent article.

2005, ch. 47, art. 128, 2007, ch. 36, art. 62(F).

Suspension – administrateurs

11.03 (1) L'ordonnance prévue à l'article 11.02 peut interdire l'introduction ou la continuation de toute action contre les administrateurs de la compagnie relativement aux réclamations qui sont antérieures aux procédures intentées sous le régime de la présente loi et visent des obligations de la compagnie dont ils peuvent être, ès qualités, responsables en droit, tant que la transaction ou l'arrangement, le cas échéant, n'a pas été homologué par le tribunal ou rejeté par celui-ci ou les créanciers.

Exclusion

(2) La suspension ne s'applique toutefois pas aux actions contre les administrateurs pour les garanties qu'ils ont données relativement aux obligations de la compagnie ni aux mesures de la nature d'une injonction les visant au sujet de celle-ci.

Présomption : administrateurs

(3) Si tous les administrateurs démissionnent ou sont destitués par les actionnaires sans être remplacés, quoique dirige ou supervise les activités commerciales et

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the business and affairs of the company is deemed to be a director for the purposes of this section.

2005, c. 47, s. 128.

Persons obligated under letter of credit or guarantee

11.04 No order made under section 11.02 has effect on any action, suit or proceeding against a person, other than the company in respect of whom the order is made, who is obligated under a letter of credit or guarantee in relation to the company.

2005, c. 47, s. 128.

11.05 [Repealed, 2007, c. 29, s. 105]

Member of the Canadian Payments Association

11.06 No order may be made under this Act that has the effect of preventing a member of the Canadian Payments Association from ceasing to act as a clearing agent or group clearer for a company in accordance with the *Canadian Payments Act* or the by-laws or rules of that Association.

2005, c. 47, s. 128, 2007, c. 36, s. 64.

11.07 [Repealed, 2012, c. 31, s. 420]

Restriction — certain powers, duties and functions

11.08 No order may be made under section 11.02 that affects

(a) the exercise or performance by the Minister of Finance or the Superintendent of Financial Institutions of any power, duty or function assigned to them by the *Bank Act*, the *Cooperative Credit Associations Act*, the *Insurance Companies Act* or the *Trust and Loan Companies Act*;

(b) the exercise or performance by the Governor in Council, the Minister of Finance or the Canada Deposit Insurance Corporation of any power, duty or function assigned to them by the *Canada Deposit Insurance Corporation Act*; or

(c) the exercise by the Attorney General of Canada of any power, assigned to him or her by the *Winding-up and Restructuring Act*.

2005, c. 47, s. 128.

Stay — Her Majesty

11.09 (1) An order made under section 11.02 may provide that

(a) Her Majesty in right of Canada may not exercise rights under subsection 224(1.2) of the *Income Tax Act* or any provision of the *Canada Pension Plan* or of the

les affaires internes de la compagnie est réputé un administrateur pour l'application du présent article.

2005, ch. 47, art. 128.

Suspension — lettres de crédit ou garanties

11.04 L'ordonnance prévue à l'article 11.02 est sans effet sur toute action, poursuite ou autre procédure contre la personne — autre que la compagnie visée par l'ordonnance — qui a des obligations au titre de lettres de crédit ou de garanties se rapportant à la compagnie.

2005, ch. 47, art. 128.

11.05 [Abrogé, 2007, ch. 29, art. 105]

Membre de l'Association canadienne des paiements

11.06 Aucune ordonnance prévue par la présente loi ne peut avoir pour effet d'empêcher un membre de l'Association canadienne des paiements de cesser d'agir, pour une compagnie, à titre d'agent de compensation ou d'adhérent correspondant de groupe conformément à la *Loi canadienne sur les paiements* et aux règles et règlements administratifs de l'Association.

2005, ch. 47, art. 128; 2007, ch. 36, art. 64.

11.07 [Abrogé, 2012, ch. 31, art. 420]

Restrictions : exercice de certaines attributions

11.08 L'ordonnance prévue à l'article 11.02 ne peut avoir d'effet sur :

a) l'exercice par le ministre des Finances ou par le surintendant des institutions financières des attributions qui leur sont conférées par la *Loi sur les banques*, la *Loi sur les associations coopératives de crédit*, la *Loi sur les sociétés d'assurances* ou la *Loi sur les sociétés de fiducie et de prêt*;

b) l'exercice par le gouverneur en conseil, le ministre des Finances ou la Société d'assurance-dépôts du Canada des attributions qui leur sont conférées par la *Loi sur la Société d'assurance-dépôts du Canada*;

c) l'exercice par le procureur général du Canada des pouvoirs qui lui sont conférés par la *Loi sur les liquidations et les restructurations*.

2005, ch. 47, art. 128.

Suspension des procédures : Sa Majesté

11.09 (1) L'ordonnance prévue à l'article 11.02 peut avoir pour effet de suspendre :

a) l'exercice par Sa Majesté du chef du Canada des droits que lui confère le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* ou toute disposition du

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Employment Insurance Act that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, in respect of the company if the company is a tax debtor under that subsection or provision, for the period that the court considers appropriate but ending not later than

- (i) the expiry of the order,
- (ii) the refusal of a proposed compromise by the creditors or the court,
- (iii) six months following the court sanction of a compromise or an arrangement,
- (iv) the default by the company on any term of a compromise or an arrangement, or
- (v) the performance of a compromise or an arrangement in respect of the company; and

(b) Her Majesty in right of a province may not exercise rights under any provision of provincial legislation in respect of the company if the company is a debtor under that legislation and the provision has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

- (i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or
- (ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a *provincial pension plan* as defined in that subsection,

for the period that the court considers appropriate but ending not later than the occurrence or time referred to in whichever of subparagraphs (a)(i) to (v) that may apply.

Régime de pensions du Canada ou de la *Loi sur l'assurance-emploi* qui renvoie à ce paragraphe et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi ainsi que des intérêts, pénalités et autres charges afférents, à l'égard d'une compagnie qui est un débiteur fiscal visé à ce paragraphe ou à cette disposition, pour la période se terminant au plus tard :

- (i) à l'expiration de l'ordonnance,
- (ii) au moment du rejet, par le tribunal ou les créanciers, de la transaction proposée,
- (iii) six mois après que le tribunal a homologué la transaction ou l'arrangement,
- (iv) au moment de tout défaut d'exécution de la transaction ou de l'arrangement,
- (v) au moment de l'exécution intégrale de la transaction ou de l'arrangement;

(b) l'exercice par Sa Majesté du chef d'une province, pour la période que le tribunal estime indiquée et se terminant au plus tard au moment visé à celui des sous-alinéas a)(i) à (v) qui, le cas échéant, est applicable, des droits que lui confère toute disposition législative de cette province à l'égard d'une compagnie qui est un débiteur visé par la loi provinciale, s'il s'agit d'une disposition dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, et qui prévoit la perception d'une somme, ainsi que des intérêts, pénalités et autres charges afférents, laquelle :

- (i) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,
- (ii) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est une province instituant un régime général de pensions au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un régime provincial de pensions au sens de ce paragraphe.

When order ceases to be in effect

(2) The portions of an order made under section 11.02 that affect the exercise of rights of Her Majesty referred to in paragraph (1)(a) or (b) cease to be in effect if

(a) the company defaults on the payment of any amount that becomes due to Her Majesty after the order is made and could be subject to a demand under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a *provincial pension plan* as defined in that subsection; or

(b) any other creditor is or becomes entitled to realize a security on any property that could be claimed by Her Majesty in exercising rights under

(i) subsection 224(1.2) of the *Income Tax Act*,

(ii) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1

Cessation d'effet

(2) Les passages de l'ordonnance qui suspendent l'exercice des droits de Sa Majesté visés aux alinéas (1)a) ou b) cessent d'avoir effet dans les cas suivants :

a) la compagnie manque à ses obligations de paiement à l'égard de toute somme qui devient due à Sa Majesté après le prononcé de l'ordonnance et qui pourrait faire l'objet d'une demande aux termes d'une des dispositions suivantes :

(i) le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*,

(ii) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi ainsi que des intérêts, pénalités et autres charges afférents,

(iii) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, et qui prévoit la perception d'une somme, ainsi que des intérêts, pénalités et autres charges afférents, laquelle :

(A) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(B) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est une province instituant un régime général de pensions au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un régime provincial de pensions au sens de ce paragraphe;

b) un autre créancier a ou acquiert le droit de réaliser sa garantie sur un bien qui pourrait être réclamé par Sa Majesté dans l'exercice des droits que lui confère l'une des dispositions suivantes :

(i) le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*,

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of that Act, and of any related interest, penalties or other amounts, or

(iii) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, and the sum

(A) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(B) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a *provincial pension plan* as defined in that subsection.

Operation of similar legislation

(3) An order made under section 11.02, other than the portions of that order that affect the exercise of rights of Her Majesty referred to in paragraph (1)(a) or (b), does not affect the operation of

(a) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any

(ii) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi ainsi que des intérêts, pénalités et autres charges afférents,

(iii) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, et qui prévoit la perception d'une somme, ainsi que des intérêts, pénalités et autres charges afférents, laquelle :

(A) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(B) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est une province instituant un régime général de pensions au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un régime provincial de pensions au sens de ce paragraphe.

Effet

(3) L'ordonnance prévue à l'article 11.02, à l'exception des passages de celle-ci qui suspendent l'exercice des droits de Sa Majesté visés aux alinéas (1)a) ou b), n'a pas pour effet de porter atteinte à l'application des dispositions suivantes :

a) les paragraphes 224(1.2) et (1.3) de la *Loi de l'impôt sur le revenu*;

b) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi ainsi que des intérêts, pénalités et autres charges afférents;

c) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce

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related interest, penalties or other amounts, and the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a province providing a comprehensive pension plan as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a provincial pension plan as defined in that subsection,

and for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

2005, c. 47, s. 128; 2009, c. 33, s. 28.

Meaning of regulatory body

11.1 (1) In this section, **regulatory body** means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a province and includes a person or body that is prescribed to be a regulatory body for the purpose of this Act.

Regulatory bodies — order under section 11.02

(2) Subject to subsection (3), no order made under section 11.02 affects a regulatory body's investigation in respect of the debtor company or an action, suit or proceeding that is taken in respect of the company by or before the regulatory body, other than the enforcement of a payment ordered by the regulatory body or the court.

Exception

(3) On application by the company and on notice to the regulatory body and to the persons who are likely to be affected by the order, the court may order that subsection (2) not apply in respect of one or more of the actions, suits or proceedings taken by or before the regulatory body if in the court's opinion

paragraphe, et qui prévoit la perception d'une somme, ainsi que des intérêts, pénalités et autres charges afférents, laquelle :

(i) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(ii) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est une province instituant un régime général de pensions au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un régime provincial de pensions au sens de ce paragraphe.

Pour l'application de l'alinéa c), la disposition législative provinciale en question est réputée avoir, à l'encontre de tout créancier et malgré tout texte législatif fédéral ou provincial et toute autre règle de droit, la même portée et le même effet que le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* quant à la somme visée au sous-alinéa c)(i), ou que le paragraphe 23(2) du *Régime de pensions du Canada* quant à la somme visée au sous-alinéa c)(ii), et quant aux intérêts, pénalités et autres charges afférents, quelle que soit la garantie dont bénéficie le créancier.

2005, ch. 47, art. 128; 2009, ch. 33, art. 28.

Définition de organisme administratif

11.1 (1) Au présent article, **organisme administratif** s'entend de toute personne ou de tout organisme chargé de l'application d'une loi fédérale ou provinciale; y est assimilé toute personne ou tout organisme désigné à ce titre par règlement.

Organisme administratif — ordonnance rendue en vertu de l'article 11.02

(2) Sous réserve du paragraphe (3), l'ordonnance prévue à l'article 11.02 ne porte aucunement atteinte aux mesures — action, poursuite ou autre procédure — prises à l'égard de la compagnie débitrice par ou devant un organisme administratif, ni aux investigations auxquelles il procède à son sujet. Elles n'ont d'effet que sur l'exécution d'un paiement ordonné par lui ou le tribunal.

Exception

(3) Le tribunal peut par ordonnance, sur demande de la compagnie et sur préavis à l'organisme administratif et à toute personne qui sera vraisemblablement touchée par l'ordonnance, déclarer que le paragraphe (2) ne s'applique pas à l'une ou plusieurs des mesures prises par ou devant celui-ci, s'il est convaincu que, à la fois :

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(a) a viable compromise or arrangement could not be made in respect of the company if that subsection were to apply; and

(b) it is not contrary to the public interest that the regulatory body be affected by the order made under section 11.02.

Declaration — enforcement of a payment

(4) If there is a dispute as to whether a regulatory body is seeking to enforce its rights as a creditor, the court may, on application by the company and on notice to the regulatory body, make an order declaring both that the regulatory body is seeking to enforce its rights as a creditor and that the enforcement of those rights is stayed.

1997, c. 12, s. 124; 2001, c. 9, s. 576; 2005, c. 47, s. 128; 2007, c. 29, s. 106, c. 36, s. 65.

11.11 [Repealed, 2005, c. 47, s. 128]

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company's property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

(a) the period during which the company is expected to be subject to proceedings under this Act;

a) il ne pourrait être fait de transaction ou d'arrangement viable à l'égard de la compagnie si ce paragraphe s'appliquait;

b) l'ordonnance demandée au titre de l'article 11.02 n'est pas contraire à l'intérêt public.

Déclaration : organisme agissant à titre de créancier

(4) En cas de différend sur la question de savoir si l'organisme administratif cherche à faire valoir ses droits à titre de créancier dans le cadre de la mesure prise, le tribunal peut déclarer, par ordonnance, sur demande de la compagnie et sur préavis à l'organisme, que celui-ci agit effectivement à ce titre et que la mesure est suspendue.

1997, ch. 12, art. 124; 2001, ch. 9, art. 576; 2005, ch. 47, art. 128; 2007, ch. 29, art. 106, ch. 36, art. 65.

11.11 [Abrogé, 2005, ch. 47, art. 128]

Financement temporaire

11.2 (1) Sur demande de la compagnie débitrice, le tribunal peut par ordonnance, sur préavis de la demande aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la compagnie sont grevés d'une charge ou sûreté — d'un montant qu'il estime indiqué — en faveur de la personne nommée dans l'ordonnance qui accepte de prêter à la compagnie la somme qu'il approuve compte tenu de l'état de l'évolution de l'encaisse et des besoins de celle-ci. La charge ou sûreté ne peut garantir qu'une obligation postérieure au prononcé de l'ordonnance.

Priorité — créanciers garantis

(2) Le tribunal peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

Priorité — autres ordonnances

(3) Il peut également y préciser que la charge ou sûreté n'a priorité sur toute autre charge ou sûreté grevant les biens de la compagnie au titre d'une ordonnance déjà rendue en vertu du paragraphe (1) que sur consentement de la personne en faveur de qui cette ordonnance a été rendue.

Facteurs à prendre en considération

(4) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

a) la durée prévue des procédures intentées à l'égard de la compagnie sous le régime de la présente loi;

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(b) how the company's business and financial affairs are to be managed during the proceedings;

(c) whether the company's management has the confidence of its major creditors;

(d) whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) the nature and value of the company's property;

(f) whether any creditor would be materially prejudiced as a result of the security or charge; and

(g) the monitor's report referred to in paragraph 23(1)(b), if any.

1997, c. 12, s. 124; 2005, c. 47, s. 128; 2007, c. 36, s. 65.

Assignment of agreements

11.3 (1) On application by a debtor company and on notice to every party to an agreement and the monitor, the court may make an order assigning the rights and obligations of the company under the agreement to any person who is specified by the court and agrees to the assignment.

Exceptions

(2) Subsection (1) does not apply in respect of rights and obligations that are not assignable by reason of their nature or that arise under

(a) an agreement entered into on or after the day on which proceedings commence under this Act;

(b) an eligible financial contract; or

(c) a collective agreement.

Factors to be considered

(3) In deciding whether to make the order, the court is to consider, among other things,

(a) whether the monitor approved the proposed assignment;

(b) whether the person to whom the rights and obligations are to be assigned would be able to perform the obligations; and

(c) whether it would be appropriate to assign the rights and obligations to that person.

Restriction

(4) The court may not make the order unless it is satisfied that all monetary defaults in relation to the

(b) la façon dont les affaires financières et autres de la compagnie seront gérées au cours de ces procédures;

(c) la question de savoir si ses dirigeants ont la confiance de ses créanciers les plus importants;

(d) la question de savoir si le prêt favorisera la conclusion d'une transaction ou d'un arrangement viable à l'égard de la compagnie;

(e) la nature et la valeur des biens de la compagnie;

(f) la question de savoir si la charge ou sûreté causera un préjudice sérieux à l'un ou l'autre des créanciers de la compagnie;

(g) le rapport du contrôleur visé à l'alinéa 23(1)b).

1997, ch. 12, art. 124; 2005, ch. 47, art. 128; 2007, ch. 36, art. 65.

Cessions

11.3 (1) Sur demande de la compagnie débitrice et sur préavis à toutes les parties au contrat et au contrôleur, le tribunal peut, par ordonnance, céder à toute personne qu'il précise et qui y a consenti les droits et obligations de la compagnie découlant du contrat.

Exceptions

(2) Le paragraphe (1) ne s'applique pas aux droits et obligations qui, de par leur nature, ne peuvent être cédés ou qui découlent soit d'un contrat conclu à la date à laquelle une procédure a été intentée sous le régime de la présente loi ou par la suite, soit d'un contrat financier admissible, soit d'une convention collective.

Facteurs à prendre en considération

(3) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

(a) l'acquiescement du contrôleur au projet de cession, le cas échéant;

(b) la capacité de la personne à qui les droits et obligations seraient cédés d'exécuter les obligations;

(c) l'opportunité de lui céder les droits et obligations.

Restriction

(4) Il ne peut rendre l'ordonnance que s'il est convaincu qu'il sera remédié, au plus tard à la date qu'il fixe, à tous

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agreement — other than those arising by reason only of the company's insolvency, the commencement of proceedings under this Act or the company's failure to perform a non-monetary obligation — will be remedied on or before the day fixed by the court.

Copy of order

(5) The applicant is to send a copy of the order to every party to the agreement.

1997, c. 12, s. 124; 2005, c. 47, s. 128; 2007, c. 29, s. 107, c. 36, ss. 65, 112.

11.31 [Repealed, 2005, c. 47, s. 128]

Critical supplier

11.4 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring a person to be a critical supplier to the company if the court is satisfied that the person is a supplier of goods or services to the company and that the goods or services that are supplied are critical to the company's continued operation.

Obligation to supply

(2) If the court declares a person to be a critical supplier, the court may make an order requiring the person to supply any goods or services specified by the court to the company on any terms and conditions that are consistent with the supply relationship or that the court considers appropriate.

Security or charge in favour of critical supplier

(3) If the court makes an order under subsection (2), the court shall, in the order, declare that all or part of the property of the company is subject to a security or charge in favour of the person declared to be a critical supplier, in an amount equal to the value of the goods or services supplied under the terms of the order.

Priority

(4) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

1997, c. 12, s. 124; 2000, c. 30, s. 156; 2001, c. 34, s. 33(E); 2005, c. 47, s. 128; 2007, c. 36, s. 65.

Removal of directors

11.5 (1) The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor company in respect of which an order has been made under this Act if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable compromise or arrangement being made in respect of the

les manquements d'ordre pécuniaire relatifs au contrat, autres que ceux découlant du seul fait que la compagnie est insolvable, est visée par une procédure intentée sous le régime de la présente loi ou ne s'est pas conformée à une obligation non pécuniaire.

Copie de l'ordonnance

(5) Le demandeur envoie une copie de l'ordonnance à toutes les parties au contrat.

1997, ch. 12, art. 124; 2005, ch. 47, art. 128; 2007, ch. 29, art. 107, ch. 36, art. 65 et 112.

11.31 [Abrogé, 2005, ch. 47, art. 128]

Fournisseurs essentiels

11.4 (1) Sur demande de la compagnie débitrice, le tribunal peut par ordonnance, sur préavis de la demande aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer toute personne fournisseur essentiel de la compagnie s'il est convaincu que cette personne est un fournisseur de la compagnie et que les marchandises ou les services qu'elle lui fournit sont essentiels à la continuation de son exploitation.

Obligation de fourniture

(2) S'il fait une telle déclaration, le tribunal peut ordonner à la personne déclarée fournisseur essentiel de la compagnie de fournir à celle-ci les marchandises ou services qu'il précise, à des conditions compatibles avec les modalités qui régissaient antérieurement leur fourniture ou aux conditions qu'il estime indiquées.

Charge ou sûreté en faveur du fournisseur essentiel

(3) Le cas échéant, le tribunal déclare dans l'ordonnance que tout ou partie des biens de la compagnie sont grevés d'une charge ou sûreté, en faveur de la personne déclarée fournisseur essentiel, d'un montant correspondant à la valeur des marchandises ou services fournis en application de l'ordonnance.

Priorité

(4) Il peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

1997, ch. 12, art. 124; 2000, ch. 30, art. 156; 2001, ch. 34, art. 33(A); 2005, ch. 47, art. 128; 2007, ch. 36, art. 65.

Révocation des administrateurs

11.5 (1) Sur demande d'un intéressé, le tribunal peut, par ordonnance, révoquer tout administrateur de la compagnie débitrice à l'égard de laquelle une ordonnance a été rendue sous le régime de la présente loi s'il est convaincu que ce dernier, sans raisons valables, compromet ou compromettra vraisemblablement la possibilité de conclure une transaction ou un arrangement viable ou

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company or is acting or is likely to act inappropriately as a director in the circumstances.

Filling vacancy

(2) The court may, by order, fill any vacancy created under subsection (1).

1997, c. 12, s. 124; 2005, c. 47, s. 128.

Security or charge relating to director's indemnification

11.51 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of the company is subject to a security or charge — in an amount that the court considers appropriate — in favour of any director or officer of the company to indemnify the director or officer against obligations and liabilities that they may incur as a director or officer of the company after the commencement of proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Restriction — indemnification insurance

(3) The court may not make the order if in its opinion the company could obtain adequate indemnification insurance for the director or officer at a reasonable cost.

Negligence, misconduct or fault

(4) The court shall make an order declaring that the security or charge does not apply in respect of a specific obligation or liability incurred by a director or officer if in its opinion the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct or, in Quebec, the director's or officer's gross or intentional fault.

2005, c. 47, s. 128; 2007, c. 36, s. 66.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

(a) the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor's duties;

agit ou agira vraisemblablement de façon inacceptable dans les circonstances.

Vacance

(2) Le tribunal peut, par ordonnance, combler toute vacance découlant de la révocation.

1997, ch. 12, art. 124; 2005, ch. 47, art. 128.

Biens grevés d'une charge ou sûreté en faveur d'administrateurs ou de dirigeants

11.51 (1) Sur demande de la compagnie débitrice, le tribunal peut par ordonnance, sur préavis de la demande aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de celle-ci sont grevés d'une charge ou sûreté, d'un montant qu'il estime indiqué, en faveur d'un ou de plusieurs administrateurs ou dirigeants pour l'exécution des obligations qu'ils peuvent contracter en cette qualité après l'introduction d'une procédure sous le régime de la présente loi.

Priorité

(2) Il peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

Restriction — assurance

(3) Il ne peut toutefois rendre une telle ordonnance s'il estime que la compagnie peut souscrire, à un coût qu'il estime juste, une assurance permettant d'indemniser adéquatement les administrateurs ou dirigeants.

Négligence, inconduite ou faute

(4) Il déclare, dans l'ordonnance, que la charge ou sûreté ne vise pas les obligations que l'administrateur ou le dirigeant assume, selon lui, par suite de sa négligence grave ou de son inconduite délibérée ou, au Québec, par sa faute lourde ou intentionnelle.

2005, ch. 47, art. 128; 2007, ch. 36, art. 66.

Biens grevés d'une charge ou sûreté pour couvrir certains frais

11.52 (1) Le tribunal peut par ordonnance, sur préavis aux créanciers garantis qui seront vraisemblablement touchés par la charge ou sûreté, déclarer que tout ou partie des biens de la compagnie débitrice sont grevés d'une charge ou sûreté, d'un montant qu'il estime indiqué, pour couvrir :

a) les débours et honoraires du contrôleur, ainsi que ceux des experts — notamment en finance et en droit

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(b) any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Priority

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

2005, c. 47, s. 128; 2007, c. 36, s. 66.

Bankruptcy and Insolvency Act matters

11.6 Notwithstanding the *Bankruptcy and Insolvency Act*,

(a) proceedings commenced under Part III of the *Bankruptcy and Insolvency Act* may be taken up and continued under this Act only if a proposal within the meaning of the *Bankruptcy and Insolvency Act* has not been filed under that Part; and

(b) an application under this Act by a bankrupt may only be made with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act* but no application may be made under this Act by a bankrupt whose bankruptcy has resulted from

(i) the operation of subsection 50.4(8) of the *Bankruptcy and Insolvency Act*, or

(ii) the refusal or deemed refusal by the creditors or the court, or the annulment, of a proposal under the *Bankruptcy and Insolvency Act*.

1997, c. 12, s. 124.

Court to appoint monitor

11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Restrictions on who may be monitor

(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

— dont il retient les services dans le cadre de ses fonctions;

b) ceux des experts dont la compagnie retient les services dans le cadre de procédures intentées sous le régime de la présente loi;

c) ceux des experts dont tout autre intéressé retient les services, si, à son avis, la charge ou sûreté était nécessaire pour assurer sa participation efficace aux procédures intentées sous le régime de la présente loi.

Priorité

(2) Il peut préciser, dans l'ordonnance, que la charge ou sûreté a priorité sur toute réclamation des créanciers garantis de la compagnie.

2005, ch. 47, art. 128; 2007, ch. 36, art. 66.

Lien avec la Loi sur la faillite et l'insolvabilité

11.6 Par dérogation à la *Loi sur la faillite et l'insolvabilité* :

a) les procédures intentées sous le régime de la partie III de cette loi ne peuvent être traitées et continuées sous le régime de la présente loi que si une proposition au sens de la *Loi sur la faillite et l'insolvabilité* n'a pas été déposée au titre de cette même partie;

b) le failli ne peut faire une demande au titre de la présente loi qu'avec l'aval des inspecteurs visés à l'article 116 de la *Loi sur la faillite et l'insolvabilité*, aucune demande ne pouvant toutefois être faite si la faillite découle, selon le cas :

(i) de l'application du paragraphe 50.4(8) de la *Loi sur la faillite et l'insolvabilité*,

(ii) du rejet — effectif ou présumé — de sa proposition par les créanciers ou le tribunal ou de l'annulation de celle-ci au titre de cette loi.

1997, ch. 12, art. 124.

Nomination du contrôleur

11.7 (1) Le tribunal qui rend une ordonnance sur la demande initiale nomme une personne pour agir à titre de contrôleur des affaires financières ou autres de la compagnie débitrice visée par la demande. Seul un syndic au sens du paragraphe 2(1) de la *Loi sur la faillite et l'insolvabilité* peut être nommé pour agir à titre de contrôleur.

Personnes qui ne peuvent agir à titre de contrôleur

(2) Sauf avec l'autorisation du tribunal et aux conditions qu'il peut fixer, ne peut être nommé pour agir à titre de contrôleur le syndic :

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(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

Court may replace monitor

(3) On application by a creditor of the company, the court may, if it considers it appropriate in the circumstances, replace the monitor by appointing another trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*, to monitor the business and financial affairs of the company.

1997, c. 12, s. 124; 2005, c. 47, s. 129.

No personal liability in respect of matters before appointment

11.8 (1) Despite anything in federal or provincial law, if a monitor, in that position, carries on the business of a debtor company or continues the employment of a debtor company's employees, the monitor is not by reason of that fact personally liable in respect of a liability, including one as a successor employer,

(a) that is in respect of the employees or former employees of the company or a predecessor of the company or in respect of a pension plan for the benefit of those employees; and

(b) that exists before the monitor is appointed or that is calculated by reference to a period before the appointment.

Status of liability

(2) A liability referred to in subsection (1) shall not rank as costs of administration.

a) qui est ou, au cours des deux années précédentes, a été :

(i) administrateur, dirigeant ou employé de la compagnie,

(ii) lié à la compagnie ou à l'un de ses administrateurs ou dirigeants,

(iii) vérificateur, comptable ou conseiller juridique de la compagnie, ou employé ou associé de l'un ou l'autre;

b) qui est :

(i) le fondé de pouvoir aux termes d'un acte constitutif d'hypothèque — au sens du *Code civil du Québec* — émanant de la compagnie ou d'une personne liée à celle-ci ou le fiduciaire aux termes d'un acte de fiducie émanant de la compagnie ou d'une personne liée à celle-ci,

(ii) lié au fondé de pouvoir ou au fiduciaire visé au sous-alinéa (i).

Remplacement du contrôleur

(3) Sur demande d'un créancier de la compagnie, le tribunal peut, s'il l'estime indiqué dans les circonstances, remplacer le contrôleur en nommant un autre syndic, au sens du paragraphe 2(1) de la *Loi sur la faillite et l'insolvabilité*, pour agir à ce titre à l'égard des affaires financières et autres de la compagnie.

1997, ch. 12, art. 124; 2005, ch. 47, art. 129.

Immunité

11.8 (1) Par dérogation au droit fédéral et provincial, le contrôleur qui, en cette qualité, continue l'exploitation de l'entreprise de la compagnie débitrice ou lui succède comme employeur est dégagé de toute responsabilité personnelle découlant de quelque obligation de la compagnie, notamment à titre d'employeur successeur, si celle-ci, à la fois :

a) l'oblige envers des employés ou anciens employés de la compagnie, ou de l'un de ses prédécesseurs, ou découle d'un régime de pension pour le bénéfice de ces employés;

b) existait avant sa nomination ou est calculée par référence à une période la précédant.

Obligation exclue des frais

(2) L'obligation visée au paragraphe (1) ne fait pas partie des frais d'administration.

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Liability of other successor employers

(2.1) Subsection (1) does not affect the liability of a successor employer other than the monitor.

Liability in respect of environmental matters

(3) Notwithstanding anything in any federal or provincial law, a monitor is not personally liable in that position for any environmental condition that arose or environmental damage that occurred

(a) before the monitor's appointment; or

(b) after the monitor's appointment unless it is established that the condition arose or the damage occurred as a result of the monitor's gross negligence or wilful misconduct.

Reports, etc., still required

(4) Nothing in subsection (3) exempts a monitor from any duty to report or make disclosure imposed by a law referred to in that subsection.

Non-liability re certain orders

(5) Notwithstanding anything in any federal or provincial law but subject to subsection (3), where an order is made which has the effect of requiring a monitor to remedy any environmental condition or environmental damage affecting property involved in a proceeding under this Act, the monitor is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,

(a) if, within such time as is specified in the order, within ten days after the order is made if no time is so specified, within ten days after the appointment of the monitor, if the order is in effect when the monitor is appointed or during the period of the stay referred to in paragraph (b), the monitor

(i) complies with the order, or

(ii) on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;

(b) during the period of a stay of the order granted, on application made within the time specified in the order referred to in paragraph (a) or within ten days after the order is made or within ten days after the appointment of the monitor, if the order is in effect when the monitor is appointed, by

Responsabilité de l'employeur successeur

(2.1) Le paragraphe (1) ne dégage aucun employeur successeur, autre que le contrôleur, de sa responsabilité.

Responsabilité en matière d'environnement

(3) Par dérogation au droit fédéral et provincial, le contrôleur est, ès qualités, dégage de toute responsabilité personnelle découlant de tout fait ou dommage lié à l'environnement survenu, avant ou après sa nomination, sauf celui causé par sa négligence grave ou son inconduite délibérée.

Rapports

(4) Le paragraphe (3) n'a pas pour effet de soustraire le contrôleur à l'obligation de faire rapport ou de communiquer des renseignements prévus par le droit applicable en l'espèce.

Immunité — ordonnances

(5) Par dérogation au droit fédéral et provincial, mais sous réserve du paragraphe (3), le contrôleur est, ès qualités, dégage de toute responsabilité personnelle découlant du non-respect de toute ordonnance de réparation de tout fait ou dommage lié à l'environnement et touchant un bien visé par des procédures intentées au titre de la présente loi, et de toute responsabilité personnelle relativement aux frais engagés par toute personne exécutant l'ordonnance :

a) si, dans les dix jours suivant l'ordonnance ou dans le délai fixé par celle-ci, dans les dix jours suivant sa nomination si l'ordonnance est alors en vigueur ou pendant la durée de la suspension visée à l'alinéa b) :

(i) il s'y conforme,

(ii) il abandonne, après avis à la personne ayant rendu l'ordonnance, tout intérêt dans l'immeuble en cause, en dispose ou s'en dessaisit;

b) pendant la durée de la suspension de l'ordonnance qui est accordée, sur demande présentée dans les dix jours suivant l'ordonnance visée à l'alinéa a) ou dans le délai fixé par celle-ci, ou dans les dix jours suivant sa nomination si l'ordonnance est alors en vigueur :

(i) soit par le tribunal ou l'autorité qui a compétence relativement à l'ordonnance, en vue de permettre au contrôleur de la contester,

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(i) the court or body having jurisdiction under the law pursuant to which the order was made to enable the monitor to contest the order, or

(ii) the court having jurisdiction under this Act for the purposes of assessing the economic viability of complying with the order; or

(c) if the monitor had, before the order was made, abandoned or renounced any interest in any real property affected by the condition or damage.

Stay may be granted

(6) The court may grant a stay of the order referred to in subsection (5) on such notice and for such period as the court deems necessary for the purpose of enabling the monitor to assess the economic viability of complying with the order.

Costs for remedying not costs of administration

(7) Where the monitor has abandoned or renounced any interest in real property affected by the environmental condition or environmental damage, claims for costs of remedying the condition or damage shall not rank as costs of administration.

Priority of claims

(8) Any claim by Her Majesty in right of Canada or a province against a debtor company in respect of which proceedings have been commenced under this Act for costs of remedying any environmental condition or environmental damage affecting real property of the company is secured by a charge on the real property and on any other real property of the company that is contiguous thereto and that is related to the activity that caused the environmental condition or environmental damage, and the charge

(a) is enforceable in accordance with the law of the jurisdiction in which the real property is located, in the same way as a mortgage, hypothec or other security on real property; and

(b) ranks above any other claim, right or charge against the property, notwithstanding any other provision of this Act or anything in any other federal or provincial law.

Claim for clean-up costs

(9) A claim against a debtor company for costs of remedying any environmental condition or environmental damage affecting real property of the company shall be a claim under this Act, whether the condition arose or the

(ii) soit par le tribunal qui a compétence en matière de faillite, en vue d'évaluer les conséquences économiques du respect de l'ordonnance;

c) si, avant que l'ordonnance ne soit rendue, il avait abandonné tout intérêt dans le bien immeuble en cause ou y avait renoncé, ou s'en était dessaisi.

Suspension

(6) En vue de permettre au contrôleur d'évaluer les conséquences économiques du respect de l'ordonnance, le tribunal peut en ordonner la suspension après avis et pour la période qu'il estime indiqués.

Frais

(7) Si le contrôleur a abandonné tout intérêt dans le bien immeuble en cause ou y a renoncé, les réclamations pour les frais de réparation du fait ou dommage lié à l'environnement et touchant le bien ne font pas partie des frais d'administration.

Priorité des réclamations

(8) Dans le cas où des procédures ont été intentées au titre de la présente loi contre une compagnie débitrice, toute réclamation de Sa Majesté du chef du Canada ou d'une province contre elle pour les frais de réparation du fait ou dommage lié à l'environnement et touchant un de ses biens immeubles est garantie par une sûreté sur le bien immeuble en cause et sur ceux qui sont contigus à celui où le dommage est survenu et qui sont liés à l'activité ayant causé le fait ou le dommage; la sûreté peut être exécutée selon le droit du lieu où est situé le bien comme s'il s'agissait d'une hypothèque ou autre garantie sur celui-ci et, par dérogation aux autres dispositions de la présente loi et à toute règle de droit fédéral et provincial, a priorité sur tout autre droit, charge ou réclamation visant le bien.

Précision

(9) La réclamation pour les frais de réparation du fait ou dommage lié à l'environnement et touchant un bien immeuble de la compagnie débitrice constitue une réclamation, que la date du fait ou dommage soit antérieure ou

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damage occurred before or after the date on which proceedings under this Act were commenced.

1997, c. 12, s. 124; 2007, c. 36, s. 67.

Fixing deadlines

12 The court may fix deadlines for the purposes of voting and for the purposes of distributions under a compromise or arrangement.

R.S., 1985, c. C-36, s. 12; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 2004, c. 25, s. 195; 2005, c. 47, s. 130; 2007, c. 36, s. 68.

Leave to appeal

13 Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

R.S., 1985, c. C-36, s. 13; 2002, c. 7, s. 134.

Court of appeal

14 (1) An appeal under section 13 lies to the highest court of final resort in or for the province in which the proceeding originated.

Practice

(2) All appeals under section 13 shall be regulated as far as possible according to the practice in other cases of the court appealed to, but no appeal shall be entertained unless, within twenty-one days after the rendering of the order or decision being appealed, or within such further time as the court appealed from, or, in Yukon, a judge of the Supreme Court of Canada, allows, the appellant has taken proceedings therein to perfect his or her appeal, and within that time he or she has made a deposit or given sufficient security according to the practice of the court appealed to that he or she will duly prosecute the appeal and pay such costs as may be awarded to the respondent and comply with any terms as to security or otherwise imposed by the judge giving leave to appeal.

R.S., 1985, c. C-36, s. 14; 2002, c. 7, s. 135.

Appeals

15 (1) An appeal lies to the Supreme Court of Canada on leave therefor being granted by that Court from the highest court of final resort in or for the province or territory in which the proceeding originated.

postérieure à celle où des procédures sont intentées au titre de la présente loi.

1997, ch. 12, art. 124; 2007, ch. 36, art. 67.

Échéances

12 Le tribunal peut fixer des échéances aux fins de votation et aux fins de distribution aux termes d'une transaction ou d'un arrangement.

L.R. (1985), ch. C-36, art. 12; 1992, ch. 27, art. 90; 1996, ch. 6, art. 167; 2004, ch. 25, art. 195; 2005, ch. 47, art. 130; 2007, ch. 36, art. 68.

Permission d'en appeler

13 Sauf au Yukon, toute personne mécontente d'une ordonnance ou décision rendue en application de la présente loi peut en appeler après avoir obtenu la permission du juge dont la décision fait l'objet d'un appel ou après avoir obtenu la permission du tribunal ou d'un juge du tribunal auquel l'appel est porté et aux conditions que prescrit ce juge ou tribunal concernant le cautionnement et à d'autres égards.

L.R. (1985), ch. C-36, art. 13; 2002, ch. 7, art. 134.

Cour d'appel

14 (1) Cet appel doit être porté au tribunal de dernier ressort de la province où la procédure a pris naissance.

Pratique

(2) Tous ces appels sont régis autant que possible par la pratique suivie dans d'autres causes devant le tribunal saisi de l'appel; toutefois, aucun appel n'est recevable à moins que, dans le délai de vingt et un jours après qu'a été rendue l'ordonnance ou la décision faisant l'objet de l'appel, ou dans le délai additionnel que peut accorder le tribunal dont il est interjeté appel ou, au Yukon, un juge de la Cour suprême du Canada, l'appelant n'y ait pris des procédures pour parfaire son appel, et à moins que, dans ce délai, il n'ait fait un dépôt ou fourni un cautionnement suffisant selon la pratique du tribunal saisi de l'appel pour garantir qu'il poursuivra dûment l'appel et payera les frais qui peuvent être adjugés à l'intimé et se conformera aux conditions relatives au cautionnement ou autres qu'impose le juge donnant la permission d'en appeler.

L.R. (1985), ch. C-36, art. 14; 2002, ch. 7, art. 135.

Appels

15 (1) Un appel peut être interjeté à la Cour suprême du Canada sur autorisation à cet effet accordée par ce tribunal, du plus haut tribunal de dernier ressort de la province ou du territoire où la procédure a pris naissance.

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Jurisdiction of Supreme Court of Canada

(2) The Supreme Court of Canada shall have jurisdiction to hear and to decide according to its ordinary procedure any appeal under subsection (1) and to award costs.

Stay of proceedings

(3) No appeal to the Supreme Court of Canada shall operate as a stay of proceedings unless and to the extent ordered by that Court.

Security for costs

(4) The appellant in an appeal under subsection (1) shall not be required to provide any security for costs, but, unless he provides security for costs in an amount to be fixed by the Supreme Court of Canada, he shall not be awarded costs in the event of his success on the appeal.

Decision final

(5) The decision of the Supreme Court of Canada on any appeal under subsection (1) is final and conclusive.

R.S., c. C-25, s. 15; R.S., c. 44(1st Suppl.), s. 10.

Order of court of one province

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

R.S., c. C-25, s. 16.

Courts shall aid each other on request

17 All courts that have jurisdiction under this Act and the officers of those courts shall act in aid of and be auxiliary to each other in all matters provided for in this Act, and an order of a court seeking aid with a request to another court shall be deemed sufficient to enable the latter court to exercise in regard to the matters directed by the order such jurisdiction as either the court that made the request or the court to which the request is made could exercise in regard to similar matters within their respective jurisdictions.

R.S., c. C-25, s. 17.

18 [Repealed, 2005, c. 47, s. 131]

18.1 [Repealed, 2005, c. 47, s. 131]

18.2 [Repealed, 2005, c. 47, s. 131]

18.3 [Repealed, 2005, c. 47, s. 131]

Juridiction de la Cour suprême du Canada

(2) La Cour suprême du Canada a juridiction pour entendre et décider, selon sa procédure ordinaire, tout appel ainsi permis et pour adjuger des frais.

Suspension de procédures

(3) Un tel appel à la Cour suprême du Canada n'a pas pour effet de suspendre les procédures, à moins que ce tribunal ne l'ordonne et dans la mesure où il l'ordonne.

Cautionnement pour les frais

(4) L'appelant n'est pas tenu de fournir un cautionnement pour les frais; toutefois, à moins qu'il ne fournisse un cautionnement pour les frais au montant que fixe la Cour suprême du Canada, il ne lui est pas adjugé de frais en cas de réussite dans son appel.

Décision finale

(5) La décision de la Cour suprême du Canada sur un tel appel est définitive et sans appel.

S.R., ch. C-25, art. 15; S.R., ch. 44(1^{er} suppl.), art. 10.

Ordonnance d'un tribunal d'une province

16 Toute ordonnance rendue par le tribunal d'une province dans l'exercice de la juridiction conférée par la présente loi à l'égard de quelque transaction ou arrangement a pleine vigueur et effet dans les autres provinces, et elle est appliquée devant le tribunal de chacune des autres provinces de la même manière, à tous égards, que si elle avait été rendue par le tribunal la faisant ainsi exécuter.

S.R., ch. C-25, art. 16.

Les tribunaux doivent s'entraider sur demande

17 Tous les tribunaux ayant juridiction sous le régime de la présente loi et les fonctionnaires de ces tribunaux sont tenus de s'entraider et de se faire les auxiliaires les uns des autres en toutes matières prévues par la présente loi, et une ordonnance du tribunal sollicitant de l'aide au moyen d'une demande à un autre tribunal est réputée suffisante pour permettre à ce dernier tribunal d'exercer, en ce qui concerne les questions prescrites par l'ordonnance, la juridiction que le tribunal ayant formulé la demande ou le tribunal auquel est adressée la demande pourrait exercer à l'égard de questions similaires dans les limites de leurs juridictions respectives.

S.R., ch. C-25, art. 17.

18 [Abrogé, 2005, ch. 47, art. 131]

18.1 [Abrogé, 2005, ch. 47, art. 131]

18.2 [Abrogé, 2005, ch. 47, art. 131]

18.3 [Abrogé, 2005, ch. 47, art. 131]

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Companies' Creditors Arrangement Act
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18.4 [Repealed, 2005, c. 47, s. 131]

18.5 [Repealed, 2005, c. 47, s. 131]

18.6 [Repealed, 2005, c. 47, s. 131]

PART III

General

Claims

Claims that may be dealt with by a compromise or arrangement

19 (1) Subject to subsection (2), the only claims that may be dealt with by a compromise or arrangement in respect of a debtor company are

(a) claims that relate to debts or liabilities, present or future, to which the company is subject on the earlier of

(i) the day on which proceedings commenced under this Act, and

(ii) if the company filed a notice of intention under section 50.4 of the *Bankruptcy and Insolvency Act* or commenced proceedings under this Act with the consent of inspectors referred to in section 116 of the *Bankruptcy and Insolvency Act*, the date of the initial bankruptcy event within the meaning of section 2 of that Act; and

(b) claims that relate to debts or liabilities, present or future, to which the company may become subject before the compromise or arrangement is sanctioned by reason of any obligation incurred by the company before the earlier of the days referred to in subparagraphs (a)(i) and (ii).

Exception

(2) A compromise or arrangement in respect of a debtor company may not deal with any claim that relates to any of the following debts or liabilities unless the compromise or arrangement explicitly provides for the claim's compromise and the creditor in relation to that debt has voted for the acceptance of the compromise or arrangement:

(a) any fine, penalty, restitution order or other order similar in nature to a fine, penalty or restitution order, imposed by a court in respect of an offence;

18.4 [Abrogé, 2005, ch. 47, art. 131]

18.5 [Abrogé, 2005, ch. 47, art. 131]

18.6 [Abrogé, 2005, ch. 47, art. 131]

PARTIE III

Dispositions générales

Réclamations

Réclamations considérées dans le cadre des transactions ou arrangements

19 (1) Les seules réclamations qui peuvent être considérées dans le cadre d'une transaction ou d'un arrangement visant une compagnie débitrice sont :

a) celles se rapportant aux dettes et obligations, présentes ou futures, auxquelles la compagnie est assujettie à celle des dates ci-après qui est antérieure à l'autre :

(i) la date à laquelle une procédure a été intentée sous le régime de la présente loi à l'égard de la compagnie,

(ii) la date d'ouverture de la faillite, au sens de l'article 2 de la *Loi sur la faillite et l'insolvabilité*, si elle a déposé un avis d'intention sous le régime de l'article 50.4 de cette loi ou qu'elle a intenté une procédure sous le régime de la présente loi avec le consentement des inspecteurs visés à l'article 116 de la *Loi sur la faillite et l'insolvabilité*;

b) celles se rapportant aux dettes et obligations, présentes ou futures, auxquelles elle peut devenir assujettie avant l'acceptation de la transaction ou de l'arrangement, en raison d'une obligation contractée antérieurement à celle des dates mentionnées aux sous-alinéas a)(i) et (ii) qui est antérieure à l'autre.

Exception

(2) La réclamation se rapportant à l'une ou l'autre des dettes ou obligations ci-après ne peut toutefois être ainsi considérée, à moins que la transaction ou l'arrangement ne prévoie expressément la possibilité de transiger sur cette réclamation et que le créancier intéressé n'ait voté en faveur de la transaction ou de l'arrangement proposé :

a) toute ordonnance d'un tribunal imposant une amende, une pénalité, la restitution ou une autre peine semblable;

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Companies' Creditors Arrangement Act
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(b) any award of damages by a court in civil proceedings in respect of

(i) bodily harm intentionally inflicted, or sexual assault, or

(ii) wrongful death resulting from an act referred to in subparagraph (i);

(c) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity or, in Quebec, as a trustee or an administrator of the property of others;

(d) any debt or liability resulting from obtaining property or services by false pretences or fraudulent misrepresentation, other than a debt or liability of the company that arises from an equity claim; or

(e) any debt for interest owed in relation to an amount referred to in any of paragraphs (a) to (d).

R.S., 1985, c. C-36, s. 19; 1996, c. 6, s. 167; 2005, c. 47, s. 131; 2007, c. 36, s. 69.

b) toute indemnité accordée en justice dans une affaire civile :

(i) pour des lésions corporelles causées intentionnellement ou pour agression sexuelle,

(ii) pour décès découlant d'un acte visé au sous-alinéa (i);

c) toute dette ou obligation résultant de la fraude, du détournement, de la concussion ou de l'abus de confiance alors que la compagnie agissait, au Québec, à titre de fiduciaire ou d'administrateur du bien d'autrui ou, dans les autres provinces, à titre de fiduciaire;

d) toute dette ou obligation résultant de l'obtention de biens ou de services par des faux-semblants ou la présentation erronée et frauduleuse des faits, autre qu'une dette ou obligation de la compagnie qui découle d'une réclamation relative à des capitaux propres;

e) toute dette relative aux intérêts dus à l'égard d'une somme visée à l'un des alinéas a) à d).

L.R. (1985), ch. C-36, art. 19; 1996, ch. 6, art. 167; 2005, ch. 47, art. 131; 2007, ch. 36, art. 69.

Determination of amount of claims

20 (1) For the purposes of this Act, the amount represented by a claim of any secured or unsecured creditor is to be determined as follows:

(a) the amount of an unsecured claim is the amount

(i) in the case of a company in the course of being wound up under the *Winding-up and Restructuring Act*, proof of which has been made in accordance with that Act,

(ii) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act*, proof of which has been made in accordance with that Act, or

(iii) in the case of any other company, proof of which might be made under the *Bankruptcy and Insolvency Act*, but if the amount so provable is not admitted by the company, the amount is to be determined by the court on summary application by the company or by the creditor; and

(b) the amount of a secured claim is the amount, proof of which might be made under the *Bankruptcy and Insolvency Act* if the claim were unsecured, but the amount if not admitted by the company is, in the case of a company subject to pending proceedings

Détermination du montant de la réclamation

20 (1) Pour l'application de la présente loi, le montant de la réclamation d'un créancier garanti ou chirographaire est déterminé de la façon suivante :

a) le montant d'une réclamation non garantie est celui :

(i) dans le cas d'une compagnie en voie de liquidation sous le régime de la *Loi sur les liquidations et les restructurations*, dont la preuve a été établie en conformité avec cette loi,

(ii) dans le cas d'une compagnie qui a fait une cession autorisée ou à l'encontre de laquelle une ordonnance de faillite a été rendue sous le régime de la *Loi sur la faillite et l'insolvabilité*, dont la preuve a été établie en conformité avec cette loi,

(iii) dans le cas de toute autre compagnie, dont la preuve peut être établie sous le régime de la *Loi sur la faillite et l'insolvabilité*, mais si le montant ainsi prouvable n'est pas admis par la compagnie, il est déterminé par le tribunal sur demande sommaire de celle-ci ou du créancier;

b) le montant d'une réclamation garantie est celui dont la preuve pourrait être établie sous le régime de la *Loi sur la faillite et l'insolvabilité* si la réclamation n'était pas garantie, mais ce montant, s'il n'est pas

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

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under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, to be established by proof in the same manner as an unsecured claim under the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act*, as the case may be, and, in the case of any other company, the amount is to be determined by the court on summary application by the company or the creditor.

Admission of claims

(2) Despite subsection (1), the company may admit the amount of a claim for voting purposes under reserve of the right to contest liability on the claim for other purposes, and nothing in this Act, the *Winding-up and Restructuring Act* or the *Bankruptcy and Insolvency Act* prevents a secured creditor from voting at a meeting of secured creditors or any class of them in respect of the total amount of a claim as admitted.

R.S., 1985, c. C-36, s. 20; 2005, c. 47, s. 131; 2007, c. 36, s. 70.

Law of set-off or compensation to apply

21 The law of set-off or compensation applies to all claims made against a debtor company and to all actions instituted by it for the recovery of debts due to the company in the same manner and to the same extent as if the company were plaintiff or defendant, as the case may be.

1997, c. 12, s. 126; 2005, c. 47, s. 131.

Classes of Creditors

Company may establish classes

22 (1) A debtor company may divide its creditors into classes for the purpose of a meeting to be held under section 4 or 5 in respect of a compromise or arrangement relating to the company and, if it does so, it is to apply to the court for approval of the division before the meeting is held.

Factors

(2) For the purpose of subsection (1), creditors may be included in the same class if their interests or rights are sufficiently similar to give them a commonality of interest, taking into account

- (a)** the nature of the debts, liabilities or obligations giving rise to their claims;
- (b)** the nature and rank of any security in respect of their claims;
- (c)** the remedies available to the creditors in the absence of the compromise or arrangement being

admis par la compagnie, est, dans le cas où celle-ci est assujettie à une procédure pendante sous le régime de la *Loi sur les liquidations et les restructurations* ou de la *Loi sur la faillite et l'insolvabilité*, établi par preuve de la même manière qu'une réclamation non garantie sous le régime de l'une ou l'autre de ces lois, selon le cas, et, s'il s'agit de toute autre compagnie, il est déterminé par le tribunal sur demande sommaire de celle-ci ou du créancier.

Admission des réclamations

(2) Malgré le paragraphe (1), la compagnie peut admettre le montant d'une réclamation aux fins de votation sous réserve du droit de contester la responsabilité quant à la réclamation pour d'autres objets, et la présente loi, la *Loi sur les liquidations et les restructurations* et la *Loi sur la faillite et l'insolvabilité* n'ont pas pour effet d'empêcher un créancier garanti de voter à une assemblée de créanciers garantis ou d'une catégorie de ces derniers à l'égard du montant total d'une réclamation ainsi admis.

L.R. (1985), ch. C-36, art. 20; 2005, ch. 47, art. 131; 2007, ch. 36, art. 70.

Compensation

21 Les règles de compensation s'appliquent à toutes les réclamations produites contre la compagnie débitrice et à toutes les actions intentées par elle en vue du recouvrement de ses créances, comme si elle était demanderesse ou défenderesse, selon le cas.

1997, ch. 12, art. 126; 2005, ch. 47, art. 131.

Catégories de créanciers

Établissement des catégories de créanciers

22 (1) La compagnie débitrice peut établir des catégories de créanciers en vue des assemblées qui seront tenues au titre des articles 4 ou 5 relativement à une transaction ou un arrangement la visant; le cas échéant, elle demande au tribunal d'approuver ces catégories avant la tenue des assemblées.

Critères

(2) Pour l'application du paragraphe (1), peuvent faire partie de la même catégorie les créanciers ayant des droits ou intérêts à ce point semblables, compte tenu des critères énumérés ci-après, qu'on peut en conclure qu'ils ont un intérêt commun :

- a)** la nature des créances et obligations donnant lieu à leurs réclamations;
- b)** la nature et le rang de toute garantie qui s'y rattache;

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

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sanctioned, and the extent to which the creditors would recover their claims by exercising those remedies; and

(d) any further criteria, consistent with those set out in paragraphs (a) to (c), that are prescribed.

Related creditors

(3) A creditor who is related to the company may vote against, but not for, a compromise or arrangement relating to the company.

1997, c. 12, s. 126; 2005, c. 47, s. 131; 2007, c. 36, s. 71.

Class — creditors having equity claims

22.1 Despite subsection 22(1), creditors having equity claims are to be in the same class of creditors in relation to those claims unless the court orders otherwise and may not, as members of that class, vote at any meeting unless the court orders otherwise.

2005, c. 47, s. 131; 2007, c. 36, s. 71.

Monitors

Duties and functions

23 (1) The monitor shall

(a) except as otherwise ordered by the court, when an order is made on the initial application in respect of a debtor company,

(i) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information, and

(ii) within five days after the day on which the order is made,

(A) make the order publicly available in the prescribed manner,

(B) send, in the prescribed manner, a notice to every known creditor who has a claim against the company of more than \$1,000 advising them that the order is publicly available, and

(C) prepare a list, showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner;

c) les voies de droit ouvertes aux créanciers, abstraction faite de la transaction ou de l'arrangement, et la mesure dans laquelle il pourrait être satisfait à leurs réclamations s'ils s'en prévalaient;

d) tous autres critères réglementaires compatibles avec ceux énumérés aux alinéas a) à c).

Créancier lié

(3) Le créancier lié à la compagnie peut voter contre, mais non pour, l'acceptation de la transaction ou de l'arrangement.

1997, ch. 12, art. 126; 2005, ch. 47, art. 131; 2007, ch. 36, art. 71.

Catégorie de créanciers ayant des réclamations relatives à des capitaux propres

22.1 Malgré le paragraphe 22(1), les créanciers qui ont des réclamations relatives à des capitaux propres font partie d'une même catégorie de créanciers relativement à ces réclamations, sauf ordonnance contraire du tribunal, et ne peuvent à ce titre voter à aucune assemblée, sauf ordonnance contraire du tribunal.

2005, ch. 47, art. 131; 2007, ch. 36, art. 71.

Contrôleurs

Attributions

23 (1) Le contrôleur est tenu :

a) à moins que le tribunal n'en ordonne autrement, lorsqu'il rend une ordonnance à l'égard de la demande initiale visant une compagnie débitrice :

(i) de publier, sans délai après le prononcé de l'ordonnance, une fois par semaine pendant deux semaines consécutives, ou selon les modalités qui y sont prévues, dans le journal ou les journaux au Canada qui y sont précisés, un avis contenant les renseignements réglementaires,

(ii) dans les cinq jours suivant la date du prononcé de l'ordonnance :

(A) de rendre l'ordonnance publique selon les modalités réglementaires,

(B) d'envoyer un avis, selon les modalités réglementaires, à chaque créancier connu ayant une réclamation supérieure à mille dollars les informant que l'ordonnance a été rendue publique,

(C) d'établir la liste des nom et adresse de chacun de ces créanciers et des montants estimés des réclamations et de la rendre publique selon les modalités réglementaires;

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(b) review the company's cash-flow statement as to its reasonableness and file a report with the court on the monitor's findings;

(c) make, or cause to be made, any appraisal or investigation the monitor considers necessary to determine with reasonable accuracy the state of the company's business and financial affairs and the cause of its financial difficulties or insolvency and file a report with the court on the monitor's findings;

(d) file a report with the court on the state of the company's business and financial affairs — containing the prescribed information, if any —

(i) without delay after ascertaining a material adverse change in the company's projected cash-flow or financial circumstances,

(ii) not later than 45 days, or any longer period that the court may specify, after the day on which each of the company's fiscal quarters ends, and

(iii) at any other time that the court may order;

(d.1) file a report with the court on the state of the company's business and financial affairs — containing the monitor's opinion as to the reasonableness of a decision, if any, to include in a compromise or arrangement a provision that sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* do not apply in respect of the compromise or arrangement and containing the prescribed information, if any — at least seven days before the day on which the meeting of creditors referred to in section 4 or 5 is to be held;

(e) advise the company's creditors of the filing of the report referred to in any of paragraphs (b) to (d.1);

(f) file with the Superintendent of Bankruptcy, in the prescribed manner and at the prescribed time, a copy of the documents specified in the regulations;

(f.1) for the purpose of defraying the expenses of the Superintendent of Bankruptcy incurred in performing his or her functions under this Act, pay the prescribed levy at the prescribed time to the Superintendent for deposit with the Receiver General;

(g) attend court proceedings held under this Act that relate to the company, and meetings of the company's creditors, if the monitor considers that his or her attendance is necessary for the fulfilment of his or her duties or functions;

(h) if the monitor is of the opinion that it would be more beneficial to the company's creditors if

b) de réviser l'état de l'évolution de l'encaisse de la compagnie, en ce qui a trait à sa justification, et de déposer auprès du tribunal un rapport où il présente ses conclusions;

c) de faire ou de faire faire toute évaluation ou investigation qu'il estime nécessaire pour établir l'état des affaires financières et autres de la compagnie et les causes des difficultés financières ou de l'insolvabilité de celle-ci, et de déposer auprès du tribunal un rapport où il présente ses conclusions;

d) de déposer auprès du tribunal un rapport portant sur l'état des affaires financières et autres de la compagnie et contenant les renseignements réglementaires :

(i) dès qu'il note un changement défavorable important au chapitre des projections relatives à l'encaisse ou de la situation financière de la compagnie,

(ii) au plus tard quarante-cinq jours — ou le nombre de jours supérieur que le tribunal fixe — après la fin de chaque trimestre d'exercice,

(iii) à tout autre moment fixé par ordonnance du tribunal;

d.1) de déposer auprès du tribunal, au moins sept jours avant la date de la tenue de l'assemblée des créanciers au titre des articles 4 ou 5, un rapport portant sur l'état des affaires financières et autres de la compagnie, contenant notamment son opinion sur le caractère raisonnable de la décision d'inclure dans la transaction ou l'arrangement une disposition prévoyant la non-application à celle-ci des articles 38 et 95 à 101 de la *Loi sur la faillite et l'insolvabilité*, et contenant les renseignements réglementaires;

e) d'informer les créanciers de la compagnie du dépôt du rapport visé à l'un ou l'autre des alinéas b) à d.1);

f) de déposer auprès du surintendant des faillites, selon les modalités réglementaires, de temps et autre, une copie des documents précisés par règlement;

f.1) afin de défrayer le surintendant des faillites des dépenses engagées par lui dans l'exercice de ses attributions prévues par la présente loi, de lui verser, pour dépôt auprès du receveur général, le prélèvement réglementaire, et ce au moment prévu par les règlements;

g) d'assister aux audiences du tribunal tenues dans le cadre de toute procédure intentée sous le régime de la

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

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proceedings in respect of the company were taken under the *Bankruptcy and Insolvency Act*, so advise the court without delay after coming to that opinion;

(i) advise the court on the reasonableness and fairness of any compromise or arrangement that is proposed between the company and its creditors;

(j) make the prescribed documents publicly available in the prescribed manner and at the prescribed time and provide the company's creditors with information as to how they may access those documents; and

(k) carry out any other functions in relation to the company that the court may direct.

Monitor not liable

(2) If the monitor acts in good faith and takes reasonable care in preparing the report referred to in any of paragraphs (1)(b) to (d.1), the monitor is not liable for loss or damage to any person resulting from that person's reliance on the report.

2005, c. 47, s. 131; 2007, c. 36, s. 72.

Right of access

24 For the purposes of monitoring the company's business and financial affairs, the monitor shall have access to the company's property, including the premises, books, records, data, including data in electronic form, and other financial documents of the company, to the extent that is necessary to adequately assess the company's business and financial affairs.

2005, c. 47, s. 131.

Obligation to act honestly and in good faith

25 In exercising any of his or her powers or in performing any of his or her duties and functions, the monitor must act honestly and in good faith and comply with the Code of Ethics referred to in section 13.5 of the *Bankruptcy and Insolvency Act*.

2005, c. 47, s. 131.

Powers, Duties and Functions of Superintendent of Bankruptcy

Public records

26 (1) The Superintendent of Bankruptcy must keep, or cause to be kept, in the form that he or she considers

présente loi relativement à la compagnie et aux assemblées de créanciers de celle-ci, s'il estime que sa présence est nécessaire à l'exercice de ses attributions;

h) dès qu'il conclut qu'il serait plus avantageux pour les créanciers qu'une procédure visant la compagnie soit intentée sous le régime de la *Loi sur la faillite et l'insolvabilité*, d'en aviser le tribunal;

i) de conseiller le tribunal sur le caractère juste et équitable de toute transaction ou de tout arrangement proposés entre la compagnie et ses créanciers;

j) de rendre publics selon les modalités réglementaires, de temps et autres, les documents réglementaires et de fournir aux créanciers de la compagnie des renseignements sur les modalités d'accès à ces documents;

k) d'accomplir à l'égard de la compagnie tout ce que le tribunal lui ordonne de faire.

Non-responsabilité du contrôleur

(2) S'il agit de bonne foi et prend toutes les précautions voulues pour bien établir le rapport visé à l'un ou l'autre des alinéas (1)b) à d.1), le contrôleur ne peut être tenu pour responsable des dommages ou pertes subis par la personne qui s'y fie.

2005, ch. 47, art. 131; 2007, ch. 36, art. 72.

Droit d'accès aux biens

24 Dans le cadre de la surveillance des affaires financières et autres de la compagnie et dans la mesure où cela s'impose pour lui permettre de les évaluer adéquatement, le contrôleur a accès aux biens de celle-ci, notamment les locaux, livres, données sur support électronique ou autre, registres et autres documents financiers.

2005, ch. 47, art. 131.

Diligence

25 Le contrôleur doit, dans l'exercice de ses attributions, agir avec intégrité et de bonne foi et se conformer au code de déontologie mentionné à l'article 13.5 de la *Loi sur la faillite et l'insolvabilité*.

2005, ch. 47, art. 131.

Attributions du surintendant des faillites

Registres publics

26 (1) Le surintendant des faillites conserve ou fait conserver, en la forme qu'il estime indiquée et pendant la

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appropriate and for the prescribed period, a public record of prescribed information relating to proceedings under this Act. On request, and on payment of the prescribed fee, the Superintendent of Bankruptcy must provide, or cause to be provided, any information contained in that public record.

Other records

(2) The Superintendent of Bankruptcy must keep, or cause to be kept, in the form that he or she considers appropriate and for the prescribed period, any other records relating to the administration of this Act that he or she considers appropriate.

Agreement to provide compilation

(3) The Superintendent of Bankruptcy may enter into an agreement to provide a compilation of all or part of the information that is contained in the public record.

2005, c. 47, s. 131; 2007, c. 36, s. 73.

Applications to court and right to intervene

27 The Superintendent of Bankruptcy may apply to the court to review the appointment or conduct of a monitor and may intervene, as though he or she were a party, in any matter or proceeding in court relating to the appointment or conduct of a monitor.

2005, c. 47, s. 131.

Complaints

28 The Superintendent of Bankruptcy must receive and keep a record of all complaints regarding the conduct of monitors.

2005, c. 47, s. 131.

Investigations

29 (1) The Superintendent of Bankruptcy may make, or cause to be made, any inquiry or investigation regarding the conduct of monitors that he or she considers appropriate.

Rights

(2) For the purpose of the inquiry or investigation, the Superintendent of Bankruptcy or any person whom he or she appoints for the purpose

(a) shall have access to and the right to examine and make copies of the books, records, data, documents or papers — including those in electronic form — in the possession or under the control of a monitor under this Act; and

(b) may, with the leave of the court granted on an *ex parte* application, examine the books, records, data, documents or papers — including those in electronic

période réglementaire, un registre public contenant des renseignements réglementaires sur les procédures intentées sous le régime de la présente loi. Il fournit ou voit à ce qu'il soit fourni à quiconque le demande tous renseignements figurant au registre, sur paiement des droits réglementaires.

Autres dossiers

(2) Il conserve également, ou fait conserver, en la forme qu'il estime indiquée et pendant la période réglementaire, les autres dossiers qu'il estime indiqués concernant l'application de la présente loi.

Accord visant la fourniture d'une compilation

(3) Enfin, il peut conclure un accord visant la fourniture d'une compilation de tout ou partie des renseignements figurant au registre public.

2005, ch. 47, art. 131; 2007, ch. 36, art. 73.

Demande au tribunal et intervention

27 Le surintendant des faillites peut demander au tribunal d'examiner la nomination ou la conduite de tout contrôleur et intervenir dans toute affaire ou procédure devant le tribunal se rapportant à ces nomination ou conduite comme s'il y était partie.

2005, ch. 47, art. 131.

Plaintes

28 Le surintendant des faillites reçoit et note toutes les plaintes sur la conduite de tout contrôleur.

2005, ch. 47, art. 131.

Investigations et enquêtes

29 (1) Le surintendant des faillites effectue ou fait effectuer au sujet de la conduite de tout contrôleur les investigations ou les enquêtes qu'il estime indiquées.

Droit d'accès

(2) Pour les besoins de ces investigations ou enquêtes, le surintendant des faillites ou la personne qu'il nomme à cette fin :

a) a accès aux livres, registres, données, documents ou papiers, sur support électronique ou autre, se trouvant, en vertu de la présente loi, en la possession ou sous la responsabilité du contrôleur et a droit de les examiner et d'en tirer des copies;

b) peut, avec la permission du tribunal donnée *ex parte*, examiner les livres, registres, données, documents ou papiers, sur support électronique ou autre,

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form — relating to any compromise or arrangement in respect of which this Act applies that are in the possession or under the control of any other person designated in the order granting the leave, and for that purpose may under a warrant from the court enter and search any premises.

Staff

(3) The Superintendent of Bankruptcy may engage the services of persons having technical or specialized knowledge, and persons to provide administrative services, to assist the Superintendent of Bankruptcy in conducting an inquiry or investigation, and may establish the terms and conditions of their engagement. The remuneration and expenses of those persons, when certified by the Superintendent of Bankruptcy, are payable out of the appropriation for the office of the Superintendent.

2005, c. 47, s. 131; 2007, c. 36, s. 74.

Powers in relation to licence

30 (1) If, after making or causing to be made an inquiry or investigation into the conduct of a monitor, it appears to the Superintendent of Bankruptcy that the monitor has not fully complied with this Act and its regulations or that it is in the public interest to do so, the Superintendent of Bankruptcy may

- (a)** cancel or suspend the monitor's licence as a trustee under the *Bankruptcy and Insolvency Act*; or
- (b)** place any condition or limitation on the licence that he or she considers appropriate.

Notice to trustee

(2) Before deciding whether to exercise any of the powers referred to in subsection (1), the Superintendent of Bankruptcy shall send the monitor written notice of the powers that the Superintendent may exercise and the reasons why they may be exercised and afford the monitor a reasonable opportunity for a hearing.

Summons

(3) The Superintendent of Bankruptcy may, for the purpose of the hearing, issue a summons requiring the person named in it

- (a)** to appear at the time and place mentioned in it;
- (b)** to testify to all matters within their knowledge relative to the subject matter of the inquiry or investigation into the conduct of the monitor; and
- (c)** to bring and produce any books, records, data, documents or papers — including those in electronic form — in their possession or under their control

qui sont en la possession ou sous la responsabilité de toute autre personne désignée dans l'ordonnance et se rapportent aux transactions ou arrangements auxquels la présente loi s'applique et peut, en vertu d'un mandat du tribunal et aux fins d'examen, pénétrer dans tout lieu et y faire des perquisitions.

Personnel

(3) Le surintendant des faillites peut retenir les services des experts ou autres personnes et du personnel administratif dont il estime le concours utile à l'investigation ou l'enquête et fixer leurs fonctions et leurs conditions d'emploi. La rémunération et les indemnités dues à ces personnes sont, une fois certifiées par le surintendant, imputables sur les crédits affectés à son bureau.

2005, ch. 47, art. 131; 2007, ch. 36, art. 74.

Décision relative à la licence

30 (1) Si, au terme d'une investigation ou d'une enquête sur la conduite du contrôleur, il estime que ce dernier n'a pas observé la présente loi ou les règlements ou que l'intérêt public le justifie, le surintendant des faillites peut annuler ou suspendre la licence que le contrôleur détient, en vertu de la *Loi sur la faillite et l'insolvabilité*, à titre de syndic ou soumettre sa licence aux conditions ou restrictions qu'il estime indiquées.

Avis au syndic

(2) Avant de prendre l'une des mesures visées au paragraphe (1), le surintendant des faillites envoie au syndic un avis écrit et motivé de la ou des mesures qu'il peut prendre et lui donne la possibilité de se faire entendre.

Convocation de témoins

(3) Le surintendant des faillites peut, aux fins d'audition, convoquer des témoins par assignation leur enjoignant :

- a)** de comparaître aux date, heure et lieu indiqués;
- b)** de témoigner sur tous faits connus d'eux se rapportant à l'investigation ou à l'enquête sur la conduite du contrôleur;
- c)** de produire tous livres, registres, données, documents ou papiers, sur support électronique ou autre, qui sont pertinents et dont ils ont la possession ou la responsabilité.

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relative to the subject matter of the inquiry or investigation.

Effect throughout Canada

(4) A person may be summoned from any part of Canada by virtue of a summons issued under subsection (3).

Fees and allowances

(5) Any person summoned under subsection (3) is entitled to receive the like fees and allowances for so doing as if summoned to attend before the Federal Court.

Procedure at hearing

(6) At the hearing, the Superintendent of Bankruptcy

- (a)** has the power to administer oaths;
- (b)** is not bound by any legal or technical rules of evidence in conducting the hearing;
- (c)** shall deal with the matters set out in the notice of the hearing as informally and expeditiously as the circumstances and a consideration of fairness permit; and
- (d)** shall cause a summary of any oral evidence to be made in writing.

Record

(7) The notice referred to in subsection (2) and, if applicable, the summary of oral evidence referred to in paragraph (6)(d), together with any documentary evidence that the Superintendent of Bankruptcy receives in evidence, form the record of the hearing, and that record and the hearing are public unless the Superintendent of Bankruptcy is satisfied that personal or other matters that may be disclosed are of such a nature that the desirability of avoiding public disclosure of those matters, in the interest of a third party or in the public interest, outweighs the desirability of the access by the public to information about those matters.

Decision

(8) The decision of the Superintendent of Bankruptcy after the hearing, together with the reasons for the decision, must be given in writing to the monitor not later than three months after the conclusion of the hearing, and is public.

Effet

(4) Les assignations visées au paragraphe (3) ont effet sur tout le territoire canadien.

Frais et indemnités

(5) Toute personne assignée reçoit les frais et indemnités accordés aux témoins assignés devant la Cour fédérale.

Procédure de l'audition

(6) Lors de l'audition, le surintendant :

- a)** peut faire prêter serment;
- b)** n'est lié par aucune règle de droit ou de procédure en matière de preuve;
- c)** règle les questions exposées dans l'avis d'audition avec célérité et sans formalisme, eu égard aux circonstances et à l'équité;
- d)** fait établir un résumé écrit de toute preuve orale.

Dossier et audition

(7) L'audition et le dossier de celle-ci sont publics à moins que le surintendant ne juge que la nature des révélations possibles sur des questions personnelles ou autres est telle que, en l'occurrence, l'intérêt d'un tiers ou l'intérêt public l'emporte sur le droit du public à l'information. Le dossier comprend l'avis prévu au paragraphe (2), le résumé de la preuve orale prévu à l'alinéa (6)d) et la preuve documentaire reçue par le surintendant des faillites.

Décision

(8) La décision du surintendant des faillites est rendue par écrit, motivée et remise au contrôleur dans les trois mois suivant la clôture de l'audition, et elle est publique.

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Review by Federal Court

(9) A decision of the Superintendent of Bankruptcy given under subsection (8) is deemed to be a decision of a federal board, commission or other tribunal that may be reviewed and set aside under the *Federal Courts Act*.

2005, c. 47, s. 131; 2007, c. 36, s. 75.

Delegation

31 (1) The Superintendent of Bankruptcy may, in writing, authorize any person to exercise or perform, subject to any terms and conditions that he or she may specify in the authorization, any of the powers, duties or functions of the Superintendent of Bankruptcy under sections 29 and 30.

Notification to monitor

(2) If the Superintendent of Bankruptcy delegates in accordance with subsection (1), the Superintendent or the delegate must give notice of the delegation in the prescribed manner to any monitor who may be affected by the delegation.

2005, c. 47, s. 131.

Agreements

Disclaimer or rescission of agreements

32 (1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or rescind any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or rescission.

Court may prohibit disclaimer or rescission

(2) Within 15 days after the day on which the company gives notice under subsection (1), a party to the agreement may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement is not to be disclaimed or rescinded.

Court-ordered disclaimer or rescission

(3) If the monitor does not approve the proposed disclaimer or rescission, the company may, on notice to the other parties to the agreement and the monitor, apply to a court for an order that the agreement be disclaimed or rescinded.

Factors to be considered

(4) In deciding whether to make the order, the court is to consider, among other things,

Examen de la Cour fédérale

(9) La décision du surintendant, rendue et remise conformément au paragraphe (8), est assimilée à celle d'un office fédéral et est soumise au pouvoir d'examen et d'annulation prévu par la *Loi sur les Cours fédérales*.

2005, ch. 47, art. 131; 2007, ch. 36, art. 75.

Pouvoir de délégation

31 (1) Le surintendant des faillites peut, par écrit, selon les modalités qu'il précise, déléguer les attributions que lui confèrent les articles 29 et 30.

Notification

(2) En cas de délégation, le surintendant des faillites ou le délégué en avise, de la manière réglementaire, tout contrôleur qui pourrait être touché par cette mesure.

2005, ch. 47, art. 131.

Contrats et conventions collectives

Résiliation de contrats

32 (1) Sous réserve des paragraphes (2) et (3), la compagnie débitrice peut — sur préavis donné en la forme et de la manière réglementaires aux autres parties au contrat et au contrôleur et après avoir obtenu l'acquiescement de celui-ci relativement au projet de résiliation — résilier tout contrat auquel elle est partie à la date à laquelle une procédure a été intentée sous le régime de la présente loi.

Contestation

(2) Dans les quinze jours suivant la date à laquelle la compagnie donne le préavis mentionné au paragraphe (1), toute partie au contrat peut, sur préavis aux autres parties au contrat et au contrôleur, demander au tribunal d'ordonner que le contrat ne soit pas résilié.

Absence d'acquiescement du contrôleur

(3) Si le contrôleur n'acquiesce pas au projet de résiliation, la compagnie peut, sur préavis aux autres parties au contrat et au contrôleur, demander au tribunal d'ordonner la résiliation du contrat.

Facteurs à prendre en considération

(4) Pour décider s'il rend l'ordonnance, le tribunal prend en considération, entre autres, les facteurs suivants :

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(a) whether the monitor approved the proposed disclaimer or resiliation;

(b) whether the disclaimer or resiliation would enhance the prospects of a viable compromise or arrangement being made in respect of the company; and

(c) whether the disclaimer or resiliation would likely cause significant financial hardship to a party to the agreement.

Date of disclaimer or resiliation

(5) An agreement is disclaimed or resiliated

(a) if no application is made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1);

(b) if the court dismisses the application made under subsection (2), on the day that is 30 days after the day on which the company gives notice under subsection (1) or on any later day fixed by the court; or

(c) if the court orders that the agreement is disclaimed or resiliated under subsection (3), on the day that is 30 days after the day on which the company gives notice or on any later day fixed by the court.

Intellectual property

(6) If the company has granted a right to use intellectual property to a party to an agreement, the disclaimer or resiliation does not affect the party's right to use the intellectual property — including the party's right to enforce an exclusive use — during the term of the agreement, including any period for which the party extends the agreement as of right, as long as the party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

Loss related to disclaimer or resiliation

(7) If an agreement is disclaimed or resiliated, a party to the agreement who suffers a loss in relation to the disclaimer or resiliation is considered to have a provable claim.

Reasons for disclaimer or resiliation

(8) A company shall, on request by a party to the agreement, provide in writing the reasons for the proposed disclaimer or resiliation within five days after the day on which the party requests them.

a) l'acquiescement du contrôleur au projet de résiliation, le cas échéant;

b) la question de savoir si la résiliation favorisera la conclusion d'une transaction ou d'un arrangement viable à l'égard de la compagnie;

c) le risque que la résiliation puisse vraisemblablement causer de sérieuses difficultés financières à une partie au contrat.

Résiliation

(5) Le contrat est résilié :

a) trente jours après la date à laquelle la compagnie donne le préavis mentionné au paragraphe (1), si aucune demande n'est présentée en vertu du paragraphe (2);

b) trente jours après la date à laquelle la compagnie donne le préavis mentionné au paragraphe (1) ou à la date postérieure fixée par le tribunal, si ce dernier rejette la demande présentée en vertu du paragraphe (2);

c) trente jours après la date à laquelle la compagnie donne le préavis mentionné au paragraphe (3) ou à la date postérieure fixée par le tribunal, si ce dernier ordonne la résiliation du contrat en vertu de ce paragraphe.

Propriété intellectuelle

(6) Si la compagnie a autorisé par contrat une personne à utiliser un droit de propriété intellectuelle, la résiliation n'empêche pas la personne de l'utiliser ni d'en faire respecter l'utilisation exclusive, à condition qu'elle respecte ses obligations contractuelles à l'égard de l'utilisation de ce droit, et ce pour la période prévue au contrat et pour toute période additionnelle dont elle peut et décide de se prévaloir de son propre gré.

Pertes découlant de la résiliation

(7) En cas de résiliation du contrat, toute partie à celui-ci qui subit des pertes découlant de la résiliation est réputée avoir une réclamation prouvable.

Motifs de la résiliation

(8) Dans les cinq jours qui suivent la date à laquelle une partie au contrat le lui demande, la compagnie lui expose par écrit les motifs de son projet de résiliation.

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Exceptions

(9) This section does not apply in respect of

- (a)** an eligible financial contract;
- (b)** a collective agreement;
- (c)** a financing agreement if the company is the borrower; or
- (d)** a lease of real property or of an immovable if the company is the lessor.

2005, c. 47, s. 131; 2007, c. 29, s. 108, c. 36, ss. 76, 112.

Collective agreements

33 (1) If proceedings under this Act have been commenced in respect of a debtor company, any collective agreement that the company has entered into as the employer remains in force, and may not be altered except as provided in this section or under the laws of the jurisdiction governing collective bargaining between the company and the bargaining agent.

Application for authorization to serve notice to bargain

(2) A debtor company that is a party to a collective agreement and that is unable to reach a voluntary agreement with the bargaining agent to revise any of the provisions of the collective agreement may, on giving five days notice to the bargaining agent, apply to the court for an order authorizing the company to serve a notice to bargain under the laws of the jurisdiction governing collective bargaining between the company and the bargaining agent.

Conditions for issuance of order

(3) The court may issue the order only if it is satisfied that

- (a)** a viable compromise or arrangement could not be made in respect of the company, taking into account the terms of the collective agreement;
- (b)** the company has made good faith efforts to renegotiate the provisions of the collective agreement; and
- (c)** a failure to issue the order is likely to result in irreparable damage to the company.

No delay on vote

(4) The vote of the creditors in respect of a compromise or an arrangement may not be delayed solely because the period provided in the laws of the jurisdiction governing

Exceptions

(9) Le présent article ne s'applique pas aux contrats suivants :

- a)** les contrats financiers admissibles;
- b)** les conventions collectives;
- c)** les accords de financement au titre desquels la compagnie est l'emprunteur;
- d)** les baux d'immeubles ou de biens réels au titre desquels la compagnie est le locateur.

2005, ch. 47, art. 131; 2007, ch. 29, art. 108, ch. 36, art. 76 et 112.

Conventions collectives

33 (1) Si une procédure a été intentée sous le régime de la présente loi à l'égard d'une compagnie débitrice, toute convention collective que celle-ci a conclue à titre d'employeur demeure en vigueur et ne peut être modifiée qu'en conformité avec le présent article ou les règles de droit applicables aux négociations entre les parties.

Demande pour que le tribunal autorise le début de négociations en vue de la révision

(2) Si elle est partie à une convention collective à titre d'employeur et qu'elle ne peut s'entendre librement avec l'agent négociateur sur la révision de celle-ci, la compagnie débitrice peut, après avoir donné un préavis de cinq jours à l'agent négociateur, demander au tribunal de l'autoriser, par ordonnance, à donner à l'agent négociateur un avis de négociations collectives pour que celui-ci entame les négociations collectives en vue de la révision de la convention collective conformément aux règles de droit applicables aux négociations entre les parties.

Cas où l'autorisation est accordée

(3) Le tribunal ne rend l'ordonnance que s'il est convaincu, à la fois :

- a)** qu'une transaction ou un arrangement viable à l'égard de la compagnie ne pourrait être fait compte tenu des dispositions de la convention collective;
- b)** que la compagnie a tenté de bonne foi d'en négocier de nouveau les dispositions;
- c)** qu'elle subirait vraisemblablement des dommages irréparables si l'ordonnance n'était pas rendue.

Vote sur la proposition

(4) Le vote des créanciers sur la transaction ou l'arrangement ne peut être retardé pour la seule raison que le délai imparti par les règles de droit applicables aux

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collective bargaining between the company and the bargaining agent has not expired.

Claims arising from termination or amendment

(5) If the parties to the collective agreement agree to revise the collective agreement after proceedings have been commenced under this Act in respect of the company, the bargaining agent that is a party to the agreement is deemed to have a claim, as an unsecured creditor, for an amount equal to the value of concessions granted by the bargaining agent with respect to the remaining term of the collective agreement.

Order to disclose information

(6) On the application of the bargaining agent and on notice to the person to whom the application relates, the court may, subject to any terms and conditions it specifies, make an order requiring the person to make available to the bargaining agent any information specified by the court in the person's possession or control that relates to the company's business or financial affairs and that is relevant to the collective bargaining between the company and the bargaining agent. The court may make the order only after the company has been authorized to serve a notice to bargain under subsection (2).

Parties

(7) For the purpose of this section, the parties to a collective agreement are the debtor company and the bargaining agent that are bound by the collective agreement.

Unrevised collective agreements remain in force

(8) For greater certainty, any collective agreement that the company and the bargaining agent have not agreed to revise remains in force, and the court shall not alter its terms.

2005, c. 47, s. 131.

Certain rights limited

34 (1) No person may terminate or amend, or claim an accelerated payment or forfeiture of the term under, any agreement, including a security agreement, with a debtor company by reason only that proceedings commenced under this Act or that the company is insolvent.

Lease

(2) If the agreement referred to in subsection (1) is a lease, the lessor may not terminate or amend the lease by reason only that proceedings commenced under this Act, that the company is insolvent or that the company has not paid rent in respect of any period before the commencement of those proceedings.

négociations collectives entre les parties à la convention collective n'est pas expiré.

Réclamation consécutive à la révision

(5) Si les parties parviennent à une entente sur la révision de la convention collective après qu'une procédure a été intentée sous le régime de la présente loi à l'égard d'une compagnie, l'agent négociateur en cause est réputé avoir une réclamation à titre de créancier chirographaire pour une somme équivalant à la valeur des concessions accordées à l'égard de la période non écoulée de la convention.

Ordonnance de communication

(6) Sur demande de l'agent négociateur partie à la convention collective et sur avis aux personnes qui ont un intérêt, le tribunal peut ordonner à celles-ci de communiquer au demandeur, aux conditions qu'il précise, tout renseignement qu'elles ont en leur possession ou à leur disposition sur les affaires et la situation financière de la compagnie pertinent pour les négociations collectives. Le tribunal ne peut rendre l'ordonnance qu'après l'envoi à l'agent négociateur de l'avis de négociations collectives visé au paragraphe (2).

Parties

(7) Pour l'application du présent article, les parties à la convention collective sont la compagnie débitrice et l'agent négociateur liés par elle.

Maintien en vigueur des conventions collectives

(8) Il est entendu que toute convention collective que la compagnie et l'agent négociateur n'ont pas convenu de réviser demeure en vigueur et que les tribunaux ne peuvent en modifier les termes.

2005, ch. 47, art. 131.

Limitation de certains droits

34 (1) Il est interdit de résilier ou de modifier un contrat — notamment un contrat de garantie — conclu avec une compagnie débitrice ou de se prévaloir d'une clause de déchéance du terme figurant dans un tel contrat au seul motif qu'une procédure a été intentée sous le régime de la présente loi à l'égard de la compagnie ou que celle-ci est insolvable.

Baux

(2) Lorsque le contrat visé au paragraphe (1) est un bail, l'interdiction prévue à ce paragraphe vaut également dans le cas où la compagnie est insolvable ou n'a pas payé son loyer à l'égard d'une période antérieure à l'introduction de la procédure.

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Public utilities

(3) No public utility may discontinue service to a company by reason only that proceedings commenced under this Act, that the company is insolvent or that the company has not paid for services rendered or goods provided before the commencement of those proceedings.

Certain acts not prevented

(4) Nothing in this section is to be construed as

(a) prohibiting a person from requiring payments to be made in cash for goods, services, use of leased property or other valuable consideration provided after the commencement of proceedings under this Act;

(b) requiring the further advance of money or credit; or

(c) [Repealed, 2012, c. 31, s. 421]

Provisions of section override agreement

(5) Any provision in an agreement that has the effect of providing for, or permitting, anything that, in substance, is contrary to this section is of no force or effect.

Powers of court

(6) On application by a party to an agreement or by a public utility, the court may declare that this section does not apply — or applies only to the extent declared by the court — if the applicant satisfies the court that the operation of this section would likely cause the applicant significant financial hardship.

Eligible financial contracts

(7) Subsection (1) does not apply

(a) in respect of an eligible financial contract; or

(b) to prevent a member of the Canadian Payments Association from ceasing to act as a clearing agent or group clearer for a company in accordance with the *Canadian Payments Act* and the by-laws and rules of that Association.

Permitted actions

(8) The following actions are permitted in respect of an eligible financial contract that is entered into before proceedings under this Act are commenced in respect of the company and is terminated on or after that day, but only in accordance with the provisions of that contract:

Entreprise de service public

(3) Il est interdit à toute entreprise de service public d'interrompre la prestation de ses services auprès d'une compagnie débitrice au seul motif qu'une procédure a été intentée sous le régime de la présente loi à l'égard de la compagnie, que celle-ci est insolvable ou qu'elle n'a pas payé des services ou marchandises fournis avant l'introduction de la procédure.

Exceptions

(4) Le présent article n'a pas pour effet :

a) d'empêcher une personne d'exiger que soient effectués des paiements en espèces pour toute contrepartie de valeur — marchandises, services, biens loués ou autres — fournie après l'introduction d'une procédure sous le régime de la présente loi;

b) d'exiger la prestation de nouvelles avances de fonds ou de nouveaux crédits.

c) [Abrogé, 2012, ch. 31, art. 421]

Incompatibilité

(5) Le présent article l'emporte sur les dispositions incompatibles de tout contrat, celles-ci étant sans effet.

Pouvoirs du tribunal

(6) À la demande de l'une des parties à un contrat ou d'une entreprise de service public, le tribunal peut déclarer le présent article inapplicable, ou applicable uniquement dans la mesure qu'il précise, s'il est établi par le demandeur que son application lui causerait vraisemblablement de sérieuses difficultés financières.

Contrats financiers admissibles

(7) Le paragraphe (1) ne s'applique pas aux contrats financiers admissibles et n'a pas pour effet d'empêcher un membre de l'Association canadienne des paiements de cesser d'agir, pour une compagnie, à titre d'agent de compensation ou d'adhérent correspondant de groupe conformément à la *Loi canadienne sur les paiements* et aux règles et règlements administratifs de l'association.

Opérations permises

(8) Si le contrat financier admissible conclu avant qu'une procédure soit intentée sous le régime de la présente loi à l'égard de la compagnie est résilié à la date d'introduction de la procédure ou par la suite, il est permis d'effectuer les opérations ci-après en conformité avec le contrat :

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(a) the netting or setting off or compensation of obligations between the company and the other parties to the eligible financial contract; and

(b) any dealing with financial collateral including

(i) the sale or foreclosure or, in the Province of Quebec, the surrender of financial collateral, and

(ii) the setting off or compensation of financial collateral or the application of the proceeds or value of financial collateral.

Restriction

(9) No order may be made under this Act if the order would have the effect of staying or restraining the actions permitted under subsection (8).

Net termination values

(10) If net termination values determined in accordance with an eligible financial contract referred to in subsection (8) are owed by the company to another party to the eligible financial contract, that other party is deemed to be a creditor of the company with a claim against the company in respect of those net termination values.

Priority

(11) No order may be made under this Act if the order would have the effect of subordinating financial collateral.

2005, c. 47, s. 131; 2007, c. 29, s. 109, c. 36, ss. 77, 112; 2012, c. 31, s. 421.

Obligations and Prohibitions

Obligation to provide assistance

35 (1) A debtor company shall provide to the monitor the assistance that is necessary to enable the monitor to adequately carry out the monitor's functions.

Obligation to duties set out in section 158 of the *Bankruptcy and Insolvency Act*

(2) A debtor company shall perform the duties set out in section 158 of the *Bankruptcy and Insolvency Act* that are appropriate and applicable in the circumstances.

2005, c. 47, s. 131.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale

a) la compensation des obligations entre la compagnie et les autres parties au contrat;

b) toute opération à l'égard de la garantie financière afférente, notamment :

(i) la vente, la demande en forclusion ou, dans la province de Québec, la demande en délaissement,

(ii) la compensation, ou l'affectation de son produit ou de sa valeur.

Restriction

(9) Aucune ordonnance rendue au titre de la présente loi ne peut avoir pour effet de suspendre ou de restreindre le droit d'effectuer les opérations visées au paragraphe (8).

Valeurs nettes dues à la date de résiliation

(10) Si, aux termes du contrat financier admissible visé au paragraphe (8), des sommes sont dues par la compagnie à une autre partie au contrat au titre de valeurs nettes dues à la date de résiliation, cette autre partie est réputée être un créancier de la compagnie relativement à ces sommes.

Rang

(11) Il ne peut être rendu, au titre de la présente loi, aucune ordonnance dont l'effet serait d'assigner un rang inférieur à toute garantie financière.

2005, ch. 47, art. 131; 2007, ch. 29, art. 109, ch. 36, art. 77 et 112; 2012, ch. 31, art. 421.

Obligations et interdiction

Assistance

35 (1) La compagnie débitrice est tenue d'aider le contrôleur à remplir adéquatement ses fonctions.

Obligations visées à l'article 158 de la *Loi sur la faillite et l'insolvabilité*

(2) Elle est également tenue de satisfaire aux obligations visées à l'article 158 de la *Loi sur la faillite et l'insolvabilité* selon ce qui est indiqué et applicable dans les circonstances.

2005, ch. 47, art. 131.

Restriction à la disposition d'actifs

36 (1) Il est interdit à la compagnie débitrice à l'égard de laquelle une ordonnance a été rendue sous le régime de la présente loi de disposer, notamment par vente, d'actifs hors du cours ordinaire de ses affaires sans l'autorisation du tribunal. Le tribunal peut accorder l'autorisation sans qu'il soit nécessaire d'obtenir l'acquiescement

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

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or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a)** whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b)** whether the monitor approved the process leading to the proposed sale or disposition;
- (c)** whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d)** the extent to which the creditors were consulted;
- (e)** the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f)** whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

- (a)** good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and
- (b)** the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

des actionnaires, et ce malgré toute exigence à cet effet, notamment en vertu d'une règle de droit fédérale ou provinciale.

Avis aux créanciers

(2) La compagnie qui demande l'autorisation au tribunal en avise les créanciers garantis qui peuvent vraisemblablement être touchés par le projet de disposition.

Facteurs à prendre en considération

(3) Pour décider s'il accorde l'autorisation, le tribunal prend en considération, entre autres, les facteurs suivants :

- a)** la justification des circonstances ayant mené au projet de disposition;
- b)** l'acquiescement du contrôleur au processus ayant mené au projet de disposition, le cas échéant;
- c)** le dépôt par celui-ci d'un rapport précisant que, à son avis, la disposition sera plus avantageuse pour les créanciers que si elle était faite dans le cadre de la faillite;
- d)** la suffisance des consultations menées auprès des créanciers;
- e)** les effets du projet de disposition sur les droits de tout intéressé, notamment les créanciers;
- f)** le caractère juste et raisonnable de la contrepartie reçue pour les actifs compte tenu de leur valeur marchande.

Autres facteurs

(4) Si la compagnie projette de disposer d'actifs en faveur d'une personne à laquelle elle est liée, le tribunal, après avoir pris ces facteurs en considération, ne peut accorder l'autorisation que s'il est convaincu :

- a)** d'une part, que les efforts voulus ont été faits pour disposer des actifs en faveur d'une personne qui n'est pas liée à la compagnie;
- b)** d'autre part, que la contrepartie offerte pour les actifs est plus avantageuse que celle qui découlerait de toute autre offre reçue dans le cadre du projet de disposition.

Personnes liées

(5) Pour l'application du paragraphe (4), les personnes ci-après sont considérées comme liées à la compagnie :

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- (a) a director or officer of the company;
- (b) a person who has or has had, directly or indirectly, control in fact of the company; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(4)(a) and (5)(a) if the court had sanctioned the compromise or arrangement.

2005, c. 47, s. 131; 2007, c. 36, s. 78.

Preferences and Transfers at Undervalue

Application of sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

36.1 (1) Sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act* apply, with any modifications that the circumstances require, in respect of a compromise or arrangement unless the compromise or arrangement provides otherwise.

Interpretation

(2) For the purposes of subsection (1), a reference in sections 38 and 95 to 101 of the *Bankruptcy and Insolvency Act*

- (a) to “date of the bankruptcy” is to be read as a reference to “day on which proceedings commence under this Act”;
- (b) to “trustee” is to be read as a reference to “monitor”; and
- (c) to “bankrupt”, “insolvent person” or “debtor” is to be read as a reference to “debtor company”.

2005, c. 47, s. 131; 2007, c. 36, s. 78.

- a) le dirigeant ou l'administrateur de celle-ci;
- b) la personne qui, directement ou indirectement, en a ou en a eu le contrôle de fait;
- c) la personne liée à toute personne visée aux alinéas a) ou b).

Autorisation de disposer des actifs en les libérant de restrictions

(6) Le tribunal peut autoriser la disposition d'actifs de la compagnie, purgés de toute charge, sûreté ou autre restriction, et, le cas échéant, est tenu d'assujettir le produit de la disposition ou d'autres de ses actifs à une charge, sûreté ou autre restriction en faveur des créanciers touchés par la purge.

Restriction à l'égard des employeurs

(7) Il ne peut autoriser la disposition que s'il est convaincu que la compagnie est en mesure d'effectuer et effectuera les paiements qui auraient été exigés en vertu des alinéas 6(4)a) et (5)a) s'il avait homologué la transaction ou l'arrangement.

2005, ch. 47, art. 131; 2007, ch. 36, art. 78.

Traitements préférentiels et opérations sous-évaluées

Application des articles 38 et 95 à 101 de la *Loi sur la faillite et l'insolvabilité*

36.1 (1) Les articles 38 et 95 à 101 de la *Loi sur la faillite et l'insolvabilité* s'appliquent, avec les adaptations nécessaires, à la transaction ou à l'arrangement sauf disposition contraire de ceux-ci.

Interprétation

(2) Pour l'application du paragraphe (1), la mention, aux articles 38 et 95 à 101 de la *Loi sur la faillite et l'insolvabilité*, de la date de la faillite vaut mention de la date à laquelle une procédure a été intentée sous le régime de la présente loi, celle du syndic vaut mention du contrôleur et celle du failli, de la personne insolvable ou du débiteur vaut mention de la compagnie débitrice.

2005, ch. 47, art. 131; 2007, ch. 36, art. 78.

Her Majesty

Deemed trusts

37 (1) Subject to subsection (2), despite any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a debtor company shall not be regarded as being held in trust for Her Majesty unless it would be so regarded in the absence of that statutory provision.

Exceptions

(2) Subsection (1) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a “federal provision”), nor does it apply in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province if

(a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(b) the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a *provincial pension plan* as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

2005, c. 47, s. 131.

Status of Crown claims

38 (1) In relation to a proceeding under this Act, all claims, including secured claims, of Her Majesty in right of Canada or a province or any body under an enactment respecting workers' compensation, in this section and in

Sa Majesté

Fiducies présumées

37 (1) Sous réserve du paragraphe (2) et par dérogation à toute disposition législative fédérale ou provinciale ayant pour effet d'assimiler certains biens à des biens détenus en fiducie pour Sa Majesté, aucun des biens de la compagnie débitrice ne peut être considéré comme tel par le seul effet d'une telle disposition.

Exceptions

(2) Le paragraphe (1) ne s'applique pas à l'égard des sommes réputées détenues en fiducie aux termes des paragraphes 227(4) ou (4.1) de la *Loi de l'impôt sur le revenu*, des paragraphes 23(3) ou (4) du *Régime de pensions du Canada* ou des paragraphes 86(2) ou (2.1) de la *Loi sur l'assurance-emploi* (chacun étant appelé « disposition fédérale » au présent paragraphe) ou à l'égard des sommes réputées détenues en fiducie aux termes de toute loi d'une province créant une fiducie présumée dans le seul but d'assurer à Sa Majesté du chef de cette province la remise de sommes déduites ou retenues aux termes d'une loi de cette province, si, dans ce dernier cas, se réalise l'une des conditions suivantes :

a) la loi de cette province prévoit un impôt semblable, de par sa nature, à celui prévu par la *Loi de l'impôt sur le revenu*, et les sommes déduites ou retenues au titre de cette loi provinciale sont de même nature que celles visées aux paragraphes 227(4) ou (4.1) de la *Loi de l'impôt sur le revenu*;

b) cette province est une province instituant un régime général de pensions au sens du paragraphe 3(1) du *Régime de pensions du Canada*, la loi de cette province institue un régime provincial de pensions au sens de ce paragraphe, et les sommes déduites ou retenues au titre de cette loi provinciale sont de même nature que celles visées aux paragraphes 23(3) ou (4) du *Régime de pensions du Canada*.

Pour l'application du présent paragraphe, toute disposition de la loi provinciale qui crée une fiducie présumée est réputée avoir, à l'encontre de tout créancier de la compagnie et malgré tout texte législatif fédéral ou provincial et toute règle de droit, la même portée et le même effet que la disposition fédérale correspondante, quelle que soit la garantie dont bénéficie le créancier.

2005, ch. 47, art. 131.

Réclamations de la Couronne

38 (1) Dans le cadre de toute procédure intentée sous le régime de la présente loi, les réclamations de Sa Majesté du chef du Canada ou d'une province ou d'un organisme compétent au titre d'une loi sur les accidents du travail, y

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section 39 called a “workers’ compensation body”, rank as unsecured claims.

Exceptions

(2) Subsection (1) does not apply

(a) in respect of claims that are secured by a security or charge of a kind that can be obtained by persons other than Her Majesty or a workers’ compensation body

(i) pursuant to any law, or

(ii) pursuant to provisions of federal or provincial legislation if those provisions do not have as their sole or principal purpose the establishment of a means of securing claims of Her Majesty or a workers’ compensation body; and

(b) to the extent provided in subsection 39(2), to claims that are secured by a security referred to in subsection 39(1), if the security is registered in accordance with subsection 39(1).

Operation of similar legislation

(3) Subsection (1) does not affect the operation of

(a) subsections 224(1.2) and (1.3) of the *Income Tax Act*,

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee’s premium, or employer’s premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts, or

(c) any provision of provincial legislation that has a purpose similar to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts if the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a *province providing a comprehensive pension plan* as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation

compris les réclamations garanties, prennent rang comme réclamations non garanties.

Exceptions

(2) Sont soustraites à l’application du paragraphe (1) :

a) les réclamations garanties par un type de charge ou de sûreté dont toute personne, et non seulement Sa Majesté ou l’organisme, peut se prévaloir au titre de dispositions législatives fédérales ou provinciales n’ayant pas pour seul ou principal objet l’établissement de mécanismes garantissant les réclamations de Sa Majesté ou de l’organisme, ou au titre de toute autre règle de droit;

b) les réclamations garanties et enregistrées aux termes du paragraphe 39(1), dans la mesure prévue au paragraphe 39(2).

Effet

(3) Le paragraphe (1) n’a pas pour effet de porter atteinte à l’application des dispositions suivantes :

a) les paragraphes 224(1.2) et (1.3) de la *Loi de l’impôt sur le revenu*;

b) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l’assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l’impôt sur le revenu* et qui prévoit la perception d’une cotisation, au sens du *Régime de pensions du Canada*, d’une cotisation ouvrière ou d’une cotisation patronale, au sens de la *Loi sur l’assurance-emploi*, ou d’une cotisation prévue par la partie VII.1 de cette loi ainsi que des intérêts, pénalités et autres charges afférents;

c) toute disposition législative provinciale dont l’objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l’impôt sur le revenu*, ou qui renvoie à ce paragraphe, et qui prévoit la perception d’une somme, ainsi que des intérêts, pénalités et autres charges afférents, laquelle :

(i) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d’un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l’impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l’impôt sur le revenu*,

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establishes a *provincial pension plan* as defined in that subsection,

and, for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

2005, c. 47, s. 131; 2009, c. 33, s. 29.

Statutory Crown securities

39 (1) In relation to proceedings under this Act in respect of a debtor company, a security provided for in federal or provincial legislation for the sole or principal purpose of securing a claim of Her Majesty in right of Canada or a province or a workers' compensation body is valid in relation to claims against the company only if, before the day on which proceedings commence, the security is registered under a system of registration of securities that is available not only to Her Majesty in right of Canada or a province or a workers' compensation body, but also to any other creditor who holds a security, and that is open to the public for information or the making of searches.

Effect of security

(2) A security referred to in subsection (1) that is registered in accordance with that subsection

(a) is subordinate to securities in respect of which all steps necessary to setting them up against other creditors were taken before that registration; and

(b) is valid only in respect of amounts owing to Her Majesty or a workers' compensation body at the time of that registration, plus any interest subsequently accruing on those amounts.

2005, c. 47, s. 131; 2007, c. 36, s. 79.

Act binding on Her Majesty

40 This Act is binding on Her Majesty in right of Canada or a province.

2005, c. 47, s. 131.

(ii) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est une province instituant un régime général de pensions au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un régime provincial de pensions au sens de ce paragraphe.

Pour l'application de l'alinéa c), la disposition législative provinciale en question est réputée avoir, à l'encontre de tout créancier et malgré tout texte législatif fédéral ou provincial et toute autre règle de droit, la même portée et le même effet que le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* quant à la somme visée au sous-alinéa c)(i), ou que le paragraphe 23(2) du *Régime de pensions du Canada* quant à la somme visée au sous-alinéa c)(ii), et quant aux intérêts, pénalités et autres charges afférents, quelle que soit la garantie dont bénéficie le créancier.

2005, ch. 47, art. 131; 2009, ch. 33, art. 29.

Garanties créées par législation

39 (1) Dans le cadre de toute procédure intentée à l'égard d'une compagnie débitrice sous le régime de la présente loi, les garanties créées aux termes d'une loi fédérale ou provinciale dans le seul but — ou principalement dans le but — de protéger des réclamations de Sa Majesté du chef du Canada ou d'une province ou d'un organisme compétent au titre d'une loi sur les accidents du travail ne sont valides que si elles ont été enregistrées avant la date d'introduction de la procédure et selon un système d'enregistrement des garanties qui est accessible non seulement à Sa Majesté du chef du Canada ou de la province ou à l'organisme, mais aussi aux autres créanciers détenant des garanties, et qui est accessible au public à des fins de consultation ou de recherche.

Rang

(2) Les garanties enregistrées conformément au paragraphe (1) :

a) prennent rang après toute autre garantie à l'égard de laquelle les mesures requises pour la rendre opposable aux autres créanciers ont toutes été prises avant l'enregistrement;

b) ne sont valides que pour les sommes dues à Sa Majesté ou à l'organisme lors de l'enregistrement et les intérêts échus depuis sur celles-ci.

2005, ch. 47, art. 131; 2007, ch. 36, art. 79.

Obligation de Sa Majesté

40 La présente loi lie Sa Majesté du chef du Canada ou d'une province.

2005, ch. 47, art. 131.

Miscellaneous

Certain sections of *Winding-up and Restructuring Act* do not apply

41 Sections 65 and 66 of the *Winding-up and Restructuring Act* do not apply to any compromise or arrangement to which this Act applies.

2005, c. 47, s. 131.

Act to be applied conjointly with other Acts

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

2005, c. 47, s. 131.

Claims in foreign currency

43 If a compromise or an arrangement is proposed in respect of a debtor company, a claim for a debt that is payable in a currency other than Canadian currency is to be converted to Canadian currency as of the date of the initial application in respect of the company unless otherwise provided in the proposed compromise or arrangement.

2005, c. 47, s. 131.

PART IV

Cross-border Insolvencies

Purpose

Purpose

44 The purpose of this Part is to provide mechanisms for dealing with cases of cross-border insolvencies and to promote

- (a) cooperation between the courts and other competent authorities in Canada with those of foreign jurisdictions in cases of cross-border insolvencies;
- (b) greater legal certainty for trade and investment;
- (c) the fair and efficient administration of cross-border insolvencies that protects the interests of creditors and other interested persons, and those of debtor companies;

Dispositions diverses

Inapplicabilité de certains articles de la *Loi sur les liquidations et les restructurations*

41 Les articles 65 et 66 de la *Loi sur les liquidations et les restructurations* ne s'appliquent à aucune transaction ni à aucun arrangement auxquels la présente loi est applicable.

2005, ch. 47, art. 131.

Application concurrente d'autres lois

42 Les dispositions de la présente loi peuvent être appliquées conjointement avec celles de toute loi fédérale ou provinciale, autorisant ou prévoyant l'homologation de transactions ou arrangements entre une compagnie et ses actionnaires ou une catégorie de ces derniers.

2005, ch. 47, art. 131.

Créances en monnaies étrangères

43 Dans le cas où une transaction ou un arrangement est proposé à l'égard d'une compagnie débitrice, la réclamation visant une créance en devises étrangères doit être convertie en monnaie canadienne au taux en vigueur à la date de la demande initiale, sauf disposition contraire de la transaction ou de l'arrangement.

2005, ch. 47, art. 131.

PARTIE IV

Insolvabilité en contexte international

Objet

Objet

44 La présente partie a pour objet d'offrir des moyens pour traiter des cas d'insolvabilité en contexte international et de promouvoir les objectifs suivants :

- a) assurer la coopération entre les tribunaux et les autres autorités compétentes du Canada et ceux des ressorts étrangers intervenant dans de tels cas;
- b) garantir une plus grande certitude juridique dans le commerce et les investissements;
- c) administrer équitablement et efficacement les affaires d'insolvabilité en contexte international, de manière à protéger les intérêts des créanciers et des

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(d) the protection and the maximization of the value of debtor company's property; and

(e) the rescue of financially troubled businesses to protect investment and preserve employment.

2005, c. 47, s. 131.

autres parties intéressées, y compris les compagnies débitrices;

d) protéger les biens des compagnies débitrices et en optimiser la valeur;

e) faciliter le redressement des entreprises en difficulté, de manière à protéger les investissements et préserver les emplois.

2005, ch. 47, art. 131.

Interpretation

Definitions

45 (1) The following definitions apply in this Part.

foreign court means a judicial or other authority competent to control or supervise a foreign proceeding. (*tribunal étranger*)

foreign main proceeding means a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests. (*principale*)

foreign non-main proceeding means a foreign proceeding, other than a foreign main proceeding. (*secondaire*)

foreign proceeding means a judicial or an administrative proceeding, including an interim proceeding, in a jurisdiction outside Canada dealing with creditors' collective interests generally under any law relating to bankruptcy or insolvency in which a debtor company's business and financial affairs are subject to control or supervision by a foreign court for the purpose of reorganization. (*instance étrangère*)

foreign representative means a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to

(a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or

(b) act as a representative in respect of the foreign proceeding. (*représentant étranger*)

Centre of debtor company's main interests

(2) For the purposes of this Part, in the absence of proof to the contrary, a debtor company's registered office is deemed to be the centre of its main interests.

2005, c. 47, s. 131.

Définitions

Définitions

45 (1) Les définitions qui suivent s'appliquent à la présente partie.

instance étrangère Procédure judiciaire ou administrative, y compris la procédure provisoire, régie par une loi étrangère relative à la faillite ou à l'insolvabilité qui touche les droits de l'ensemble des créanciers et dans le cadre de laquelle les affaires financières et autres de la compagnie débitrice sont placées sous la responsabilité ou la surveillance d'un tribunal étranger aux fins de réorganisation. (*foreign proceeding*)

principale Qualifie l'instance étrangère qui a lieu dans le ressort où la compagnie débitrice a ses principales affaires. (*foreign main proceeding*)

représentant étranger Personne ou organe qui, même à titre provisoire, est autorisé dans le cadre d'une instance étrangère à surveiller les affaires financières ou autres de la compagnie débitrice aux fins de réorganisation, ou à agir en tant que représentant. (*foreign representative*)

secondaire Qualifie l'instance étrangère autre que l'instance étrangère principale. (*foreign non-main proceeding*)

tribunal étranger Autorité, judiciaire ou autre, compétente pour contrôler ou surveiller des instances étrangères. (*foreign court*)

Lieu des principales affaires

(2) Pour l'application de la présente partie, sauf preuve contraire, le siège social de la compagnie débitrice est présumé être le lieu où elle a ses principales affaires.

2005, ch. 47, art. 131.

Recognition of Foreign Proceeding

Application for recognition of a foreign proceeding

46 (1) A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.

Documents that must accompany application

(2) Subject to subsection (3), the application must be accompanied by

(a) a certified copy of the instrument, however designated, that commenced the foreign proceeding or a certificate from the foreign court affirming the existence of the foreign proceeding;

(b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity; and

(c) a statement identifying all foreign proceedings in respect of the debtor company that are known to the foreign representative.

Documents may be considered as proof

(3) The court may, without further proof, accept the documents referred to in paragraphs (2)(a) and (b) as evidence that the proceeding to which they relate is a foreign proceeding and that the applicant is a foreign representative in respect of the foreign proceeding.

Other evidence

(4) In the absence of the documents referred to in paragraphs (2)(a) and (b), the court may accept any other evidence of the existence of the foreign proceeding and of the foreign representative's authority that it considers appropriate.

Translation

(5) The court may require a translation of any document accompanying the application.

2005, c. 47, s. 131.

Order recognizing foreign proceeding

47 (1) If the court is satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, the court shall make an order recognizing the foreign proceeding.

Reconnaissance des instances étrangères

Demande de reconnaissance de l'instance étrangère

46 (1) Le représentant étranger peut demander au tribunal de reconnaître l'instance étrangère dans le cadre de laquelle il a qualité.

Documents accompagnant la demande de reconnaissance

(2) La demande de reconnaissance est accompagnée des documents suivants :

a) une copie certifiée conforme de l'acte — quelle qu'en soit la désignation — introductif de l'instance étrangère ou le certificat délivré par le tribunal étranger attestant l'introduction de celle-ci;

b) une copie certifiée conforme de l'acte — quelle qu'en soit la désignation — autorisant le représentant étranger à agir à ce titre ou le certificat délivré par le tribunal étranger attestant la qualité de celui-ci;

c) une déclaration faisant état de toutes les instances étrangères visant la compagnie débitrice qui sont connues du représentant étranger.

Documents acceptés comme preuve

(3) Le tribunal peut, sans preuve supplémentaire, accepter les documents visés aux alinéas (2)a) et b) comme preuve du fait qu'il s'agit d'une instance étrangère et que le demandeur est le représentant étranger dans le cadre de celle-ci.

Autre preuve

(4) En l'absence des documents visés aux alinéas (2)a) et b), il peut accepter toute autre preuve — qu'il estime indiquée — de l'introduction de l'instance étrangère et de la qualité du représentant étranger.

Traduction

(5) Il peut exiger la traduction des documents accompagnant la demande de reconnaissance.

2005, ch. 47, art. 131.

Ordonnance de reconnaissance

47 (1) S'il est convaincu que la demande de reconnaissance vise une instance étrangère et que le demandeur est un représentant étranger dans le cadre de celle-ci, le tribunal reconnaît, par ordonnance, l'instance étrangère en cause.

Nature of foreign proceeding to be specified

(2) The court shall specify in the order whether the foreign proceeding is a foreign main proceeding or a foreign non-main proceeding.

2005, c. 47, s. 131.

Order relating to recognition of a foreign main proceeding

48 (1) Subject to subsections (2) to (4), on the making of an order recognizing a foreign proceeding that is specified to be a foreign main proceeding, the court shall make an order, subject to any terms and conditions it considers appropriate,

(a) staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken against the debtor company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;

(b) restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the debtor company;

(c) prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the debtor company; and

(d) prohibiting the debtor company from selling or otherwise disposing of, outside the ordinary course of its business, any of the debtor company's property in Canada that relates to the business and prohibiting the debtor company from selling or otherwise disposing of any of its other property in Canada.

Scope of order

(2) The order made under subsection (1) must be consistent with any order that may be made under this Act.

When subsection (1) does not apply

(3) Subsection (1) does not apply if any proceedings under this Act have been commenced in respect of the debtor company at the time the order recognizing the foreign proceeding is made.

Application of this and other Acts

(4) Nothing in subsection (1) precludes the debtor company from commencing or continuing proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

2005, c. 47, s. 131.

Nature de l'instance

(2) Il précise dans l'ordonnance s'il s'agit d'une instance étrangère principale ou secondaire.

2005, ch. 47, art. 131.

Effets de la reconnaissance d'une instance étrangère principale

48 (1) Sous réserve des paragraphes (2) à (4), si l'ordonnance de reconnaissance précise qu'il s'agit d'une instance étrangère principale, le tribunal, par ordonnance, selon les modalités qu'il estime indiquées :

a) suspend, jusqu'à nouvel ordre, toute procédure qui est ou pourrait être intentée contre la compagnie sous le régime de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*;

b) surseoit, jusqu'à nouvel ordre, à la continuation de toute action, poursuite ou autre procédure contre la compagnie;

c) interdit, jusqu'à nouvel ordre, l'introduction de toute action, poursuite ou autre procédure contre la compagnie;

d) interdit à la compagnie de disposer, notamment par vente, des biens de son entreprise situés au Canada hors du cours ordinaire des affaires ou de ses autres biens situés au Canada.

Compatibilité

(2) L'ordonnance visée au paragraphe (1) doit être compatible avec les autres ordonnances rendues sous le régime de la présente loi.

Non-application du paragraphe (1)

(3) Le paragraphe (1) ne s'applique pas si au moment où l'ordonnance de reconnaissance est rendue une procédure a déjà été intentée sous le régime de la présente loi contre la compagnie débitrice.

Application de la présente loi et d'autres lois

(4) Le paragraphe (1) n'a pas pour effet d'empêcher la compagnie débitrice d'intenter ou de continuer une procédure sous le régime de la présente loi, de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*.

2005, ch. 47, art. 131.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Companies' Creditors Arrangement Act
PART IV Cross-border Insolvencies
Recognition of Foreign Proceeding
Sections 49-51

Arrangements avec les créanciers des compagnies
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Reconnaissance des instances étrangères
Articles 49-51

Other orders

49 (1) If an order recognizing a foreign proceeding is made, the court may, on application by the foreign representative who applied for the order, if the court is satisfied that it is necessary for the protection of the debtor company's property or the interests of a creditor or creditors, make any order that it considers appropriate, including an order

- (a) if the foreign proceeding is a foreign non-main proceeding, referred to in subsection 48(1);
- (b) respecting the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor company's property, business and financial affairs, debts, liabilities and obligations; and
- (c) authorizing the foreign representative to monitor the debtor company's business and financial affairs in Canada for the purpose of reorganization.

Restriction

(2) If any proceedings under this Act have been commenced in respect of the debtor company at the time an order recognizing the foreign proceeding is made, an order made under subsection (1) must be consistent with any order that may be made in any proceedings under this Act.

Application of this and other Acts

(3) The making of an order under paragraph (1)(a) does not preclude the commencement or the continuation of proceedings under this Act, the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* in respect of the debtor company.

2005, c. 47, s. 131.

Terms and conditions of orders

50 An order under this Part may be made on any terms and conditions that the court considers appropriate in the circumstances.

2005, c. 47, s. 131.

Commencement or continuation of proceedings

51 If an order is made recognizing a foreign proceeding, the foreign representative may commence and continue proceedings under this Act in respect of a debtor company as if the foreign representative were a creditor of the debtor company, or the debtor company, as the case may be.

2005, c. 47, s. 131.

Autre ordonnance

49 (1) Une fois l'ordonnance de reconnaissance rendue, le tribunal, sur demande présentée par le représentant étranger demandeur, peut, s'il est convaincu que la mesure est nécessaire pour protéger les biens de la compagnie débitrice ou les intérêts d'un ou plusieurs créanciers, rendre toute ordonnance qu'il estime indiquée, notamment pour :

- a) s'il s'agit d'une instance étrangère secondaire, imposer les interdictions visées au paragraphe 48(1);
- b) régir l'interrogatoire des témoins et la manière de recueillir des preuves ou fournir des renseignements concernant les biens, affaires financières et autres, dettes, obligations et engagements de la compagnie débitrice;
- c) autoriser le représentant étranger à surveiller les affaires financières et autres de la compagnie débitrice qui se rapportent à ses opérations au Canada.

Restriction

(2) Si, au moment où l'ordonnance de reconnaissance est rendue, une procédure a déjà été intentée sous le régime de la présente loi contre la compagnie débitrice, l'ordonnance prévue au paragraphe (1) doit être compatible avec toute ordonnance qui peut être rendue dans le cadre de cette procédure.

Application de la présente loi et d'autres lois

(3) L'ordonnance rendue au titre de l'alinéa (1)a) n'a pas pour effet d'empêcher que soit intentée ou continuée, contre la compagnie débitrice, une procédure sous le régime de la présente loi, de la *Loi sur la faillite et l'insolvabilité* ou de la *Loi sur les liquidations et les restructurations*.

2005, ch. 47, art. 131.

Conditions

50 Le tribunal peut assortir les ordonnances qu'il rend au titre de la présente partie des conditions qu'il estime indiquées dans les circonstances.

2005, ch. 47, art. 131.

Début et continuation de la procédure

51 Une fois l'ordonnance de reconnaissance rendue, le représentant étranger en cause peut intenter ou continuer la procédure visée par la présente loi comme s'il était créancier de la compagnie débitrice ou la compagnie débitrice elle-même, selon le cas.

2005, ch. 47, art. 131.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

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 Articles 52-53

Obligations

Cooperation — court

52 (1) If an order recognizing a foreign proceeding is made, the court shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Cooperation — other authorities in Canada

(2) If any proceedings under this Act have been commenced in respect of a debtor company and an order recognizing a foreign proceeding is made in respect of the debtor company, every person who exercises powers or performs duties and functions under the proceedings under this Act shall cooperate, to the maximum extent possible, with the foreign representative and the foreign court involved in the foreign proceeding.

Forms of cooperation

(3) For the purpose of this section, cooperation may be provided by any appropriate means, including

- (a)** the appointment of a person to act at the direction of the court;
- (b)** the communication of information by any means considered appropriate by the court;
- (c)** the coordination of the administration and supervision of the debtor company's assets and affairs;
- (d)** the approval or implementation by courts of agreements concerning the coordination of proceedings; and
- (e)** the coordination of concurrent proceedings regarding the same debtor company.

2005, c. 47, s. 131; 2007, c. 36, s. 80.

Obligations of foreign representative

53 If an order recognizing a foreign proceeding is made, the foreign representative who applied for the order shall

- (a)** without delay, inform the court of
 - (i)** any substantial change in the status of the recognized foreign proceeding,
 - (ii)** any substantial change in the status of the foreign representative's authority to act in that capacity, and
 - (iii)** any other foreign proceeding in respect of the same debtor company that becomes known to the foreign representative; and

Obligations

Collaboration — tribunal

52 (1) Une fois l'ordonnance de reconnaissance rendue, le tribunal collabore dans toute la mesure possible avec le représentant étranger et le tribunal étranger en cause dans le cadre de l'instance étrangère reconnue.

Collaboration — autres autorités compétentes

(2) Si une procédure a été intentée sous le régime de la présente loi contre une compagnie débitrice et qu'une ordonnance a été rendue reconnaissant une instance étrangère visant cette compagnie, toute personne exerçant des attributions dans le cadre de cette procédure collabore dans toute la mesure possible avec le représentant étranger et le tribunal étranger en cause.

Moyens d'assurer la collaboration

(3) Pour l'application du présent article, la collaboration peut être assurée par tout moyen approprié, notamment :

- a)** la nomination d'une personne chargée d'agir suivant les instructions du tribunal;
- b)** la communication de renseignements par tout moyen jugé approprié par celui-ci;
- c)** la coordination de l'administration et de la surveillance des biens et des affaires de la compagnie débitrice;
- d)** l'approbation ou l'application par les tribunaux des accords concernant la coordination des procédures;
- e)** la coordination de procédures concurrentes concernant la même compagnie débitrice.

2005, ch. 47, art. 131; 2007, ch. 36, art. 80.

Obligations du représentant étranger

53 Si l'ordonnance de reconnaissance est rendue, il incombe au représentant étranger demandeur :

- a)** d'informer sans délai le tribunal :
 - (i)** de toute modification sensible du statut de l'instance étrangère reconnue,
 - (ii)** de toute modification sensible de sa qualité,
 - (iii)** de toute autre procédure étrangère visant la compagnie débitrice qui a été portée à sa connaissance;

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Companies' Creditors Arrangement
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(b) publish, without delay after the order is made, once a week for two consecutive weeks, or as otherwise directed by the court, in one or more newspapers in Canada specified by the court, a notice containing the prescribed information.

2005, c. 47, s. 131.

b) de publier, sans délai après le prononcé de l'ordonnance, une fois par semaine pendant deux semaines consécutives, ou selon les modalités qui y sont prévues, dans le journal ou les journaux au Canada qui y sont précisés, un avis contenant les renseignements réglementaires.

2005, ch. 47, art. 131.

Multiple Proceedings

Concurrent proceedings

54 If any proceedings under this Act in respect of a debtor company are commenced at any time after an order recognizing the foreign proceeding is made, the court shall review any order made under section 49 and, if it determines that the order is inconsistent with any orders made in the proceedings under this Act, the court shall amend or revoke the order.

2005, c. 47, s. 131.

Instances multiples

Instances concomitantes

54 Si, après qu'a été rendue une ordonnance de reconnaissance à l'égard d'une instance étrangère visant une compagnie débitrice, une procédure est intentée sous le régime de la présente loi contre cette compagnie, le tribunal examine toute ordonnance rendue au titre de l'article 49 et, s'il conclut qu'elle n'est pas compatible avec toute ordonnance rendue dans le cadre des procédures intentées sous le régime de la présente loi, il la modifie ou la révoque.

2005, ch. 47, art. 131.

Multiple foreign proceedings

55 (1) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of a debtor company, an order recognizing a foreign main proceeding is made in respect of the debtor company, the court shall review any order made under section 49 in respect of the foreign non-main proceeding and, if it determines that the order is inconsistent with any orders made under that section in respect of the foreign main proceedings, the court shall amend or revoke the order.

Multiple foreign proceedings

(2) If, at any time after an order is made in respect of a foreign non-main proceeding in respect of the debtor company, an order recognizing another foreign non-main proceeding is made in respect of the debtor company, the court shall, for the purpose of facilitating the coordination of the foreign non-main proceedings, review any order made under section 49 in respect of the first recognized proceeding and amend or revoke the order if it considers it appropriate.

2005, c. 47, s. 131.

Plusieurs instances étrangères

55 (1) Si, après qu'a été rendue une ordonnance de reconnaissance à l'égard d'une instance étrangère secondaire visant une compagnie débitrice, une ordonnance de reconnaissance est rendue à l'égard d'une instance étrangère principale visant la même compagnie, toute ordonnance rendue au titre de l'article 49 dans le cadre de l'instance étrangère secondaire doit être compatible avec toute ordonnance qui peut être rendue au titre de cet article dans le cadre de l'instance étrangère principale.

Plusieurs instances étrangères

(2) Si, après qu'a été rendue une ordonnance de reconnaissance à l'égard d'une instance étrangère secondaire visant une compagnie débitrice, une autre ordonnance de reconnaissance est rendue à l'égard d'une instance étrangère secondaire visant la même compagnie, le tribunal examine, en vue de coordonner les instances étrangères secondaires, toute ordonnance rendue au titre de l'article 49 dans le cadre de la première procédure reconnue et la modifie ou la révoque s'il l'estime indiqué.

2005, ch. 47, art. 131.

Miscellaneous Provisions

Authorization to act as representative of proceeding under this Act

56 The court may authorize any person or body to act as a representative in respect of any proceeding under this

Dispositions diverses

Autorisation d'agir à titre de représentant dans toute procédure intentée sous le régime de la présente loi

56 Le tribunal peut autoriser toute personne ou tout organe à agir à titre de représentant dans le cadre de toute procédure intentée sous le régime de la présente loi en

Act for the purpose of having them recognized in a jurisdiction outside Canada.

2005, c. 47, s. 131.

Foreign representative status

57 An application by a foreign representative for any order under this Part does not submit the foreign representative to the jurisdiction of the court for any other purpose except with regard to the costs of the proceedings, but the court may make any order under this Part conditional on the compliance by the foreign representative with any other order of the court.

2005, c. 47, s. 131.

Foreign proceeding appeal

58 A foreign representative is not prevented from making an application to the court under this Part by reason only that proceedings by way of appeal or review have been taken in a foreign proceeding, and the court may, on an application if such proceedings have been taken, grant relief as if the proceedings had not been taken.

2005, c. 47, s. 131.

Presumption of insolvency

59 For the purposes of this Part, if an insolvency or a reorganization or a similar order has been made in respect of a debtor company in a foreign proceeding, a certified copy of the order is, in the absence of evidence to the contrary, proof that the debtor company is insolvent and proof of the appointment of the foreign representative made by the order.

2005, c. 47, s. 131.

Credit for recovery in other jurisdictions

60 (1) In making a compromise or an arrangement of a debtor company, the following shall be taken into account in the distribution of dividends to the company's creditors in Canada as if they were a part of that distribution:

(a) the amount that a creditor receives or is entitled to receive outside Canada by way of a dividend in a foreign proceeding in respect of the company; and

(b) the value of any property of the company that the creditor acquires outside Canada on account of a provable claim of the creditor or that the creditor acquires outside Canada by way of a transfer that, if it were subject to this Act, would be a preference over other creditors or a transfer at undervalue.

Restriction

(2) Despite subsection (1), the creditor is not entitled to receive a dividend from the distribution in Canada until every other creditor who has a claim of equal rank in the

vue d'obtenir la reconnaissance de celle-ci dans un ressort étranger.

2005, ch. 47, art. 131.

Statut du représentant étranger

57 Le représentant étranger n'est pas soumis à la juridiction du tribunal pour le motif qu'il a présenté une demande au titre de la présente partie, sauf en ce qui touche les frais de justice; le tribunal peut toutefois subordonner toute ordonnance visée à la présente partie à l'observation par le représentant étranger de toute autre ordonnance rendue par lui.

2005, ch. 47, art. 131.

Instance étrangère : appel

58 Le fait qu'une instance étrangère fait l'objet d'un appel ou d'une révision n'a pas pour effet d'empêcher le représentant étranger de présenter toute demande au tribunal au titre de la présente partie; malgré ce fait, le tribunal peut, sur demande, accorder des redressements.

2005, ch. 47, art. 131.

Présomption d'insolvabilité

59 Pour l'application de la présente partie, une copie certifiée conforme de l'ordonnance d'insolvabilité ou de réorganisation ou de toute ordonnance semblable, rendue contre une compagnie débitrice dans le cadre d'une instance étrangère, fait foi, sauf preuve contraire, de l'insolvabilité de celle-ci et de la nomination du représentant étranger au titre de l'ordonnance.

2005, ch. 47, art. 131.

Sommes reçues à l'étranger

60 (1) Lorsqu'une transaction ou un arrangement visant la compagnie débitrice est proposé, les éléments énumérés ci-après doivent être pris en considération dans la distribution des dividendes aux créanciers d'un débiteur au Canada comme s'ils faisaient partie de la distribution :

a) les sommes qu'un créancier a reçues — ou auxquelles il a droit — à l'étranger, à titre de dividende, dans le cadre d'une instance étrangère le visant;

b) la valeur de tout bien de la compagnie que le créancier a acquis à l'étranger au titre d'une créance prouvable ou par suite d'un transfert qui, si la présente loi lui était applicable, procurerait à un créancier une préférence sur d'autres créanciers ou constituerait une opération sous-évaluée.

Restriction

(2) Le créancier n'a toutefois pas le droit de recevoir un dividende dans le cadre de la distribution faite au Canada tant que les titulaires des créances venant au même rang

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

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order of priority established under this Act has received a dividend whose amount is the same percentage of that other creditor's claim as the aggregate of the amount referred to in paragraph (1)(a) and the value referred to in paragraph (1)(b) is of that creditor's claim.

2005, c. 47, s. 131.

Court not prevented from applying certain rules

61 (1) Nothing in this Part prevents the court, on the application of a foreign representative or any other interested person, from applying any legal or equitable rules governing the recognition of foreign insolvency orders and assistance to foreign representatives that are not inconsistent with the provisions of this Act.

Public policy exception

(2) Nothing in this Part prevents the court from refusing to do something that would be contrary to public policy.

2005, c. 47, s. 131; 2007, c. 36, s. 81.

PART V

Administration

Regulations

62 The Governor in Council may make regulations for carrying out the purposes and provisions of this Act, including regulations

(a) specifying documents for the purpose of paragraph 23(1)(f); and

(b) prescribing anything that by this Act is to be prescribed.

2005, c. 47, s. 131; 2007, c. 36, s. 82.

Review of Act

63 (1) Within five years after the coming into force of this section, the Minister shall cause to be laid before both Houses of Parliament a report on the provisions and operation of this Act, including any recommendations for amendments to those provisions.

Reference to parliamentary committee

(2) The report stands referred to the committee of the Senate, the House of Commons or both Houses of Parliament that is designated or established for that purpose, which shall

que la sienne dans l'ordre de collocation prévu par la présente loi n'ont pas reçu un dividende dont le pourcentage d'acquittement est égal au pourcentage d'acquittement des éléments visés aux alinéas (1)a) et b).

2005, ch. 47, art. 131.

Application de règles étrangères

61 (1) La présente partie n'a pas pour effet d'empêcher le tribunal d'appliquer, sur demande faite par le représentant étranger ou tout autre intéressé, toute règle de droit ou d'équité relative à la reconnaissance des ordonnances étrangères en matière d'insolvabilité et à l'assistance à prêter au représentant étranger, dans la mesure où elle n'est pas incompatible avec les dispositions de la présente loi.

Exception relative à l'ordre public

(2) La présente partie n'a pas pour effet d'empêcher le tribunal de refuser de prendre une mesure contraire à l'ordre public.

2005, ch. 47, art. 131; 2007, ch. 36, art. 81.

PARTIE V

Administration

Règlements

62 Le gouverneur en conseil peut, par règlement, prendre toute mesure d'application de la présente loi, notamment :

a) préciser les documents pour l'application de l'alinéa 23(1)f);

b) prendre toute mesure d'ordre réglementaire prévue par la présente loi.

2005, ch. 47, art. 131; 2007, ch. 36, art. 82.

Rapport

63 (1) Dans les cinq ans suivant l'entrée en vigueur du présent article, le ministre présente au Sénat et à la Chambre des communes un rapport sur les dispositions de la présente loi et son application dans lequel il fait état des modifications qu'il juge souhaitables.

Examen parlementaire

(2) Le comité du Sénat, de la Chambre des communes, ou mixte, constitué ou désigné à cette fin, est saisi d'office du rapport et procède dans les meilleurs délais à l'étude de celui-ci et, dans l'année qui suit le dépôt du rapport ou le délai supérieur accordé par le Sénat, la

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36

Companies' Creditors Arrangement Act
PART V Administration
Section 63

Arrangements avec les créanciers des compagnies
PARTIE V Administration
Article 63

(a) as soon as possible after the laying of the report, review the report; and

(b) report to the Senate, the House of Commons or both Houses of Parliament, as the case may be, within one year after the laying of the report of the Minister, or any further time authorized by the Senate, the House of Commons or both Houses of Parliament.

2005, c. 47, s. 131.

Chambre des communes ou les deux chambres, selon le cas, leur présente son rapport.

2005, ch. 47, art. 131.

RELATED PROVISIONS

— R.S., 1985, c. 27 (2nd Supp.), s. 11

Transitional: proceedings

11 Proceedings to which any of the provisions amended by the schedule apply that were commenced before the coming into force of section 10 shall be continued in accordance with those amended provisions without any further formality.

— 1990, c. 17, s. 45(1)

Transitional: proceedings

45 (1) Every proceeding commenced before the coming into force of this subsection and in respect of which any provision amended by this Act applies shall be taken up and continued under and in conformity with that amended provision without any further formality.

— 1997, c. 12, s. 127

Application

127 Section 120, 121, 122, 123, 124, 125 or 126 applies to proceedings commenced under the *Companies' Creditors Arrangement Act* after that section comes into force.

— 1998, c. 30, s. 10

Transitional — proceedings

10 Every proceeding commenced before the coming into force of this section and in respect of which any provision amended by sections 12 to 16 applies shall be taken up and continued under and in conformity with that amended provision without any further formality.

— 2000, c. 30, s. 156(2)

(2) Subsection (1) applies to proceedings commenced under the Act after September 29, 1997.

— 2000, c. 30, s. 157(2)

(2) Subsection (1) applies to proceedings commenced under the Act after September 29, 1997.

— 2000, c. 30, s. 158(2)

(2) Subsection (1) applies to proceedings commenced under the Act after September 29, 1997.

DISPOSITIONS CONNEXES

— L.R. (1985), ch. 27 (2^e suppl.), art. 11

Disposition transitoire : procédure

11 Les procédures intentées en vertu des dispositions modifiées en annexe avant l'entrée en vigueur de l'article 10 se poursuivent en conformité avec les nouvelles dispositions sans autres formalités.

— 1990, ch. 17, par. 45(1)

Disposition transitoire : procédures

45 (1) Les procédures intentées avant l'entrée en vigueur du présent paragraphe et auxquelles s'appliquent des dispositions visées par la présente loi se poursuivent sans autres formalités en conformité avec ces dispositions dans leur forme modifiée.

— 1997, ch. 12, art. 127

Application

127 Les articles 120, 121, 122, 123, 124, 125 ou 126 s'appliquent aux procédures intentées sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies* après l'entrée en vigueur de l'article en cause.

— 1998, ch. 30, art. 10

Procédures

10 Les procédures intentées avant l'entrée en vigueur du présent article et auxquelles s'appliquent des dispositions visées par les articles 12 à 16 se poursuivent sans autres formalités en conformité avec ces dispositions dans leur forme modifiée.

— 2000, ch. 30, par. 156(2)

(2) Le paragraphe (1) s'applique aux procédures intentées en vertu de la même loi après le 29 septembre 1997.

— 2000, ch. 30, par. 157(2)

(2) Le paragraphe (1) s'applique aux procédures intentées en vertu de la même loi après le 29 septembre 1997.

— 2000, ch. 30, par. 158(2)

(2) Le paragraphe (1) s'applique aux procédures intentées en vertu de la même loi après le 29 septembre 1997.

Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*Companies' Creditors Arrangement Act*
RELATED PROVISIONS

— 2001, c. 34, s. 33(2)

(2) Subsection (1) applies to proceedings commenced under the Act after September 29, 1997.

— 2005, c. 47, s. 134, as amended by 2007, c. 36, s. 107

Companies' Creditors Arrangement Act

134 An amendment to the *Companies' Creditors Arrangement Act* that is enacted by any of sections 124 to 131 of this Act applies only to a debtor company in respect of whom proceedings commence under that Act on or after the day on which the amendment comes into force.

— 2007, c. 29, s. 119

Companies' Creditors Arrangement Act

119 An amendment to the *Companies' Creditors Arrangement Act* made by section 104 or 106 of this Act applies only to a debtor company in respect of which proceedings under that Act are commenced on or after the day on which the amendment comes into force.

— 2007, c. 36, s. 111

Companies' Creditors Arrangement Act

111 The amendment to the *Companies' Creditors Arrangement Act* that is enacted by section 67 of this Act applies only to a debtor company in respect of whom proceedings commence under that Act on or after the day on which the amendment comes into force.

Arrangements avec les créanciers des compagnies
DISPOSITIONS CONNEXES

— 2001, ch. 34, par. 33(2)

(2) Le paragraphe (1) s'applique aux procédures intentées en vertu de la même loi après le 29 septembre 1997.

— 2005, ch. 47, art. 134, modifié par 2007, ch. 36, art. 107

Loi sur les arrangements avec les créanciers des compagnies

134 Toute modification à la *Loi sur les arrangements avec les créanciers des compagnies* édictée par l'un des articles 124 à 131 de la présente loi ne s'applique qu'aux compagnies débitrices à l'égard desquelles une procédure est intentée sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies* à la date d'entrée en vigueur de la modification ou par la suite.

— 2007, ch. 29, art. 119

Loi sur les arrangements avec les créanciers des compagnies

119 La modification apportée à la *Loi sur les arrangements avec les créanciers des compagnies* par les articles 104 ou 106 de la présente loi ne s'applique qu'aux compagnies débitrices à l'égard desquelles une procédure est intentée sous le régime de cette loi à la date d'entrée en vigueur de la modification ou par la suite.

— 2007, ch. 36, art. 111

Loi sur les arrangements avec les créanciers des compagnies

111 La modification à la *Loi sur les arrangements avec les créanciers des compagnies* édictée par l'article 67 de la présente loi ne s'applique qu'aux compagnies débitrices à l'égard desquelles une procédure est intentée sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies* à la date d'entrée en vigueur de la modification ou par la suite.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141



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CODIFICATION

Bankruptcy and Insolvency Act

Loi sur la faillite et l'insolvabilité

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

L.R.C. (1985), ch. B-3

Current to December 11, 2017

À jour au 11 décembre 2017

Last amended on September 21, 2017

Dernière modification le 21 septembre 2017

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

NOTE

This consolidation is current to December 11, 2017. The last amendments came into force on September 21, 2017. Any amendments that were not in force as of December 11, 2017 are set out at the end of this document under the heading "Amendments Not in Force".

CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité – lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

NOTE

Cette codification est à jour au 11 décembre 2017. Les dernières modifications sont entrées en vigueur le 21 septembre 2017. Toutes modifications qui n'étaient pas en vigueur au 11 décembre 2017 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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

L.R.C., 1985, ch. B-3

An Act respecting bankruptcy and insolvency

Loi concernant la faillite et l'insolvabilité

Short Title

Titre abrégé

Short title

1 This Act may be cited as the *Bankruptcy and Insolvency Act*.

R.S., 1985, c. B-3, s. 1; 1992, c. 27, s. 2.

Titre abrégé

1 *Loi sur la faillite et l'insolvabilité*.

L.R. (1985), ch. B-3, art. 1; 1992, ch. 27, art. 2.

Interpretation

Définitions et interprétation

Definitions

2 In this Act,

affidavit includes statutory declaration and solemn affirmation; (*affidavit*)

aircraft objects [Repealed, 2012, c. 31, s. 414]

application, with respect to a bankruptcy application filed in a court in the Province of Quebec, means a motion; (*Version anglaise seulement*)

assignment means an assignment filed with the official receiver; (*cession*)

bank means

(a) every bank and every authorized foreign bank within the meaning of section 2 of the *Bank Act*,

(b) every other member of the Canadian Payments Association established by the *Canadian Payments Act*, and

(c) every local cooperative credit society, as defined in subsection 2(1) of the Act referred to in paragraph (b), that is a member of a central cooperative credit society, as defined in that subsection, that is a member of that Association; (*banque*)

Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

accord de transfert de titres pour obtention de crédit

Accord aux termes duquel une personne insolvable ou un failli transfère la propriété d'un bien en vue de garantir le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible. (*title transfer credit support agreement*)

actif à court terme Sommes en espèces, équivalents de trésorerie — notamment les effets négociables et dépôts à vue —, inventaire, comptes à recevoir ou produit de toute opération relative à ces actifs. (*current assets*)

actionnaire S'agissant d'une personne morale ou d'une fiducie de revenu assujetties à la présente loi, est assimilée à l'actionnaire la personne ayant un intérêt dans cette personne morale ou détenant des parts de cette fiducie. (*shareholder*)

administrateur S'agissant d'une personne morale autre qu'une fiducie de revenu, toute personne exerçant les fonctions d'administrateur, indépendamment de son titre, et, s'agissant d'une fiducie de revenu, toute personne exerçant les fonctions de fiduciaire, indépendamment de son titre. (*director*)

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Bankruptcy and Insolvency Act
Interpretation
Section 2

Faillite et insolvabilité
Définitions et interprétation
Article 2

bankrupt means a person who has made an assignment or against whom a bankruptcy order has been made or the legal status of that person; (*failli*)

bankruptcy means the state of being bankrupt or the fact of becoming bankrupt; (*faillite*)

bargaining agent means any trade union that has entered into a collective agreement on behalf of the employees of a person; (*agent négociateur*)

child [Repealed, 2000, c. 12, s. 8]

claim provable in bankruptcy, provable claim or claim provable includes any claim or liability provable in proceedings under this Act by a creditor; (*réclamation prouvable en matière de faillite ou réclamation prouvable*)

collective agreement, in relation to an insolvent person, means a collective agreement within the meaning of the jurisdiction governing collective bargaining between the insolvent person and a bargaining agent; (*convention collective*)

common-law partner, in relation to an individual, means a person who is cohabiting with the individual in a conjugal relationship, having so cohabited for a period of at least one year; (*conjoint de fait*)

common-law partnership means the relationship between two persons who are common-law partners of each other; (*union de fait*)

corporation means a company or legal person that is incorporated by or under an Act of Parliament or of the legislature of a province, an incorporated company, wherever incorporated, that is authorized to carry on business in Canada or has an office or property in Canada or an income trust, but does not include banks, authorized foreign banks within the meaning of section 2 of the *Bank Act*, insurance companies, trust companies, loan companies or railway companies; (*personne morale*)

court, except in paragraphs 178(1)(a) and (a.1) and sections 204.1 to 204.3, means a court referred to in subsection 183(1) or (1.1) or a judge of that court, and includes a registrar when exercising the powers of the court conferred on a registrar under this Act; (*tribunal*)

creditor means a person having a claim provable as a claim under this Act; (*créancier*)

affidavit Sont assimilées à un affidavit une déclaration et une affirmation solennelles. (*affidavit*)

agent négociateur Syndicat ayant conclu une convention collective pour le compte des employés d'une personne. (*bargaining agent*)

banque

a) Les banques et les banques étrangères autorisées, au sens de l'article 2 de la *Loi sur les banques*;

b) les membres de l'Association canadienne des paiements créée par la *Loi canadienne sur les paiements*;

c) les sociétés coopératives de crédit locales définies au paragraphe 2(1) de la loi mentionnée à l'alinéa b) et affiliées à une centrale — au sens du même paragraphe — qui est elle-même membre de cette association. (*bank*)

bien Bien de toute nature, qu'il soit situé au Canada ou ailleurs. Sont compris parmi les biens les biens personnels et réels, en droit ou en equity, les sommes d'argent, marchandises, choses non possessoires et terres, ainsi que les obligations, servitudes et toute espèce de domaines, d'intérêts ou de profits, présents ou futurs, acquis ou éventuels, sur des biens, ou en provenant ou s'y rattachant. (*property*)

biens [Abrogée, 2004, ch. 25, art. 7]

biens aéronautiques [Abrogée, 2012, ch. 31, art. 414]

cession Cession déposée chez le séquestre officiel. (*assignment*)

conjoint de fait La personne qui vit avec la personne en cause dans une relation conjugale depuis au moins un an. (*common-law partner*)

conseiller juridique Toute personne qualifiée, en vertu du droit de la province, pour donner des avis juridiques. (*legal counsel*)

contrat financier admissible Contrat d'une catégorie prescrite. (*eligible financial contract*)

convention collective S'agissant d'une personne insolvable, s'entend au sens donné à ce terme par les règles de droit applicables aux négociations collectives entre elle et l'agent négociateur. (*collective agreement*)

créancier Personne titulaire d'une réclamation prouvable à ce titre sous le régime de la présente loi. (*creditor*)

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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current assets means cash, cash equivalents — including negotiable instruments and demand deposits — inventory or accounts receivable, or the proceeds from any dealing with those assets; (*actif à court terme*)

date of the bankruptcy, in respect of a person, means the date of

- (a) the granting of a bankruptcy order against the person,
- (b) the filing of an assignment in respect of the person, or
- (c) the event that causes an assignment by the person to be deemed; (*date de la faillite*)

date of the initial bankruptcy event, in respect of a person, means the earliest of the day on which any one of the following is made, filed or commenced, as the case may be:

- (a) an assignment by or in respect of the person,
- (b) a proposal by or in respect of the person,
- (c) a notice of intention by the person,
- (d) the first application for a bankruptcy order against the person, in any case
 - (i) referred to in paragraph 50.4(8)(a) or 57(a) or subsection 61(2), or
 - (ii) in which a notice of intention to make a proposal has been filed under section 50.4 or a proposal has been filed under section 62 in respect of the person and the person files an assignment before the court has approved the proposal,
- (e) the application in respect of which a bankruptcy order is made, in the case of an application other than one referred to in paragraph (d), or
- (f) proceedings under the *Companies' Creditors Arrangement Act*; (*ouverture de la faillite*)

debtor includes an insolvent person and any person who, at the time an act of bankruptcy was committed by him, resided or carried on business in Canada and, where the context requires, includes a bankrupt; (*débiteur*)

director in respect of a corporation other than an income trust, means a person occupying the position of director by whatever name called and, in the case of an income trust, a person occupying the position of trustee by whatever name called; (*administrateur*)

créancier garanti Personne titulaire d'une hypothèque, d'un gage, d'une charge ou d'un privilège sur ou contre les biens du débiteur ou une partie de ses biens, à titre de garantie d'une dette échue ou à échoir, ou personne dont la réclamation est fondée sur un effet de commerce ou garantie par ce dernier, lequel effet de commerce est détenu comme garantie subsidiaire et dont le débiteur n'est responsable qu'indirectement ou secondairement. S'entend en outre :

- a) de la personne titulaire, selon le *Code civil du Québec* ou les autres lois de la province de Québec, d'un droit de rétention ou d'une priorité constitutive de droit réel sur ou contre les biens du débiteur ou une partie de ses biens;
- b) lorsque l'exercice de ses droits est assujéti aux règles prévues pour l'exercice des droits hypothécaires au livre sixième du *Code civil du Québec* intitulé *Des priorités et des hypothèques* :

- (i) de la personne qui vend un bien au débiteur, sous condition ou à tempérament,
- (ii) de la personne qui achète un bien du débiteur avec faculté de rachat en faveur de celui-ci,
- (iii) du fiduciaire d'une fiducie constituée par le débiteur afin de garantir l'exécution d'une obligation. (*secured creditor*)

date de la faillite S'agissant d'une personne, la date :

- a) soit de l'ordonnance de faillite la visant;
- b) soit du dépôt d'une cession de biens la visant;
- c) soit du fait sur la base duquel elle est réputée avoir fait une cession de biens. (*date of the bankruptcy*)

débiteur Sont assimilées à un débiteur toute personne insolvable et toute personne qui, à l'époque où elle a commis un acte de faillite, résidait au Canada ou y exerçait des activités. S'entend en outre, lorsque le contexte l'exige, d'un failli. (*debtor*)

disposition [Abrogée, 2005, ch. 47, art. 2]

enfant [Abrogée, 2000, ch. 12, art. 8]

entreprise de service public Vise notamment la personne ou l'organisme qui fournit du combustible, de l'eau ou de l'électricité, un service de télécommunications, d'enlèvement des ordures ou de lutte contre la pollution ou encore des services postaux. (*public utility*)

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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eligible financial contract means an agreement of a prescribed kind; (*contrat financier admissible*)

equity claim means a claim that is in respect of an equity interest, including a claim for, among others,

- (a) a dividend or similar payment,
- (b) a return of capital,
- (c) a redemption or retraction obligation,
- (d) a monetary loss resulting from the ownership, purchase or sale of an equity interest or from the rescission, or, in Quebec, the annulment, of a purchase or sale of an equity interest, or
- (e) contribution or indemnity in respect of a claim referred to in any of paragraphs (a) to (d); (*réclamation relative à des capitaux propres*)

equity interest means

- (a) in the case of a corporation other than an income trust, a share in the corporation — or a warrant or option or another right to acquire a share in the corporation — other than one that is derived from a convertible debt, and
- (b) in the case of an income trust, a unit in the income trust — or a warrant or option or another right to acquire a unit in the income trust — other than one that is derived from a convertible debt; (*intérêt relatif à des capitaux propres*)

executing officer includes a sheriff, a bailiff and any officer charged with the execution of a writ or other process under this Act or any other Act or proceeding with respect to any property of a debtor; (*huissier-exécutant*)

financial collateral means any of the following that is subject to an interest, or in the Province of Quebec a right, that secures payment or performance of an obligation in respect of an eligible financial contract or that is subject to a title transfer credit support agreement:

- (a) cash or cash equivalents, including negotiable instruments and demand deposits,
- (b) securities, a securities account, a securities entitlement or a right to acquire securities, or
- (c) a futures agreement or a futures account; (*garantie financière*)

General Rules means the General Rules referred to in section 209; (*Règles générales*)

failli Personne qui a fait une cession ou contre laquelle a été rendue une ordonnance de faillite. Peut aussi s'entendre de la situation juridique d'une telle personne. (*bankrupt*)

faillite L'état de faillite ou le fait de devenir en faillite. (*bankruptcy*)

fiducie de revenu Fiducie qui possède un actif au Canada et dont les parts sont inscrites à une bourse de valeurs mobilières visée par les Règles générales à la date de l'ouverture de la faillite, ou sont détenues en majorité par une fiducie dont les parts sont inscrites à une telle bourse à cette date. (*income trust*)

garantie financière S'il est assujéti soit à un intérêt ou, dans la province de Québec, à un droit garantissant le paiement d'une somme ou l'exécution d'une obligation relativement à un contrat financier admissible, soit à un accord de transfert de titres pour obtention de crédit, l'un ou l'autre des éléments suivants :

- a) les sommes en espèces et les équivalents de trésorerie — notamment les effets négociables et dépôts à vue;
- b) les titres, comptes de titres, droits intermédiés et droits d'acquérir des titres;
- c) les contrats à terme ou comptes de contrats à terme. (*financial collateral*)

huissier-exécutant Shérif, huissier ou autre personne chargée de l'exécution d'un bref ou autre procédure sous l'autorité de la présente loi ou de toute autre loi, ou de toute autre procédure relative aux biens du débiteur. (*sheriff*)

intérêt relatif à des capitaux propres

- a) S'agissant d'une personne morale autre qu'une fiducie de revenu, action de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle action et ne provenant pas de la conversion d'une dette convertible;
- b) s'agissant d'une fiducie de revenu, part de celle-ci ou bon de souscription, option ou autre droit permettant d'acquérir une telle part et ne provenant pas de la conversion d'une dette convertible. (*equity interest*)

localité En parlant d'un débiteur, le lieu principal où, selon le cas :

- a) il a exercé ses activités au cours de l'année précédant l'ouverture de sa faillite;

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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income trust means a trust that has assets in Canada if

(a) its units are listed on a prescribed stock exchange on the date of the initial bankruptcy event, or

(b) the majority of its units are held by a trust whose units are listed on a prescribed stock exchange on the date of the initial bankruptcy event; (*fiducie de revenu*)

insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (*personne insolvable*)

legal counsel means any person qualified, in accordance with the laws of a province, to give legal advice; (*conseiller juridique*)

locality of a debtor means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated; (*localité*)

Minister means the Minister of Industry; (*ministre*)

net termination value means the net amount obtained after netting or setting off or compensating the mutual obligations between the parties to an eligible financial contract in accordance with its provisions; (*valeurs nettes dues à la date de résiliation*)

official receiver means an officer appointed under subsection 12(2); (*séquestre officiel*)

(b) il a résidé au cours de l'année précédant l'ouverture de sa faillite;

(c) se trouve la plus grande partie de ses biens, dans les cas non visés aux alinéas a) ou b). (*locality of a debtor*)

localité d'un débiteur [Abrogée, 2005, ch. 47, art. 2(F)]

ministre Le ministre de l'Industrie. (*Minister*)

moment de la faillite S'agissant d'une personne, le moment :

(a) soit du prononcé de l'ordonnance de faillite la visant;

(b) soit du dépôt d'une cession de biens la visant;

(c) soit du fait sur la base duquel elle est réputée avoir fait une cession de biens. (*time of the bankruptcy*)

opération sous-évaluée Toute disposition de biens ou fourniture de services pour laquelle le débiteur ne reçoit aucune contrepartie ou en reçoit une qui est manifestement inférieure à la juste valeur marchande de celle qu'il a lui-même donnée. (*transfer at undervalue*)

ouverture de la faillite Relativement à une personne, le premier en date des événements suivants à survenir :

(a) le dépôt d'une cession de biens la visant;

(b) le dépôt d'une proposition la visant;

(c) le dépôt d'un avis d'intention par elle;

(d) le dépôt de la première requête en faillite :

(i) dans les cas visés aux alinéas 50.4(8) a) et 57 a) et au paragraphe 61(2),

(ii) dans le cas où la personne, alors qu'elle est visée par un avis d'intention déposé aux termes de l'article 50.4 ou une proposition déposée aux termes de l'article 62, fait une cession avant que le tribunal ait approuvé la proposition;

(e) dans les cas non visés à l'alinéa d), le dépôt de la requête à l'égard de laquelle une ordonnance de faillite est rendue;

(f) l'introduction d'une procédure sous le régime de la *Loi sur les arrangements avec les créanciers des compagnies*. (*date of the initial bankruptcy event*)

personne

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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person includes a partnership, an unincorporated association, a corporation, a cooperative society or a cooperative organization, the successors of a partnership, of an association, of a corporation, of a society or of an organization and the heirs, executors, liquidators of the succession, administrators or other legal representatives of a person; (*personne*)

prescribed

(a) in the case of the form of a document that is by this Act to be prescribed and the information to be given therein, means prescribed by directive issued by the Superintendent under paragraph 5(4)(e), and

(b) in any other case, means prescribed by the General Rules; (*prescrit*)

property means any type of property, whether situated in Canada or elsewhere, and includes money, goods, things in action, land and every description of property, whether real or personal, legal or equitable, as well as obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of or incident to property; (*bien*)

proposal means

(a) in any provision of Division I of Part III, a proposal made under that Division, and

(b) in any other provision, a proposal made under Division I of Part III or a consumer proposal made under Division II of Part III

and includes a proposal or consumer proposal, as the case may be, for a composition, for an extension of time or for a scheme or arrangement; (*proposition concordataire* ou *proposition*)

public utility includes a person or body who supplies fuel, water or electricity, or supplies telecommunications, garbage collection, pollution control or postal services; (*entreprise de service public*)

resolution or **ordinary resolution** means a resolution carried in the manner provided by section 115; (*résolution* ou *résolution ordinaire*)

secured creditor means a person holding a mortgage, hypothec, pledge, charge or lien on or against the property of the debtor or any part of that property as security for a debt due or accruing due to the person from the debtor, or a person whose claim is based on, or secured by, a negotiable instrument held as collateral security

a) Sont assimilés aux personnes les sociétés de personnes, associations non constituées en personne morale, personnes morales, sociétés et organisations coopératives, ainsi que leurs successeurs;

b) sont par ailleurs assimilés aux personnes leurs héritiers, liquidateurs de succession, exécuteurs testamentaires, administrateurs et autres représentants légaux. (*person*)

personne insolvable Personne qui n'est pas en faillite et qui réside au Canada ou y exerce ses activités ou qui a des biens au Canada, dont les obligations, constituant à l'égard de ses créanciers des réclamations prouvables aux termes de la présente loi, s'élèvent à mille dollars et, selon le cas :

a) qui, pour une raison quelconque, est incapable de faire honneur à ses obligations au fur et à mesure de leur échéance;

b) qui a cessé d'acquitter ses obligations courantes dans le cours ordinaire des affaires au fur et à mesure de leur échéance;

c) dont la totalité des biens n'est pas suffisante, d'après une juste estimation, ou ne suffirait pas, s'il en était disposé lors d'une vente bien conduite par autorité de justice, pour permettre l'acquittement de toutes ses obligations échues ou à échoir. (*insolvent person*)

personne morale Personne morale qui est autorisée à exercer des activités au Canada ou qui y a un établissement ou y possède des biens, ainsi que toute fiducie de revenu. Sont toutefois exclues les banques, banques étrangères autorisées au sens de l'article 2 de la *Loi sur les banques*, compagnies d'assurance, sociétés de fiducie, sociétés de prêt ou compagnies de chemin de fer constituées en personnes morales. (*corporation*)

prescrit

a) Dans le cas de la forme de documents à prescrire au titre de la présente loi et des renseignements qui doivent y figurer, prescrit par le surintendant en application de l'alinéa 5(4) e);

b) dans les autres cas, prescrit par les Règles générales. (*prescribed*)

proposition concordataire ou **proposition** S'entend :

a) à la section I de la partie III, de la proposition faite au titre de cette section;

b) dans le reste de la présente loi, de la proposition faite au titre de la section I de la partie III ou d'une

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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and on which the debtor is only indirectly or secondarily liable, and includes

(a) a person who has a right of retention or a prior claim constituting a real right, within the meaning of the *Civil Code of Québec* or any other statute of the Province of Quebec, on or against the property of the debtor or any part of that property, or

(b) any of

(i) the vendor of any property sold to the debtor under a conditional or instalment sale,

(ii) the purchaser of any property from the debtor subject to a right of redemption, or

(iii) the trustee of a trust constituted by the debtor to secure the performance of an obligation,

if the exercise of the person's rights is subject to the provisions of Book Six of the *Civil Code of Québec* entitled *Prior Claims and Hypothecs* that deal with the exercise of hypothecary rights; (*créancier garanti*)

settlement [Repealed, 2005, c. 47, s. 2]

shareholder includes a member of a corporation — and, in the case of an income trust, a holder of a unit in an income trust — to which this Act applies; (*actionnaire*)

sheriff [Repealed, 2004, c. 25, s. 7]

special resolution means a resolution decided by a majority in number and three-fourths in value of the creditors with proven claims present, personally or by proxy, at a meeting of creditors and voting on the resolution; (*résolution spéciale*)

Superintendent means the Superintendent of Bankruptcy appointed under subsection 5(1); (*surintendant*)

Superintendent of Financial Institutions means the Superintendent of Financial Institutions appointed under subsection 5(1) of the *Office of the Superintendent of Financial Institutions Act*; (*surintendant des institutions financières*)

time of the bankruptcy, in respect of a person, means the time of

(a) the granting of a bankruptcy order against the person,

(b) the filing of an assignment by or in respect of the person, or

proposition de consommateur faite au titre de la section II de la partie III.

Est également visée la proposition ou proposition de consommateur faite en vue d'un concordat, d'un atermolement ou d'un accommodement. (*proposal*)

réclamation prouvable en matière de faillite ou **réclamation prouvable** Toute réclamation ou créance pouvant être prouvée dans des procédures intentées sous l'autorité de la présente loi par un créancier. (*claim provable in bankruptcy, provable claim or claim provable*)

réclamation relative à des capitaux propres Réclamation portant sur un intérêt relatif à des capitaux propres et visant notamment :

a) un dividende ou un paiement similaire;

b) un remboursement de capital;

c) tout droit de rachat d'actions au gré de l'actionnaire ou de remboursement anticipé d'actions au gré de l'émetteur;

d) des pertes pécuniaires associées à la propriété, à l'achat ou à la vente d'un intérêt relatif à des capitaux propres ou à l'annulation de cet achat ou de cette vente;

e) une contribution ou une indemnité relative à toute réclamation visée à l'un des alinéas a) à d). (*equity claim*)

Règles générales Les Règles générales établies en application de l'article 209. (*General Rules*)

résolution ou **résolution ordinaire** Résolution adoptée conformément à l'article 115. (*resolution or ordinary resolution*)

résolution spéciale Résolution décidée par une majorité en nombre et une majorité des trois quarts en valeur des créanciers titulaires de réclamations prouvées, présents personnellement ou représentés par fondés de pouvoir à une assemblée des créanciers et votant sur la résolution. (*special resolution*)

séquestre officiel Fonctionnaire nommé en vertu du paragraphe 12(2). (*official receiver*)

surintendant Le surintendant des faillites nommé aux termes du paragraphe 5(1). (*Superintendent*)

surintendant des institutions financières Le surintendant des institutions financières nommé en application

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(c) the event that causes an assignment by the person to be deemed; (*moment de la faillite*)

title transfer credit support agreement means an agreement under which an insolvent person or a bankrupt has provided title to property for the purpose of securing the payment or performance of an obligation of the insolvent person or bankrupt in respect of an eligible financial contract; (*accord de transfert de titres pour obtention de crédit*)

transfer at undervalue means a disposition of property or provision of services for which no consideration is received by the debtor or for which the consideration received by the debtor is conspicuously less than the fair market value of the consideration given by the debtor; (*opération sous-évaluée*)

trustee or licensed trustee means a person who is licensed or appointed under this Act. (*syndic ou syndic autorisé*)

R.S., 1985, c. B-3, s. 2; R.S., 1985, c. 31 (1st Supp.), s. 69; 1992, c. 1, s. 145(F), c. 27, s. 3; 1995, c. 1, s. 62; 1997, c. 12, s. 1; 1999, c. 28, s. 146, c. 31, s. 17; 2000, c. 12, s. 8; 2001, c. 4, s. 25, c. 9, s. 572; 2004, c. 25, s. 7; 2005, c. 3, s. 11, c. 47, s. 2; 2007, c. 29, s. 91, c. 36, s. 1; 2012, c. 31, s. 414; 2015, c. 3, s. 6(F).

Designation of beneficiary

2.1 A change in the designation of a beneficiary in an insurance contract is deemed to be a disposition of property for the purpose of this Act.

1997, c. 12, s. 2; 2004, c. 25, s. 8; 2005, c. 47, s. 3.

Superintendent's division office

2.2 Any notification, document or other information that is required by this Act to be given, forwarded, mailed, sent or otherwise provided to the Superintendent, other than an application for a licence under subsection 13(1), shall be given, forwarded, mailed, sent or otherwise provided to the Superintendent at the Superintendent's division office as specified in directives of the Superintendent.

1997, c. 12, s. 2.

3 [Repealed, 2005, c. 47, s. 4]

Definitions

4 (1) In this section,

entity means a person other than an individual; (*entité*)

related group means a group of persons each member of which is related to every other member of the group; (*groupe lié*)

du paragraphe 5(1) de la *Loi sur le Bureau du surintendant des institutions financières*. (*Superintendent of Financial Institutions*)

syndic ou **syndic autorisé** Personne qui détient une licence ou est nommée en vertu de la présente loi. (*trustee or licensed trustee*)

tribunal Sauf aux alinéas 178(1)a) et a.1) et aux articles 204.1 à 204.3, tout tribunal mentionné aux paragraphes 183(1) ou (1.1). Y est assimilé tout juge de ce tribunal ainsi que le greffier ou le registraire de celui-ci, lorsqu'il exerce les pouvoirs du tribunal qui lui sont conférés au titre de la présente loi. (*court*)

union de fait Relation qui existe entre deux conjoints de fait. (*common-law partnership*)

valeurs nettes dues à la date de résiliation La somme nette obtenue après compensation des obligations mutuelles des parties à un contrat financier admissible effectuée conformément à ce contrat. (*net termination value*)

L.R. (1985), ch. B-3, art. 2; L.R. (1985), ch. 31 (1^{er} suppl.), art. 69; 1992, ch. 1, art. 145(F), ch. 27, art. 3; 1995, ch. 1, art. 62; 1997, ch. 12, art. 1; 1999, ch. 28, art. 146, ch. 31, art. 17; 2000, ch. 12, art. 8; 2001, ch. 4, art. 25, ch. 9, art. 572; 2004, ch. 25, art. 7; 2005, ch. 3, art. 11, ch. 47, art. 2; 2007, ch. 29, art. 91, ch. 36, art. 1; 2012, ch. 31, art. 414; 2015, ch. 3, art. 6(F).

Désignation de bénéficiaires

2.1 La modification de la désignation du bénéficiaire d'une police d'assurance est réputée être une disposition de biens pour l'application de la présente loi.

1997, ch. 12, art. 2; 2004, ch. 25, art. 8; 2005, ch. 47, art. 3.

Bureau de division

2.2 Sauf dans le cas de la demande de licence prévue au paragraphe 13(1), les notifications et envois de documents ou renseignements à effectuer au titre de la présente loi auprès du surintendant le sont au bureau de division spécifié par ses instructions.

1997, ch. 12, art. 2.

3 [Abrogé, 2005, ch. 47, art. 4]

Définitions

4 (1) Les définitions qui suivent s'appliquent au présent article.

entité Personne autre qu'une personne physique. (*entity*)

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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on all the unsecured claims provable against the debtor's estate or such percentage thereof as the court may direct.

Court may order amendment

(4) If a court approves a proposal, it may order that the debtor's constating instrument be amended in accordance with the proposal to reflect any change that may lawfully be made under federal or provincial law.

R.S., 1985, c. B-3, s. 59; 1997, c. 12, s. 36; 2000, c. 12, s. 10; 2007, c. 36, s. 21.

Priority of claims

60 (1) No proposal shall be approved by the court that does not provide for the payment in priority to other claims of all claims directed to be so paid in the distribution of the property of a debtor and for the payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal or in the bankruptcy.

Certain Crown claims

(1.1) Unless Her Majesty consents, no proposal shall be approved by the court that does not provide for the payment in full to Her Majesty in right of Canada or a province, within six months after court approval of the proposal, of all amounts that were outstanding at the time of the filing of the notice of intention or of the proposal, if no notice of intention was filed, and are of a kind that could be subject to a demand under

- (a) subsection 224(1.2) of the *Income Tax Act*;
- (b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or
- (c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum
 - (i) has been withheld or deducted by a person from a payment to another person and is in respect of a

cents par dollar sur toutes les réclamations non garanties prouvables contre l'actif du débiteur ou pour le paiement de tel pourcentage en l'espèce que le tribunal peut déterminer.

Modification des statuts constitutifs

(4) Le tribunal qui approuve une proposition peut ordonner la modification des statuts constitutifs du débiteur conformément à ce qui est prévu dans la proposition, pourvu que la modification soit légale au regard du droit fédéral ou provincial.

L.R. (1985), ch. B-3, art. 59; 1997, ch. 12, art. 36; 2000, ch. 12, art. 10; 2007, ch. 36, art. 21.

Priorité des réclamations

60 (1) Le tribunal ne peut approuver aucune proposition qui ne prescrive pas le paiement, en priorité sur les autres réclamations, de toutes les réclamations dont le paiement est ainsi ordonné dans la distribution des biens d'un débiteur, et le paiement de tous les honoraires et dépenses convenables du syndic relatifs et connexes aux procédures découlant de la proposition ou survenant dans la faillite.

Certaines réclamations de la Couronne

(1.1) Le tribunal ne peut, sans le consentement de Sa Majesté, approuver une proposition qui ne prévoit pas le paiement intégral à Sa Majesté du chef du Canada ou d'une province, dans les six mois suivant l'approbation, de tous les montants qui étaient dus lors du dépôt de l'avis d'intention ou, à défaut, de la proposition et qui sont de nature à faire l'objet d'une demande aux termes d'une des dispositions suivantes :

- a) le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*;
- b) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi et des intérêts, pénalités ou autres montants y afférents;
- c) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, dans la mesure où elle prévoit la perception d'une somme, et des intérêts, pénalités ou autres montants y afférents, qui :

- (i) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a "province providing a comprehensive pension plan" as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a "provincial pension plan" as defined in that subsection.

Idem

(1.2) No proposal shall be approved by the court if, at the time the court hears the application for approval, Her Majesty in right of Canada or a province satisfies the court that the debtor is in default on any remittance of an amount referred to in subsection (1.1) that became due after the filing

(a) of the notice of intention; or

(b) of the proposal, if no notice of intention was filed.

Proposals by employers

(1.3) No proposal in respect of an employer shall be approved by the court unless

(a) it provides for payment to the employees and former employees, immediately after court approval of the proposal, of amounts at least equal to the amounts that they would be qualified to receive under paragraph 136(1)(d) if the employer became bankrupt on the date of the filing of the notice of intention, or proposal if no notice of intention was filed, as well as wages, salaries, commissions or compensation for services rendered after that date and before the court approval of the proposal, together with, in the case of travelling salespersons, disbursements properly incurred by them in and about the bankrupt's business during the same period; and

(b) the court is satisfied that the employer can and will make the payments as required under paragraph (a).

Voting on proposal

(1.4) For the purpose of voting on any question relating to a proposal in respect of an employer, no person has a claim for an amount referred to in paragraph (1.3)(a).

d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(ii) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est « une province instituant un régime général de pensions » au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un « régime provincial de pensions » au sens de ce paragraphe.

Idem

(1.2) Le tribunal ne peut approuver la proposition si, lors de l'audition de la demande d'approbation, Sa Majesté du chef du Canada ou d'une province le convainc du défaut du débiteur d'effectuer un versement portant sur un montant visé au paragraphe (1.1) et qui est devenu exigible après le dépôt de l'avis d'intention ou, à défaut d'avis d'intention, après le dépôt de la proposition.

Propositions d'employeurs

(1.3) Le tribunal ne peut approuver la proposition visant un employeur que si, à la fois :

a) celle-ci prévoit que sera effectué le paiement aux employés — actuels et anciens —, dès son approbation, de sommes égales ou supérieures, d'une part, à celles qu'ils seraient en droit de recevoir en application de l'alinéa 136(1)d) si l'employeur avait fait faillite à la date du dépôt de l'avis d'intention ou, à défaut, de la proposition et, d'autre part, au montant des gages, salaires, commissions ou rémunérations pour services fournis entre cette date et celle de son approbation, y compris les sommes que le voyageur de commerce a régulièrement déboursées dans l'entreprise du failli ou relativement à celle-ci entre ces dates;

b) il est convaincu que l'employeur est en mesure d'effectuer, et effectuera, les paiements prévus à l'alinéa a).

Vote sur la proposition

(1.4) Aux fins du vote sur toute question relative à la proposition visant un employeur, personne n'a de réclamation à faire valoir pour les montants mentionnés à l'alinéa (1.3)a).

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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Proposals by employers — prescribed pension plans

(1.5) No proposal in respect of an employer who participates in a prescribed pension plan for the benefit of its employees shall be approved by the court unless

(a) the proposal provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,

(C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament,

(C) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it

Propositions d'employeurs — régime de pension

(1.5) Le tribunal ne peut approuver la proposition visant un employeur qui participe à un régime de pension prescrit institué pour ses employés que si, à la fois :

a) la proposition prévoit que seront effectués des paiements correspondant au total des sommes ci-après qui n'ont pas été versées au fonds établi dans le cadre du régime de pension :

(i) les sommes qui ont été déduites de la rémunération des employés pour versement au fonds,

(ii) dans le cas d'un régime de pension prescrit régi par une loi fédérale :

(A) les coûts normaux, au sens du paragraphe 2(1) du *Règlement de 1985 sur les normes de prestation de pension*, que l'employeur est tenu de verser au fonds,

(B) les sommes que l'employeur est tenu de verser au fonds au titre de toute disposition à cotisations déterminées au sens du paragraphe 2(1) de la *Loi de 1985 sur les normes de prestation de pension*,

(C) les sommes que l'employeur est tenu de verser à l'administrateur d'un régime de pension agréé collectif au sens du paragraphe 2(1) de la *Loi sur les régimes de pension agréés collectifs*,

(iii) dans le cas de tout autre régime de pension prescrit :

(A) la somme égale aux coûts normaux, au sens du paragraphe 2(1) du *Règlement de 1985 sur les normes de prestation de pension*, que l'employeur serait tenu de verser au fonds si le régime était régi par une loi fédérale,

(B) la somme égale au total des sommes que l'employeur serait tenu de verser au fonds au titre de toute disposition à cotisations déterminées au sens du paragraphe 2(1) de la *Loi de 1985 sur les normes de prestation de pension* si le régime était régi par une loi fédérale,

(C) la somme égale au total des sommes que l'employeur serait tenu de verser à l'égard du régime s'il était régi par la *Loi sur les régimes de pension agréés collectifs*;

b) il est convaincu que l'employeur est en mesure d'effectuer, et effectuera, les paiements prévus à l'alinéa a).

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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were regulated by the *Pooled Registered Pension Plans Act*; and

(b) the court is satisfied that the employer can and will make the payments as required under paragraph (a).

Non-application of subsection (1.5)

(1.6) Despite subsection (1.5), the court may approve a proposal that does not allow for the payment of the amounts referred to in that subsection if it is satisfied that the relevant parties have entered into an agreement, approved by the relevant pension regulator, respecting the payment of those amounts.

Payment — equity claims

(1.7) No proposal that provides for the payment of an equity claim is to be approved by the court unless the proposal provides that all claims that are not equity claims are to be paid in full before the equity claim is to be paid.

Payment to trustee

(2) All moneys payable under the proposal shall be paid to the trustee and, after payment of all proper fees and expenses mentioned in subsection (1), shall be distributed by him to the creditors.

Distribution of promissory notes, stock, etc., of debtor

(3) Where the proposal provides for the distribution of property in the nature of promissory notes or other evidence of obligations by or on behalf of the debtor or, when the debtor is a corporation, shares in the capital stock of the corporation, the property shall be dealt with in the manner prescribed in subsection (2) as nearly as may be.

Section 147 applies

(4) Section 147 applies to all distributions made to the creditors by the trustee pursuant to subsection (2) or (3).

Power of court

(5) Subject to subsections (1) to (1.7), the court may either approve or refuse to approve the proposal.

R.S., 1985, c. B-3, s. 60; 1992, c. 27, s. 24; 1997, c. 12, s. 37; 2000, c. 30, s. 144; 2005, c. 47, s. 39; 2007, c. 36, ss. 22, 99; 2009, c. 33, s. 22; 2012, c. 16, s. 79.

Annulment of bankruptcy

61 (1) The approval by the court of a proposal made after bankruptcy operates to annul the bankruptcy and to

Non-application du paragraphe (1.5)

(1.6) Par dérogation au paragraphe (1.5), le tribunal peut approuver la proposition qui ne prévoit pas le versement des sommes mentionnées à ce paragraphe s'il est convaincu que les parties en cause ont conclu un accord sur les sommes à verser et que l'autorité administrative responsable du régime de pension a consenti à l'accord.

Paiement d'une réclamation relative à des capitaux propres

(1.7) Le tribunal ne peut approuver la proposition qui prévoit le paiement d'une réclamation relative à des capitaux propres que si, selon les termes de celle-ci, le paiement intégral de toutes les autres réclamations sera effectué avant le paiement de la réclamation relative à des capitaux propres.

Paiement au syndic

(2) Tout montant payable aux termes de la proposition est payé au syndic et, après le paiement de tous les honoraires et dépenses convenables mentionnés au paragraphe (1), distribué par lui aux créanciers.

Distribution de billets à ordre, d'actions, etc. du débiteur

(3) Lorsque la proposition prévoit la distribution des biens sous forme de billets à ordre ou d'autres titres d'obligations souscrites par le débiteur ou en son nom ou, si le débiteur est une personne morale, sous forme d'actions du capital social de la personne morale, ces biens sont traités dans la mesure du possible conformément au paragraphe (2).

L'art. 147 s'applique

(4) L'article 147 s'applique à toutes les distributions faites aux créanciers par le syndic conformément au paragraphe (2) ou (3).

Pouvoirs du tribunal

(5) Sous réserve des paragraphes (1) à (1.7), le tribunal peut approuver ou refuser la proposition.

L.R. (1985), ch. B-3, art. 60; 1992, ch. 27, art. 24; 1997, ch. 12, art. 37; 2000, ch. 30, art. 144; 2005, ch. 47, art. 39; 2007, ch. 36, art. 22 et 99; 2009, ch. 33, art. 22; 2012, ch. 16, art. 79.

Annulation de faillite

61 (1) L'approbation par le tribunal d'une proposition faite après la faillite a pour effet d'annuler la faillite et de

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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(c) the failure to issue the order is likely to result in irreparable damage to the insolvent person.

No delay on vote on proposal

(3) The vote of the creditors in respect of a proposal may not be delayed solely because the period provided in the laws of the jurisdiction governing collective bargaining between the insolvent person and the bargaining agent has not expired.

Claims arising from revision of collective agreement

(4) If the parties to the collective agreement agree to revise the collective agreement after proceedings have been commenced under this Act in respect of the insolvent person, the bargaining agent that is a party to the agreement has a claim, as an unsecured creditor, for an amount equal to the value of concessions granted by the bargaining agent with respect to the remaining term of the collective agreement.

Order to disclose information

(5) On the application of the bargaining agent and on notice to the person to whom the application relates, the court may, subject to any terms and conditions it specifies, make an order requiring the person to make available to the bargaining agent any information specified by the court in the person's possession or control that relates to the insolvent person's business or financial affairs and that is relevant to the collective bargaining between the insolvent person and the bargaining agent. The court may make the order only after the insolvent person has been authorized to serve a notice to bargain under subsection (1).

Unrevised collective agreements remain in force

(6) For greater certainty, any collective agreement that the insolvent person and the bargaining agent have not agreed to revise remains in force.

Parties

(7) For the purpose of this section, the parties to a collective agreement are the insolvent person and the bargaining agent who are bound by the collective agreement.

2005, c. 47, s. 44.

Restriction on disposition of assets

65.13 (1) An insolvent person in respect of whom a notice of intention is filed under section 50.4 or a proposal is filed under subsection 62(1) may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale

c) elle subirait vraisemblablement des dommages irréparables s'il ne la rendait pas.

Vote sur la proposition

(3) Le vote des créanciers sur la proposition ne peut être retardé pour la seule raison que le délai imparti par les règles de droit applicables aux négociations collectives entre les parties à la convention collective n'a pas expiré.

Réclamation consécutive à la révision

(4) Si les parties acceptent de réviser la convention collective après que des procédures ont été intentées sous le régime de la présente loi à l'égard d'une personne insolvable, l'agent négociateur en cause est réputé avoir une réclamation à titre de créancier non garanti pour une somme équivalant à la valeur des concessions accordées pour la période non écoulée de la convention.

Ordonnance visant la communication de renseignements

(5) Sur demande de l'agent négociateur partie à la convention collective et sur avis aux personnes intéressées, le tribunal peut ordonner à celles-ci de communiquer au demandeur, aux conditions qu'il précise, tous renseignements qu'elles ont en leur possession ou à leur disposition — sur les affaires et la situation financière de la personne insolvable — qui ont un intérêt pour les négociations collectives. Le tribunal ne peut rendre l'ordonnance qu'après l'envoi à l'agent négociateur de l'avis de négociations collectives visé au paragraphe (1).

Maintien en vigueur des conventions collectives

(6) Il est entendu que toute convention collective que la personne insolvable et l'agent négociateur n'ont pas convenu de réviser demeure en vigueur.

Parties

(7) Pour l'application du présent article, les parties à la convention collective sont la personne insolvable et l'agent négociateur liés par elle.

2005, ch. 47, art. 44.

Restriction à la disposition d'actifs

65.13 (1) Il est interdit à la personne insolvable à l'égard de laquelle a été déposé un avis d'intention aux termes de l'article 50.4 ou une proposition aux termes du paragraphe 62(1) de disposer, notamment par vente, d'actifs hors du cours ordinaire de ses affaires sans l'autorisation du tribunal. Le tribunal peut accorder l'autorisation sans qu'il soit nécessaire d'obtenir l'acquiescement

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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or disposition even if shareholder approval was not obtained.

Individuals

(2) In the case of an individual who is carrying on a business, the court may authorize the sale or disposition only if the assets were acquired for or used in relation to the business.

Notice to secured creditors

(3) An insolvent person who applies to the court for an authorization shall give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(4) In deciding whether to grant the authorization, the court is to consider, among other things,

- (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
- (b) whether the trustee approved the process leading to the proposed sale or disposition;
- (c) whether the trustee filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;
- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(5) If the proposed sale or disposition is to a person who is related to the insolvent person, the court may, after considering the factors referred to in subsection (4), grant the authorization only if it is satisfied that

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and
- (b) the consideration to be received is superior to the consideration that would be received under any other

des actionnaires, et ce malgré toute exigence à cet effet, notamment en vertu d'une règle de droit fédérale ou provinciale.

Personne physique

(2) Toutefois, lorsque l'autorisation est demandée par une personne physique qui exploite une entreprise, elle ne peut viser que les actifs acquis ou utilisés dans le cadre de l'exploitation de celle-ci.

Avis aux créanciers

(3) La personne insolvable qui demande l'autorisation au tribunal en avise les créanciers garantis qui peuvent vraisemblablement être touchés par le projet de disposition.

Facteurs à prendre en considération

(4) Pour décider s'il accorde l'autorisation, le tribunal prend en considération, entre autres, les facteurs suivants :

- a) la justification des circonstances ayant mené au projet de disposition;
- b) l'acquiescement du syndic au processus ayant mené au projet de disposition, le cas échéant;
- c) le dépôt par celui-ci d'un rapport précisant que, à son avis, la disposition sera plus avantageuse pour les créanciers que si elle était faite dans le cadre de la faillite;
- d) la suffisance des consultations menées auprès des créanciers;
- e) les effets du projet de disposition sur les droits de tout intéressé, notamment les créanciers;
- f) le caractère juste et raisonnable de la contrepartie reçue pour les actifs compte tenu de leur valeur marchande.

Autres facteurs

(5) Si la personne insolvable projette de disposer d'actifs en faveur d'une personne à laquelle elle est liée, le tribunal, après avoir pris ces facteurs en considération, ne peut accorder l'autorisation que s'il est convaincu :

- a) d'une part, que les efforts voulus ont été faits pour disposer des actifs en faveur d'une personne qui n'est pas liée à la personne insolvable;
- b) d'autre part, que la contrepartie offerte pour les actifs est plus avantageuse que celle qui découlerait de

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(6) For the purpose of subsection (5), a person who is related to the insolvent person includes

- (a) a director or officer of the insolvent person;
- (b) a person who has or has had, directly or indirectly, control in fact of the insolvent person; and
- (c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(7) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the insolvent person or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(8) The court may grant the authorization only if the court is satisfied that the insolvent person can and will make the payments that would have been required under paragraphs 60(1.3)(a) and (1.5)(a) if the court had approved the proposal.

2005, c. 47, s. 44; 2007, c. 36, s. 27.

Insolvent person may disclaim or resiliate commercial lease

65.2 (1) At any time between the filing of a notice of intention and the filing of a proposal, or on the filing of a proposal, in respect of an insolvent person who is a commercial lessee under a lease of real property or an immovable, the insolvent person may disclaim or resiliate the lease on giving thirty days notice to the lessor in the prescribed manner, subject to subsection (2).

Lessor may challenge

(2) Within fifteen days after being given notice of the disclaimer or resiliation of a lease under subsection (1), the lessor may apply to the court for a declaration that subsection (1) does not apply in respect of that lease, and the court, on notice to any parties that it may direct, shall, subject to subsection (3), make that declaration.

toute autre offre reçue dans le cadre du projet de disposition.

Personnes liées

(6) Pour l'application du paragraphe (5), les personnes ci-après sont considérées comme liées à la personne insolvable :

- a) le dirigeant ou l'administrateur de celle-ci;
- b) la personne qui, directement ou indirectement, en a ou en a eu le contrôle de fait;
- c) la personne liée à toute personne visée aux alinéas a) ou b).

Autorisation de disposer des actifs en les libérant de restrictions

(7) Le tribunal peut autoriser la disposition d'actifs de la personne insolvable, purgés de toute charge, sûreté ou autre restriction, et, le cas échéant, est tenu d'assujettir le produit de la disposition ou d'autres de ses actifs à une charge, sûreté ou autre restriction en faveur des créanciers touchés par la purge.

Restriction à l'égard des employeurs

(8) Il ne peut autoriser la disposition que s'il est convaincu que la personne insolvable est en mesure d'effectuer et effectuera les paiements qui auraient été exigés en vertu des alinéas 60(1.3)a) et (1.5)a) s'il avait approuvé la proposition.

2005, ch. 47, art. 44; 2007, ch. 36, art. 27.

Résiliation d'un bail commercial

65.2 (1) Entre le dépôt d'un avis d'intention et celui d'une proposition relative à une personne insolvable qui est un locataire commercial en vertu d'un bail sur un immeuble ou un bien réel, ou lors du dépôt d'une telle proposition, cette personne peut, sous réserve du paragraphe (2), résilier son bail sur préavis de trente jours donné de la manière prescrite.

Contestation

(2) Sur demande du locateur, faite dans les quinze jours suivant le préavis, et sur préavis aux parties qu'il estime indiquées, le tribunal déclare le paragraphe (1) inapplicable au bail en question.

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PART IV

Property of the Bankrupt

Property of bankrupt

67 (1) The property of a bankrupt divisible among his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person;

(b) any property that as against the bankrupt is exempt from execution or seizure under any laws applicable in the province within which the property is situated and within which the bankrupt resides;

(b.1) goods and services tax credit payments that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b);

(b.2) prescribed payments relating to the essential needs of an individual that are made in prescribed circumstances to the bankrupt and that are not property referred to in paragraph (a) or (b); or

(b.3) without restricting the generality of paragraph (b), property in a registered retirement savings plan or a registered retirement income fund, as those expressions are defined in the *Income Tax Act*, or in any prescribed plan, other than property contributed to any such plan or fund in the 12 months before the date of bankruptcy,

but it shall comprise

(c) all property wherever situated of the bankrupt at the date of the bankruptcy or that may be acquired by or devolve on the bankrupt before their discharge, including any refund owing to the bankrupt under the *Income Tax Act* in respect of the calendar year — or the fiscal year of the bankrupt if it is different from the calendar year — in which the bankrupt became a bankrupt, except the portion that

(i) is not subject to the operation of this Act, or

(ii) in the case of a bankrupt who is the judgment debtor named in a garnishee summons served on Her Majesty under the *Family Orders and Agreements Enforcement Assistance Act*, is garnishable money that is payable to the bankrupt and is to be paid under the garnishee summons, and

(d) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit.

PARTIE IV

Biens du failli

Biens du failli

67 (1) Les biens d'un failli, constituant le patrimoine attribué à ses créanciers, ne comprennent pas les biens suivants :

a) les biens détenus par le failli en fiducie pour toute autre personne;

b) les biens qui, selon le droit applicable dans la province dans laquelle ils sont situés et où réside le failli, ne peuvent faire l'objet d'une mesure d'exécution ou de saisie contre celui-ci;

b.1) dans les circonstances prescrites, les paiements qui sont faits au failli au titre de crédits de taxe sur les produits et services et qui ne sont pas des biens visés aux alinéas a) ou b);

b.2) dans les circonstances prescrites, les paiements prescrits qui sont faits au failli relativement aux besoins essentiels de personnes physiques et qui ne sont pas des biens visés aux alinéas a) ou b);

b.3) sans restreindre la portée générale de l'alinéa b), les biens détenus dans un régime enregistré d'épargne-retraite ou un fonds enregistré de revenu de retraite, au sens de la *Loi de l'impôt sur le revenu*, ou dans tout régime prescrit, à l'exception des cotisations au régime ou au fonds effectuées au cours des douze mois précédant la date de la faillite,

mais ils comprennent :

c) tous les biens, où qu'ils soient situés, qui appartiennent au failli à la date de la faillite, ou qu'il peut acquérir ou qui peuvent lui être dévolus avant sa libération, y compris les remboursements qui lui sont dus au titre de la *Loi de l'impôt sur le revenu* relativement à l'année civile — ou à l'exercice lorsque celui-ci diffère de l'année civile — au cours de laquelle il a fait faillite, mais à l'exclusion de la partie de ces remboursements qui :

(i) soit sont des sommes soustraites à l'application de la présente loi,

(ii) soit sont des sommes qui lui sont dues et qui sont saisissables en vertu d'un bref de saisie-arrêt signifié à Sa Majesté en application de la *Loi d'aide à l'exécution des ordonnances et des ententes familiales* dans lequel il est nommé comme débiteur;

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Deemed trusts

(2) Subject to subsection (3), notwithstanding any provision in federal or provincial legislation that has the effect of deeming property to be held in trust for Her Majesty, property of a bankrupt shall not be regarded as held in trust for Her Majesty for the purpose of paragraph (1)(a) unless it would be so regarded in the absence of that statutory provision.

Exceptions

(3) Subsection (2) does not apply in respect of amounts deemed to be held in trust under subsection 227(4) or (4.1) of the *Income Tax Act*, subsection 23(3) or (4) of the *Canada Pension Plan* or subsection 86(2) or (2.1) of the *Employment Insurance Act* (each of which is in this subsection referred to as a “federal provision”) nor in respect of amounts deemed to be held in trust under any law of a province that creates a deemed trust the sole purpose of which is to ensure remittance to Her Majesty in right of the province of amounts deducted or withheld under a law of the province where

(a) that law of the province imposes a tax similar in nature to the tax imposed under the *Income Tax Act* and the amounts deducted or withheld under that law of the province are of the same nature as the amounts referred to in subsection 227(4) or (4.1) of the *Income Tax Act*, or

(b) the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan*, that law of the province establishes a **provincial pension plan** as defined in that subsection and the amounts deducted or withheld under that law of the province are of the same nature as amounts referred to in subsection 23(3) or (4) of the *Canada Pension Plan*,

and for the purpose of this subsection, any provision of a law of a province that creates a deemed trust is, notwithstanding any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as the corresponding federal provision.

R.S., 1985, c. B-3, s. 67; 1992, c. 27, s. 33; 1996, c. 23, s. 168; 1997, c. 12, s. 59; 1998, c. 19, s. 250; 2005, c. 47, s. 57; 2007, c. 36, s. 32.

d) les pouvoirs sur des biens ou à leur égard, qui auraient pu être exercés par le failli pour son propre bénéfice.

Fiducies présumées

(2) Sous réserve du paragraphe (3) et par dérogation à toute disposition législative fédérale ou provinciale ayant pour effet d'assimiler certains biens à des biens détenus en fiducie pour Sa Majesté, aucun des biens du failli ne peut, pour l'application de l'alinéa (1)a), être considéré comme détenu en fiducie pour Sa Majesté si, en l'absence de la disposition législative en question, il ne le serait pas.

Exceptions

(3) Le paragraphe (2) ne s'applique pas à l'égard des montants réputés détenus en fiducie aux termes des paragraphes 227(4) ou (4.1) de la *Loi de l'impôt sur le revenu*, des paragraphes 23(3) ou (4) du *Régime de pensions du Canada* ou des paragraphes 86(2) ou (2.1) de la *Loi sur l'assurance-emploi* (chacun étant appelé « disposition fédérale » au présent paragraphe) ou à l'égard des montants réputés détenus en fiducie aux termes de toute loi d'une province créant une fiducie présumée dans le seul but d'assurer à Sa Majesté du chef de cette province la remise de sommes déduites ou retenues aux termes d'une loi de cette province, dans la mesure où, dans ce dernier cas, se réalise l'une des conditions suivantes :

a) la loi de cette province prévoit un impôt semblable, de par sa nature, à celui prévu par la *Loi de l'impôt sur le revenu*, et les sommes déduites ou retenues aux termes de la loi de cette province sont de même nature que celles visées aux paragraphes 227(4) ou (4.1) de la *Loi de l'impôt sur le revenu*;

b) cette province est **une province instituant un régime général de pensions** au sens du paragraphe 3(1) du *Régime de pensions du Canada*, la loi de cette province institue un **régime provincial de pensions** au sens de ce paragraphe, et les sommes déduites ou retenues aux termes de la loi de cette province sont de même nature que celles visées aux paragraphes 23(3) ou (4) du *Régime de pensions du Canada*.

Pour l'application du présent paragraphe, toute disposition de la loi provinciale qui crée une fiducie présumée est réputée avoir, à l'encontre de tout créancier du failli et malgré tout texte législatif fédéral ou provincial et toute règle de droit, la même portée et le même effet que la disposition fédérale correspondante, quelle que soit la garantie dont bénéficie le créancier.

L.R. (1985), ch. B-3, art. 67; 1992, ch. 27, art. 33; 1996, ch. 23, art. 168; 1997, ch. 12, art. 59; 1998, ch. 19, art. 250; 2005, ch. 47, art. 57; 2007, ch. 36, art. 32.

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General Provisions

Precedence of bankruptcy orders and assignments

70 (1) Every bankruptcy order and every assignment made under this Act takes precedence over all judicial or other attachments, garnishments, certificates having the effect of judgments, judgments, certificates of judgment, legal hypothecs of judgment creditors, executions or other process against the property of a bankrupt, except those that have been completely executed by payment to the creditor or the creditor's representative, and except the rights of a secured creditor.

Costs

(2) Despite subsection (1), one bill of costs of a barrister or solicitor or, in the Province of Quebec, an advocate, including the executing officer's fees and land registration fees, shall be payable to the creditor who has first attached by way of garnishment or filed with the executing officer an attachment, execution or other process against the property of the bankrupt.

R.S., 1985, c. B-3, s. 70; 1992, c. 27, s. 37; 1997, c. 12, s. 66(F); 2004, c. 25, s. 44; 2005, c. 47, s. 63(E).

Vesting of property in trustee

71 On a bankruptcy order being made or an assignment being filed with an official receiver, a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property, which shall, subject to this Act and to the rights of secured creditors, immediately pass to and vest in the trustee named in the bankruptcy order or assignment, and in any case of change of trustee the property shall pass from trustee to trustee without any assignment or transfer.

R.S., 1985, c. B-3, s. 71; 1997, c. 12, s. 67; 2004, c. 25, s. 44.

Application of other substantive law

72 (1) The provisions of this Act shall not be deemed to abrogate or supersede the substantive provisions of any other law or statute relating to property and civil rights that are not in conflict with this Act, and the trustee is entitled to avail himself of all rights and remedies provided by that law or statute as supplementary to and in addition to the rights and remedies provided by this Act.

Operation of provincial law re documents executed under Act

(2) No bankruptcy order, assignment or other document made or executed under the authority of this Act shall, except as otherwise provided in this Act, be within the operation of any legislative enactment in force at any time in any province relating to deeds, mortgages, hypothecs, judgments, bills of sale, chattel mortgages,

Dispositions générales

Priorité des ordonnances de faillite et cessions

70 (1) Toute ordonnance de faillite rendue et toute cession faite en conformité avec la présente loi ont priorité sur toutes saisies, saisies-arrêts, certificats ayant l'effet de jugements, jugements, certificats de jugements, hypothèques légales résultant d'un jugement, procédures d'exécution ou autres procédures contre les biens d'un failli, sauf ceux qui ont été complètement réglés par paiement au créancier ou à son représentant, et sauf les droits d'un créancier garanti.

Frais

(2) Malgré le paragraphe (1), un seul mémoire de frais émanant d'un avocat, y compris les honoraires de l'huissier-exécutant et les droits d'enregistrement fonciers, est à payer au créancier qui a le premier mis la saisie-arrêt ou déposé entre les mains de l'huissier-exécutant une saisie, une procédure d'exécution ou une autre procédure contre les biens du failli.

L.R. (1985), ch. B-3, art. 70; 1992, ch. 27, art. 37; 1997, ch. 12, art. 66(F); 2004, ch. 25, art. 44; 2005, ch. 47, art. 63(A).

Dévolution des biens au syndic

71 Lorsqu'une ordonnance de faillite est rendue, ou qu'une cession est produite auprès d'un séquestre officiel, le failli cesse d'être habile à céder ou autrement aliéner ses biens qui doivent, sous réserve des autres dispositions de la présente loi et des droits des créanciers garantis, immédiatement passer et être dévolus au syndic nommé dans l'ordonnance de faillite ou dans la cession, et advenant un changement de syndic, les biens passent de syndic à syndic sans cession ni transfert quelconque.

L.R. (1985), ch. B-3, art. 71; 1997, ch. 12, art. 67; 2004, ch. 25, art. 44.

Application d'autres lois positives

72 (1) La présente loi n'a pas pour effet d'abroger ou de remplacer les dispositions de droit substantif d'une autre loi ou règle de droit concernant la propriété et les droits civils, non incompatibles avec la présente loi, et le syndic est autorisé à se prévaloir de tous les droits et recours prévus par cette autre loi ou règle de droit, qui sont supplémentaires et additionnels aux droits et recours prévus par la présente loi.

Application de lois provinciales

(2) Nulle ordonnance de faillite, cession ou autre document fait ou souscrit sous l'autorité de la présente loi n'est, sauf disposition contraire de celle-ci, assujéti à l'application de toute loi en vigueur à toute époque dans une province relativement aux actes, hypothèques, jugements, actes de vente, biens ou enregistrements de pièces

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property or registration of documents affecting title to or liens or charges on real or personal property or immovables or movables.

R.S., 1985, c. B-3, s. 72; 1997, c. 12, s. 68(F); 2004, c. 25, s. 45.

Purchaser in good faith at sale protected

73 (1) An execution levied by seizure and sale of the property of a bankrupt is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the property in good faith under a sale by the executing officer acquires a good title to the property against the trustee.

Executing officer to deliver property of bankrupt to trustee

(2) If an assignment or a bankruptcy order has been made, the executing officer or other officer of any court or any other person having seized property of the bankrupt under execution or attachment or any other process shall, on receiving a copy of the assignment or the bankruptcy order certified by the trustee as a true copy, immediately deliver to the trustee all the property of the bankrupt in their hands.

In case of executing officer's sale

(3) If the executing officer has sold the property or any part of the property of a bankrupt, the executing officer shall deliver to the trustee the money so realized less the executing officer's fees and the costs referred to in subsection 70(2).

Effect of bankruptcy on seizure of property for rent or taxes

(4) Any property of a bankrupt under seizure for rent or taxes shall on production of a copy of the bankruptcy order or the assignment certified by the trustee as a true copy be delivered without delay to the trustee, but the payment of the costs of distress or, in the Province of Quebec, the costs of seizure, is secured by a security on the property ranking ahead of any other security on it, and, if the property or any part of it has been sold, the money realized from the sale less the costs of distress, or seizure, and sale shall be paid to the trustee.

R.S., 1985, c. B-3, s. 73; 1997, c. 12, s. 69(F); 2004, c. 25, s. 46; 2015, c. 3, s. 8.

Registration of bankruptcy order or assignment

74 (1) Every bankruptcy order, or a true copy certified by the registrar or other officer of the court that made it, and every assignment, or a true copy certified by the official receiver, may be registered by or on behalf of the trustee in respect of the whole or any part of any real property in which the bankrupt has any interest or estate,

affectant le titre afférent aux biens, meubles ou immeubles, personnels ou réels, ou les privilèges ou charges sur ces biens.

L.R. (1985), ch. B-3, art. 72; 1997, ch. 12, art. 68(F); 2004, ch. 25, art. 45.

Protection de l'acheteur de bonne foi à la vente

73 (1) Une exécution exercée par saisie et vente des biens d'un failli n'est pas invalide pour le seul motif qu'elle est un acte de faillite, et une personne qui achète de bonne foi ces biens à une vente faite par l'huissier-exécutant acquiert un titre valable à ces biens contre le syndic.

Remise par l'huissier-exécutant des biens au syndic

(2) Lorsqu'il a été fait une cession ou qu'il a été rendu une ordonnance de faillite, l'huissier-exécutant ou tout autre fonctionnaire d'un tribunal ou toute autre personne ayant saisi des biens du failli en vertu d'une procédure d'exécution, d'une saisie-arrêt ou de toute autre procédure, sur réception d'une copie de la cession ou de l'ordonnance de faillite certifiée conforme par le syndic, livre immédiatement au syndic tous les biens du failli qu'il a en sa possession.

Dans le cas de vente par l'huissier-exécutant

(3) Lorsque l'huissier-exécutant a vendu les biens du failli ou une partie de ces biens, il remet au syndic les sommes d'argent qu'il a ainsi réalisées, moins ses honoraires et les frais mentionnés au paragraphe 70(2).

Effet d'une faillite sur la saisie de biens pour loyer ou taxes

(4) Sur production d'une copie de l'ordonnance de faillite ou de la cession, que le syndic a certifiée conforme, tout bien d'un failli saisi pour loyer ou pour taxes est remis sans délai au syndic; mais le paiement des frais de saisie est garanti par une sûreté de premier rang sur ces biens et, en cas de vente de tout ou partie des biens, le produit de celle-ci, moins les frais de la saisie et de la vente, est remis au syndic.

L.R. (1985), ch. B-3, art. 73; 1997, ch. 12, art. 69(F); 2004, ch. 25, art. 46; 2015, ch. 3, art. 8.

Enregistrement de l'ordonnance de faillite ou de la cession

74 (1) Toute ordonnance de faillite, ou une copie conforme d'une telle ordonnance certifiée par le registraire ou par un autre fonctionnaire du tribunal qui l'a rendue, et chaque cession, ou une copie conforme de celle-ci certifiée par le séquestre officiel, peuvent être enregistrées par le syndic ou en son nom, relativement à la

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Proof by delivery

(8) A claim referred to in this section is proved by delivering to the receiver a proof of claim in the prescribed form.

Definitions

(9) The following definitions apply in this section.

compensation includes vacation pay but does not include termination or severance pay. (*rémunération*)

person who is subject to a receivership means a person any of whose property is in the possession or under the control of a receiver. (*personne faisant l'objet d'une mise sous séquestre*)

receiver means a receiver within the meaning of subsection 243(2) or an interim receiver appointed under subsection 46(1), 47(1) or 47.1(1). (*séquestre*)

2005, c. 47, s. 67; 2007, c. 36, s. 38; 2009, c. 2, s. 356(F).

Security for unpaid amounts re prescribed pensions plan — bankruptcy

81.5 (1) If the bankrupt is an employer who participated or participates in a prescribed pension plan for the benefit of the bankrupt's employees, the following amounts that are unpaid on the date of bankruptcy to the fund established for the purpose of the pension plan are secured by security on all the assets of the bankrupt:

(a) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund;

(b) if the prescribed pension plan is regulated by an Act of Parliament,

(i) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(ii) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,

(iii) an amount equal to the sum of all amounts that were required to be paid by the employer to the

substance pareille à celle qu'elle aurait conclue si elle n'avait pas eu de lien de dépendance avec la personne mise sous séquestre.

Remise de preuve

(8) Toute réclamation visée au présent article est prouvée par la remise, au séquestre, d'une preuve de la réclamation établie en la forme prescrite.

Définitions

(9) Les définitions qui suivent s'appliquent au présent article.

personne faisant l'objet d'une mise sous séquestre Personne dont un bien quelconque est en la possession ou sous la responsabilité d'un séquestre. (*person who is subject to a receivership*)

rémunération S'entend notamment de l'indemnité de vacances, mais non de l'indemnité de départ ou de préavis. (*compensation*)

séquestre Séquestre au sens du paragraphe 243(2) ou séquestre intérimaire nommé en vertu des paragraphes 46(1), 47(1) ou 47.1(1). (*receiver*)

2005, ch. 47, art. 67; 2007, ch. 36, art. 38; 2009, ch. 2, art. 356(F).

Sûreté relative aux régimes de pension prescrits — faillite

81.5 (1) Si le failli est un employeur qui participe ou a participé à un régime de pension prescrit institué pour ses employés, les sommes ci-après qui, à la date de la faillite, n'ont pas été versées au fonds établi dans le cadre de ce régime sont garanties, à compter de cette date, par une sûreté sur les éléments d'actif du failli :

a) les sommes qui ont été déduites de la rémunération des employés pour versement au fonds;

b) dans le cas d'un régime de pension prescrit régi par une loi fédérale :

(i) les coûts normaux, au sens du paragraphe 2(1) du *Règlement de 1985 sur les normes de prestation de pension*, que l'employeur est tenu de verser au fonds,

(ii) les sommes que l'employeur est tenu de verser au fonds au titre de toute disposition à cotisations déterminées au sens du paragraphe 2(1) de la *Loi de 1985 sur les normes de prestation de pension*,

(iii) les sommes que l'employeur est tenu de verser à l'administrateur d'un régime de pension agréé collectif au sens du paragraphe 2(1) de la *Loi sur les régimes de pension agréés collectifs*;

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administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*; and

(c) in the case of any other prescribed pension plan,

(i) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament,

(ii) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament, and

(iii) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*.

Rank of security

(2) A security under this section ranks above every other claim, right, charge or security against the bankrupt's assets, regardless of when that other claim, right, charge or security arose, except

(a) rights under sections 81.1 and 81.2;

(b) amounts referred to in subsection 67(3) that have been deemed to be held in trust; and

(c) securities under sections 81.3 and 81.4.

Liability of trustee

(3) If the trustee disposes of assets covered by the security, the trustee is liable for the amounts referred to in subsection (1) to the extent of the amount realized on the disposition of the assets, and is subrogated in and to all rights of the fund established for the purpose of the pension plan in respect of those amounts.

2005, c. 47, s. 67; 2012, c. 16, s. 80.

Security for unpaid amounts re prescribed pensions plan — receivership

81.6 (1) If a person who is subject to a receivership is an employer who participated or participates in a prescribed pension plan for the benefit of the person's employees, the following amounts that are unpaid immediately before the first day on which there was a receiver in

(c) dans le cas de tout autre régime de pension prescrit :

(i) la somme égale aux coûts normaux, au sens du paragraphe 2(1) du *Règlement de 1985 sur les normes de prestation de pension*, que l'employeur serait tenu de verser au fonds si le régime était régi par une loi fédérale,

(ii) les sommes que l'employeur serait tenu de verser au fonds au titre de toute disposition à cotisations déterminées au sens du paragraphe 2(1) de la *Loi de 1985 sur les normes de prestation de pension* si le régime était régi par une loi fédérale,

(iii) les sommes que l'employeur serait tenu de verser à l'égard du régime s'il était régi par la *Loi sur les régimes de pension agréés collectifs*.

Priorité

(2) La sûreté visée au présent article a priorité sur tout autre droit, sûreté, charge ou réclamation — peu importe la date à laquelle ils ont pris naissance — grevant les biens du failli, à l'exception :

a) des droits prévus aux articles 81.1 et 81.2;

b) des sommes mentionnées au paragraphe 67(3) qui sont réputées être détenues en fiducie;

c) de la sûreté prévue aux articles 81.3 et 81.4.

Responsabilité du syndic

(3) Le syndic qui dispose d'éléments d'actif grevés par la sûreté est responsable des sommes mentionnées au paragraphe (1) jusqu'à concurrence du produit de la disposition, et est subrogé dans tous les droits du fonds établi dans le cadre du régime de pension jusqu'à concurrence des sommes ainsi payées.

2005, ch. 47, art. 67; 2012, ch. 16, art. 80.

Sûreté relative aux régimes de pension prescrits — mise sous séquestre

81.6 (1) Si la personne faisant l'objet d'une mise sous séquestre est un employeur qui participe ou a participé à un régime de pension prescrit institué pour ses employés, les sommes ci-après qui, à la date à laquelle le séquestre commence à agir, n'ont pas été versées au fonds établi

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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PART IV Property of the Bankrupt
General Provisions
Section 81.6

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Article 81.6

relation to the person are secured by security on all the person's assets:

(a) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund;

(b) if the prescribed pension plan is regulated by an Act of Parliament,

(i) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(ii) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*,

(iii) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the *Pooled Registered Pension Plans Act*; and

(c) in the case of any other prescribed pension plan,

(i) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament,

(ii) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament, and

(iii) an amount equal to the sum of all amounts that would have been required to be paid by the employer in respect of a prescribed plan, if it were regulated by the *Pooled Registered Pension Plans Act*.

Rank of security

(2) A security under this section ranks above every other claim, right, charge or security against the person's assets, regardless of when that other claim, right, charge or security arose, except rights under sections 81.1 and 81.2 and securities under sections 81.3 and 81.4.

dans le cadre de ce régime sont garanties, à compter de cette date, par une sûreté sur les éléments d'actif de la personne :

a) les sommes qui ont été déduites de la rémunération des employés pour versement au fonds;

b) dans le cas d'un régime de pension prescrit régi par une loi fédérale :

(i) les coûts normaux, au sens du paragraphe 2(1) du *Règlement de 1985 sur les normes de prestation de pension*, que l'employeur serait tenu de verser au fonds,

(ii) les sommes que l'employeur est tenu de verser au fonds au titre de toute disposition à cotisations déterminées au sens du paragraphe 2(1) de la *Loi de 1985 sur les normes de prestation de pension*,

(iii) les sommes que l'employeur est tenu de verser à l'administrateur d'un régime de pension agréé collectif au sens du paragraphe 2(1) de la *Loi sur les régimes de pension agréés collectifs*;

c) dans le cas de tout autre régime de pension prescrit :

(i) la somme égale aux coûts normaux, au sens du paragraphe 2(1) du *Règlement de 1985 sur les normes de prestation de pension*, que l'employeur serait tenu de verser au fonds si le régime était régi par une loi fédérale,

(ii) les sommes que l'employeur serait tenu de verser au fonds au titre de toute disposition à cotisations déterminées au sens du paragraphe 2(1) de la *Loi de 1985 sur les normes de prestation de pension* si le régime était régi par une loi fédérale,

(iii) les sommes que l'employeur serait tenu de verser à l'égard du régime s'il était régi par la *Loi sur les régimes de pension agréés collectifs*.

Priorité

(2) La sûreté visée au présent article a priorité sur tout autre droit, sûreté, charge ou réclamation — peu importe la date à laquelle ils ont pris naissance — grevant les biens de la personne, à l'exception des droits prévus aux

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

Bankruptcy and Insolvency Act
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Faillite et insolvabilité
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Articles 81.6-83

Liability of receiver

(3) If the receiver disposes of assets covered by the security, the receiver is liable for the amounts referred to in subsection (1) to the extent of the amount realized on the disposition of the assets, and is subrogated in and to all rights of the fund established for the purpose of the pension plan in respect of those amounts.

Definitions

(4) The following definitions apply in this section.

person who is subject to a receivership means a person any of whose property is in the possession or under the control of a receiver. (*personne faisant l'objet d'une mise sous séquestre*)

receiver means a receiver within the meaning of subsection 243(2) or an interim receiver appointed under subsection 46(1), 47(1) or 47.1(1). (*séquestre*)

2005, c. 47, s. 67; 2007, c. 36, s. 39; 2012, c. 16, s. 81.

Trustee to have right to sell patented articles

82 (1) If any property of a bankrupt vesting in a trustee consists of articles that are subject to a patent or to a certificate of supplementary protection issued under the *Patent Act* and were sold to the bankrupt subject to any restrictions or limitations, the trustee is not bound by the restrictions or limitations but may sell and dispose of the articles free and clear of the restrictions or limitations.

Right of manufacturer

(2) If the manufacturer or vendor of the articles referred to in subsection (1) objects to the disposition of them by the trustee as provided by this section and gives to the trustee notice in writing of the objection before their sale or disposition, that manufacturer or vendor has the right to purchase the articles at their invoice prices, subject to any reasonable deduction for depreciation or deterioration.

R.S., 1985, c. B-3, s. 82; 1993, c. 34, s. 10(E); 2017, c. 6, s. 122.

Copyright and manuscript to revert to author

83 (1) Notwithstanding anything in this Act or in any other statute, the author's manuscripts and any copyright or any interest in a copyright in whole or in part assigned to a publisher, printer, firm or person becoming bankrupt shall,

articles 81.1 et 81.2 et de la sûreté prévue aux articles 81.3 et 81.4.

Responsabilité du séquestre

(3) Le séquestre qui dispose d'éléments d'actif grevés par la sûreté est responsable des sommes mentionnées au paragraphe (1) jusqu'à concurrence du produit de la disposition, et est subrogé dans tous les droits du fonds établi dans le cadre du régime de pension jusqu'à concurrence des sommes ainsi payées.

Définitions

(4) Les définitions qui suivent s'appliquent au présent article.

personne faisant l'objet d'une mise sous séquestre Personne dont tout bien est en la possession ou sous la responsabilité d'un séquestre. (*person who is subject to a receivership*)

séquestre Séquestre au sens du paragraphe 243(2) ou séquestre intérimaire nommé en vertu des paragraphes 46(1), 47(1) ou 47.1(1). (*receiver*)

2005, ch. 47, art. 67; 2007, ch. 36, art. 39; 2012, ch. 16, art. 81.

Le syndic a droit de vendre des marchandises brevetées

82 (1) Lorsque les biens d'un failli, attribués à un syndic, consistent en articles qui sont visés par un brevet ou par un certificat de protection supplémentaire délivré en vertu de la *Loi sur les brevets* et qui avaient été vendus au failli sous réserve de restrictions ou limitations quelconques, le syndic n'est pas lié par ces restrictions ou limitations et peut vendre et aliéner ces articles, libres de ces restrictions ou limitations.

Droit du fabricant

(2) Lorsque le fabricant ou le vendeur des articles visés au paragraphe (1) s'oppose à ce que le syndic les aliène comme le prévoit le présent article, et qu'il donne au syndic un avis écrit de cette opposition, avant qu'ils soient vendus ou aliénés, ce fabricant ou vendeur a le droit d'acheter ces articles à leur prix de facture, sous réserve d'une déduction raisonnable pour dépréciation ou détérioration.

L.R. (1985), ch. B-3, art. 82; 1993, ch. 34, art. 10(A); 2017, ch. 6, art. 122.

Le droit d'auteur et les manuscrits retournent à l'auteur

83 (1) Nonobstant les autres dispositions de la présente loi ou toute autre loi, les manuscrits de l'auteur et tout droit d'auteur ou intérêt dans un droit d'auteur totalement ou partiellement cédé à un éditeur, à un imprimeur, à une firme ou à une personne devenue en faillite :

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

Bankruptcy and Insolvency Act
PART IV Property of the Bankrupt
Partnership Property
Sections 85-86

Faillite et insolvabilité
PARTIE IV Biens du failli
Biens de sociétés de personnes
Articles 85-86

Partnership Property

Application to limited partnerships

85 (1) This Act applies to limited partnerships in like manner as if limited partnerships were ordinary partnerships, and, on all the general partners of a limited partnership becoming bankrupt, the property of the limited partnership vests in the trustee.

Actions by trustee and bankrupt's partner

(2) If a member of a partnership becomes bankrupt, the court may authorize the trustee to commence and prosecute any action in the names of the trustee and of the bankrupt's partner, and any release by the partner of the debt or demand to which the action relates is void or, in the Province of Quebec, null.

Notice to partner

(3) Notice of the application for authority to commence an action under subsection (2) shall be given to the bankrupt's partner, who may show cause against it, and on his application the court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and, if he does not claim any benefit therefrom, he shall be indemnified against costs in respect thereof as the court directs.

R.S., 1985, c. B-3, s. 85; 2004, c. 25, s. 52.

Crown Interests

Status of Crown claims

86 (1) In relation to a bankruptcy or proposal, all provable claims, including secured claims, of Her Majesty in right of Canada or a province or of any body under an Act respecting workers' compensation, in this section and in section 87 called a "workers' compensation body", rank as unsecured claims.

Exceptions

(2) Subsection (1) does not apply

(a) to claims that are secured by a security or charge of a kind that can be obtained by persons other than Her Majesty or a workers' compensation body

(i) pursuant to any law, or

(ii) pursuant to provisions of federal or provincial legislation, where those provisions do not have as their sole or principal purpose the establishment of a means of securing claims of Her Majesty or of a workers' compensation body; and

Biens de sociétés de personnes

Application aux sociétés de personnes en commandite

85 (1) La présente loi s'applique aux sociétés de personnes en commandite de la même manière que si elles étaient des sociétés en nom collectif; et, lorsque tous les membres d'une telle société deviennent en faillite, les biens de celle-ci sont dévolus au syndic.

Actions par le syndic et l'associé du failli

(2) Lorsqu'un membre d'une société de personnes fait faillite, le tribunal peut autoriser le syndic à intenter et à poursuivre une action au nom du syndic et de l'associé du failli; et toute remise, par cet associé, de la dette ou revendication à laquelle se rapporte l'action, est nulle.

Avis à l'associé

(3) Avis de la demande d'autorisation d'intenter l'action est donné à l'associé du failli, et l'associé peut exposer les motifs qu'il a de s'opposer à cette action, et, à sa demande, le tribunal peut, s'il l'estime utile, enjoindre qu'il reçoive sa juste part du produit de l'action; et, s'il ne réclame aucun profit de cette action, il est indemnisé de tous frais à cet égard, suivant que le tribunal l'ordonne.

L.R. (1985), ch. B-3, art. 85; 2004, ch. 25, art. 52.

Droits de la Couronne

Réclamations de la Couronne

86 (1) Dans le cadre d'une faillite ou d'une proposition, les réclamations prouvables — y compris les réclamations garanties — de Sa Majesté du chef du Canada ou d'une province ou d'un organisme compétent au titre d'une loi sur les accidents du travail prennent rang comme réclamations non garanties.

Exceptions

(2) Sont soustraites à l'application du paragraphe (1) :

a) les réclamations garanties par un type de charge ou de sûreté dont toute personne, et non seulement Sa Majesté ou l'organisme, peut se prévaloir au titre de dispositions législatives fédérales ou provinciales n'ayant pas pour seul ou principal objet l'établissement de mécanismes garantissant les réclamations de Sa Majesté ou de l'organisme, ou au titre de toute autre règle de droit;

b) les réclamations garanties aux termes de l'article 87, dans la mesure prévue à cet article.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

Bankruptcy and Insolvency Act
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Droits de la Couronne
Article 86

(b) to the extent provided in subsection 87(2), to claims that are secured by a security referred to in subsection 87(1), if the security is registered in accordance with that subsection.

Exceptions

(3) Subsection (1) does not affect the operation of

(a) subsections 224(1.2) and (1.3) of the *Income Tax Act*;

(b) any provision of the *Canada Pension Plan* or of the *Employment Insurance Act* that refers to subsection 224(1.2) of the *Income Tax Act* and provides for the collection of a contribution, as defined in the *Canada Pension Plan*, an employee's premium, or employer's premium, as defined in the *Employment Insurance Act*, or a premium under Part VII.1 of that Act, and of any related interest, penalties or other amounts; or

(c) any provision of provincial legislation that has a similar purpose to subsection 224(1.2) of the *Income Tax Act*, or that refers to that subsection, to the extent that it provides for the collection of a sum, and of any related interest, penalties or other amounts, where the sum

(i) has been withheld or deducted by a person from a payment to another person and is in respect of a tax similar in nature to the income tax imposed on individuals under the *Income Tax Act*, or

(ii) is of the same nature as a contribution under the *Canada Pension Plan* if the province is a **province providing a comprehensive pension plan** as defined in subsection 3(1) of the *Canada Pension Plan* and the provincial legislation establishes a **provincial pension plan** as defined in that subsection,

and for the purpose of paragraph (c), the provision of provincial legislation is, despite any Act of Canada or of a province or any other law, deemed to have the same effect and scope against any creditor, however secured, as subsection 224(1.2) of the *Income Tax Act* in respect of a sum referred to in subparagraph (c)(i), or as subsection 23(2) of the *Canada Pension Plan* in respect of a sum referred to in subparagraph (c)(ii), and in respect of any related interest, penalties or other amounts.

R.S., 1985, c. B-3, s. 86; 1992, c. 27, s. 39; 1997, c. 12, s. 73; 2000, c. 30, s. 148; 2005, c. 47, s. 69; 2009, c. 33, s. 25.

Effet

(3) Le paragraphe (1) n'a pas pour effet de porter atteinte à l'application des dispositions suivantes :

a) les paragraphes 224(1.2) et (1.3) de la *Loi de l'impôt sur le revenu*;

b) toute disposition du *Régime de pensions du Canada* ou de la *Loi sur l'assurance-emploi* qui renvoie au paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* et qui prévoit la perception d'une cotisation, au sens du *Régime de pensions du Canada*, d'une cotisation ouvrière ou d'une cotisation patronale, au sens de la *Loi sur l'assurance-emploi*, ou d'une cotisation prévue par la partie VII.1 de cette loi et des intérêts, pénalités ou autres montants y afférents;

c) toute disposition législative provinciale dont l'objet est semblable à celui du paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu*, ou qui renvoie à ce paragraphe, dans la mesure où elle prévoit la perception d'une somme, et des intérêts, pénalités ou autres montants y afférents, qui :

(i) soit a été retenue par une personne sur un paiement effectué à une autre personne, ou déduite d'un tel paiement, et se rapporte à un impôt semblable, de par sa nature, à l'impôt sur le revenu auquel les particuliers sont assujettis en vertu de la *Loi de l'impôt sur le revenu*,

(ii) soit est de même nature qu'une cotisation prévue par le *Régime de pensions du Canada*, si la province est **une province instituant un régime général de pensions** au sens du paragraphe 3(1) de cette loi et si la loi provinciale institue un **régime provincial de pensions** au sens de ce paragraphe.

Pour l'application de l'alinéa c), la disposition législative provinciale en question est réputée avoir, à l'encontre de tout créancier et malgré tout texte législatif fédéral ou provincial et toute règle de droit, la même portée et le même effet que le paragraphe 224(1.2) de la *Loi de l'impôt sur le revenu* quant à la somme visée au sous-alinéa c)(i), ou que le paragraphe 23(2) du *Régime de pensions du Canada* quant à la somme visée au sous-alinéa c)(ii), et quant aux intérêts, pénalités ou autres montants y afférents, quelle que soit la garantie dont bénéficie le créancier.

L.R. (1985), ch. B-3, art. 86; 1992, ch. 27, art. 39; 1997, ch. 12, art. 73; 2000, ch. 30, art. 148; 2005, ch. 47, art. 69; 2009, ch. 33, art. 25.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

Bankruptcy and Insolvency Act
PART IV Property of the Bankrupt
Crown Interests
Sections 87-95

Faillite et insolvabilité
PARTIE IV Biens du failli
Droits de la Couronne
Articles 87-95

Statutory Crown securities

87 (1) A security provided for in federal or provincial legislation for the sole or principal purpose of securing a claim of Her Majesty in right of Canada or of a province or of a workers' compensation body is valid in relation to a bankruptcy or proposal only if the security is registered under a prescribed system of registration before the date of the initial bankruptcy event.

Idem

(2) In relation to a bankruptcy or proposal, a security referred to in subsection (1) that is registered in accordance with that subsection

(a) is subordinate to securities in respect of which all steps necessary to make them effective against other creditors were taken before that registration; and

(b) is valid only in respect of amounts owing to Her Majesty or a workers' compensation body at the time of that registration, plus any interest subsequently accruing on those amounts.

R.S., 1985, c. B-3, s. 87; 1992, c. 27, s. 39; 1997, c. 12, s. 74; 2004, c. 25, s. 53; 2005, c. 47, s. 70.

Priority of Financial Collateral

Priority

88 In relation to a bankruptcy or proposal, no order may be made under this Act if the order would have the effect of subordinating financial collateral.

R.S., 1985, c. B-3, s. 88; 1992, c. 27, s. 39; 1994, c. 26, s. 6; 2007, c. 29, s. 99, c. 36, s. 112; 2009, c. 31, s. 65.

89 and 90 [Repealed, 1992, c. 27, s. 39]

Preferences and Transfers at Undervalue

91 [Repealed, 2005, c. 47, s. 71]

92 and 93 [Repealed, 2000, c. 12, s. 12]

94 [Repealed, 2005, c. 47, s. 72]

Preferences

95 (1) A transfer of property made, a provision of services made, a charge on property made, a payment made, an obligation incurred or a judicial proceeding taken or suffered by an insolvent person

Garanties créées par législation

87 (1) Les garanties créées aux termes d'une loi fédérale ou provinciale dans le seul but — ou principalement dans le but — de protéger des réclamations mentionnées au paragraphe 86(1) ne sont valides, dans le cadre d'une faillite ou d'une proposition, que si elles ont été enregistrées, conformément à un système d'enregistrement prescrit, avant l'ouverture de la faillite.

Rang

(2) Dans le cadre d'une faillite ou d'une proposition, les garanties visées au paragraphe (1) et enregistrées conformément à ce paragraphe :

a) prennent rang après toute autre garantie à l'égard de laquelle les mesures requises pour la rendre opposable aux autres créanciers ont toutes été prises avant l'enregistrement;

b) ne sont valides que pour les sommes dues à Sa Majesté ou à l'organisme mentionné au paragraphe 86(1) lors de l'enregistrement et les intérêts échus depuis sur celles-ci.

L.R. (1985), ch. B-3, art. 87; 1992, ch. 27, art. 39; 1997, ch. 12, art. 74; 2004, ch. 25, art. 53; 2005, ch. 47, art. 70.

Rang des garanties financières

Rang

88 Il ne peut être rendu au titre de la présente loi, dans le cadre de toute faillite ou proposition, aucune ordonnance dont l'effet serait d'assigner un rang inférieur à toute garantie financière.

L.R. (1985), ch. B-3, art. 88; 1992, ch. 27, art. 39; 1994, ch. 26, art. 6; 2007, ch. 29, art. 99, ch. 36, art. 112; 2009, ch. 31, art. 65.

89 et 90 [Abrogés, 1992, ch. 27, art. 39]

Traitements préférentiels et opérations sous-évaluées

91 [Abrogé, 2005, ch. 47, art. 71]

92 et 93 [Abrogés, 2000, ch. 12, art. 12]

94 [Abrogé, 2005, ch. 47, art. 72]

Traitements préférentiels

95 (1) Sont inopposables au syndic tout transfert de biens, toute affectation de ceux-ci à une charge et tout paiement faits par une personne insolvable de même que toute obligation contractée ou tout service rendu par une telle personne et toute instance judiciaire intentée par ou contre elle :

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

Bankruptcy and Insolvency Act
PART V Administration of Estates
Proof of Claims
Sections 126-128

Faillite et insolvabilité
PARTIE V Administration des actifs
Preuve de réclamations
Articles 126-128

Worker's wage claims

(2) Proofs of claims for wages of workers and others employed by the bankrupt may be made in one proof by the bankrupt, by someone on the bankrupt's behalf, by a representative of a federal or provincial ministry responsible for labour matters, by a representative of a union representing workers and others employed by the bankrupt or by a court-appointed representative, and that proof is to be made by attaching to it a schedule setting out the names and addresses of the workers and others and the amounts severally due to them, but that proof does not disentitle any worker or other wage earner to file a separate proof on his or her own behalf.

R.S., 1985, c. B-3, s. 126; 1997, c. 12, s. 88; 2005, c. 47, s. 87.

Proof by Secured Creditors

Proof by secured creditor

127 (1) Where a secured creditor realizes his security, he may prove the balance due to him after deducting the net amount realized.

May prove whole claim on surrender

(2) Where a secured creditor surrenders his security to the trustee for the general benefit of the creditors, he may prove his whole claim.

R.S., 1985, c. B-3, s. 127; 2004, c. 25, s. 67(F).

Proof may be requested

128 (1) Where the trustee has knowledge of property that may be subject to a security, the trustee may, by serving notice in the prescribed form and manner, require any person to file, in the prescribed form and manner, a proof of the security that gives full particulars of the security, including the date on which the security was given and the value at which that person assesses it.

Where reply not received

(1.1) Where the trustee serves a notice pursuant to subsection (1), and the person on whom the notice is served does not file a proof of security within thirty days after the day of service of the notice, the trustee may thereupon, with leave of the court, sell or dispose of any property that was subject to the security, free of that security.

Dividend on balance

(2) A creditor is entitled to receive a dividend in respect only of the balance due to him after deducting the assessed value of his security.

Réclamations d'ouvriers pour gages

(2) Les preuves de réclamations pour gages d'ouvriers et d'autres personnes employées par le failli peuvent être établies en une seule preuve par celui-ci ou pour son compte, par le représentant soit d'un ministère fédéral ou provincial responsable des questions liées au travail, soit d'un syndicat représentant les ouvriers et autres employés, ou par le représentant nommé par le tribunal; la preuve est accompagnée d'une annexe énumérant les noms et adresses des ouvriers et des autres personnes, ainsi que les sommes qui leur sont respectivement dues. Une telle preuve n'enlève pas à l'ouvrier ou à tout autre salarié le droit de produire pour son propre compte une preuve distincte.

L.R. (1985), ch. B-3, art. 126; 1997, ch. 12, art. 88; 2005, ch. 47, art. 87.

Preuve des créanciers garantis

Preuve du créancier garanti

127 (1) Lorsqu'un créancier garanti réalise sa garantie, il peut prouver le reliquat qui lui est dû, après avoir déduit la somme nette réalisée.

Peut prouver sa réclamation entière sur renonciation

(2) Lorsqu'un créancier garanti renonce à sa garantie en faveur du syndic au profit des créanciers en général, il peut établir la preuve de sa réclamation entière.

L.R. (1985), ch. B-3, art. 127; 2004, ch. 25, art. 67(F).

Preuve de garantie

128 (1) S'il a connaissance de biens qui peuvent être assujettis à une garantie, le syndic peut, par signification d'un avis en la forme et de la manière prescrites, enjoindre à quiconque de produire, en la forme et de la manière prescrites, une preuve de la garantie énonçant la date à laquelle elle a été donnée, la valeur que cette personne lui attribue et tous autres renseignements à son égard.

Défaut de réponse

(1.1) Faute par la personne à laquelle le syndic a fait signifier l'avis d'avoir produit une preuve de sa garantie dans les trente jours suivant cette signification, le syndic peut, sur permission du tribunal, aliéner les biens visés, ceux-ci étant dès lors libres de toute garantie.

Dividende sur le reliquat

(2) Un créancier n'est admis à recevoir un dividende que relativement au reliquat qui lui est dû après déduction de la valeur attribuée à sa garantie.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

Bankruptcy and Insolvency Act
PART V Administration of Estates
Proof by Secured Creditors
Sections 128-131

Faillite et insolvabilité
PARTIE V Administration des actifs
Preuve des créanciers garantis
Articles 128-131

Trustee may redeem security

(3) The trustee may redeem a security on payment to the secured creditor of the debt or the value of the security as assessed, in the proof of security, by the secured creditor.

R.S., 1985, c. B-3, s. 128; 1992, c. 27, s. 51; 1999, c. 31, s. 25; 2004, c. 25, s. 68(F).

May order security to be sold

129 (1) Where the trustee is dissatisfied with the value at which a security is assessed, the trustee may require that the property the security comprises be offered for sale at such time and on such terms and conditions as may be agreed on between the creditor and the trustee or, in default of such an agreement, as the court may direct.

Sale by public auction

(2) Where a sale under subsection (1) is by public auction the creditor or the trustee on behalf of the estate may bid or purchase.

(3) [Repealed, 1992, c. 27, s. 52]

Costs of sale

(4) The costs and expenses of a sale made under this section are in the discretion of the court.

R.S., 1985, c. B-3, s. 129; 1992, c. 27, s. 52; 2004, c. 25, s. 69(F).

Creditor may require trustee to elect to exercise power

130 Notwithstanding subsection 128(3) and section 129, the creditor may, by notice in writing, require the trustee to elect whether he will exercise the power of redeeming the security or requiring it to be realized, and if the trustee does not, within one month after receiving the notice or such further time or times as the court may allow, signify in writing to the creditor his election to exercise the power, he is not entitled to exercise it, and the equity of redemption or any other interest in the property comprised in the security that is vested in the trustee shall vest in the creditor, and the amount of his claim shall be reduced by the amount at which the security has been valued.

R.S., c. B-3, s. 101.

Amended valuation by creditor

131 Where a creditor after having valued his security subsequently realizes it, or it is realized under section 129, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor and shall be treated in all respects as an amended valuation made by the creditor.

R.S., c. B-3, s. 102.

Rachat par le syndic

(3) Le syndic peut racheter une garantie sur paiement au créancier garanti de la créance ou de la valeur de la garantie telle qu'elle est fixée par le créancier garanti dans la preuve de garantie.

L.R. (1985), ch. B-3, art. 128; 1992, ch. 27, art. 51; 1999, ch. 31, art. 25; 2004, ch. 25, art. 68(F).

Peut ordonner la vente de la garantie

129 (1) S'il n'est pas satisfait de la valeur attribuée à une garantie, le syndic peut exiger que le bien visé par la garantie soit mis en vente à la date et selon les modalités pouvant être convenues entre le créancier et lui, ou que le tribunal peut ordonner à défaut de pareille convention.

Vente à l'enchère publique

(2) Lorsque la vente s'opère par enchère publique, le créancier, ou le syndic agissant au nom de l'actif, peut enchérir ou se porter acquéreur.

(3) [Abrogé, 1992, ch. 27, art. 52]

Frais de vente

(4) Les frais occasionnés par une vente faite sous l'autorité du présent article sont à la discrétion du tribunal.

L.R. (1985), ch. B-3, art. 129; 1992, ch. 27, art. 52; 2004, ch. 25, art. 69(F).

Un créancier peut exiger du syndic qu'il choisisse d'exercer son pouvoir

130 Nonobstant le paragraphe 128(3) et l'article 129, le créancier peut, au moyen d'un avis écrit, exiger du syndic qu'il choisisse s'il exercera son pouvoir de racheter la garantie ou de la faire réaliser; si, au cours du mois suivant la réception de l'avis ou dans le ou les délais supplémentaires que le tribunal peut accorder, le syndic ne signifie pas, par écrit au créancier, son choix d'exercer ce pouvoir, il n'a pas le droit de l'exercer; la faculté de réméré ou autre intérêt dans les biens compris dans la garantie qui est dévolue au syndic sont attribués au créancier, et le montant de sa réclamation est diminué du montant auquel la garantie a été évaluée.

S.R., ch. B-3, art. 101.

Évaluation modifiée par le créancier

131 Lorsqu'un créancier, après avoir évalué sa garantie, la réalise subséquemment, ou qu'elle est réalisée sous le régime de l'article 129, le montant net réalisé est substitué au montant de toute évaluation antérieurement faite par le créancier et il est traité à tous égards comme une évaluation modifiée faite par le créancier.

S.R., ch. B-3, art. 102.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

Bankruptcy and Insolvency Act
PART V Administration of Estates
Proof by Secured Creditors
Sections 132-135

Faillite et insolvabilité
PARTIE V Administration des actifs
Preuve des créanciers garantis
Articles 132-135

Secured creditor may amend

132 (1) Where the trustee has not elected to acquire the security as provided in this Act, a creditor may at any time amend the valuation and proof on showing to the satisfaction of the trustee or the court that the valuation and proof were made in good faith on a mistaken estimate or that the security has diminished or increased in value since its previous valuation.

Amendment at cost of creditor

(2) An amendment pursuant to subsection (1) shall be made at the cost of the creditor and on such terms as the court orders, unless the trustee allows the amendment without application to the court.

Rights and liabilities of creditor where valuation amended

(3) Where a valuation has been amended pursuant to this section, the creditor

(a) shall forthwith repay any surplus dividend that he may have received in excess of that to which he would have been entitled on the amended valuation; or

(b) is entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend that he may have failed to receive by reason of the amount of the original valuation before that money is made applicable to the payment of any future dividend, but he is not entitled to disturb the distribution of any dividend declared before the amendment is filed with the trustee.

R.S., c. B-3, s. 103.

Exclusion for non-compliance

133 Where a secured creditor does not comply with sections 127 to 132, he shall be excluded from any dividend.

R.S., c. B-3, s. 104.

No creditor to receive more than 100 cents in dollar

134 Subject to section 130, a creditor shall in no case receive more than one hundred cents on the dollar and interest as provided by this Act.

R.S., c. B-3, s. 105.

Admission and Disallowance of Proofs of Claim and Proofs of Security

Trustee shall examine proof

135 (1) The trustee shall examine every proof of claim or proof of security and the grounds therefor and may require further evidence in support of the claim or security.

Le créancier garanti peut modifier l'évaluation

132 (1) Lorsque le syndic n'a pas choisi d'acquiescer la garantie dans les conditions prévues à la présente loi, un créancier peut modifier l'évaluation et la preuve en démontrant, à la satisfaction du syndic ou du tribunal, que l'évaluation et la preuve ont été faites de bonne foi sur une estimation erronée, ou que la garantie a diminué ou augmenté en valeur depuis son évaluation précédente.

Modification aux frais du créancier

(2) Une modification conforme au paragraphe (1) est faite aux frais du créancier et selon les modalités que le tribunal prescrit, à moins que le syndic ne permette la modification sans requête au tribunal.

Droits et obligations du créancier lorsque l'évaluation est modifiée

(3) Lorsqu'une évaluation a été modifiée conformément au présent article, le créancier, selon le cas :

a) doit rembourser sans retard tout surplus de dividende qu'il peut avoir reçu en sus du montant auquel il aurait eu droit sur l'évaluation modifiée;

b) a droit de recevoir, sur les deniers alors applicables à des dividendes, tout dividende ou part de dividende qu'il peut ne pas avoir reçu à cause du montant de l'évaluation primitive, avant que ces montants soient attribués au paiement d'un dividende futur; il n'a toutefois pas le droit de déranger la distribution d'un dividende déclaré avant que la modification soit déposée chez le syndic.

S.R., ch. B-3, art. 103.

Exclusion pour défaut de se conformer

133 Lorsqu'un créancier garanti ne se conforme pas aux articles 127 à 132, il est exclu de tout dividende.

S.R., ch. B-3, art. 104.

Aucun créancier ne peut recevoir plus de cent cents par dollar

134 Sous réserve de l'article 130, un créancier ne peut dans aucun cas recevoir plus de cent cents par dollar avec l'intérêt prévu par la présente loi.

S.R., ch. B-3, art. 105.

Admission et rejet des preuves de réclamation et de garantie

Examen de la preuve

135 (1) Le syndic examine chaque preuve de réclamation ou de garantie produite, ainsi que leurs motifs, et il peut exiger de nouveaux témoignages à l'appui.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

Bankruptcy and Insolvency Act
PART V Administration of Estates
 Admission and Disallowance of Proofs of Claim and Proofs of Security
 Sections 135-136

Faillite et insolvabilité
PARTIE V Administration des actifs
 Admission et rejet des preuves de réclamation et de garantie
 Articles 135-136

Determination of provable claims

(1.1) The trustee shall determine whether any contingent claim or unliquidated claim is a provable claim, and, if a provable claim, the trustee shall value it, and the claim is thereafter, subject to this section, deemed a proved claim to the amount of its valuation.

Disallowance by trustee

(2) The trustee may disallow, in whole or in part,

- (a)** any claim;
- (b)** any right to a priority under the applicable order of priority set out in this Act; or
- (c)** any security.

Notice of determination or disallowance

(3) Where the trustee makes a determination under subsection (1.1) or, pursuant to subsection (2), disallows, in whole or in part, any claim, any right to a priority or any security, the trustee shall forthwith provide, in the prescribed manner, to the person whose claim was subject to a determination under subsection (1.1) or whose claim, right to a priority or security was disallowed under subsection (2), a notice in the prescribed form setting out the reasons for the determination or disallowance.

Determination or disallowance final and conclusive

(4) A determination under subsection (1.1) or a disallowance referred to in subsection (2) is final and conclusive unless, within a thirty day period after the service of the notice referred to in subsection (3) or such further time as the court may on application made within that period allow, the person to whom the notice was provided appeals from the trustee's decision to the court in accordance with the General Rules.

Expunge or reduce a proof

(5) The court may expunge or reduce a proof of claim or a proof of security on the application of a creditor or of the debtor if the trustee declines to interfere in the matter.

R.S., 1985, c. B-3, s. 135; 1992, c. 1, s. 20, c. 27, s. 53; 1997, c. 12, s. 89.

Scheme of Distribution

Priority of claims

136 (1) Subject to the rights of secured creditors, the proceeds realized from the property of a bankrupt shall be applied in priority of payment as follows:

- (a)** in the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the

Réclamations éventuelles et non liquidées

(1.1) Le syndic décide si une réclamation éventuelle ou non liquidée est une réclamation prouvable et, le cas échéant, il l'évalue; sous réserve des autres dispositions du présent article, la réclamation est dès lors réputée prouvée pour le montant de l'évaluation.

Rejet par le syndic

(2) Le syndic peut rejeter, en tout ou en partie, toute réclamation, tout droit à un rang prioritaire dans l'ordre de collocation applicable prévu par la présente loi ou toute garantie.

Avis de la décision

(3) S'il décide qu'une réclamation est prouvable ou s'il rejette, en tout ou en partie, une réclamation, un droit à un rang prioritaire ou une garantie, le syndic en donne sans délai, de la manière prescrite, un avis motivé, en la forme prescrite, à l'intéressé.

Effet de la décision

(4) La décision et le rejet sont définitifs et péremptoires, à moins que, dans les trente jours suivant la signification de l'avis, ou dans tel autre délai que le tribunal peut accorder, sur demande présentée dans les mêmes trente jours, le destinataire de l'avis n'interjette appel devant le tribunal, conformément aux Règles générales, de la décision du syndic.

Rejet total ou partiel d'une preuve

(5) Le tribunal peut rayer ou réduire une preuve de réclamation ou de garantie à la demande d'un créancier ou du débiteur, si le syndic refuse d'intervenir dans l'affaire.

L.R. (1985), ch. B-3, art. 135; 1992, ch. 1, art. 20, ch. 27, art. 53; 1997, ch. 12, art. 89.

Plan de répartition

Priorité des créances

136 (1) Sous réserve des droits des créanciers garantis, les montants réalisés provenant des biens d'un failli sont distribués d'après l'ordre de priorité de paiement suivant :

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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legal representative or, in the Province of Quebec, the successors or heirs of the deceased bankrupt;

(b) the costs of administration, in the following order,

(i) the expenses and fees of any person acting under a direction made under paragraph 14.03(1)(a),

(ii) the expenses and fees of the trustee, and

(iii) legal costs;

(c) the levy payable under section 147;

(d) the amount of any wages, salaries, commissions, compensation or disbursements referred to in sections 81.3 and 81.4 that was not paid;

(d.01) the amount equal to the difference a secured creditor would have received but for the operation of sections 81.3 and 81.4 and the amount actually received by the secured creditor;

(d.02) the amount equal to the difference a secured creditor would have received but for the operation of sections 81.5 and 81.6 and the amount actually received by the secured creditor;

(d.1) claims in respect of debts or liabilities referred to in paragraph 178(1)(b) or (c), if provable by virtue of subsection 121(4), for periodic amounts accrued in the year before the date of the bankruptcy that are payable, plus any lump sum amount that is payable;

(e) municipal taxes assessed or levied against the bankrupt, within the two years immediately preceding the bankruptcy, that do not constitute a secured claim against the real property or immovables of the bankrupt, but not exceeding the value of the interest or, in the Province of Quebec, the value of the right of the bankrupt in the property in respect of which the taxes were imposed as declared by the trustee;

(f) the lessor for arrears of rent for a period of three months immediately preceding the bankruptcy and accelerated rent for a period not exceeding three months following the bankruptcy if entitled to accelerated rent under the lease, but the total amount so payable shall not exceed the realization from the property on the premises under lease, and any payment made on account of accelerated rent shall be credited against the amount payable by the trustee for occupation rent;

(g) the fees and costs referred to in subsection 70(2) but only to the extent of the realization from the property exigible thereunder;

a) dans le cas d'un failli décédé, les frais de funérailles et dépenses testamentaires raisonnables, faits par le représentant légal ou, dans la province de Québec, les successibles ou héritiers du failli décédé;

b) les frais d'administration, dans l'ordre suivant :

(i) débours et honoraires de la personne visée à l'alinéa 14.03(1)a),

(ii) débours et honoraires du syndic,

(iii) frais légaux;

c) le prélèvement payable en vertu de l'article 147;

d) les gages, salaires, commissions, rémunérations ou sommes déboursées visés aux articles 81.3 et 81.4 qui n'ont pas été versés;

d.01) la différence entre la somme que le créancier garanti aurait reçue n'eût été l'application des articles 81.3 et 81.4 et celle qu'il reçoit effectivement;

d.02) la différence entre la somme que le créancier garanti aurait reçue n'eût été l'application des articles 81.5 et 81.6 et celle qu'il reçoit effectivement;

d.1) les réclamations pour les dettes ou obligations mentionnées aux alinéas 178(1)b) ou c), si elles constituent des réclamations prouvables en raison du paragraphe 121(4), pour le total des sommes payables périodiquement qui se sont accumulées au cours de l'année qui précède la date de la faillite et de toute somme forfaitaire payable;

e) les taxes municipales établies ou perçues à l'encontre du failli dans les deux années précédant sa faillite et qui ne constituent pas une créance garantie sur les immeubles ou les biens réels du failli, mais ne dépassant pas la valeur de l'intérêt ou, dans la province de Québec, la valeur du droit du failli sur les biens à l'égard desquels ont été imposées les taxes telles qu'elles ont été déclarées par le syndic;

f) le locateur quant aux arriérés de loyer pour une période de trois mois précédant la faillite, et, si une disposition du bail le prévoit, le loyer exigible par anticipation, pour une somme correspondant à trois mois de loyer au plus, mais le montant total ainsi payable ne peut dépasser la somme réalisée sur les biens se trouvant sur les lieux sous bail; tout paiement fait par le locataire au titre d'une telle disposition est porté au compte du montant payable par le syndic pour le loyer d'occupation;

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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(h) in the case of a bankrupt who became bankrupt before the prescribed date, all indebtedness of the bankrupt under any Act respecting workers' compensation, under any Act respecting unemployment insurance or under any provision of the *Income Tax Act* creating an obligation to pay to Her Majesty amounts that have been deducted or withheld, rateably;

(i) claims resulting from injuries to employees of the bankrupt in respect of which the provisions of any Act respecting workers' compensation do not apply, but only to the extent of moneys received from persons guaranteeing the bankrupt against damages resulting from those injuries; and

(j) in the case of a bankrupt who became bankrupt before the prescribed date, claims of the Crown not mentioned in paragraphs (a) to (i), in right of Canada or any province, rateably notwithstanding any statutory preference to the contrary.

Payment as funds available

(2) Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, payment in accordance with subsection (1) shall be made as soon as funds are available for the purpose.

Balance of claim

(3) A creditor whose rights are restricted by this section is entitled to rank as an unsecured creditor for any balance of claim due him.

R.S., 1985, c. B-3, s. 136; 1992, c. 1, s. 143(E), c. 27, s. 54; 1997, c. 12, s. 90; 2001, c. 4, s. 31; 2004, c. 25, s. 70; 2005, c. 47, s. 88.

Postponement of claims — creditor not at arm's length

137 (1) A creditor who, at any time before the bankruptcy of a debtor, entered into a transaction with the debtor and who was not at arm's length with the debtor at that time is not entitled to claim a dividend in respect of a claim arising out of that transaction until all claims of the other creditors have been satisfied, unless the transaction was in the opinion of the trustee or of the court a proper transaction.

(2) [Repealed, 2007, c. 36, s. 47]

R.S., 1985, c. B-3, s. 137; 2000, c. 12, s. 15; 2005, c. 47, s. 89; 2007, c. 36, s. 47.

138 [Repealed, 2007, c. 36, s. 48]

g) les honoraires et droits mentionnés au paragraphe 70(2), mais jusqu'à concurrence seulement de la réalisation des biens exigibles en vertu de ce paragraphe;

h) dans le cas d'un failli qui est devenu un failli avant la date prescrite, toutes dettes contractées par le failli sous l'autorité d'une loi sur les accidents du travail, d'une loi sur l'assurance-chômage, d'une disposition de la *Loi de l'impôt sur le revenu* créant une obligation de rembourser à Sa Majesté des sommes qui ont été déduites ou retenues, au prorata;

i) les réclamations résultant de blessures subies par des employés du failli, que les dispositions d'une loi sur les accidents du travail ne visent pas, mais seulement jusqu'à concurrence des montants d'argent reçus des personnes garantissant le failli contre le préjudice résultant de ces blessures;

j) dans le cas d'un failli qui est devenu un failli avant la date prescrite, les réclamations, non mentionnées aux alinéas a) à i), de Sa Majesté du chef du Canada ou d'une province, au prorata, nonobstant tout privilège prévu par une loi à l'effet contraire.

À acquitter dès que les disponibilités le permettent

(2) Sauf la retenue des sommes qui peuvent être nécessaires pour les frais d'administration ou autrement, le paiement prévu au paragraphe (1) est fait dès qu'il se trouve des disponibilités à cette fin.

Solde de réclamation

(3) Tout créancier dont le présent article restreint les droits prend rang comme créancier non garanti, quant à tout solde de réclamation qui lui est dû.

L.R. (1985), ch. B-3, art. 136; 1992, ch. 1, art. 143(A), ch. 27, art. 54; 1997, ch. 12, art. 90; 2001, ch. 4, art. 31; 2004, ch. 25, art. 70; 2005, ch. 47, art. 88.

Ajournement de réclamations relatives à des transactions

137 (1) Le créancier qui, avant la faillite du débiteur, a conclu une transaction avec celui-ci alors qu'il existait un lien de dépendance entre eux n'a pas droit de réclamer un dividende relativement à une réclamation née de cette transaction jusqu'à ce que toutes les réclamations des autres créanciers aient été satisfaites, sauf si la transaction était, de l'avis du syndic ou du tribunal, une transaction régulière.

(2) [Abrogé, 2007, ch. 36, art. 47]

L.R. (1985), ch. B-3, art. 137; 2000, ch. 12, art. 15; 2005, ch. 47, art. 89; 2007, ch. 36, art. 47.

138 [Abrogé, 2007, ch. 36, art. 48]

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, Sections 2, 60, 65.13, 67, 70, 72, 81.5, 81.6, 86, 87, 127-134, 136, 137 and 141

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Postponement of claims of silent partners

139 Where a lender advances money to a borrower engaged or about to engage in trade or business under a contract with the borrower that the lender shall receive a rate of interest varying with the profits or shall receive a share of the profits arising from carrying on the trade or business, and the borrower subsequently becomes bankrupt, the lender of the money is not entitled to recover anything in respect of the loan until the claims of all other creditors of the borrower have been satisfied.

R.S., c. B-3, s. 110.

Postponement of wage claims of officers and directors

140 Where a corporation becomes bankrupt, no officer or director thereof is entitled to have his claim preferred as provided by section 136 in respect of wages, salary, commission or compensation for work done or services rendered to the corporation in any capacity.

R.S., c. B-3, s. 111.

Postponement of equity claims

140.1 A creditor is not entitled to a dividend in respect of an equity claim until all claims that are not equity claims have been satisfied.

2005, c. 47, s. 90; 2007, c. 36, s. 49.

Claims generally payable rateably

141 Subject to this Act, all claims proved in a bankruptcy shall be paid rateably.

R.S., c. B-3, s. 112.

Partners and separate properties

142 (1) Where partners become bankrupt, their joint property shall be applicable in the first instance in payment of their joint debts, and the separate property of each partner shall be applicable in the first instance in payment of his separate debts.

Surplus of separate properties

(2) Where there is a surplus of the separate properties of the partners, it shall be dealt with as part of the joint property.

Surplus of joint properties

(3) Where there is a surplus of the joint property of the partners, it shall be dealt with as part of the respective

Renvoi des réclamations d'un bailleur de fonds

139 Lorsqu'un prêteur avance de l'argent à un emprunteur, engagé ou sur le point de s'engager dans un commerce ou une entreprise, aux termes d'un contrat, passé avec l'emprunteur, en vertu duquel le prêteur doit recevoir un taux d'intérêt variant selon les profits ou recevoir une partie des profits provenant de la conduite du commerce ou de l'entreprise, et que subséquemment l'emprunteur devient failli, le prêteur n'a droit à aucun recouvrement du chef d'un pareil prêt jusqu'à ce que les réclamations de tous les autres créanciers de l'emprunteur aient été acquittées.

S.R., ch. B-3, art. 110.

Renvoi des réclamations pour gages des dirigeants et administrateurs

140 Dans le cas où une personne morale devient en faillite, aucun dirigeant ou administrateur de celle-ci n'a droit à la priorité de réclamation prévue par l'article 136 à l'égard de tout salaire, traitement, commission ou rémunération pour travail exécuté ou services rendus à cette personne morale à quelque titre que ce soit.

S.R., ch. B-3, art. 111.

Réclamations relatives à des capitaux propres

140.1 Le créancier qui a une réclamation relative à des capitaux propres n'a pas droit à un dividende à cet égard avant que toutes les réclamations qui ne sont pas des réclamations relatives à des capitaux propres aient été satisfaites.

2005, ch. 47, art. 90; 2007, ch. 36, art. 49.

Réclamations généralement payables au prorata

141 Sous réserve des autres dispositions de la présente loi, toutes les réclamations établies dans la faillite sont acquittées au prorata.

S.R., ch. B-3, art. 112.

Associés et biens distincts

142 (1) Dans le cas où des associés deviennent en faillite, leurs biens communs sont applicables en premier lieu au paiement de leurs dettes communes, et les biens distincts de chaque associé sont applicables en premier lieu au paiement de ses dettes distinctes.

Surplus des biens distincts

(2) Lorsqu'il existe un surplus des biens distincts, il en est disposé comme partie des biens communs.

Surplus des biens communs

(3) Lorsqu'il existe un surplus des biens communs, il en est disposé comme partie des biens distincts respectifs en



CANADA

CONSOLIDATION

CODIFICATION

**Canada Business Corporations
Act**

**Loi canadienne sur les sociétés
par actions**

R.S.C., 1985, c. C-44

L.R.C. (1985), ch. C-44

Current to December 11, 2017

À jour au 11 décembre 2017

Last amended on February 26, 2015

Dernière modification le 26 février 2015

**OFFICIAL STATUS
OF CONSOLIDATIONS**

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

Published consolidation is evidence

31 (1) Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

Inconsistencies in Acts

(2) In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

NOTE

This consolidation is current to December 11, 2017. The last amendments came into force on February 26, 2015. Any amendments that were not in force as of December 11, 2017 are set out at the end of this document under the heading "Amendments Not in Force".

**CARACTÈRE OFFICIEL
DES CODIFICATIONS**

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1^{er} juin 2009, prévoient ce qui suit :

Codifications comme élément de preuve

31 (1) Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

Incompatibilité – lois

(2) Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

NOTE

Cette codification est à jour au 11 décembre 2017. Les dernières modifications sont entrées en vigueur le 26 février 2015. Toutes modifications qui n'étaient pas en vigueur au 11 décembre 2017 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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(d) order that any money payable to a shareholder who cannot be found be paid to the Receiver General and subsection 227(3) applies in respect thereof.

R.S., 1985, c. C-44, s. 206; 2001, c. 14, ss. 99, 135(E); 2011, c. 21, s. 61.

Obligation to acquire shares

206.1 (1) If a shareholder holding shares of a distributing corporation does not receive an offeror's notice under subsection 206(3), the shareholder may

(a) within ninety days after the date of termination of the take-over bid, or

(b) if the shareholder did not receive an offer pursuant to the take-over bid, within ninety days after the later of

(i) the date of termination of the take-over bid, and

(ii) the date on which the shareholder learned of the take-over bid,

require the offeror to acquire those shares.

Conditions

(2) If a shareholder requires the offeror to acquire shares under subsection (1), the offeror shall acquire the shares on the same terms under which the offeror acquired or will acquire the shares of the offerees who accepted the take-over bid.

2001, c. 14, s. 100.

PART XVIII

Liquidation and Dissolution

Definition of court

207 In this Part, *court* means a court having jurisdiction in the place where the corporation has its registered office.

1974-75-76, c. 33, s. 200; 1978-79, c. 9, s. 1(F).

Application of Part

208 (1) This Part, other than sections 209 and 212, does not apply to a corporation that is an insolvent person or a bankrupt as those terms are defined in subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Staying proceedings

(2) Any proceedings taken under this Part to dissolve or to liquidate and dissolve a corporation shall be stayed if

d) prévoir le versement, au receveur général, des fonds payables aux actionnaires introuvables, auquel cas le paragraphe 227(3) s'applique.

L.R. (1985), ch. C-44, art. 206; 2001, ch. 14, art. 99 et 135(A); 2011, ch. 21, art. 61.

Acquisition forcée à la demande d'un actionnaire

206.1 (1) L'actionnaire qui détient des actions d'une société ayant fait appel au public et qui n'a pas reçu du pollicitant l'avis visé au paragraphe 206(3) peut exiger de ce dernier l'acquisition de ces actions :

a) soit dans les quatre-vingt-dix jours suivant la date d'expiration de l'offre d'achat visant à la mainmise;

b) soit, s'il n'a pas reçu une telle offre, dans le délai visé à l'alinéa a) ou dans les quatre-vingt-dix jours suivant la date où il a pris connaissance de l'offre si ce délai est plus long.

Conditions

(2) Le pollicitant est alors tenu d'acquérir les actions aux mêmes conditions que celles faites aux pollicités acceptants.

2001, ch. 14, art. 100.

PARTIE XVIII

Liquidation et dissolution

Définition de tribunal

207 Dans la présente partie, *tribunal* désigne le tribunal compétent du ressort du siège social de la société.

1974-75-76, ch. 33, art. 200; 1978-79, ch. 9, art. 1(F).

Application de la présente partie

208 (1) La présente partie, sauf les articles 209 et 212, ne s'applique pas aux sociétés qui sont des personnes insolubles ou des faillies au sens du paragraphe 2(1) de la *Loi sur la faillite et l'insolvabilité*.

Suspension des procédures

(2) Toute procédure soit de dissolution, soit de liquidation et de dissolution, engagée en vertu de la présente partie, est suspendue dès la constatation de l'insolvabilité

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the corporation is at any time found, in a proceeding under the *Bankruptcy and Insolvency Act*, to be an insolvent person as defined in subsection 2(1) of that Act.

R.S., 1985, c. C-44, s. 208; 1992, c. 27, s. 90; 2001, c. 14, s. 101.

Revival

209 (1) When a body corporate is dissolved under this Part or under section 268 of this Act, section 261 of chapter 33 of the Statutes of Canada, 1974-75-76, or subsection 297(6) of the *Canada Not-for-profit Corporations Act*, any interested person may apply to the Director to have the body corporate revived as a corporation under this Act.

Articles of revival

(2) Articles of revival in the form that the Director fixes shall be sent to the Director.

Certificate of revival

(3) On receipt of articles of revival, the Director shall issue a certificate of revival in accordance with section 262, if

- (a)** the body corporate has fulfilled all conditions precedent that the Director considers reasonable; and
- (b)** there is no valid reason for refusing to issue the certificate.

Date of revival

(3.1) A body corporate is revived as a corporation under this Act on the date shown on the certificate of revival.

Rights preserved

(4) Subject to any reasonable terms that may be imposed by the Director, to the rights acquired by any person after its dissolution and to any changes to the internal affairs of the corporation after its dissolution, the revived corporation is, in the same manner and to the same extent as if it had not been dissolved,

- (a)** restored to its previous position in law, including the restoration of any rights and privileges whether arising before its dissolution or after its dissolution and before its revival; and
- (b)** liable for the obligations that it would have had if it had not been dissolved whether they arise before its dissolution or after its dissolution and before its revival.

de la société au cours de procédures intentées en vertu de la *Loi sur la faillite et l'insolvabilité*.

L.R. (1985), ch. C-44, art. 208; 1992, ch. 27, art. 90; 2001, ch. 14, art. 101.

Reconstitution

209 (1) Tout intéressé peut demander au directeur la reconstitution en société régie par la présente loi d'une personne morale dissoute en vertu de la présente partie, de l'article 268 de la présente loi, de l'article 261 de la *Loi sur les sociétés commerciales canadiennes*, chapitre 33 des Statuts du Canada de 1974-75-76, ou du paragraphe 297(6) de la *Loi canadienne sur les organisations à but non lucratif*.

Clauses de reconstitution

(2) Les clauses de reconstitution sont envoyées au directeur en la forme établie par lui.

Certificat de reconstitution

(3) Sur réception des clauses de reconstitution, le directeur doit délivrer un certificat de reconstitution conformément à l'article 262 si :

- a)** la personne morale a rempli les conditions préalables à la délivrance qu'il estime raisonnables;
- b)** il n'y a aucun motif valable d'en refuser la délivrance.

Reconstitution

(3.1) La personne morale est reconstituée en société régie par la présente loi à la date figurant sur le certificat.

Maintien des droits et obligations

(4) Sous réserve des modalités raisonnables imposées par le directeur, des droits acquis par toute personne après sa dissolution et de tout changement aux affaires internes de la société survenu après sa dissolution, la société reconstituée recouvre, comme si elle n'avait jamais été dissoute :

- a)** la même situation juridique, notamment ses droits et privilèges, indépendamment de leur date d'acquisition;
- b)** la responsabilité des obligations qui seraient les siennes si elle n'avait pas été dissoute, indépendamment de la date où elles ont été contractées.

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Legal actions

(5) Any legal action respecting the affairs of a revived corporation taken between the time of its dissolution and its revival is valid and effective.

Definition of interested person

(6) In this section, *interested person* includes

- (a) a shareholder, a director, an officer, an employee and a creditor of the dissolved corporation;
- (b) a person who has a contractual relationship with the dissolved corporation;
- (c) a person who, although at the time of dissolution of the corporation was not a person described in paragraph (a), would be such a person if a certificate of revival is issued under this section; and
- (d) a trustee in bankruptcy for the dissolved corporation.

R.S., 1985, c. C-44, s. 209; 2001, c. 14, s. 102; 2009, c. 23, s. 310.

Dissolution before commencing business

210 (1) A corporation that has not issued any shares may be dissolved at any time by resolution of all the directors.

Dissolution if no property

(2) A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders or, where it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

Dissolution where property disposed of

(3) A corporation that has property or liabilities or both may be dissolved by special resolution of the shareholders or, where it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote, if

- (a) by the special resolution or resolutions the shareholders authorize the directors to cause the corporation to distribute any property and discharge any liabilities; and
- (b) the corporation has distributed any property and discharged any liabilities before it sends articles of dissolution to the Director pursuant to subsection (4).

Articles of dissolution

(4) Articles of dissolution in the form that the Director fixes shall be sent to the Director.

Action en justice

(5) Est valide toute action en justice concernant les affaires internes de la société reconstituée intentée entre le moment de sa dissolution et celui de sa reconstitution.

Définition

(6) Pour l'application du présent article, « intéressé » s'entend notamment :

- a) des actionnaires, administrateurs, dirigeants, employés et créanciers de la société dissoute;
- b) de toute personne ayant un lien contractuel avec elle;
- c) de toute personne qui, bien que non visée par l'alinéa a) à la date de la dissolution, le deviendrait si la société était reconstituée;
- d) du syndic de faillite de la société dissoute.

L.R. (1985), ch. C-44, art. 209; 2001, ch. 14, art. 102; 2009, ch. 23, art. 310.

Dissolution avant le début des opérations

210 (1) La société n'ayant émis aucune action peut être dissoute par résolution de tous les administrateurs.

Dissolution lorsqu'il n'y a pas de biens

(2) La société sans biens ni dettes peut être dissoute par résolution spéciale soit des actionnaires soit, en présence de plusieurs catégories d'actions, des détenteurs d'actions de chaque catégorie assorties ou non du droit de vote.

Dissolution après répartition des biens

(3) La société, qui a des biens ou des dettes ou les deux à la fois, peut être dissoute par résolution spéciale soit des actionnaires soit, en présence de plusieurs catégories d'actions, des détenteurs d'actions de chaque catégorie assorties ou non du droit de vote, pourvu que :

- a) d'une part, les résolutions autorisent les administrateurs à effectuer une répartition de biens et un règlement de dettes;
- b) d'autre part, la société ait effectué une répartition de biens et un règlement de dettes avant d'envoyer les clauses de dissolution au directeur conformément au paragraphe (4).

Clauses de dissolution

(4) Les clauses de dissolution sont envoyées au directeur en la forme établie par lui.

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Certificate of dissolution

(5) On receipt of articles of dissolution, the Director shall issue a certificate of dissolution in accordance with section 262.

Effect of certificate

(6) The corporation ceases to exist on the date shown in the certificate of dissolution.

R.S., 1985, c. C-44, s. 210; 2001, c. 14, s. 103.

Proposing liquidation and dissolution

211 (1) The directors may propose, or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 137, make a proposal for, the voluntary liquidation and dissolution of a corporation.

Notice of meeting

(2) Notice of any meeting of shareholders at which voluntary liquidation and dissolution is to be proposed shall set out the terms thereof.

Shareholders resolution

(3) A corporation may liquidate and dissolve by special resolution of the shareholders or, where the corporation has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

Statement of intent to dissolve

(4) A statement of intent to dissolve in the form that the Director fixes shall be sent to the Director.

Certificate of intent to dissolve

(5) On receipt of a statement of intent to dissolve, the Director shall issue a certificate of intent to dissolve in accordance with section 262.

Effect of certificate

(6) On issue of a certificate of intent to dissolve, the corporation shall cease to carry on business except to the extent necessary for the liquidation, but its corporate existence continues until the Director issues a certificate of dissolution.

Liquidation

(7) After issue of a certificate of intent to dissolve, the corporation shall

- (a)** immediately cause notice thereof to be sent to each known creditor of the corporation;

Certificat de dissolution

(5) Sur réception des clauses de dissolution, le directeur délivre un certificat de dissolution en conformité avec l'article 262.

Effet du certificat

(6) La société cesse d'exister à la date figurant sur le certificat de dissolution.

L.R. (1985), ch. C-44, art. 210; 2001, ch. 14, art. 103.

Proposition de liquidation et dissolution

211 (1) La liquidation et la dissolution volontaires de la société peuvent être proposées par les administrateurs ou, conformément à l'article 137, par tout actionnaire habile à voter à l'assemblée annuelle.

Avis d'assemblée

(2) L'avis de convocation de l'assemblée, qui doit statuer sur la proposition de liquidation et de dissolution volontaires, doit en exposer les modalités.

Résolution des actionnaires

(3) La société peut prononcer sa liquidation et sa dissolution par résolution spéciale des actionnaires ou, le cas échéant, par résolution spéciale des détenteurs de chaque catégorie d'actions, assorties ou non du droit de vote.

Déclaration d'intention

(4) Une déclaration d'intention de dissolution est envoyée au directeur en la forme établie par lui.

Certificat d'intention

(5) Sur réception de la déclaration d'intention de dissolution, le directeur délivre, en conformité avec l'article 262, un certificat d'intention de dissolution.

Effet du certificat

(6) Dès la délivrance du certificat, la société doit cesser toute activité commerciale, sauf dans la mesure nécessaire à la liquidation, mais sa personnalité morale ne cesse d'exister qu'à la délivrance du certificat de dissolution.

Liquidation

(7) À la suite de la délivrance du certificat d'intention de dissolution, la société doit :

- a)** en envoyer immédiatement avis à chaque créancier connu;

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(b) without delay take reasonable steps to give notice of it in each province in Canada where the corporation was carrying on business at the time it sent the statement of intent to dissolve to the Director;

(c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations and to do all other acts required to liquidate its business; and

(d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

Supervision by court

(8) The Director or any interested person may, at any time during the liquidation of a corporation, apply to a court for an order that the liquidation be continued under the supervision of the court as provided in this Part, and on such application the court may so order and make any further order it thinks fit.

Notice to Director

(9) An applicant under this section shall give the Director notice of the application, and the Director is entitled to appear and be heard in person or by counsel.

Revocation

(10) At any time after issue of a certificate of intent to dissolve and before issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked by sending to the Director a statement of revocation of intent to dissolve in the form that the Director fixes, if such revocation is approved in the same manner as the resolution under subsection (3).

Certificate of revocation of intent to dissolve

(11) On receipt of a statement of revocation of intent to dissolve, the Director shall issue a certificate of revocation of intent to dissolve in accordance with section 262.

Effect of certificate

(12) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the corporation may continue to carry on its business or businesses.

Right to dissolve

(13) If a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection (7), the corporation shall prepare articles of dissolution.

b) prendre sans délai toute disposition utile pour en donner avis dans chaque province où la société exerçait ses activités commerciales au moment de l'envoi au directeur de la déclaration d'intention de dissolution;

c) accomplir tous actes utiles à la dissolution, notamment recouvrer ses biens, disposer des biens non destinés à être répartis en nature entre les actionnaires et honorer ses obligations;

d) après avoir donné les avis exigés aux alinéas a) et b) et constitué une provision suffisante pour honorer ses obligations, répartir le reliquat de l'actif, en numéraire ou en nature, entre les actionnaires, selon leurs droits respectifs.

Surveillance judiciaire

(8) Le tribunal, sur demande présentée à cette fin et au cours de la liquidation par le directeur ou par tout intéressé, peut, par ordonnance, décider que la liquidation sera poursuivie sous sa surveillance conformément à la présente partie, et prendre toute autre mesure pertinente.

Avis au directeur

(9) L'intéressé qui présente la demande prévue au présent article doit en donner avis au directeur; celui-ci peut comparaître en personne ou par ministère d'avocat.

Révocation

(10) Le certificat d'intention de dissolution peut, après sa délivrance et avant celle du certificat de dissolution, être révoqué par résolution adoptée conformément au paragraphe (3) et sur envoi au directeur d'une déclaration de renonciation à dissolution en la forme établie par lui.

Certificat

(11) Sur réception de la déclaration de renonciation à dissolution, le directeur délivre, en conformité avec l'article 262, le certificat à cet effet.

Effet du certificat

(12) Le certificat de renonciation à dissolution prend effet à la date qui y figure et la société peut dès lors continuer à exercer ses activités commerciales.

Droit de dissolution

(13) En l'absence de renonciation à dissolution, la société, après avoir observé le paragraphe (7), rédige les clauses régissant la dissolution.

Canada Business Corporations Act, R.S.C. 1985, c. C-44, Part XVIII

Canada Business Corporations Act
PART XVIII Liquidation and Dissolution
Sections 211-212

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Articles 211-212

Articles of dissolution

(14) Articles of dissolution in the form that the Director fixes shall be sent to the Director.

Certificate of dissolution

(15) On receipt of articles of dissolution, the Director shall issue a certificate of dissolution in accordance with section 262.

Effect of certificate

(16) The corporation ceases to exist on the date shown in the certificate of dissolution.

R.S., 1985, c. C-44, s. 211; 2001, c. 14, s. 104.

Dissolution by Director

212 (1) Subject to subsections (2) and (3), the Director may

(a) dissolve a corporation by issuing a certificate of dissolution under this section if the corporation

(i) has not commenced business within three years after the date shown in its certificate of incorporation,

(ii) has not carried on its business for three consecutive years,

(iii) is in default for a period of one year in sending to the Director any fee, notice or document required by this Act, or

(iv) does not have any directors or is in the situation described in subsection 109(4); or

(b) apply to a court for an order dissolving the corporation, in which case section 217 applies.

Publication

(2) The Director shall not dissolve a corporation under this section until the Director has

(a) given one hundred and twenty days notice of the decision to dissolve the corporation to the corporation and to each director thereof; and

(b) published notice of that decision in a publication generally available to the public.

Certificate of dissolution

(3) Unless cause to the contrary has been shown or an order has been made by a court under section 246, the Director may, after the expiration of the period referred

Clauses de dissolution

(14) Les clauses de dissolution sont envoyées au directeur en la forme établie par lui.

Certificat de dissolution

(15) Sur réception des clauses de dissolution, le directeur délivre un certificat de dissolution en conformité avec l'article 262.

Effet du certificat

(16) La société cesse d'exister à la date figurant sur le certificat de dissolution.

L.R. (1985), ch. C-44, art. 211; 2001, ch. 14, art. 104.

Dissolution par le directeur

212 (1) Sous réserve des paragraphes (2) et (3), le directeur peut :

a) soit dissoudre, par la délivrance du certificat de dissolution prévu au présent article, toute société qui, selon le cas :

(i) n'a pas commencé ses opérations dans les trois ans suivant la date figurant sur son certificat de constitution,

(ii) n'a pas exercé ses activités commerciales pendant trois ans consécutifs,

(iii) omet, pendant un délai d'un an, d'envoyer au directeur les droits, avis ou documents exigés par la présente loi,

(iv) est sans administrateur ou se trouve dans la situation visée au paragraphe 109(4);

b) soit demander au tribunal sa dissolution par voie d'ordonnance, auquel cas l'article 217 s'applique.

Publication

(2) Le directeur ne peut dissoudre, en vertu du présent article, une société avant :

a) de lui avoir donné, ainsi qu'à chacun de ses administrateurs, un préavis de cent vingt jours de sa décision;

b) d'avoir publié un avis de son intention dans une publication accessible au grand public.

Certificat de dissolution

(3) En l'absence d'opposition justifiée ou d'ordonnance rendue en vertu de l'article 246, le directeur peut, à l'expiration du délai visé au paragraphe (2), délivrer le certificat de dissolution en la forme établie par lui.

Canada Business Corporations Act, R.S.C. 1985, c. C-44, Part XVIII

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Articles 212-213

to in subsection (2), issue a certificate of dissolution in the form that the Director fixes.

Exception — non-payment of incorporation fee

(3.1) Despite anything in this section, the Director may dissolve a corporation by issuing a certificate of dissolution if the required fee for the issuance of a certificate of incorporation has not been paid.

Effect of certificate

(4) The corporation ceases to exist on the date shown in the certificate of dissolution.

R.S., 1985, c. C-44, s. 212; 1994, c. 24, s. 25; 2001, c. 14, ss. 105, 135(E).

Grounds for dissolution

213 (1) The Director or any interested person may apply to a court for an order dissolving a corporation if the corporation has

- (a)** failed for two or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders;
- (b)** contravened subsection 16(2) or section 21, 157 or 159; or
- (c)** procured any certificate under this Act by misrepresentation.

Notice to Director

(2) An applicant under this section shall give the Director notice of the application, and the Director is entitled to appear and be heard in person or by counsel.

Dissolution order

(3) On an application under this section or section 212, the court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the court, and the court may make any other order it thinks fit.

Certificate

(4) On receipt of an order under this section, section 212 or 214, the Director shall

- (a)** if the order is to dissolve the corporation, issue a certificate of dissolution in the form that the Director fixes; or

Non-paiement des droits de constitution

(3.1) Malgré toute autre disposition du présent article, le directeur peut dissoudre une société par la délivrance du certificat de dissolution lorsque les droits requis pour la délivrance d'un certificat de constitution n'ont pas été payés.

Effet du certificat

(4) La société cesse d'exister à la date figurant sur le certificat de dissolution.

L.R. (1985), ch. C-44, art. 212; 1994, ch. 24, art. 25; 2001, ch. 14, art. 105 et 135(A).

Motifs de dissolution

213 (1) Le directeur ou tout intéressé peut demander au tribunal de prononcer, par ordonnance, la dissolution de la société qui, selon le cas :

- a)** n'a pas observé pendant au moins deux ans consécutifs les dispositions de la présente loi en matière de tenue des assemblées annuelles;
- b)** a enfreint les dispositions du paragraphe 16(2) ou des articles 21, 157 ou 159;
- c)** a obtenu un certificat sur présentation de faits erronés.

Avis au directeur

(2) L'intéressé qui présente la demande prévue au présent article doit en donner avis au directeur; celui-ci peut comparaître en personne ou par ministère d'avocat.

Ordonnance de dissolution

(3) Sur demande présentée en vertu du présent article ou de l'article 212, le tribunal peut rendre toute ordonnance qu'il estime pertinente et, notamment, prononcer la dissolution de la société ou en prescrire la dissolution et la liquidation sous sa surveillance.

Certificat

(4) Sur réception de l'ordonnance visée au présent article ou aux articles 212 ou 214, le directeur délivre, en la forme établie par lui, un certificat :

- a)** de dissolution, s'il s'agit d'une ordonnance à cet effet;
- b)** d'intention de dissolution, s'il s'agit d'une ordonnance de liquidation et de dissolution sous surveillance judiciaire; il en fait publier un avis dans une publication accessible au grand public.

Canada Business Corporations Act, R.S.C. 1985, c. C-44, Part XVIII

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PART XVIII Liquidation and Dissolution
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Articles 213-214

(b) if the order is to liquidate and dissolve the corporation under the supervision of the court, issue a certificate of intent to dissolve in the form that the Director fixes and publish notice of the order in a publication generally available to the public.

Effect of certificate

(5) The corporation ceases to exist on the date shown in the certificate of dissolution.

R.S., 1985, c. C-44, s. 213; 2001, c. 14, s. 106.

Further grounds

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

(a) if the court is satisfied that in respect of a corporation or any of its affiliates

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or

(b) if the court is satisfied that

(i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or

(ii) it is just and equitable that the corporation should be liquidated and dissolved.

Alternative order

(2) On an application under this section, a court may make such order under this section or section 241 as it thinks fit.

Application of s. 242

(3) Section 242 applies to an application under this section.

R.S., 1985, c. C-44, s. 214; 2001, c. 14, s. 107(F).

Effet du certificat

(5) La société cesse d'exister à la date figurant sur le certificat de dissolution.

L.R. (1985), ch. C-44, art. 213; 2001, ch. 14, art. 106.

Autres motifs

214 (1) À la demande d'un actionnaire, le tribunal peut ordonner la liquidation et la dissolution de la société ou de toute autre société de son groupe dans l'un ou l'autre des cas suivants :

a) il constate qu'elle abuse des droits de tout détenteur de valeurs mobilières, créancier, administrateur ou dirigeant, ou se montre injuste à leur égard en leur portant préjudice ou en ne tenant pas compte de leurs intérêts :

(i) soit en raison de son comportement,

(ii) soit par la façon dont elle conduit ou a conduit ses activités commerciales ou ses affaires internes,

(iii) soit par la façon dont ses administrateurs exercent ou ont exercé leurs pouvoirs;

b) il constate :

(i) soit la survenance d'un événement qui, selon une convention unanime des actionnaires permet à l'actionnaire mécontent d'exiger la dissolution,

(ii) soit le caractère juste et équitable de cette mesure.

Ordonnance subsidiaire

(2) Sur demande présentée en vertu du présent article, le tribunal peut rendre, conformément à cet article ou à l'article 241, toute ordonnance qu'il estime pertinente.

Application de l'art. 242

(3) L'article 242 s'applique aux demandes visées au présent article.

L.R. (1985), ch. C-44, art. 214; 2001, ch. 14, art. 107(F).

Application for supervision

215 (1) An application to a court to supervise a voluntary liquidation and dissolution under subsection 211(8) shall state the reasons, verified by an affidavit of the applicant, why the court should supervise the liquidation and dissolution.

Court supervision

(2) If a court makes an order applied for under subsection 211(8), the liquidation and dissolution of the corporation shall continue under the supervision of the court in accordance with this Act.

1974-75-76, c. 33, s. 208; 1978-79, c. 9, s. 1(F).

Application to court

216 (1) An application to a court under subsection 214(1) shall state the reasons, verified by an affidavit of the applicant, why the corporation should be liquidated and dissolved.

Show cause order

(2) On an application under subsection 214(1), the court may make an order requiring the corporation and any person having an interest in the corporation or claim against it to show cause, at a time and place specified in the order, within four weeks after the date of the order, why the corporation should not be liquidated and dissolved.

Powers of court

(3) On an application under subsection 214(1), the court may order the directors and officers of the corporation to furnish the court with all material information known to or reasonably ascertainable by them, including

- (a)** financial statements of the corporation;
- (b)** the name and address of each shareholder of the corporation; and
- (c)** the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the corporation has a contract.

Publication

(4) A copy of an order made under subsection (2) shall be

- (a)** published as directed in the order, at least once in each week before the time appointed for the hearing, in a newspaper published or distributed in the place where the corporation has its registered office; and

Demande de surveillance

215 (1) La demande de surveillance présentée au tribunal conformément au paragraphe 211(8) doit être motivée, avec l'affidavit du demandeur à l'appui.

Surveillance

(2) La liquidation et la dissolution doivent se poursuivre, conformément à la présente loi, sous la surveillance du tribunal, si l'ordonnance prévue au paragraphe 211(8) est rendue.

1974-75-76, ch. 33, art. 208; 1978-79, ch. 9, art. 1(F).

Demande au tribunal

216 (1) La demande de liquidation et de dissolution visée au paragraphe 214(1) doit être motivée, avec l'affidavit du demandeur à l'appui.

Ordonnance préliminaire

(2) Après le dépôt de la demande visée au paragraphe 214(1), le tribunal peut, par ordonnance, requérir la société ainsi que tout intéressé ou créancier d'expliquer, dans les quatre semaines de l'ordonnance et aux lieux, dates et heures indiqués, pourquoi la liquidation et la dissolution seraient inopportunes.

Pouvoirs du tribunal

(3) Après le dépôt de la demande visée au paragraphe 214(1), le tribunal peut ordonner aux administrateurs et dirigeants de lui fournir tous les renseignements pertinents en leur possession ou qu'ils peuvent raisonnablement obtenir, y compris :

- a)** les états financiers de la société;
- b)** les noms et adresses des actionnaires;
- c)** les noms et adresses des créanciers ou réclamants connus, y compris ceux qui ont des créances non liquidées, futures ou éventuelles, et des cocontractants de la société.

Publication

(4) L'ordonnance rendue en vertu du paragraphe (2) est à la fois :

- a)** insérée de la manière y indiquée, une fois au moins chaque semaine précédant la date de l'audience, dans un journal publié ou diffusé au lieu du siège social de la société;

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(b) served on the Director and each person named in the order.

Person responsible

(5) Publication and service of an order under this section shall be effected by the corporation or by such other person and in such manner as the court may order.

R.S., 1985, c. C-44, s. 216; 1999, c. 31, s. 64(E).

Powers of court

217 In connection with the dissolution or the liquidation and dissolution of a corporation, the court may, if it is satisfied that the corporation is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit including, without limiting the generality of the foregoing,

- (a)** an order to liquidate;
- (b)** an order appointing a liquidator, with or without security, fixing the liquidator's remuneration and replacing a liquidator;
- (c)** an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;
- (d)** an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (e)** an order determining the validity of any claims made against the corporation;
- (f)** an order, at any stage of the proceedings, restraining the directors and officers from
 - (i)** exercising any of their powers, or
 - (ii)** collecting or receiving any debt or other property of the corporation, and from paying out or transferring any property of the corporation, except as permitted by the court;
- (g)** an order determining and enforcing the duty or liability of any present or former director, officer or shareholder
 - (i)** to the corporation, or
 - (ii)** for an obligation of the corporation;
- (h)** an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of assets for such purpose, and determining the adequacy of provisions for the payment or

b) signifiée au directeur et aux personnes y désignées.

Personne responsable

(5) La publication et la signification des ordonnances visées au présent article sont faites, selon les modalités que prescrit le tribunal, par la société ou la personne qu'il désigne.

L.R. (1985), ch. C-44, art. 216; 1999, ch. 31, art. 64(A).

Pouvoirs du tribunal

217 À l'occasion de la dissolution ou de la liquidation et de la dissolution, le tribunal peut, s'il constate la capacité de la société de payer ou de constituer une provision pour honorer ses obligations, rendre les ordonnances qu'il estime pertinentes et en vue, notamment :

- a)** de procéder à la liquidation;
- b)** de nommer un liquidateur et d'exiger de lui une garantie, de fixer sa rémunération et de le remplacer;
- c)** de nommer des inspecteurs ou des arbitres, de préciser leurs pouvoirs, de fixer leur rémunération et de les remplacer;
- d)** de décider s'il y a lieu de donner avis aux intéressés ou à toute autre personne;
- e)** de juger de la validité des réclamations faites contre la société;
- f)** d'interdire, à tout stade de la procédure, aux administrateurs et aux dirigeants :
 - (i)** soit d'exercer tout ou partie de leurs pouvoirs,
 - (ii)** soit de percevoir toute créance de la société ou de payer, céder ou recevoir tout bien de celle-ci, sauf de la manière autorisée par le tribunal;
- g)** de préciser et de mettre en jeu la responsabilité des administrateurs, dirigeants ou actionnaires ou de leurs prédécesseurs :
 - (i)** soit envers la société,
 - (ii)** soit envers les tiers pour les obligations de la société;
- h)** d'approuver, en ce qui concerne les dettes de la société, tout paiement, règlement, transaction ou rétention d'éléments d'actif, et de juger si les provisions constituées suffisent à acquitter les obligations de la société, qu'elles soient ou non liquidées, futures ou éventuelles;

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discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;

(i) an order disposing of or destroying the documents and records of the corporation;

(j) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;

(k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on such terms as the court thinks fit and confirming any act of the liquidator;

(l) subject to section 223, an order approving any proposed interim or final distribution to shareholders in money or in property;

(m) an order disposing of any property belonging to creditors or shareholders who cannot be found;

(n) on the application of any director, officer, security holder, creditor or the liquidator,

(i) an order staying the liquidation on such terms and conditions as the court thinks fit,

(ii) an order continuing or discontinuing the liquidation proceedings, or

(iii) an order to the liquidator to restore to the corporation all its remaining property; and

(o) after the liquidator has rendered a final account to the court, an order dissolving the corporation.

R.S., 1985, c. C-44, s. 217; 2001, c. 14, ss. 108, 135(E); 2011, c. 21, s. 62(F).

Effect of order

218 The liquidation of a corporation commences when a court makes an order therefor.

1974-75-76, c. 33, s. 211; 1978-79, c. 9, s. 1(F).

Cessation of business and powers

219 (1) If a court makes an order for liquidation of a corporation,

(a) the corporation continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and

(b) the powers of the directors and shareholders cease and vest in the liquidator, except as specifically authorized by the court.

i) de fixer l'usage qui sera fait des documents et registres de la société ou de les détruire;

j) sur demande d'un créancier, des inspecteurs ou du liquidateur, de donner des instructions sur toute question touchant à la liquidation;

k) sur avis à tous les intéressés, de décharger le liquidateur de ses manquements, selon les modalités que le tribunal estime pertinentes, et de confirmer ses actes;

l) sous réserve de l'article 223, d'approuver tout projet de répartition provisoire ou définitive entre les actionnaires, en numéraire ou en nature;

m) de fixer la destination des biens appartenant aux créanciers ou aux actionnaires introuvables;

n) sur demande de tout administrateur, dirigeant, détenteur de valeurs mobilières ou créancier ou du liquidateur :

(i) de surseoir à la liquidation, selon les modalités que le tribunal estime pertinentes,

(ii) de poursuivre ou d'interrompre la procédure de liquidation,

(iii) d'enjoindre au liquidateur de restituer à la société le reliquat des biens de celle-ci;

o) après la reddition de comptes définitive du liquidateur devant le tribunal, de dissoudre la société.

L.R. (1985), ch. C-44, art. 217; 2001, ch. 14, art. 108 et 135(A); 2011, ch. 21, art. 62(F).

Effet de l'ordonnance

218 La liquidation de la société commence dès que le tribunal rend une ordonnance à cet effet.

1974-75-76, ch. 33, art. 211; 1978-79, ch. 9, art. 1(F).

Cessation d'activité et perte de pouvoirs

219 (1) À la suite de l'ordonnance de liquidation :

a) la société, tout en continuant à exister, cesse d'exercer ses activités commerciales, à l'exception de celles que le liquidateur estime nécessaires au déroulement normal des opérations de la liquidation;

b) les pouvoirs des administrateurs et des actionnaires sont dévolus au liquidateur, sauf indication contraire et expresse du tribunal.

Delegation by liquidator

(2) The liquidator may delegate any powers vested in the liquidator by paragraph (1)(b) to the directors or shareholders.

R.S., 1985, c. C-44, s. 219; 2001, c. 14, s. 135(E).

Appointment of liquidator

220 (1) When making an order for the liquidation of a corporation or at any time thereafter, the court may appoint any person, including a director, an officer or a shareholder of the corporation or any other body corporate, as liquidator of the corporation.

Vacancy

(2) Where an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the court until the office of liquidator is filled.

1974-75-76, c. 33, s. 213; 1978-79, c. 9, ss. 1(F), 67.

Duties of liquidator

221 A liquidator shall

(a) forthwith after appointment give notice thereof to the Director and to each claimant and creditor known to the liquidator;

(b) without delay publish notice by insertion once a week for two consecutive weeks in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice of the appointment in each province where the corporation carries on business, requiring any person

(i) indebted to the corporation, to render an account and pay to the liquidator at the time and place specified any amount owing,

(ii) possessing property of the corporation, to deliver it to the liquidator at the time and place specified, and

(iii) having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars thereof in writing to the liquidator not later than two months after the first publication of the notice;

(c) take into custody and control the property of the corporation;

(d) open and maintain a trust account for the moneys of the corporation;

Délégation par le liquidateur

(2) Le liquidateur peut déléguer aux administrateurs ou aux actionnaires la totalité ou une partie des pouvoirs qui lui sont dévolus en vertu de l'alinéa (1)b).

L.R. (1985), ch. C-44, art. 219; 2001, ch. 14, art. 135(A).

Nomination du liquidateur

220 (1) Le tribunal peut, en rendant l'ordonnance de liquidation ou par la suite, nommer en qualité de liquidateur toute personne et notamment l'un des administrateurs, dirigeants ou actionnaires de la société ou une autre personne morale.

Vacance

(2) Les biens de la société sont placés sous la garde du tribunal durant toute vacance du poste de liquidateur survenant après le prononcé de l'ordonnance de liquidation.

1974-75-76, ch. 33, art. 213; 1978-79, ch. 9, art. 1(F) et 67.

Obligations du liquidateur

221 Le liquidateur doit :

a) donner avis, sans délai, de sa nomination au directeur et aux réclamants et créanciers connus de lui;

b) insérer sans délai, une fois par semaine pendant deux semaines consécutives, dans un journal publié ou diffusé au lieu du siège social de la société, tout en prenant des mesures raisonnables pour en faire une certaine publicité dans chaque province où la société exerce ses activités commerciales, un avis obligeant :

(i) les débiteurs de la société à lui rendre compte et à lui payer leurs dettes, aux date et lieu précisés dans cet avis,

(ii) les personnes en possession des biens de la société à les lui remettre aux date et lieu précisés dans l'avis,

(iii) les créanciers de la société à lui fournir par écrit un relevé détaillé de leur créance, qu'elle soit ou non liquidée, future ou éventuelle, dans les deux mois de la première publication de l'avis;

c) prendre sous sa garde et sous son contrôle tous les biens de la société;

d) ouvrir un compte en fiducie pour les fonds de la société;

e) tenir une comptabilité des recettes et déboursés de la société;

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(e) keep accounts of the moneys of the corporation received and paid out by him;

(f) maintain separate lists of the shareholders, creditors and other persons having claims against the corporation;

(g) if at any time the liquidator determines that the corporation is unable to pay or adequately provide for the discharge of its obligations, apply to the court for directions;

(h) deliver to the court and to the Director, at least once in every twelve month period after appointment or more often as the court may require, financial statements of the corporation in the form required by section 155 or in such other form as the liquidator may think proper or as the court may require; and

(i) after the final accounts are approved by the court, distribute any remaining property of the corporation among the shareholders according to their respective rights.

R.S., 1985, c. C-44, s. 221; 2001, c. 14, ss. 109, 135(E).

Powers of liquidator

222 (1) A liquidator may

(a) retain lawyers, accountants, engineers, appraisers and other professional advisers;

(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the corporation;

(c) carry on the business of the corporation as required for an orderly liquidation;

(d) sell by public auction or private sale any property of the corporation;

(e) do all acts and execute or, in Quebec, sign any documents in the name and on behalf of the corporation;

(f) borrow money on the security of the property of the corporation;

(g) settle or compromise any claims by or against the corporation; and

(h) do all other things necessary for the liquidation of the corporation and distribution of its property.

Due diligence

(2) A liquidator is not liable if the liquidator exercised the care, diligence and skill that a reasonably prudent

f) tenir des listes distinctes des actionnaires, créanciers et autres réclamants;

g) demander des instructions au tribunal après constatation de l'incapacité de la société d'honorer ses obligations ou de constituer une provision suffisante à cette fin;

h) remettre, au tribunal ainsi qu'au directeur, au moins une fois tous les douze mois à compter de sa nomination et chaque fois que le tribunal l'ordonne, les états financiers de la société en la forme exigée à l'article 155 ou en telle autre forme jugée pertinente par le liquidateur ou exigée par le tribunal;

i) après l'approbation par le tribunal de ses comptes définitifs, répartir le reliquat des biens de la société entre les actionnaires selon leurs droits respectifs.

L.R. (1985), ch. C-44, art. 221; 2001, ch. 14, art. 109 et 135(A).

Pouvoirs du liquidateur

222 (1) Le liquidateur peut :

a) retenir les services de conseillers professionnels, notamment d'avocats, de comptables, d'ingénieurs et d'estimateurs;

b) ester en justice, lors de toute procédure civile, pénale ou administrative, pour le compte de la société;

c) exercer les activités commerciales de la société dans la mesure nécessaire à la liquidation;

d) vendre aux enchères publiques ou de gré à gré tout bien de la société;

e) agir et signer des documents au nom de la société;

f) contracter des emprunts garantis par les biens de la société;

g) transiger sur toutes réclamations mettant en cause la société ou les régler;

h) faire tout ce qui est par ailleurs nécessaire à la liquidation et à la répartition des biens de la société.

Défense de diligence raisonnable

(2) N'est pas engagée la responsabilité du liquidateur qui a agi avec le soin, la diligence et la compétence dont ferait preuve, en pareilles circonstances, une personne

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person would have exercised in comparable circumstances, including reliance in good faith on

(a) financial statements of the corporation represented to the liquidator by an officer of the corporation or in a written report of the auditor of the corporation fairly to reflect the financial condition of the corporation; or

(b) a report of a person whose profession lends credibility to a statement made by the professional person.

Application for examination

(3) If a liquidator has reason to believe that any person has in their possession or under their control, or has concealed, withheld or misappropriated any property of the corporation, the liquidator may apply to the court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

Power of court

(4) If the examination referred to in subsection (3) discloses that a person has concealed, withheld or misappropriated property of the corporation, the court may order that person to restore it or pay compensation to the liquidator.

R.S., 1985, c. C-44, s. 222; 2001, c. 14, ss. 110, 135(E); 2011, c. 21, s. 63(E).

Costs of liquidation

223 (1) A liquidator shall pay the costs of liquidation out of the property of the corporation and shall pay or make adequate provision for all claims against the corporation.

Final accounts

(2) Within one year after appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator shall apply to the court

(a) for approval of the final accounts and for an order permitting the liquidator to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights; or

(b) for an extension of time, setting out the reasons therefor.

Shareholder application

(3) If a liquidator fails to make the application required by subsection (2), a shareholder of the corporation may apply to the court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

prudente, notamment le fait de s'appuyer de bonne foi sur :

a) les états financiers de la société qui, d'après l'un de ses dirigeants ou d'après le rapport écrit du vérificateur, reflètent équitablement sa situation;

b) les rapports des personnes dont la profession permet d'accorder foi à leurs déclarations.

Demande d'interrogatoire

(3) Le liquidateur qui a de bonnes raisons de croire qu'une personne a en sa possession ou sous son contrôle ou a dissimulé, retenu ou détourné des biens de la société peut demander au tribunal de l'obliger, par ordonnance, à comparaître pour interrogatoire aux date, heure et lieu que celle-ci précise.

Pouvoirs du tribunal

(4) Le tribunal peut ordonner à la personne dont l'interrogatoire visé au paragraphe (3) révèle qu'elle a dissimulé, retenu ou détourné des biens de la société de les restituer au liquidateur ou de lui verser une indemnité compensatoire.

L.R. (1985), ch. C-44, art. 222; 2001, ch. 14, art. 110 et 135(A); 2011, ch. 21, art. 63(A).

Frais de liquidation

223 (1) Le liquidateur acquitte les frais de liquidation sur les biens de la société; il acquitte également toutes les dettes de la société ou constitue une provision suffisante à cette fin.

Comptes définitifs

(2) Dans l'année de sa nomination et après avoir acquitté toutes les dettes de la société ou constitué une provision suffisante à cette fin, le liquidateur demande au tribunal :

a) soit d'approuver ses comptes définitifs et de l'autoriser, par ordonnance, à répartir en numéraire ou en nature le reliquat des biens entre les actionnaires selon leurs droits respectifs;

b) soit, avec motifs à l'appui, de prolonger son mandat.

Demande des actionnaires

(3) Tout actionnaire peut demander au tribunal d'obliger, par ordonnance, le liquidateur qui néglige de présenter la demande exigée par le paragraphe (2) à expliquer pourquoi un compte définitif ne peut être dressé et une répartition effectuée.

Publication

(4) A liquidator shall give notice of their intention to make an application under subsection (2) to the Director, to each inspector appointed under section 217, to each shareholder and to any person who provided a security, fidelity bond or fidelity insurance for the liquidation, and shall publish the notice in a newspaper published or distributed in the place where the corporation has its registered office, or as otherwise directed by the court.

Final order

(5) If the court approves the final accounts rendered by a liquidator, the court shall make an order

- (a)** directing the Director to issue a certificate of dissolution;
- (b)** directing the custody or disposal of the documents and records of the corporation; and
- (c)** subject to subsection (6), discharging the liquidator.

Delivery of order

(6) The liquidator shall forthwith send a certified copy of the order referred to in subsection (5) to the Director.

Certificate of dissolution

(7) On receipt of the order referred to in subsection (5), the Director shall issue a certificate of dissolution in accordance with section 262.

Effect of certificate

(8) The corporation ceases to exist on the date shown in the certificate of dissolution.

R.S., 1985, c. C-44, s. 223; 2001, c. 14, ss. 111(E), 135(E); 2011, c. 21, s. 64.

Right to distribution in money

224 (1) If in the course of liquidation of a corporation the shareholders resolve or the liquidator proposes to

- (a)** exchange all or substantially all the property of the corporation for securities of another body corporate that are to be distributed to the shareholders, or
- (b)** distribute all or part of the property of the corporation to the shareholders in kind,

a shareholder may apply to the court for an order requiring the distribution of the property of the corporation to be in money.

Publication

(4) Le liquidateur doit donner avis de son intention de présenter la demande prévue au paragraphe (2) au directeur, à chaque inspecteur nommé en vertu de l'article 217, à chaque actionnaire et aux personnes ayant fourni une sûreté ou une assurance détournement et vol pour les besoins de la liquidation, et faire insérer cet avis dans un journal publié ou diffusé au lieu du siège social de la société ou le faire connaître par tout autre moyen choisi par le tribunal.

Ordonnance définitive

(5) Le tribunal, s'il approuve les comptes définitifs du liquidateur, doit, par ordonnance :

- a)** demander au directeur de délivrer un certificat de dissolution;
- b)** donner des instructions quant à la garde des documents et des livres de la société et à l'usage qui en sera fait;
- c)** sous réserve du paragraphe (6), le libérer.

Copie

(6) Le liquidateur doit, sans délai, envoyer au directeur une copie certifiée de l'ordonnance visée au paragraphe (5).

Certificat de dissolution

(7) Sur réception de l'ordonnance visée au paragraphe (5), le directeur délivre un certificat de dissolution en conformité avec l'article 262.

Effet du certificat

(8) La société cesse d'exister à la date figurant sur le certificat de dissolution.

L.R. (1985), ch. C-44, art. 223; 2001, ch. 14, art. 111(A) et 135(A); 2011, ch. 21, art. 64.

Droit à la répartition en numéraire

224 (1) Si, au cours de la liquidation, les actionnaires décident, par résolution, ou si le liquidateur propose :

- a)** soit d'échanger la totalité ou la quasi-totalité des biens de la société contre des valeurs mobilières d'une autre personne morale à répartir entre les actionnaires;
- b)** soit de répartir tout ou partie des biens de la société, en nature, entre les actionnaires,

tout actionnaire peut demander au tribunal d'imposer, par ordonnance, la répartition en numéraire des biens de la société.

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Powers of court

(2) On an application under subsection (1), the court may order

(a) all the property of the corporation to be converted into and distributed in money; or

(b) the claims of any shareholder applying under this section to be satisfied by a distribution in money, in which case subsections 190(20) to (22) apply.

1974-75-76, c. 33, s. 217; 1978-79, c. 9, s. 1(F).

Custody of records

225 (1) A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce such documents and records for six years following the date of its dissolution or until the expiration of such other shorter period as may be ordered under subsection 223(5).

Offence

(2) A person who, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both.

1974-75-76, c. 33, s. 218; 1978-79, c. 9, s. 1(F).

Definition of shareholder

226 (1) In this section, *shareholder* includes the heirs and personal representatives of a shareholder.

Continuation of actions

(2) Notwithstanding the dissolution of a body corporate under this Act,

(a) a civil, criminal or administrative action or proceeding commenced by or against the body corporate before its dissolution may be continued as if the body corporate had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the body corporate within two years after its dissolution as if the body corporate had not been dissolved; and

(c) any property that would have been available to satisfy any judgment or order if the body corporate had not been dissolved remains available for such purpose.

Pouvoirs du tribunal

(2) Sur demande présentée en vertu du paragraphe (1), le tribunal peut ordonner :

a) soit la réalisation de tous les biens de la société et la répartition du produit;

b) soit le règlement en numéraire des créances des actionnaires qui en font la demande en vertu du présent article, auquel cas les paragraphes 190(20) à (22) s'appliquent.

1974-75-76, ch. 33, art. 217; 1978-79, ch. 9, art. 1(F).

Garde des documents

225 (1) La personne qui s'est vu confier la garde des documents et livres d'une société dissoute peut être tenue de les produire jusqu'à la date fixée dans l'ordonnance rendue en vertu du paragraphe 223(5) et, au maximum, dans les six ans suivant la date de la dissolution.

Infraction

(2) La personne qui, sans motif raisonnable, contrevient au paragraphe (1) commet une infraction et encourt, sur déclaration de culpabilité par procédure sommaire, une amende maximale de cinq mille dollars et un emprisonnement maximal de six mois, ou l'une de ces peines.

1974-75-76, ch. 33, art. 218; 1978-79, ch. 9, art. 1(F).

Définition de actionnaire

226 (1) Au présent article, *actionnaire* s'entend notamment des héritiers et des représentants personnels de l'actionnaire.

Continuation des actions

(2) Nonobstant la dissolution d'une personne morale conformément à la présente loi :

a) les procédures civiles, pénales ou administratives intentées par ou contre elle avant sa dissolution peuvent être poursuivies comme si la dissolution n'avait pas eu lieu;

b) dans les deux ans suivant la dissolution, des procédures civiles, pénales ou administratives peuvent être intentées contre la personne morale comme si elle n'avait pas été dissoute;

c) les biens qui auraient servi à satisfaire tout jugement ou ordonnance, à défaut de la dissolution, demeurent disponibles à cette fin.

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Service

(3) Service of a document on a corporation after its dissolution may be effected by serving the document on a person shown in the last notice filed under section 106 or 113.

Idem

(3.1) Service of a document on a company to which the *Canada Corporations Act*, chapter C-32 of the Revised Statutes of Canada, 1970, applied that has been dissolved by subsection 261(8) of the *Canada Business Corporations Act*, chapter 33 of the Statutes of Canada, 1974-75-76 and chapter 9 of the Statutes of Canada, 1978-79, may be effected by serving the document on a person shown as a director in the last annual summary filed by the company pursuant to the *Canada Corporations Act*.

Reimbursement

(4) Notwithstanding the dissolution of a body corporate under this Act, a shareholder to whom any of its property has been distributed is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder on such distribution, and an action to enforce such liability may be brought within two years after the date of the dissolution of the body corporate.

Representative action

(5) A court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to such conditions as the court thinks fit and, if the plaintiff establishes a claim, the court may refer the proceedings to a referee or other officer of the court who may

(a) add as a party to the proceedings each person who was a shareholder found by the plaintiff;

(b) determine, subject to subsection (4), the amount that each person who was a shareholder shall contribute towards satisfaction of the plaintiff's claim; and

(c) direct payment of the amounts so determined.

R.S., 1985, c. C-44, s. 226; 1992, c. 1, s. 57; 2001, c. 14, ss. 112, 135(E); 2011, c. 21, s. 65(F).

Unknown claimants

227 (1) On the dissolution of a body corporate under this Act, the portion of the property distributable to a creditor or shareholder who cannot be found shall be converted into money and paid to the Receiver General.

Signification

(3) Après la dissolution, la signification des documents peut se faire à toute personne figurant sur la dernière liste enregistrée conformément aux articles 106 ou 113.

Idem

(3.1) La signification des documents à une compagnie qui était régie par la *Loi sur les corporations canadiennes*, chapitre C-32 des Statuts révisés du Canada de 1970, et qui a été dissoute par suite de l'application du paragraphe 261(8) de la *Loi sur les sociétés commerciales canadiennes*, chapitre 33 des Statuts du Canada de 1974-75-76 et chapitre 9 des Statuts du Canada de 1978-79, peut se faire à toute personne figurant comme dirigeant dans le dernier sommaire déposé par la compagnie conformément à la *Loi sur les corporations canadiennes*.

Remboursement

(4) Nonobstant la dissolution d'une personne morale, conformément à la présente loi, les actionnaires entre lesquels sont répartis les biens engagent leur responsabilité, à concurrence de la somme reçue, envers toute personne invoquant le paragraphe (2), toute action en recouvrement pouvant alors être engagée dans les deux ans suivant la dissolution.

Action en justice collective

(5) Le tribunal peut ordonner que soit intentée, collectivement contre les actionnaires, l'action visée au paragraphe (4), sous réserve des conditions qu'il juge pertinentes, et peut, si le demandeur établit le bien-fondé de sa demande, renvoyer l'affaire devant un arbitre ou un autre officier de justice qui a le pouvoir :

a) de joindre comme partie à l'instance chaque ancien actionnaire retrouvé par le demandeur;

b) de déterminer, sous réserve du paragraphe (4), la part que chaque ancien actionnaire doit verser pour dédommager le demandeur;

c) d'ordonner le versement des sommes déterminées.

L.R. (1985), ch. C-44, art. 226; 1992, ch. 1, art. 57; 2001, ch. 14, art. 112 et 135(A); 2011, ch. 21, art. 65(F).

Créanciers inconnus

227 (1) La partie des biens à remettre, par suite de la dissolution d'une personne morale en vertu de la présente loi, à tout créancier ou actionnaire introuvable doit être réalisée en numéraire et le produit versé au receveur général.

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Constructive satisfaction

(2) A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of such creditor or shareholder.

Recovery

(3) A person who establishes an entitlement to any moneys paid to the Receiver General under this Act shall be paid by the Receiver General an equivalent amount out of the Consolidated Revenue Fund.

R.S., 1985, c. C-44, s. 227; 2001, c. 14, s. 135(E).

Vesting in Crown

228 (1) Subject to subsection 226(2) and section 227, property of a body corporate that has not been disposed of at the date of its dissolution under this Act vests in Her Majesty in right of Canada.

Return of property on revival

(2) If a body corporate is revived as a corporation under section 209, any property, other than money, that vested in Her Majesty pursuant to subsection (1), that has not been disposed of shall be returned to the corporation and there shall be paid to the corporation out of the Consolidated Revenue Fund

(a) an amount equal to any money received by Her Majesty pursuant to subsection (1); and

(b) where property other than money vested in Her Majesty pursuant to subsection (1) and that property has been disposed of, an amount equal to the lesser of

(i) the value of any such property at the date it vested in Her Majesty, and

(ii) the amount realized by Her Majesty from the disposition of that property.

1974-75-76, c. 33, s. 221; 1978-79, c. 9, ss. 1(F), 70.

PART XIX

Investigation

Investigation

229 (1) A security holder or the Director may apply, *ex parte* or on such notice as the court may require, to a court having jurisdiction in the place where the corporation has its registered office for an order directing an investigation to be made of the corporation and any of its affiliated corporations.

Dédommagement

(2) Le versement prévu au paragraphe (1) est réputé régler le créancier ou dédommager l'actionnaire.

Recouvrement

(3) Le receveur général doit verser, sur le Trésor, une somme égale à celle qu'il a reçue, à toute personne qui la réclame à bon droit selon la présente loi.

L.R. (1985), ch. C-44, art. 227; 2001, ch. 14, art. 135(A).

Dévolution à la Couronne

228 (1) Sous réserve du paragraphe 226(2) et de l'article 227, les biens dont il n'a pas été disposé à la date de la dissolution d'une personne morale en vertu de la présente loi sont dévolus à Sa Majesté du chef du Canada.

Restitution des biens

(2) Les biens dévolus à Sa Majesté conformément au paragraphe (1) et dont il n'a pas été disposé, à l'exclusion des sommes d'argent, sont restitués à la personne morale reconstituée en société en vertu de l'article 209; lui sont versées, sur le Trésor :

a) une somme égale à celles qu'a reçues Sa Majesté conformément au paragraphe (1);

b) en cas de disposition de biens autres qu'en numéraire dévolus à Sa Majesté conformément au paragraphe (1), une somme égale au moins élevé des montants suivants :

(i) la valeur de ces biens à la date de leur dévolution,

(ii) le produit tiré par Sa Majesté de cette disposition.

1974-75-76, ch. 33, art. 221; 1978-79, ch. 9, art. 1(F) et 70.

PARTIE XIX

Enquêtes

Enquête

229 (1) Tout détenteur de valeurs mobilières ou le directeur peut demander au tribunal du ressort du siège social de la société, *ex parte* ou après avoir donné l'avis que celui-ci peut exiger, d'ordonner la tenue d'une enquête sur la société et sur toute société du même groupe.

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PENSION BENEFITS ACT, 1997

Amended:

2001 c22 ss19-29; 2001 c42 s31; 2004 c36 s29; 2004 c40;
2004 c47 s29; 2007 c6; 2007 cT-9.1 s5; 2008 c16; 2012 c41

CHAPTER P-4.01

AN ACT RESPECTING PENSION BENEFITS

(Assented to December 19, 1996)

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81. Commencement

Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

**PART I
SHORT TITLE AND DEFINITIONS**

Short title

1. This Act may be cited as the *Pension Benefits Act, 1997*.

[1996 cP-4.01 s1](#)

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Definitions

2. In this Act

- (a) "additional voluntary contribution" means an optional contribution by an employee under a pension plan that does not impose an obligation on the employer to make additional contributions or to provide additional benefits under the plan;
- (b) "administrator" means
- (i) the employer, or
 - (ii) a board of trustees, a pension committee or other body constituted in accordance with the terms of a pension plan or a collective agreement to manage the affairs of the plan;
- (c) "bridging benefit" means a periodic payment provided under a pension plan to a former member for the purpose of supplementing the former member's pension benefit for a temporary period following early retirement and ceases not later than the date on which the member attains age 65;
- (c.1) "cohabiting partner",
- (i) in relation to a member or former member who has a spouse, means a person who is not the spouse of the member or former member who has cohabited continuously with the member or former member in a conjugal relationship for not less than 3 years, or
 - (ii) in relation to a member or former member who does not have a spouse, means a person who has cohabited continuously with the member or former member in a conjugal relationship for not less than one year,
- and is cohabiting or has cohabited with the member or former member within the preceding year;
- (d) "commuted value" means the present value, calculated in the manner prescribed by the regulations and as of a fixed date, of a pension benefit;
- (e) "continuous employment" means service for a period of time without regard to periods of temporary suspension of employment;
- (f) "defined benefit plan" means a pension plan that is not a defined contribution plan;

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- (g) "defined benefit provision" means a provision of a pension plan under which a pension benefit for a member is determined in any way other than that described in the definition "defined contribution provision";
- (h) "defined contribution plan" means a pension plan that consists of defined contribution provisions and does not contain defined benefit provisions other than
 - (i) a defined benefit provision relating to pension benefits accrued in respect of employment before the effective date of a pension plan, and
 - (ii) a defined benefit provision that provides for a minimum pension benefit the additional value of which, in the superintendent's opinion, is not significant;
- (i) "defined contribution provision" means a provision of a pension plan under which a pension benefit of a member or former member is determined solely as a function of contributions, interest earned and other gains and losses allocated to that member or former member's account;
- (j) "designated province" means a province that is a province as prescribed by the regulations in which there is in force legislation substantially similar to this Act;
- (k) "early retirement" means the date or age specified in a pension plan in accordance with section 29;
- (l) "employee" means a person who performs service for an employer in the province or in a designated province and is in receipt of or entitled to remuneration for the service;
- (m) "employer" in relation to an employee, means the person or organization whether incorporated or unincorporated, carrying on business or established in the province, from whom the employee receives remuneration, and includes the successors or assigns of the person or organization;
- (n) "former Act" means the *Pension Benefits Act* ;
- (o) "former member", in relation to a pension plan, means a person who has either ceased membership in the plan or has retired from the plan, and who retains a present or future entitlement to receive a benefit under the plan;
- (p) "fundholder" means a person or institution who maintains a pension fund for the purpose of investment and payment of benefits as they become due;
- (q) "insurance company" means a corporation authorized to carry on life insurance business in Canada ;
- (r) "joint and survivor pension benefit" means a pension benefit that continues until the death of the member or former member, or the principal beneficiary of that member or former member, whichever occurs later;
- (s) "life annuity" means a sum of money payable yearly or at other regular intervals that continues for the life of the annuitant, and may be
 - (i) a deferred life annuity in which payment starts no earlier than one year after the purchase of the life annuity, or
 - (ii) an immediate life annuity in which payment starts within one year after the purchase of the life annuity;
- (t) "member", in relation to a pension plan, means a person who has become a member of the plan and has neither ceased membership in the plan nor retired from the plan;

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- (u) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (v) "multi-employer pension plan" means a pension plan organized and administered for employees of 2 or more employers who contribute to the plan under an agreement, by-law or statute, where the plan provides pension benefits that are determined with reference to periods of employment with any or all of the participating employers except where both or all of those employers are affiliates within the meaning of the *Corporations Act* ;
- (v.1) "multi-jurisdictional pension plan" means a pension plan that is subject to this Act and to the pension benefits legislation of one or more designated provinces or of Canada ;
- (v.2) "multilateral agreement" means an agreement entered into under section 8.2;
- (w) "normal actuarial cost" means the cost of a pension benefit that is to accrue during a plan year determined on the basis of a going concern valuation as prescribed by the regulations;
- (x) "normal form of pension" means the form of pension that would be paid to a member under a pension plan at normal retirement, but for section 45;
- (y) "normal retirement" means the date or age specified in a pension plan in accordance with section 28;
- (z) "participating employer", in relation to a multi-employer pension plan, means an employer who is required to contribute to that plan;
- (aa) "pension benefit" means a periodic amount under a pension plan to which a member or former member or the principal beneficiary, beneficiary or estate of a member or former member, is or may become entitled;
- (bb) "pension fund", in relation to a pension plan, means a fund maintained to provide pension benefits under the plan;
- (cc) "pension plan" means a superannuation or other plan organized and administered to provide pension benefits to employees and to which the employer is required, in accordance with the plan, to contribute, but does not include
 - (i) an employee's profit sharing plan or a deferred profit sharing plan as defined in the *Income Tax Act (Canada)* ,
 - (ii) arrangements which provide benefits in excess of those allowed under the *Income Tax Act (Canada)* , or
 - (iii) any other arrangement prescribed by the regulations;
- (dd) "predecessor employer" means an employer who disposes of all or part of the employer's business, undertaking or assets;
- (dd.1) "principal beneficiary" means the spouse of a member or former member, or where the member or former member has a cohabiting partner, the member or former member's cohabiting partner;
- (ee) "province of employment" means the province where an employee reports for work, but if the employee is not required to report for work, the province where an employer's establishment is located from which an employee's remuneration is paid;
- (ff) "spouse" means, except in Part VI, a person who
 - (i) is married to the member or former member,

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- (ii) is married to the member or the former member by a marriage that is voidable and has not been voided by a judgment of nullity, or
- (iii) has gone through a form of a marriage with the member or former member, in good faith, that is void and is cohabiting or has cohabited with the member or former member within the preceding year;
- (gg) "successor employer" means an employer who acquires all or part of the business, undertaking or assets of a predecessor employer;
- (hh) "superintendent" means the Superintendent of Pensions;
- (ii) "surplus" means the excess of the value of the assets of a pension fund over the value of the liabilities under the pension plan, both calculated in the manner prescribed by the regulations; and
- (jj) "YMPE" means the year's maximum pensionable earnings as defined under the Canada Pension Plan.

[1996 cP-4.01 s2; 2001 c22 s19; 2012 c41 s1](#)

**PART II
ADMINISTRATION OF THE ACT**

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Minimum standards

3. The requirements of this Act shall not prevent the registration or operation of a pension plan containing a provision that is more advantageous to a member or former member, or the principal beneficiary, beneficiary or estate of a member or former member.

[1996 cP-4.01 s3; 2001 c22 s20](#)

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Act prevails

4. In the event of a conflict between this Act and another Act, this Act prevails with the exceptions noted in section 33 and Part VI.

[1996 cP-4.01 s4](#)

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Application of Act

5. This Act applies to all pension plans for persons employed in the province, except those pension plans to which an Act of the Parliament of Canada applies.

[1996 cP-4.01 s5](#)

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Powers and duties of superintendent

- 6. (1) The Lieutenant-Governor in Council shall appoint a Superintendent of Pensions.
 - (1.1) The Lieutenant-Governor in Council may appoint a Deputy Superintendent of Pensions
 - (a) to act in place of the superintendent in his or her absence or incapacity; and

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(b) to exercise the powers and perform the duties of the superintendent under an Act or regulations that may be assigned by the superintendent.

(2) The superintendent, subject to the approval of the minister, has the control and supervision of the administration of this Act, and has the following powers and duties:

(a) to examine all pension plans and all amendments to those plans that are filed for registration under this Act;

(b) to register and issue certificates of registration in respect of all pension plans that are filed for registration under this Act and comply with the standards for registration;

(c) to refuse to register a pension plan that does not comply with this Act;

(d) to carry out periodic or other inspections and audits of registered pension plans;

(e) to revoke the registration and cancel the certificate of registration for a pension plan that ceases to comply with the requirements of this Act;

(f) to direct the administrator of a pension plan to provide information to plan members at a time and in a manner specified by the superintendent;

(g) to assess and collect fees for the registration and annual supervision of pension plans; and

(h) to perform other functions and duties that the Lieutenant-Governor in Council may assign.

(3) On receipt of a written request and if satisfied reasonable grounds exist for the extension, the superintendent may extend a time limit imposed under this Act to a maximum of 6 months.

(4) The superintendent may place a pension plan under trusteeship and appoint one or more persons to act as trustee of the plan where, in the opinion of the superintendent, it is necessary to do so.

(5) The cost of administering a pension plan by a trustee under subsection (4) is to be paid

(a) by the employer; or

(b) by the plan fund where, in the opinion of the superintendent, special circumstances exist.

[1996 cP-4.01 s6; 2004 c40 s1](#)

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Inspection of documents

7. (1) The superintendent may inspect the books, documents and other records respecting a pension plan kept by an employer, an insurance company, a trustee of the plan or other person and require that person to furnish information which the superintendent considers necessary.

(2) Where the superintendent believes that a person has contravened this Act, the superintendent or an authorized representative may, with a warrant issued under subsection (3), enter the business premises and investigate and examine the affairs of the person in respect of whom the investigation is being made, and any books, documents and other records in relation to that person.

(3) A Provincial Court judge, who is satisfied by information upon oath that there are reasonable grounds to believe that there has been a contravention of this Act, may issue a warrant authorizing the superintendent or an authorized representative to enter and search any business and

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to make inquiries and copies of books, documents and other records considered necessary, subject to conditions specified in the warrant.

(4) The owner, or person in charge of the premises referred to in this section, and every person found on the premises shall furnish information requested by the superintendent or an authorized representative and shall assist him or her to carry out his or her functions under this section.

[1996 cP-4.01 s7; 2004 c36 s29](#)

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Agreements

8. (1) The minister may

- (a) subject to the *Executive Council Act* , enter into agreements;
- (b) authorize the Canadian association of pension supervisory authorities to exercise or perform powers and functions of the superintendent;
- (c) delegate to a pension supervisory authority or the government of a designated province or of Canada , powers and functions under this Act; and
- (d) authorize the superintendent to accept a delegation of powers and functions from a pension supervisory authority or the government of a designated province or of Canada .

(2) The minister may, subject to the approval of the Lieutenant-Governor in Council, enter into an agreement with the government of a designated province or of Canada , or with more than one of them, to provide that where a pension plan is subject to both this Act and an Act of one or more of those other jurisdictions, either

- (a) this Act or a part of it is not to apply and the legislation or part of the legislation of the other jurisdiction is to apply to the plan; or
- (b) this Act or a part of it is to apply and the legislation or part of the legislation of the other jurisdiction is not to apply to the plan,

and to establish conditions for the application of the laws referred to in paragraphs (a) and (b).

(3) An agreement entered into under subsection (2) shall specify the date on which it comes into force and the agreement acquires the force of law in the province as of that date.

[1996 cP-4.01 s8](#)

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Existing agreement

8.1 An agreement entered into under section 8 continues in force until it is terminated according to its terms or until the minister and the other party to the agreement become subject to a multilateral agreement.

[2012 c41 s2](#)

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Multilateral agreement

8.2 (1) The minister may, subject to the approval of the Lieutenant-Governor in Council, enter into a multilateral agreement respecting multi-jurisdictional pension plans with the government of a designated province or of Canada, or with more than one of them.

- (2) A multilateral agreement may provide for
- (a) the application of this Act and the regulations to multi-jurisdictional pension plans;
 - (b) the application of the pension benefits legislation of a designated province or of Canada to multi-jurisdictional pension plans;
 - (c) the application of the multilateral agreement itself to multi-jurisdictional pension plans; and
 - (d) the supervision and regulation of multi-jurisdictional pension plans.

[2012 c41 s2](#)

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Status of agreement

8.3 (1) A multilateral agreement shall specify the date on which it comes into force and it acquires the force of law in the province as of that date.

(2) In the event of an inconsistency between a provision of a multilateral agreement and a provision of this Act or the regulations, the provision of the multilateral agreement prevails to the extent of the inconsistency.

[2012 c41 s2](#)

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Administrator

8.4 The administrator of a multi-jurisdictional pension plan shall comply with the requirements in a multilateral agreement that apply with respect to the pension plan and with requirements imposed under the authority of a multilateral agreement.

[2012 c41 s2](#)

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Employer

8.5 An employer or person required to make contributions to a multi-jurisdictional pension plan on the employer's behalf shall comply with the requirements in a multilateral agreement that apply with respect to the pension plan and with requirements imposed under the authority of a multilateral agreement.

[2012 c41 s2](#)

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Application

8.6 Sections 8.3, 8.4 and 8.5 do not apply to a multi-jurisdictional pension plan unless the minister has entered into a multilateral agreement with a designated province or Canada to which the pension plan is subject.

[2012 c41 s2](#)

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Publication

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8.7 (1) The minister shall publish a multilateral agreement and an amendment to a multilateral agreement in the *Gazette* as soon as practicable after entering into a multilateral agreement or making the amendment.

(2) A multilateral agreement or an amendment to it published under subsection (1) is not subordinate legislation for the purpose of the *Statutes and Subordinate Legislation Act*.

[2012 c41 s2](#)

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Certain agreements void

9. Where this Act requires an amount to be deducted, withheld, paid or credited, an agreement or arrangement to not deduct, withhold, pay or credit that amount is void.

[1996 cP-4.01 s9](#)

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Fees

10. The minister may set fees for the administration of this Act.

[1996 cP-4.01 s10](#)

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Annual audit

11. The accounts and transactions of the superintendent shall be examined annually by the auditor general.

[1996 cP-4.01 s11](#)

**PART III
ADMINISTRATION OF PENSION PLANS**

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Administrators of pension plans

12. (1) Except in the case of a multi-employer pension plan, the administrator of a plan shall be

- (a) the employer;
- (b) a pension committee composed of one or more representatives of
 - (i) the employer or a person other than the employer required to make contributions under the plan, and
 - (ii) the members;
- (c) a pension committee composed only of representatives of the members;
- (d) the insurance company that provides the pension benefits where all the benefits under the plan are guaranteed by the insurance company; or
- (e) a board, agency, commission or other body responsible for the administration of the plan.

(2) Notwithstanding subsection (1), where a pension plan has more than 49 members and the majority of members so request in writing, the employer shall establish a pension advisory

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committee, which shall consist of at least one representative who is a member of the plan and one former member who is in receipt of a pension benefit under the plan.

- (3) A pension advisory committee may review and provide advice on
 - (a) the financial, actuarial and administrative aspects of the plan; and
 - (b) any other matters relating to the plan as requested by the employer or administrator.

[1996 cP-4.01 s12](#)

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Administrator of multi-employer pension plan

13. (1) In the case of a multi-employer pension plan established under one or more collective agreements, the administrator of the plan shall be a board of trustees or other similar body constituted in accordance with the terms of the plan to manage the affairs of the plan and, unless otherwise determined under the collective agreement, at least one half of the representatives of the board or other body shall be representatives of the members of the plan.

(2) In the case of a multi-employer pension plan not described in subsection (1), the administrator of the plan shall be a pension committee constituted in accordance with the terms of the plan to manage the affairs of the plan.

(3) The powers and duties of a board of trustees or other body that acts as an administrator of a multi-employer pension plan shall be in writing and shall be as approved by the superintendent.

[1996 cP-4.01 s13](#)

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Duties of administrator

14. (1) An administrator shall administer a pension plan and pension fund as a trustee for the employer, the members and former members of the plan, and other persons with an entitlement under the plan.

(2) An administrator of a pension plan is responsible for administering the plan and the pension fund and for filing the required documents in accordance with this Act.

(3) An employer, who is not the administrator of a pension plan, shall provide the administrator with the information required by that administrator in order to comply with the terms of the plan and discharge the responsibilities under subsection (2).

(4) An administrator of a pension plan shall, within 30 days of becoming the administrator, inform the superintendent of

- (a) the administrator's name and address;
- (b) the names and addresses of the persons who constitute the body that is the administrator; and
- (c) a change in the membership of the body that is the administrator.

[1996 cP-4.01 s14](#)

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Fundholder

15. A pension fund shall be maintained by one or a combination of the following:

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- (a) a government;
- (b) an insurance company under a contract of insurance;
- (c) a trust in Canada governed by a written trust agreement under which the trustees are
 - (i) a trust corporation as defined in the *Trust and Loan Corporations Act* ,
 - (ii) 3 or more individuals, at least 3 of whom reside in Canada and at least one of whom is independent of any employer contributing to the pension fund, to the extent the individual is neither a significant shareholder, partner, proprietor, director, officer, or an employee of an employer contributing to the pension fund or an affiliate of that employer, or
 - (iii) a corporate pension society established under the *Pension Fund Societies Act* (Canada); and
- (d) a board, agency, commission or corporation made responsible by an Act of the Legislature for the administration of the pension fund.

[1996 cP-4.01 s15; 2007 cT-9.1 s5](#)

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Filing requirements

16. (1) An administrator of a pension plan shall file with the superintendent an information return for the plan in the form and containing the information required by the superintendent and as prescribed by the regulations.

(2) An administrator of a pension plan shall file other information required by the superintendent and as prescribed by the regulations.

(3) The contents and the method of preparation of the reports and qualifications of the persons or classes of persons by whom the report must be prepared shall be as required by the superintendent and as prescribed by the regulations.

[1996 cP-4.01 s16](#)

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Conflict of interest

17. (1) A person shall not be appointed to a body referred to in paragraph 12(1)(b), (c) or (e) or subsections 13(1) and (2) if there is a conflict of interest between the person's role as a member of the body and the person's role in any other capacity.

(2) Where a person described in subsection (1) has a conflict of interest he or she shall, within 30 days after becoming aware of the conflict, declare the conflict to the body and, as the body directs,

- (a) abstain from the matter of the conflict;
- (b) eliminate the conflict; or
- (c) resign as a member of the body.

(3) Where the employer is the administrator of a pension plan under paragraph 12(1)(a), if there is a conflict of interest between the employer's role as administrator and the employer's role in any other capacity, the employer shall

- (a) within 30 days after becoming aware of the conflict, declare the conflict to the pension committee or to the members of the plan; and
- (b) act in the best interests of the members of the plan.

[1996 cP-4.01 s17](#)

PART IV REGISTRATION AND AMENDMENT OF PENSION PLANS

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Registration requirements

18. (1) An administrator of a pension plan applying for registration of the plan, or an amendment to the plan, shall do so as required by the superintendent and shall provide the information required by the superintendent.

(2) The superintendent shall issue a certificate of registration for each pension plan registered under this Act and a notice of registration for each amendment registered under this Act.

(3) An administrator of a pension plan shall not administer the plan unless it is filed for registration under this Act.

(4) Where registration of a pension plan has been refused or revoked by the superintendent, a person shall not administer the plan except for the purpose of a wind-up of the plan.

[1996 cP-4.01 s18](#)

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Eligibility for registration

19. (1) A pension plan is not eligible for registration unless

- (a) it provides for the accrual of pension benefits in a gradual and uniform manner; and
- (b) the formula for computation of the employer's contributions to the pension fund or the pension benefit provided under the plan is not variable at the discretion of the employer.

(2) A pension plan that contains a defined contribution provision is not eligible for registration if the formula governing allocation of contributions to the pension fund among members of the plan is variable at the discretion of the employer.

(3) Notwithstanding subsections (1) and (2), the superintendent may register a pension plan if the superintendent is of the opinion that registration is justified in the circumstances of the plan and the members.

[1996 cP-4.01 s19](#)

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Void amendments

20. (1) An amendment to a pension plan is void if the amendment reduces the amount or the commuted value of a pension benefit or a deferred pension benefit accrued under the plan with respect to employment before the effective date of the amendment.

(2) Subsection (1) does not apply to

- (a) a multi-employer pension plan established under a collective agreement; or

- (b) a pension plan that contains a defined benefit provision if the obligation of the employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement.

(3) Subject to the approval of the superintendent, subsection (1) does not apply where the amendment is required for the purpose of maintaining registration as a registered plan under the *Income Tax Act* (Canada).

[1996 cP-4.01 s20](#)

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Revocation of registration

21. (1) The revocation of registration of a pension plan shall be considered to constitute termination of the plan.

(2) The superintendent may revoke registration of a pension plan if he or she reasonably believes that the

- (a) plan or pension fund is not being administered in accordance with this Act or the plan;
- (b) plan does not comply with this Act; or
- (c) administrator of the plan, the employer or another person is in contravention of this Act.

[1996 cP-4.01 s21](#)

PART V STANDARDS FOR REGISTRATION

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Contents of pension plan documents

22. (1) The documents that create and support a pension plan shall set out

- (a) the method of appointment and the details of appointment of the administrator;
- (b) if the plan is a multi-employer pension plan under a collective agreement, the powers and duties of the board of trustees or other body that is the administrator of the multi-employer pension plan;
- (c) the conditions for membership;
- (d) the benefits and rights that are to accrue upon termination of employment, cessation of membership, termination of the plan, retirement or death, and the division of pension benefits on marriage breakdown;
- (e) the normal retirement date;
- (f) the contributions or the method of calculating the contributions required;
- (g) the method of determining pension benefits payable;
- (h) the method of calculating interest to be credited on contributions in accordance with section 36;
- (i) the means for payment of the cost of administration of the plan and pension fund;
- (j) the means for establishing and maintaining the pension fund;

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- (k) the treatment of surplus during the continuation of the plan and on termination of the plan;
- (l) the obligation of the administrator to provide members with information and documents required to be disclosed under the section 25;
- (m) a provision for funding of pension benefits provided under the plan which sets out the obligation of the employer, or any person required to make contributions on behalf of an employer, to contribute both in respect of the normal cost of those benefits and any going concern unfunded liabilities and solvency deficiencies under the plan; and
- (n) where the plan is a multi-employer pension plan established under a collective agreement or contains a defined benefit provision where the obligation of an employer to contribute to the plan is limited to a fixed amount set out in a collective agreement, a provision for the funding of pension benefits and any other benefits provided under the plan which sets out the obligation of an employer, or a person required to make contributions on behalf of the employer, to contribute to the pension fund.

(2) Unless otherwise provided by a pension plan, the fiscal year of a pension plan shall be considered to commence on January 1 and end on December 31 and, except as otherwise approved by the superintendent, the fiscal year of a pension plan shall not exceed 12 months.

[1996 cP-4.01 s22; 2001 c22 s21](#)

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Eligibility for full-time employees

23. Each employee who works on a full-time basis and is a member of a class of employees prescribed by the regulations for which a pension plan is provided shall be eligible to become a member of that plan after

- (a) the employee completes 24 months of continuous employment with the employer, or a lesser period of employment, whether continuous or not, as the plan provides; or
- (b) in the case of a multi-employer pension plan, the day on which both the following requirements have been fulfilled:
 - (i) 24 months have elapsed since the employee was first employed with a participating employer, and
 - (ii) the employee has earned, in respect of employment with a participating employer, at least 35% of the YMPE in each of 2 consecutive calendar years

or as approved by the superintendent.

[1996 cP-4.01 s23](#)

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Eligibility for part-time employees

24. (1) Where a pension plan is provided for members of a class of full-time employees prescribed by the regulations, each employee who works part-time for that employer and is a member of that prescribed class shall be eligible to become a member of that plan on or after the day on which both the following requirements have been fulfilled:

- (a) completion of 24 months of continuous employment with the employer; and
- (b) the employee has earned, in respect of employment with the employer, at least 35% of the YMPE in each of 2 consecutive calendar years,

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or as approved by the superintendent.

(2) An administrator of a pension plan may meet the requirements of subsection (1) by providing a separate pension plan for part-time employees.

(3) A separate pension plan under subsection (2) shall be reasonably comparable to the plan covering full-time employees in terms of the average value of pension benefits provided or the average rates or amounts of contributions considering the differences in the number of hours worked in the relevant period of employment.

[1996 cP-4.01 s24](#)

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Disclosure of information

25. (1) An administrator of a pension plan shall provide in writing to a person eligible or required to become a member of the plan

- (a) an explanation of the terms and conditions and any subsequent amendments of the plan applicable to the person;
- (b) an explanation of that person's rights and obligations in respect of the plan; and
- (c) other information that the superintendent requires to be provided.

(2) The information referred to in subsection (1) shall be provided,

- (a) to a person who becomes a member of a pension plan on the date the plan is established, within 60 days after the date the plan is established;
- (b) to an employee who will become eligible to become a member of a pension plan, at least 60 days before the date on which the person will become eligible; and
- (c) to a person who is eligible to become a member of a pension plan upon commencing employment, within 60 days after the person's commencement of employment.

(3) Where an amendment to a pension plan which affects the member's or former member's rights and obligations in respect of the plan is registered under this Act, the administrator of the plan shall, within 60 days after registration, provide a written notice and an explanation of the amendment to each member, former member or other person who is or will be affected by the amendment.

(4) An administrator of a pension plan shall, at least once every 3 years or at the written request of a member or former member, provide each member, or that member or former member, with a written statement as required by the superintendent.

(5) Where a member of a pension plan retires, ceases membership in the plan or dies, the administrator of the plan shall provide a written statement as required by the superintendent.

(6) Where an employer applies to the superintendent to withdraw surplus from a pension plan, the employer shall provide a written notice, as required by the superintendent, to persons required by the superintendent.

(7) Each member or former member or principal beneficiary of a member or former member of a pension plan, once in each fiscal year of the plan may, personally or by an agent authorized in writing for that purpose, request in writing to examine documents filed with the superintendent under section 16, subsection 18(1) or a regulation or requirement of the superintendent under this Act, at the office of the administrator of the plan or at another place as agreed, and may request a photocopy of those documents.

[1996 cP-4.01 s25; 2001 c22 s22](#)

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Termination of membership

26. (1) A member of a pension plan shall be considered to cease membership in the plan when the member's employment with the employer terminates and the member is not in receipt of an immediate pension benefit, whether or not contributions by the employer in respect of that member have ceased previously.

(2) A member of a multi-employer pension plan is entitled to cease membership in the plan when no contributions have been made in respect of that member by a participating employer for a period of 24 months, or a shorter period as provided under the plan, and the member is not in receipt of an immediate pension benefit.

(3) For the purpose of determining a pension benefit for a member or former member of a pension plan under this Act, a person who ceases membership in the plan is considered to have terminated employment.

(4) An employee who is a member of a pension plan shall continue as a member of the plan as long as the employee's employment in respect of which the plan is maintained continues.

[1996 cP-4.01 s26](#)

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Considered retirement

27. A member of a pension plan shall be considered to retire on receipt of an immediate pension benefit, whether or not the member's employment has terminated.

[1996 cP-4.01 s27](#)

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Retirement date

28. (1) A pension plan shall provide for normal retirement calculated with reference to the age when a member is normally eligible to start receiving a pension in accordance with the plan without reduction or increase and normal retirement age shall be not later than the date the member or former member attains age 65.

(2) A pension plan shall provide that a member who continues in employment after reaching normal retirement age and who is not receiving a pension under the plan shall be entitled to continue to participate in the plan on the same basis that applied before the member reached normal retirement age.

(3) A pension plan may provide that where a member continues in employment after reaching normal retirement age, one or more of the following options may be available to the member:

- (a) the member may cease to contribute to the plan and no additional benefits shall be accrued but on the member's pension commencing, the pension shall be increased, taking into account the period of time during which the pension was not paid, to at least the actuarial equivalent of the pension accrued at normal retirement age;
- (b) the member may commence receipt of a pension while continuing in employment and no further contributions to the plan are payable and no additional benefits may be accrued; or
- (c) another arrangement, with the approval of the superintendent.

(4) Notwithstanding subsection (2), a member's or former member's pension benefit shall commence before the end of the calendar year in which the member or former member attains the age at which a pension benefit is required to begin under the *Income Tax Act* (Canada).

[2007 c6 s1](#)

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Early retirement

29. (1) A pension plan shall provide for early retirement beginning any time on or after the date on which the member attains age 55.

(2) A former member of a pension plan is entitled to elect early retirement under the plan where the former member

- (a) terminated employment with the employer before January 1, 1997;
- (b) is entitled to a deferred pension benefit under this Act; and
- (c) has attained age 55 or an earlier age permitted by the plan.

(3) An election under subsection (2) shall be made in writing by the former member and delivered to the administrator of the plan.

(4) A pension benefit on early retirement may be reduced provided the commuted value of the reduced pension benefit is not less than the commuted value of the pension benefit that would have been payable at normal retirement of the member or former member.

[1996 cP-4.01 s29](#)

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Remittance

30. (1) An employer shall, within the period prescribed by the regulations, remit employer and member contributions due under a pension plan, and other payments required under this Act,

- (a) in the case of a multi-employer pension plan, to the administrator of the plan; and
- (b) in the case of another pension plan, to the fundholder.

(2) Where the administrator of a multi-employer pension plan is not the trustee, the administrator shall, immediately on receipt of contributions, remit them to the trustee, and where the trustee is not the fundholder, the trustee shall immediately remit them to the fundholder.

(3) Where an employer fails to remit contributions in accordance with subsection (1), subsequent payment of contributions shall include interest on the contributions as prescribed by the regulations.

[1996 cP-4.01 s30](#)

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Failure to remit

31. Where an employer or trustee fails to remit contributions required under section 30 within 30 days after the end of the period prescribed by the regulations, the administrator of the plan or, where the employer or trustee is the administrator of the plan, the fundholder, who should have received them shall immediately notify the superintendent in writing of the failure.

[1996 cP-4.01 s31](#)

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Amounts to be held in trust

32. (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that

- (a) the money in the pension fund;
- (b) an amount equal to the aggregate of
 - (i) the normal actuarial cost, and
 - (ii) any special payments prescribed by the regulations, that have accrued to date; and
- (c) all
 - (i) amounts deducted by the employer from the member's remuneration, and
 - (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.

(3) Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.

(4) An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).

[1996 cP-4.01 s32](#)

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Money not assignable

33. Money payable under a pension plan shall not be assigned, charged, attached, anticipated or given as security and is exempt from execution, seizure or attachment, and a transaction purporting to assign, charge, attach, anticipate or give as security such money is void, except where this section is overridden by another Act, or in circumstances prescribed by the regulations.

[1996 cP-4.01 s33](#)

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Refund of contributions

34. On cessation of membership in a pension plan, a member is entitled to withdraw from the plan an amount equal to the aggregate of the member's own contributions, together with interest as prescribed by the regulations, in respect of a period of membership for which the member is not entitled to a pension benefit under section 28, 29, or 43.

[1996 cP-4.01 s34](#)[Back to Top](#)**Funding**

35. (1) A pension plan shall provide for funding, in accordance with the requirements for solvency as prescribed by the regulations, which is adequate to provide for payment of all pension benefits required to be paid under the plan.

(2) In the case of an actuarial report required under section 16, where the superintendent is of the opinion that the report has not been prepared

- (a) on the basis of actuarial assumptions or methods that are adequate and appropriate; and
- (b) in accordance with accepted actuarial practice,

the superintendent shall notify the administrator of the plan in writing of this opinion and shall direct the administrator to have the appropriate changes made to the report, and the administrator shall immediately comply with that direction.

(3) A pension plan shall be funded in accordance with the report referred to in subsection (2) as amended in accordance with the direction of the superintendent.

[1996 cP-4.01 s35](#)[Back to Top](#)**Interest on contributions**

36. (1) In the case of a defined contribution plan, the members' accounts shall be credited with interest, gains and losses that can reasonably be attributed to the operation of the pension fund.

- (2) In the case of a defined benefit plan,
 - (a) interest shall be credited on members' contributions at a rate equal to or greater than the rate required by the superintendent; or
 - (b) members' contributions shall be credited with interest, gains and losses that can reasonably be attributed to the operation of the pension fund,

and the plan shall specify which of paragraph (a) or (b) operates, but the plan may specify that one of those paragraphs applies to required contributions and the other paragraph applies to additional voluntary contributions, in which case the reference in paragraph (b) to "the operation of the pension fund" shall be read as either "the operation of that portion of the pension fund that relates to required contributions" or "the operation of that portion of the pension fund that relates to additional voluntary contributions", whichever is appropriate.

(3) The rate required by the superintendent under subsection (2) shall be determined to reflect current interest rates.

(4) Interest, gains and losses referred to in subsections (1) and (2) shall be calculated and applied to contributions as prescribed by the regulations.

[1996 cP-4.01 s36](#)[Back to Top](#)**Investments**

37. Assets of a pension plan shall be invested as prescribed by the regulations.

[1996 cP-4.01 s37](#)[Back to Top](#)**Surplus**

38. (1) Except in circumstances prescribed by the regulations, a pension plan shall provide, with respect to surplus accrued after December 31, 1996, for

- (a) the treatment of surplus during continuation of the plan; and
- (b) the allocation of surplus on termination of the plan.

(2) A pension plan shall provide, with respect to surplus accrued after December 31, 1996, for the allocation of surplus on termination of the plan to

- (a) the members, former members or their surviving principal beneficiaries or estates;
- (b) the employer; or
- (c) a combination of the persons referred to in paragraph (a) or paragraphs (a) and (b).

[1996 cP-4.01 s38; 2001 c22 s23](#)[Back to Top](#)**Fifty percent rule**

39. (1) In the case of a defined benefit plan where a member is required to make contributions and

- (a) the member retires;
- (b) the member ceases membership in the plan;
- (c) the member dies; or
- (d) the plan is terminated, in whole or in part,

not more than 50% of the commuted value of the pension benefit with respect to the member's membership in the plan after December 31, 1996 may be provided by the member's contributions with interest.

(2) Where the value of a former member's contributions with interest exceeds 50% of the commuted value of the pension benefit with respect to his or her membership in the plan after December 31, 1996 the excess value shall, at the option of the former member, be

- (a) returned to the former member;
- (b) transferred to a retirement savings arrangement;
- (c) transferred to another pension plan, if and to the extent the other plan permits the transfer;
- (d) transferred to an insurance company to purchase a life annuity; or
- (e) used to increase the amount of the pension, if and to the extent the plan permits the increase.

(3) For the purpose of subsections (1) and (2), the following shall not be taken in account:

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- (a) contributions made with respect to a defined contribution provision of a defined benefit plan and a part of the commuted value of the pension benefit attributable to those contributions; and
- (b) the commuted value of a portion of a member or former member's pension benefit attributable to past service pension benefits purchased voluntarily by the member or former member.

[1996 cP-4.01 s39](#)

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Portability

40. (1) A pension plan shall provide that where a member of a pension plan, before becoming eligible to retire under sections 28 and 29, ceases membership in the plan or dies and is entitled to a deferred pension benefit, the member, or the surviving principal beneficiary of the member or former member, is entitled

- (a) in the case of the member, to
 - (i) transfer the commuted value of the member's pension benefit to another pension plan, if the other plan permits and the administrator of the other plan agrees to accept the payment,
 - (ii) transfer the commuted value of the member's pension benefit to a class or type of retirement savings arrangement as approved by the superintendent, or
 - (iii) use the commuted value of the member's pension benefit to purchase a deferred life annuity of the kind approved by the superintendent for the member or the surviving principal beneficiary; and
- (b) in the case of the surviving principal beneficiary, to transfer or use the commuted value of the surviving principal beneficiary's pension benefit in the manner provided for the member's pension benefit under subparagraph (i), (ii) or (iii),

if the member or the surviving principal beneficiary makes an election as prescribed by the regulations.

(2) Where a member of a pension plan, after becoming eligible to retire under sections 28 and 29 but before beginning payment of a pension benefit, ceases membership in the plan or dies, the plan may permit the member, or the surviving principal beneficiary of the member or former member,

- (a) in the case of the member, to
 - (i) transfer the commuted value of the member's pension benefit to another pension plan, if the other plan permits and the administrator of the other plan agrees to accept the payment,
 - (ii) transfer the commuted value of the member's pension benefit to a class or type of retirement savings arrangement as approved by the superintendent, or
 - (iii) use the commuted value of the member's pension benefit to purchase a life annuity of the kind approved by the superintendent for the member or the surviving principal beneficiary; and
- (b) in the case of the surviving principal beneficiary, to transfer or use the commuted value of the surviving principal beneficiary's pension benefit in the manner provided for the member's pension benefit under subparagraph (i), (ii) or (iii).

(3) For the purpose of a transfer or purchase under subsection (1) or (2), a contract to establish a retirement savings arrangement or an insurance contract to provide a life annuity shall be in the form required by the superintendent.

(4) The administrator of a pension plan shall transfer money out of the pension fund under this section except where the transfer is not permitted under this Act.

(5) Where a member ceases to be a member of a pension plan and becomes a member of another plan that requires the same employer to make contributions on the member's behalf, the member's membership in the first plan shall continue until the member ceases membership in the second plan.

(6) Where a member or former member of a multi-employer pension plan terminates employment with an employer but continues to be a member of the same multi-employer pension plan, the member is not considered to have ceased membership until the member is no longer employed with an employer in the multi-employer pension plan.

[1996 cP-4.01 s40; 2001 c22 s24](#)

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Pre-retirement death benefit

41. (1) Where a member or former member of a pension plan, who under section 43 is entitled to a deferred pension benefit attributable to the member's or former member's membership in the plan after December 31, 1996 dies, the surviving principal beneficiary of the member or former member, or, where there is no surviving principal beneficiary, the estate of the member or former member, is entitled to receive the commuted value of the deferred pension benefit calculated, as of the day of death, as if the member or former member had not died but had ceased membership in the plan on that day, in accordance with section 43.

(2) Notwithstanding subsection (1), a pension plan may provide an immediate pension benefit equal to or greater than that provided in subsection (1) to the surviving principal beneficiary of a member or former member.

(3) A surviving principal beneficiary of a member or former member may transfer the commuted value of a deferred pension benefit in accordance with subsections 40(1) and (2).

(4) A member or former member of a pension plan who is entitled to a deferred pension benefit under section 43 and who dies before the start of payment of the pension benefit, but after becoming eligible for retirement in accordance with section 29, shall be considered

- (a) to have retired for the purpose of the survivor benefit; and
- (b) to have been entitled to the joint and survivor pension benefit payable under section 45 without regard to subsection 45(4) in respect of the deferred pension benefit.

[1996 cP-4.01 s41; 2001 c22 s25](#)

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CPP, QPP and OAS reduction

42. (1) A pension plan may provide that a pension benefit or a deferred pension benefit may be reduced by reason of payments under the Canada Pension Plan, the Quebec Pension Plan, or under the *Old Age Security Act* (Canada), but a reduction shall not exceed the reduction calculated in accordance with the formula approved by the superintendent.

(2) The reduction referred to in subsection (1) shall be applied before any other adjustment under the plan.

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(3) The amount of the reduction referred to in subsection (1) shall not be increased by reason of an increase in payments under the Canada Pension Plan, the Quebec Pension Plan or the *Old Age Security Act* (Canada) after the date on which the member ceases membership in the plan or dies.

(4) The value of a bridging benefit, for receipt of which a member or former member has satisfied all eligibility requirements of a pension plan, shall not be reduced by reason only of the eligibility of the member or former member to receive a payment before he or she attains age 65 under the Canada Pension Plan, Quebec Pension Plan or *Old Age Security Act* (Canada).

(5) Where a pension plan provides for variation of a pension benefit because of a benefit payable under the Canada Pension Plan or the Quebec Pension Plan without specifically stating the age at which the variation is to occur, the plan is considered to provide that the variation is to occur when the recipient of the pension benefit attains age 65.

(6) A pension plan shall not permit the reduction of a pension or deferred pension benefit based on a person's entitlement under the *Old Age Security Act* (Canada) in respect of a pension benefit accrued after December 31, 1996.

[1996 cP-4.01 s42](#)

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Vesting

43. (1) A pension plan shall provide that a member of the plan who has been a member for a continuous period of 2 years is entitled, on retirement or cessation of membership in the plan,

- (a) to a deferred pension benefit equal to the pension benefit provided under the terms of the plan in respect of membership in the plan after December 31, 1996; and
- (b) to any other pension or other benefit to which the member is entitled under the terms of the plan in respect of membership in the plan after December 31, 1996.

(2) A pension plan shall provide that a member of a plan who has been employed by the employer for a continuous period of 10 years, or has been a member of the plan for a continuous period of 10 years, whichever occurs first, and who has attained 45 years of age, is entitled, on retirement or cessation of membership in the plan, to a deferred pension benefit equal to the pension benefit provided

- (a) under the terms of the plan in respect of membership in the plan from January 1, 1985 and ending on December 31, 1996; and
- (b) by virtue of any amendments to the plan made from January 1, 1985 and ending on December 31, 1996 in respect of membership in the plan up to December 31, 1996.

[1996 cP-4.01 s43](#)

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Required terms

44. (1) A pension plan shall provide

- (a) that no pension benefit provided under the plan is capable of being assigned, charged, anticipated or given as security, or confers on a member or former member, the personal representative or dependant of the member or former member, or other person, a right or interest that is capable of being assigned, charged, anticipated or given as security;
- (b) that, except in the case of the unexpired period of a guaranteed annuity and subsection 41(1), no benefit described in section 43 is capable of being surrendered or commuted during the lifetime of the member or former member, or that person's principal

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beneficiary, or confers on a member or former member, the personal representative or dependant of the member or former member, or other person, a right or interest that is capable of being surrendered or commuted during the lifetime of the member or former member or the member's or former member's principal beneficiary; and

- (c) a member or former member who is entitled to a benefit under section 43, or would be so entitled if the member reached normal retirement or ceased membership in the plan, is not permitted to withdraw any part of the member's or former member's contributions to the plan, other than additional voluntary contributions, in respect of a period after December 31, 1984.
- (2) Notwithstanding subsection (1), a pension plan may provide
- (a) that a member or former member who is entitled to a deferred pension benefit under section 43 may, before the start of payment, elect or be authorized to receive a payment or series of payments by reason of a disability prescribed by the regulations, partly or wholly instead of the deferred pension benefit described in section 43;
 - (b) that, where the annual pension benefit payable is less than 4% of the YMPE for the calendar year in which a member ceased membership in the plan or dies, the member or former member or the member's principal beneficiary or the former member's principal beneficiary or surviving principal beneficiary is entitled to receive a lump sum payment instead of the deferred pension benefit described in section 43; and
 - (c) that, where the commuted value of a deferred pension benefit is less than 10% of the YMPE for the calendar year in which a member ceased membership in the plan or dies, the member or former member or the member's principal beneficiary or the former member's principal beneficiary or surviving principal beneficiary is entitled to receive a lump sum payment instead of the deferred pension benefit described in section 43.

[1996 cP-4.01 s44; 2001 c22 s26](#)

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Joint and survivor pensions

45. (1) A pension benefit that begins being paid after December 31, 1996 to a member or former member of a pension plan who has a principal beneficiary at the time the pension benefit begins to be paid, shall be in the form of a joint and survivor benefit, subject to Part VI.

(2) A pension benefit described in subsection (1) may be reduced by reason of death of the member or former member, to an amount not less than 60% of the amount of the pension benefit that would have been payable in respect of the member or former member had the death not occurred.

(3) Where the commuted value of the pension benefit described in subsection (1) is not less than the commuted value of the normal form of the pension benefit, the initial amount of that pension benefit may be adjusted.

(4) Notwithstanding subsections (1), (2) and (3), a pension plan shall provide that in respect of a pension benefit that begins to be paid after December 31, 1996, a member or former member may elect to receive

- (a) the normal form of the pension benefit; or
- (b) the pension benefit in another form provided under the plan,

but if the member or former member has a principal beneficiary, the joint and survivor pension required by subsection (1) may be waived by both the member or former member and his or her principal beneficiary.

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(5) An election or a waiver referred to in subsection (4) shall be made as required by the superintendent and delivered to the administrator.

[1996 cP-4.01 s45; 2001 c22 s45](#)

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Remarriage

46. A pension benefit payable to the former principal beneficiary of a member or former member or to the surviving principal beneficiary of a deceased member or former member shall not terminate by reason only of the marriage or remarriage of the principal beneficiary.

[2001 c22 s28](#)

**PART VI
MARRIAGE BREAKDOWN**

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Pension entitlement on marriage breakdown

47. (1) In this Part

- (a) "date of marriage breakdown" means the date of separation or other date specified in a court order or separation agreement as the date on which matrimonial property of the member is to be valued or divided;
- (b) "limited member" means a person designated as a limited member of a pension plan under subsection 49(1);
- (c) "matured pension" means a pension benefit being paid to a member and includes a disability pension benefit when the member attains the age at which he or she is entitled to receive an unreduced pension;
- (d) "member" includes a former member;
- (e) "proportionate share" means a fraction of the commuted value of a pension benefit calculated as prescribed by the regulations or a court order;
- (f) "separate pension" means the proportionate share of a member's pension benefit which is established in a separate account in favour of a spouse;
- (g) "spouse" means a spouse, as defined in the *Family Law Act*, of a member and includes a former spouse of a member; and
- (h) "transfer" means, when referring to the payment of a proportionate share of the commuted value of a pension benefit to the credit of a spouse, a transfer made in accordance with section 40 and the regulations.

(2) Notwithstanding another provision of this Act, an administrator of a pension plan shall, on the breakdown of marriage of a member, divide a pension or other benefit under the plan to which the member is entitled, in accordance with this Part.

(3) A pension or other benefit shall be divided

- (a) where a court has made an order for the division of matrimonial property under the *Family Law Act* or a similar order of a court outside the province enforceable in the province, in accordance with the court order; or
- (b) where the member or his or her spouse have entered into a separation agreement within the meaning of the *Family Law Act* to divide their matrimonial property, in accordance

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with the separation agreement.

(4) The value of a pension or other benefit to be divided shall be calculated by the administrator of a pension plan as prescribed by the regulations, but shall not reduce that member's commuted value to less than 50% of the member's commuted value before the division.

(5) If a member of a pension plan is not entitled to a deferred pension benefit under section 43 at the date of marriage breakdown, the portion of the member's contributions and interest to be credited to the spouse shall be paid, in cash, from the plan to the spouse.

(6) If a spouse is entitled to a share of a pre-retirement death benefit or a post-retirement death benefit paid to another person, the recipient holds the share in trust for the spouse.

[1996 cP-4.01 s47](#)

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Types of pension plans

48. (1) In the case of a defined contribution plan, where a pension benefit is to be divided and the member is not eligible to receive a pension benefit under the plan, a spouse is entitled to have a proportionate share of the pension benefit transferred from the plan to the credit of the spouse.

(2) In the case of a defined benefit plan, where a pension benefit is to be divided, a spouse is entitled

- (a) where the member is not eligible to receive a pension without reduction, to have, until the member is eligible to receive a pension without reduction, a proportionate share of the pension benefit transferred from the plan to the credit of the spouse; or
- (b) where the member is eligible to receive a pension without reduction, to receive, from the time the member is eligible to receive a pension without reduction until the time the member retires, a separate pension from the plan as prescribed by the regulations.

(3) In the case of a pension plan containing defined contribution and defined benefit provisions, where the pension benefit is to be divided and the member is not entitled to receive a pension without reduction

- (a) to the extent that the plan is based on principles applicable to a defined contribution plan, the pension benefit shall be divided in accordance with this Part and the regulations as if the plan were a defined contribution plan; and
- (b) the remainder of the pension benefit shall be divided in accordance with this Part and the regulations as if the plan were a defined benefit plan.

(4) Notwithstanding the nature of a pension plan, where a pension is to be divided and has matured, a spouse is entitled to receive, as a limited member, a proportionate share of benefits paid as a separate pension under the plan until the earlier of the

- (a) death of the limited member; or
- (b) termination of the pension under the plan.

[1996 cP-4.01 s48](#)

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Limited membership

49. (1) If a pension benefit to be divided is an unmatured pension in a defined benefit plan or a matured pension in a pension plan and a spouse elects to receive a separate pension from the plan under this Part, the spouse shall be designated as a limited member of the plan.

- (2) A limited member of a pension plan has the following rights:
- (a) to receive from the plan a separate pension or a proportionate share of benefits paid under the plan as determined under this Part and the regulations;
 - (b) to receive from the plan a proportionate share, calculated as prescribed by the regulations, of a pre-retirement death benefit or a post-retirement death benefit until the limited member ceases to be a limited member or is entitled to receive a separate pension under the plan;
 - (c) to enforce rights against the plan and recover damages for losses as a result of a breach of a duty owed by the plan to the limited member;
 - (d) except as modified by this Part and the regulations, all rights of a member under this Act; and
 - (e) those additional rights prescribed by the regulations.

(3) A separate pension of a limited member of a pension plan shall be based on the normal form of a pension under the plan but shall not be a joint and survivor pension.

(4) An administrator of a pension plan shall make separate source deductions required under the *Income Tax Act* (Canada) for the spouse's share and the member's share of a pension benefit.

(5) If the proportionate share of the spouse is transferred from a pension plan to the credit of the spouse under this Part, the spouse ceases to be a limited member of the plan.

(6) Notwithstanding paragraph (2)(b) and subsection (5), a spouse who is entitled to a post-retirement death benefit is entitled to the whole of that benefit.

(7) Where a limited member of a pension plan dies before the member and at the time of death is not entitled to receive a separate pension under the plan, the plan shall transfer the proportionate share of the commuted value of the member's pension to the estate of the limited member.

(8) Where a limited member of a pension plan dies and at the time of death is receiving a separate pension under the plan, the estate of the limited member is entitled to receive any post-retirement death benefit payable under the plan in respect of the separate pension.

[1996 cP-4.01 s49](#)

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Adjustment of member's pension benefit

50. Where an amount has been transferred from a pension plan or used to provide a separate pension to a spouse in accordance with an order or agreement under subsection 47(3),

- (a) a member's pension benefit, or the interest of a person claiming an interest in a pension benefit through the member, shall be adjusted as prescribed by the regulations;
- (b) the spouse has no further claim or entitlement to a further benefit under the plan; and
- (c) neither the administrator nor the plan is liable to a person by reason of having complied with an order or agreement mentioned in subsection 47(3) in accordance with this Part.

[1996 cP-4.01 s50](#)

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Considered election

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51. Where a spouse fails to direct the administrator of a pension plan as to how a pension benefit is to be divided as prescribed by the regulations, the spouse is considered to have elected to receive a separate pension under the plan.

[1996 cP-4.01 s51](#)

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Revocation of election

52. (1) Where a spouse elects to take a separate pension from a pension plan under paragraph 48(2)(b), the spouse may, before the commencement of a separate pension, revoke the election and elect to transfer the proportionate share from the plan.

(2) The value of the spouse's share of the pension benefit available for re-election under subsection (1) is the commuted value calculated at the date of re-election.

[1996 cP-4.01 s52](#)

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Clarification or objection

53. (1) An administrator of a pension plan shall not effect a division of a pension benefit where he or she

- (a) reasonably believes that a court order or a separation agreement relating to division of a pension benefit is incomplete or does not provide clear or sufficient direction to administer a division of the pension benefit; or
- (b) has notice of a member's objection to a division of a pension benefit as prescribed by the regulations.

(2) Where subsection (1) applies, the administrator shall, as prescribed by the regulations, but not later than 30 days after the receipt of a member's objection, give written notice of the inability to comply to the member and spouse and

- (a) require that the matter be determined by a court or otherwise determined between the member and his or her spouse, as evidenced by filing with the administrator a court order or a written agreement between the member and his or her spouse; or
- (b) apply to the court for directions.

(3) Where the administrator applies to the court under subsection (2), the court may make or vary an order as it considers appropriate in the circumstances but no order as to costs shall be made against the administrator of the plan.

[1996 cP-4.01 s53](#)

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Regulations prescribe procedure to divide pension

54. When dividing a pension benefit or satisfying a spouse's entitlement to a pension benefit the

- (a) procedures to be followed by a spouse, member and administrator of a pension plan;
- (b) information to be provided to a spouse or limited member by an administrator of a pension plan;
- (c) form, content and manner of giving a notice or waiver under this Part; and

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(d) maximum fee that may be charged by an administrator of a plan shall be as prescribed in the regulations.

[1996 cP-4.01 s54](#)

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Application

55. (1) Subsection 47(3) applies to a court order or separation agreement mentioned in that subsection, regardless of the date of the order or separation agreement.

(2) A spouse who before January 1, 1997 was entitled to receive from a member a proportionate share of benefits paid under a matured pension may, as prescribed by the regulations, require an administrator of a pension plan to effect the division of the pension benefit in accordance with subsection 48(4).

(3) This Part applies to a life annuity purchased by an administrator of a pension plan upon the retirement of a member and held by a third party insurance company.

(4) If a member's pension benefit to be divided under this Act includes or consists of an annuity that is payable under an insurance contract that prohibits the annuity from being commuted and if the commuted value of the pension benefit under the plan, if credited to, paid to or otherwise delivered to the credit of the spouse, would be insufficient to fulfil the spouse's entitlement on a division under this Act, the annuity is a class of pension plan that is exempt from the application of this Part and, if ordered by the court or agreed to in writing by the member and the spouse, the actual pension benefit shall be divided in accordance with the applicable court order or separation agreement and the portion of the pension payable to the spouse shall be subject to the terms and conditions of the annuity contract.

(5) Subsection (4) does not apply to a life annuity described in that subsection purchased after December 31, 1996.

[1996 cP-4.01 s55](#)

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Family Law Act prevails

56. If a provision of this Part conflicts with a provision of the *Family Law Act*, the *Family Law Act* shall prevail.

[1996 cP-4.01 s56](#)

PART VII SURPLUS AND TRANSFER OF PLAN ASSETS

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Surplus payment

57. (1) No part of surplus may be paid to the employer unless

- (a) the payment is permitted by the regulations; and
- (b) the superintendent consents in writing to the payment.

(2) Where an employer requests payment of the surplus, the superintendent shall consider criteria prescribed by the regulations and provide written reasons for his or her decision to the employer.

- (3) The superintendent may attach conditions to the consent required under subsection (1).

[1996 cP-4.01 s57](#)

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Transfer of plan assets

58. A transfer of assets of a pension plan shall not be made from the pension fund of the plan to the pension fund of another pension plan unless

- (a) the contract or trust agreement of the receiving fundholder is filed with the superintendent and the receiving plan is registered under this Act; and
- (b) the superintendent has approved the transfer in writing.

[1996 cP-4.01 s58](#)

PART VIII TERMINATION, WIND-UP AND DISPOSAL OF BUSINESS

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Plan termination

59. (1) The superintendent may declare the whole or part of a pension plan terminated where

- (a) there is a suspension or cessation of employer contributions in respect of all or part of the plan membership, except where surplus is used to meet funding requirements;
- (b) the employer has discontinued or is in the process of discontinuing all of its business operation or a part in which a substantial portion of its employees who are members of the plan are employed;
- (c) the employer is bankrupt within the meaning of the *Bankruptcy Act* (Canada);
- (d) the superintendent is of the opinion that the plan has failed to meet the requirements prescribed by the regulations for solvency in respect of funding; or
- (e) all or part of the business or assets of a predecessor employer's business are sold, assigned or otherwise disposed of and the successor employer who acquired the business or assets does not provide a pension plan for the members of the predecessor employer's plan who become employees of the successor employer.

(2) A declaration made under subsection (1) shall declare the whole or part of a pension plan to be terminated as of a date determined by the superintendent.

[1996 cP-4.01 s59](#)

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Plan termination requirements

60. (1) An employer, or, in the case of a multi-employer pension plan, the administrator, who intends to terminate the whole or part of a pension plan shall notify in writing the superintendent and any other person or body who is affected of that intention at least 60 days before the date of the intended termination.

(2) On the termination of the whole or part of a pension plan, the administrator of the plan shall file with the superintendent

Pension Benefits Act, 1997, S.N.L. 1996, c. P-4.01

(a) a report required by the superintendent, within 6 months after the effective date of termination; and

(b) all outstanding annual information returns up to the effective date of the termination, within 3 months after that date.

(3) The wind-up of a pension plan shall commence immediately after the termination of the plan unless the superintendent gives written approval to postpone the wind-up.

[1996 cP-4.01 s60](#)

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Termination payments

61. (1) On termination of a pension plan, the employer shall pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the regulations for solvency, including

(a) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) special payments prescribed by the regulations,

that have accrued to the date of termination; and

(b) all

(i) amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer

that have not been remitted to the pension fund at the date of termination.

(2) Where, on the termination, after April 1, 2008, of a pension plan, other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan, the employer shall, as prescribed by the regulations, make the payments into the pension fund, in addition to the payments required under subsection (1), that are necessary to fund the benefits provided under the plan.

[1996 cP-4.01 s61; 2008 c16 s1](#)

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Distribution of plan assets

62. (1) On termination or wind-up of a pension plan, no part of the assets of the plan shall revert to the benefit of the employer until the superintendent's consent has been obtained and provision has been made for the payment to members or former members, the principal beneficiary, beneficiary or estate of a member or former member of a pension benefit, accrued or payable, in respect of membership to the date of termination or wind-up and, for that purpose, those pension benefits shall be treated as if the members or former members were entitled to a deferred pension benefit.

(2) Where a notice of intention to terminate a pension plan has been given, the assets of the plan may not be applied toward the provision of a pension benefit until the superintendent has approved the report required by subsection 60(2), but the administrator of the plan may continue to pay a pension benefit which began before the notice of intention to terminate and any other payment approved by the superintendent.

(3) On termination of a pension plan all assets of the plan that are to be used for the purpose of providing a pension benefit or another benefit continue to be subject to this Act.

Pension Benefits Act, 1997, S.N.L. 1996, c. P-4.01

(4) Where a pension plan is terminated in part, the rights of members affected shall not be less than what they would have been if the whole of the plan had been terminated on the same date as the partial termination.

[1996 cP-4.01 s62; 2001 c22 s29](#)

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Appointment of administrator

63. Where the whole of a pension plan has been terminated and the superintendent is of the opinion that no action or insufficient action has been taken to wind up the plan, the superintendent may appoint an administrator of the plan and direct the administrator to distribute the assets of the plan as prescribed by the regulations and may direct that expenses incurred in connection with that distribution be paid out of the pension fund, and the administrator shall immediately comply with that direction.

[1996 cP-4.01 s63](#)

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Notice of entitlement

64. On termination of a pension plan, in whole or in part, the administrator shall provide a notice of entitlement required by the superintendent.

[1996 cP-4.01 s64](#)

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Failure to elect

65. Each person in receipt of a notice of entitlement under section 64 shall elect from the options given, within the time required by the superintendent, or shall be considered to have elected, to transfer the money to a class or type of retirement savings arrangement approved by the superintendent in accordance with subparagraph 40(1)(a)(ii) or (2)(a)(ii).

[1996 cP-4.01 s65; 2004 c47 s29](#)

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Reduction of pension benefits

66. Where a pension plan is terminated in whole or in part and the assets of the pension fund are not sufficient to pay all pension and other benefits on the wind-up of the plan, the pension and other benefits shall be reduced as prescribed by the regulations.

[1996 cP-4.01 s66](#)

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Successor employer

67. (1) Where

- (a) employees of a predecessor employer become employees of a successor employer; and
- (b) the successor employer does not assume responsibility for accrued pension benefits of the predecessor employer's pension plan,

the employees continue to be entitled to the pension benefits provided under the predecessor employer's plan in respect of the period of membership in that plan, without further accrual.

Pension Benefits Act, 1997, S.N.L. 1996, c. P-4.01

(2) The superintendent may terminate the pension plan of a predecessor employer, in whole or in part, where

(a) employees of the predecessor employer become employees of the successor employer; and

(b) the successor employer does not assume responsibility for accrued pension benefits of the predecessor employer's plan.

(3) An employee's employment with both a predecessor employer and a successor employer shall be taken into account for the purposes of determining

(a) the length of employment with respect to an eligibility condition of the successor employer's plan;

(b) whether a member is entitled to a deferred pension benefit under a pension plan of either employer; or

(c) whether the benefits under a pension plan of either employer meets the requirements of section 43.

(4) A change in employment from a predecessor employer to a successor employer does not constitute a break in employment for the purpose of this Act.

(5) No transfer of assets shall be made from the pension fund of a predecessor employer's pension plan to the pension fund of a successor employer's pension plan without the prior written consent of the superintendent.

[1996 cP-4.01 s67](#)

PART IX RECONSIDERATION AND APPEALS

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Reconsideration

68. (1) The superintendent shall by registered mail give written notice to an administrator of a pension plan and other affected persons of a decision under paragraphs 6(2)(c) and (e) and section 21 and that notice shall contain the reasons upon which the decision is based.

(2) Within 60 days after the mailing of the notification, the administrator may serve on the superintendent a notice of administrator's objection which shall state the reasons for the objection and include a request for the superintendent to reconsider the decision.

(3) On receipt of a notice of administrator's objection, the superintendent shall reconsider the decision and may vary or confirm the decision and shall, by registered mail, give notice to the administrator of the results of the reconsideration.

[1996 cP-4.01 s68](#)

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Application to court

69. Where a provision of this Act is contravened, the superintendent may apply to the Trial Division for an order prohibiting the continuation or repetition of the contravention or the carrying on of any activity specified.

[1996 cP-4.01 s69](#)

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Service of documents

70. (1) A notice or other document under this Act is sufficiently given, served or delivered if delivered personally or sent by registered mail addressed to the person to whom it is to be given, served or delivered at the person's last known address.

(2) A notice or other document sent by registered mail in accordance with subsection (1) shall be considered to be given, served or delivered on the seventh day after the day of mailing, unless the person to whom it is sent establishes that, acting in good faith, the person did not receive the notice or other document, or did not receive it until a later date, through absence, accident, illness or other cause beyond that person's control.

[1996 cP-4.01 s70](#)

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Appeal

71. (1) Where an administrator of a pension plan has served a notice of administrator's objection under subsection 68(2), the administrator may,

- (a) within 60 days after the superintendent has confirmed the action taken as described in subsection 68(3); or
- (b) where the superintendent does not confirm or vary the action as provided for in paragraph (a), within a further 60 days,

appeal to the Trial Division for an order described in subsection (2).

- (2) The court may dispose of an appeal under subsection (1)
 - (a) by dismissing it and ordering the appellant to effect the compliance of a pension plan with requirements for registration;
 - (b) by allowing it and ordering the superintendent to register a pension plan or to reinstate the registration of a pension plan, and to issue a certificate of registration in that respect; or
 - (c) as the court otherwise considers appropriate.

(3) An order made as described in paragraph (2)(b) may include conditions imposed upon the appellant that are conditions precedent to the registration or reinstatement of registration of a pension plan.

[1996 cP-4.01 s71](#)

**PART X
OFFENCES AND PUNISHMENT**

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Failure to comply

72. Failure to comply with a requirement or a directive of the superintendent constitutes an offence.

[1996 cP-4.01 s72](#)

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No action lies

Pension Benefits Act, 1997, S.N.L. 1996, c. P-4.01

73. No action lies against a person for withholding, deducting, paying or crediting a sum of money in compliance with this Act.

[1996 cP-4.01 s73](#)

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Staff liability

74. The superintendent or the staff of the superintendent are not personally liable for an action done in good faith in the execution or intended execution of a duty or authority under this Act or for alleged neglect or default in the execution in good faith of a duty or authority.

[1996 cP-4.01 s74](#)

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Corporate liability

75. (1) Notwithstanding subsection 76(2), where a corporation is convicted of an offence contrary to this Act, the maximum penalty that may be imposed is \$25,000.

(2) Where a corporation is convicted of an offence contrary to this Act,

(a) each director of the corporation; and

(b) each officer, employee or agent of the corporation who in whole or in part acquiesced in or was responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for up to 6 months or both.

(3) Where a person is convicted of an offence related to the failure to submit or make payment to a pension fund or to an insurance company or an administrator of a pension plan, the court that convicts the person may, in addition to a fine or imprisonment imposed, assess the amount not submitted or not paid and order the person to pay the amount to the pension fund, insurance company or administrator.

(4) A statement by the superintendent as to the date when the subject matter of the proceeding first came to the knowledge of the superintendent is admissible in evidence in or in respect of the proceeding and is, in the absence of evidence to the contrary, proof of the facts stated.

[1996 cP-4.01 s75](#)

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Contravention of the Act

76. (1) Every person who contravenes this Act or the regulations is guilty of an offence.

(2) Every person who is guilty of an offence contrary to this Act or the regulations is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for 6 months or to both.

[1996 cP-4.01 s76](#)

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Limitation

77. Notwithstanding the *Provincial Offences Act*, no proceeding under this Act or the regulations shall be commenced more than 2 years after the date when the subject-matter arose.

[1996 cP-4.01 s77](#)

**PART XI
REGULATIONS, REPEAL AND
COMMENCEMENT**

[Back to Top](#)**Regulations**

- 78.** (1) The Lieutenant-Governor may make regulations
- (a) with respect to a matter referred to in this Act as being prescribed by the regulations;
 - (b) respecting application of this Act to public sector pension plans;
 - (c) exempting an employee or pension plan, a class of employee or pension plan or a benefit or kind of benefit under a pension plan from the application of this Act or any provision of it;
 - (d) delegating a matter referred to in this Act to the superintendent;
 - (e) defining a word or expression used but not defined in this Act; and
 - (f) generally for carrying into effect the provisions of this Act.
- (2) A regulation may adopt by reference, in whole or in part, with those changes as the Lieutenant-Governor in Council considers necessary, any code, formula, standard and procedure.
- (3) Regulations may be made with retroactive effect.

[1996 cP-4.01 s78](#)[Back to Top](#)**Transition**

- 79.** (1) An administrator of a pension plan in effect after December 31, 1996 shall comply with this Act.
- (2) Notwithstanding subsection (1), an administrator of a pension plan shall amend the plan to conform with this Act and file a copy of the amendment with the superintendent by January 1, 1999.
- (3) Notwithstanding subsection (1), where a pension plan is governed by one or more collective agreements entered into before January 1, 1997, and where the terms of the plan conflict with the provisions of this Act, the terms of the plan shall prevail until the earlier of the expiry of the collective agreement or January 1, 2000.
- (4) The superintendent shall register a pension plan that is governed by a collective agreement or an arbitration award made under the *Labour Relations Act* that contains a provision contrary to this Act if the plan would have been eligible for registration under the former Act.
- (5) Every pension plan that was registered and continued to qualify for registration under the former Act is considered to be registered under this Act after December 31, 1996.

[1996 cP-4.01 s79](#)[Back to Top](#)

80. (1) The *Pension Benefits Act* is repealed.

(2) Notwithstanding subsection (1), the former Act continues to apply to persons who have before January 1, 1997 ceased membership in or retired from a pension plan.

[1996 cP-4.01 s80](#)

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Commencement

81. This Act comes into force on January 1, 1997.

[1996 cP-4.01 s81](#)

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Important Information

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(O.C. 96-968)

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**NEWFOUNDLAND AND LABRADOR
REGULATION 114/96**

Pension Benefits Act Regulations
under the
Pension Benefits Act, 1997
(O.C. 96-968)

(Filed December 18, 1996)

Pension Benefits Act Regulations, N.L.R. 114/96

Under the authority of section 77 of the *Pension Benefits Act, 1997*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's, December 18, 1996.

Wayne Green
for the Clerk of the Executive Council

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PART I SHORT TITLE AND INTERPRETATION

Short title

1. These regulations may be cited as the *Pension Benefits Act Regulations* .

[Back to Top](#)**Interpretation****2. (1) In these regulations**

- (a) "Act" means the *Pension Benefits Act, 1997* ;
- (b) "actuarial gain" means the sum, if positive, as of the review date of a going concern valuation, of the following:
 - (i) the gain to a pension plan during the period since the last review date of the increase or decrease in the value of the assets of a pension plan less the liabilities of the plan, during the period since the last review date determined in a going concern valuation of the plan resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based,
 - (ii) the amount by which the going concern liabilities increase or decrease as a result of an amendment to the plan, and
 - (iii) the amount by which the going concern liabilities increase or decrease or the going concern assets increase or decrease as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based;
- (c) "actuarial loss" means the sum, if negative, of subparagraphs (b)(i), (ii) and (iii), as of the review date of a going concern actuarial valuation;
- (d) "actuary" means a Fellow of the Canadian Institute of Actuaries;
- (e) "book value", in relation to an asset, means the cost of acquisition to the person acquiring the asset, including all direct costs associated with acquisition;
- (f) [Rep. by 29/13 s1]
- (g) "escalated adjustment" means an adjustment made after the cessation of membership of a member of a pension plan to his or her pension benefit or deferred pension benefit, which adjustment is not capable of being determined with certainty at the time the plan, or an amendment to that plan, is submitted for registration because the adjustment is related to the investment earnings of the pension fund or to future changes in a general wage or price index;
- (h) "financial institution" means
 - (i) a bank,
 - (ii) a body corporate to which the *Trust and Loan Companies Act* (Canada) applies,
 - (iii) a cooperative credit society to which the *Cooperative Credit Associations Act* (Canada) applies,
 - (iv) an insurance company to which the *Insurance Companies Act* (Canada) applies,
 - (v) a trust, loan or insurance corporation incorporated by or under an Act of the legislature of a province,
 - (vi) a cooperative credit society incorporated and regulated by or under an Act of the legislature of a province,
 - (vii) an entity that is incorporated or formed by or under an Act of Parliament or of the legislature of a province that is primarily engaged in dealing in securities, including

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portfolio management and investment counselling, or

- (viii) a foreign institution;
- (i) "foreign institution" means an entity that is
 - (i) engaged in the business of banking, the trust, loan or insurance business, the business of a cooperative credit society or the business of dealing in securities or is otherwise engaged primarily in the business of providing financial services, and
 - (ii) incorporated or formed otherwise than by or under an Act of Parliament or of the legislature of a province;
- (j) "going concern assets" means the value of the assets of a pension plan including income due and accrued, determined on the basis of a going concern valuation;
- (k) "going concern liabilities" means the present value of the accrued benefits of a pension plan including amounts due and unpaid, determined on the basis of a going concern valuation;
- (l) "going concern unfunded liability" means the excess of going concern liabilities over going concern assets;
- (m) "going concern valuation" means a valuation of going concern assets and going concern liabilities of a pension plan prepared on the basis of a continuing pension plan as required by the superintendent;
- (n) "insured plan" means a pension plan funded through a contract with a life insurance company where all the benefits under the plan are guaranteed by the life insurance company;
- (o) "life income fund" means a registered retirement income fund established in accordance with the *Income Tax Act* (Canada) that is locked in in accordance with these regulations and meets the requirements of the superintendent;
- (p) "locked in retirement account" means a registered retirement savings plan established in accordance with the *Income Tax Act* (Canada) that is locked in in accordance with these regulations and meets the requirements of the superintendent;
- (q) "market value" in respect of an asset, means the price that would be obtained in the purchase or sale of the asset in an open market under conditions requisite to a fair transaction between parties;
- (r) [Rep. by 29/13 s1]
- (s) "public sector pension plan" means, for the purpose of the Act and these regulations, the
 - (i) Public Service Pension Plan,
 - (ii) Uniformed Services Pension Plan,
 - (iii) Teachers' Pension Plan,
 - (iv) Members of the House of Assembly Pension Plan,
 - (v) Government Money Purchase Pension Plan, and
 - (vi) Memorial University Pension Plan;
- (t) "review date" means the date as of which a report is or was required to be made under section 5;

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- (u) [Rep. by 29/13 s1]
- (v) "solvency assets" means the market value of investments held by a pension plan plus any cash balances of the plan and accrued or receivable income items of the plan, less any amounts payable by the plan;
- (w) "solvency deficiency" means the deficiency determined by a solvency valuation performed in accordance with section 11;
- (x) "solvency gain" means the sum, if positive, as of a review date of a solvency valuation performed in accordance with section 11, of the following:
 - (i) the gain to a pension plan during the period since the last review date of the solvency valuation resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based, and
 - (ii) the amount by which the solvency liabilities increase or decrease or the solvency assets increase or decrease as a result of a change in the actuarial methods or assumptions upon which the current solvency valuation is based;
- (y) "solvency ratio" means the lesser of one and the fraction obtained by dividing the solvency assets of a pension plan by the liabilities of the plan calculated on a plan termination basis as of the latest review date and as required by the superintendent; and
- (z) "special payment" means a payment or one of a series of payments determined for the purpose of liquidating a going concern unfunded liability or solvency deficiency in accordance with section 12.

(2) For the purpose of these regulations, money in a pension plan, an RRSP, a life annuity contract or a retirement income fund as defined in the *Income Tax Act* (Canada) that meets the requirements of these regulations is locked in if its withdrawal, surrender or commutation is prohibited by any of the following:

- (a) subsection 43(2) of the Act;
- (b) a contract as set out in a directive of the superintendent; and
- (c) any legislation of a designated province that is similar to paragraph (a) or (b) of these regulations.

(3) The definitions in paragraphs (1)(e) and (w) shall apply wherever those terms are used in the Act.

[114/96 s2; 29/13 s1](#)

PART II ADMINISTRATION OF PENSION PLANS

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Annual information return

3. The annual information return required under section 16 of the Act shall be delivered to the superintendent within 6 months following the end of the fiscal year of the pension plan with any required fees.

[114/96 s3](#)

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Filing of reciprocal transfer agreements

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4. (1) An administrator of a pension plan shall, file with the superintendent within 6 months of the commencement of these regulations, a certified copy of any reciprocal transfer agreement entered into before commencement of these regulations.

(2) An administrator of a pension plan shall, within 60 days following execution of the reciprocal transfer agreement, file with the superintendent a certified copy of any agreement entered into on or after the commencement of these regulations.

[114/96 s4](#)

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Reporting

5. (1) This section applies only to a pension plan that contain one or more defined benefit provisions.

(2) An administrator of a pension plan shall have the plan reviewed as follows:

(a) in the case of a new pension plan, as of the effective date of the plan;

(b) where the superintendent sends a notice to the administrator requesting that a review be made of the plan, as of the date specified in the notice; and

(c) subject to paragraphs (a) and (b) and subsection (3), as of the end of a fiscal year of the plan and at intervals not exceeding 3 fiscal years after the preceding review date.

(3) Actuarial valuation reports and cost certificates resulting from reviews required by subsection (1) shall be filed with the superintendent, by the administrator

(a) in the case of a new pension plan, within 60 days after the date of establishment of the plan; and

(b) in the case of a review date occurring after the effective date of the plan, not later than 9 months after the review date.

(4) In the case of a defined benefit plan, where an amendment to the plan affects the cost of benefits provided by the plan, creates an unfunded liability or otherwise affects the solvency or funding of the plan, the administrator of the plan shall have the plan reviewed or the latest review revised as of the date of the amendment.

(5) Where the plan is reviewed under subsection (4), the review date shall be considered to be the last day of the fiscal year preceding that in which the amendment was made.

(6) Subsection (4) does not apply if an actuary certifies that no change in contributions to the plan is required before the next review date.

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Review of defined benefit pension plans

6. (1) In the case of a defined benefit plan, other than a defined benefit plan that is a fully insured plan, a review of the plan required by section 5 shall be in the form of an actuarial valuation report prepared by an actuary in a manner consistent with the accepted standards of practice for the preparation of actuarial valuation reports for pension plans issued by the Canadian Institute of Actuaries.

(2) In the case of a defined benefit plan that is a fully insured plan, an actuarial valuation report or a cost certificate required under section 5, may be prepared and signed by any person so authorized by the insurance company.

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(3) An actuarial valuation report required under subsection (1) shall be prepared on the basis of a going concern valuation containing information required by the superintendent and a solvency valuation under section 11.

(4) Where a going concern valuation is made in respect of a pension plan that provides a pension benefit based on a rate of salary at retirement date or on average rates of salary over a specified and limited period, a projection of the current salary of each member shall be used to estimate the salary on which the pension benefit payable at retirement date shall be based.

(5) Where an escalated adjustment has been made from the pension fund, the amounts, to the extent that they have not been prefunded, are considered to be part of the normal actuarial cost.

(6) Where a person authorized to prepare and sign an actuarial valuation report or cost certificate respecting an insured plan under subsection (2) certifies that

- (a) all pension benefits relating to a defined benefit provision of the plan, are insured by a contract with an insurance company under which that company is obligated to pay those benefits; and
- (b) all future benefits shall accrue under a defined contribution provision of the plan,

the administrator is not required to file any further actuarial valuation reports or cost certificates until the plan again provides for benefits to accrue under a defined benefit provision.

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Review of multi-employer defined benefit pension plans

7. (1) In the case of a multi-employer pension plan containing a defined benefit provision, the actuary shall, as part of the actuarial report required under section 5 and in addition to the requirements of section 6 and any directives of the superintendent,

- (a) perform those tests that shall demonstrate the sufficiency of the contributions required by the collective agreement or agreements to provide for the pension benefits set out in the plan, without consideration of any provision for reduction of benefits set out in the plan; and
- (b) where the contributions are not sufficient to provide the pension benefits under the plan, propose options available to the administrator of the plan for required contributions to meet funding requirements.

(2) Where an actuary proposes options in accordance with paragraph (1)(b), he or she shall file a copy of the report with the superintendent within 30 days of submitting the report to the administrator and the time period referred to in subsection 5(3).

(3) Where an actuary has proposed options in accordance with paragraph (1)(b), an administrator of a pension plan shall take action to have in the plan meet the funding requirements of this section within 180 days following the date on which the actuary submitted the report to the administrator.

(4) Where options have been proposed under paragraph (1)(b), an administrator of a pension plan shall advise the superintendent of the action taken for the plan to meet the funding requirements of this section within 180 days following the date the actuary submitted the report to the administrator and the administrator shall file all documents relevant to the action taken.

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7.1 (1) An administrator of a multi-employer pension plan may elect that subsections (3) to (7), instead of subsections 7(1) to (4), apply to a report filed under sections 5, 6, 11 and 12 where the period covered by the report is between January 1, 2016 and December 31, 2020 inclusive.

(2) [Rep. by 125/13 s1]

(3) The required contributions to a multi-employer pension plan are sufficient if, for each year of the period covered by the report, they are not less than the sum of the following amounts determined under a going concern valuation:

- (a) the normal cost of the plan;
- (b) the special payments set out in a previous report that remain to be paid with respect to any going concern unfunded liability; and
- (c) the special payments to be paid with respect to a going concern unfunded liability that is determined in the report.

(3.1) Notwithstanding paragraph 12(3)(c), the maximum period for liquidating a going concern unfunded liability for a multi-employer pension plan is within 12 years of the review date for actuarial reports prepared with review dates between December 31, 2015 and December 31, 2020 inclusive.

(4) Within 60 days after electing to have this section apply to a report filed under sections 5, 6, 11 and 12, the administrator of a multi-employer pension plan shall give written notice of the election to each member and former member of the plan.

(5) The written notice required by subsection (4) shall contain all the following information:

- (a) the name and provincial registration number of the multi-employer pension plan;
- (b) the name and contact of the administrator;
- (c) the solvency ratio of the plan and, where the plan is amended to increase benefits, the solvency ratio before and after the amendment, effective on the valuation date of the report; and
- (d) an explanation of how the security of pension benefits for members and former members might be affected as a result of the election made under this section.

(6) Within 60 days after filing a report to which this section applies, an administrator shall

- (a) file a copy of the notice required by subsection (4) with the superintendent; and
- (b) give a copy of the notice required by subsection (4) to every employer who makes contributions to a multi-employer pension plan and to every bargaining agent who represents members of the plan.

(7) In addition to the requirements of subsection (6), an administrator who files a report to which this section applies shall give a copy of the notice required by subsection (4) to each person who, after the report is filed and before the next report is filed, will be eligible or is required to become a member of the multi-employer pension plan, and the notice shall accompany the information required to be given to the person under subsection 25(1) of the Act.

[29/08 s1; 125/13 s1; 23/17 s1](#)

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Remittance of contributions

Pension Benefits Act Regulations, N.L.R. 114/96

8. (1) For the purpose of section 30 of the Act, all contributions shall be remitted to the pension fund within the following time periods:

- (a) in the case of member contributions, all sums received by the employer from an employee or deducted from an employee's pay as the employee's contribution to the plan, within 30 days following the month in which the sum was received or deducted;
- (b) in the case of employer contributions determined in accordance with a formula respecting
 - (i) a defined contribution provision that relates to profits of the employer, other than minimum required contributions, 90 days after the end of the fiscal year, or
 - (ii) a defined contribution provision that does not relate to profits of the employer or that are minimum required contributions, 30 days after the end of the month for which those contributions are payable;
- (c) in the case of employer contributions to a defined benefit multi-employer pension plan or a pension plan where employer contributions are based on a fixed rate of dollars and portion of dollars per hour of employment, 30 days after the end of the month for which those contributions are payable; and
- (d) subject to paragraph (c), in the case of employer contributions relating to normal actuarial costs and special payments in respect of a defined benefit provision that are payable on at least a quarterly basis, 30 days after the end of each period in respect of which they are payable.

(2) In the case of a multi-employer pension plan established under a collective agreement or a pension plan that contains one or more defined benefit provisions where the obligation of an employer to contribute to the plan is limited to a fixed amount set out in a collective agreement, an employer, or any person required to make contributions on behalf of an employer, shall pay to the fundholder amounts which are not less than the sum of

- (a) any contributions received from employees, including money withheld from an employee, whether by payroll deduction or otherwise as the employee's contribution to the plan within 30 days following the month in which the sum was received or deducted; and
- (b) the amounts set out in the applicable collective agreement required to be paid by the employer or the person required to make contributions on behalf of the employer within the time limit specified by the applicable collective agreement but in any event, within 30 days following the month in which the period of employment giving rise to those payments occurred.

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Interest on contributions

9. (1) For the purpose of subsection 36(2) of the Act, the method first selected under that subsection to calculate the rate of interest may not be changed without the prior written consent of the superintendent.

(2) Subject to this section, the rate of interest to be applied to contributions for the purpose of subsection 36(1) and (2)(b) of the Act is the amount determined under a pension plan as the gross rate of interest earned by the pension fund that holds those contributions, for the most recently completed period for which interest is to be applied, less the rate attributable to any expenses of administering the plan fund that holds those contributions relating to that period that are not required to be paid by the employer.

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- (3) Interest shall be calculated at least annually, promptly after the end of each fiscal year.
- (4) Interest shall be applied at least annually as follows:
- (a) to member contributions, additional voluntary contributions, and if applicable, employer contributions made to the end of the fiscal year immediately preceding the most recently completed fiscal year, together with prior interest credited on those contributions, at the applicable interest rate described in subsection 36(1) and (2) of the Act; and
 - (b) to member contributions, additional voluntary contributions and if applicable, the employer contributions made during the most recently completed fiscal year at one half of the applicable interest rate prescribed by subsections 36(1) and (2) of the Act.
- (5) If a person becomes entitled to have a refund of contributions, interest shall be applied, with respect to all member contributions, additional voluntary contributions and if applicable, employer contributions, to the end of the month immediately preceding the date of payment or return of contributions or the first payment in a series of payments, at whichever of the following rates is provided for in the plan:
- (a) the rate calculated by dividing 365 into the product of the number of days in the uncompleted fiscal year with respect to which interest is to be paid and the applicable rate provided for by section 36 of the Act at the end of the immediately preceding fiscal year;
 - (b) the actual net rate of interest earned by the plan during that portion of the uncompleted fiscal year as determined under subsection (2); and
 - (c) an estimate of the actual net rate of interest determined solely on the basis of information regarding the performance of the investments of the assets of the plan during that portion of the uncompleted fiscal year, as reported to the administrator by the fund holder or the person making the plan investments.
- (6) Where in a defined benefit provision the rate determined under subsection (5) would result in a negative interest rate, the interest rate to be applied under that subsection is zero.
- (7) Once the method of calculating the rate under subsection (5) has been chosen in respect of a fiscal year, that method shall be used for all pension benefit payments from the plan during that fiscal year.
- (8) Notwithstanding subsections (4) and (5), a pension plan may provide for interest on contributions referred to in those subsections to be calculated in another manner and at other rates as the superintendent considers reasonable.
- (9) For the purpose of subsection 36(1) and (2) of the Act, "contributions" does not include contributions returned to a member of a pension plan or to an employer who participated in a pension plan if the contributions are returned to avoid revocation of the plan's registration under the *Income Tax Act* (Canada).

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Interest on late payments

10. Where an employer has failed to remit contributions within the required period under sections 8 and 12, subsequent payment of contributions shall include contributions plus interest at the rate specified in subsections 36(1) and (2) of the Act as applicable.

[114/96 s10](#)

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Tests for solvency

11. In the preparation of an actuarial valuation report to determine the existence of a solvency deficiency, a solvency valuation shall be performed in the following manner:

- (a) the solvency liabilities of a pension plan shall be determined on the basis that the plan is terminated or on a basis that is certified by an actuary to be reasonably approximate to that, taking into account any significant increases or decreases in pension benefits to the plan members as a result of the termination;
- (b) notwithstanding paragraph (a), solvency liabilities of a multi-employer pension plan established under one or more collective agreements or a trust agreement or a pension plan that contains one or more defined benefit provisions where the obligation of an employer to contribute to the pension fund is limited to a fixed amount set out in a collective agreement shall be determined on the basis of the pension benefit structure set out in the plan at the date of the solvency valuation, without consideration of the possible reduction of those pension benefits;
- (c) the solvency assets shall be the sum of
 - (i) the market value of investments of the pension fund or a value related to the market value by means of an averaging method which stabilizes short-term fluctuations over a period of not more than 5 years, plus any cash balances and accrued or receivable income,
 - (ii) the present value of any remaining special payments established before January 1, 1997,
 - (iii) the present value of any special payments required to liquidate any solvency deficiencies that emerged after December 31, 1996 as a result of pension benefits granted for a period of employment before the effective date of the plan, where the employment had not previously been recognized by the plan, created under the Act and established on or after January 1, 1997, and
 - (iv) the present value of any other special payments established on or after January 1, 1997 which are scheduled for payment within 5 years of the review date;
- (d) the present values referred to in subparagraphs (c)(ii), (iii) and (iv) shall be determined on the basis of the assumed interest rate used in the solvency valuation; and
- (e) where there is not a market value for an investment of a pension plan and the investment is issued or guaranteed by a government, the book value of the investment may be used instead of market value in paragraph (c)(i).

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Funding

12. (1) This section applies only to a pension plan that contains one or more defined benefit provisions.

(2) For the purpose of section 30 and 35 of the Act, every pension plan to which this section applies shall be funded in accordance with the funding requirements of this section.

(3) Subject to subsections (5) and (6) and section 13, every employer shall pay to a pension fund

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- (a) employer contributions, within 30 days following the end of each period in respect of which contributions are payable, equal to the normal actuarial cost allocated to the employer as stated in the most recent actuarial valuation report or cost certificate filed;
 - (b) special payments determined in accordance with subsection (7) with respect to an "initial unfunded liability" or "experience deficiency" as defined under the former Act;
 - (c) special payments required to liquidate by equal payments made at least quarterly, with interest at the going concern valuation rate, any other going concern unfunded liability within 15 years of the review date of the actuarial valuation in which the liability is identified; and
 - (d) the amount required to liquidate any solvency deficiency by equal payments made at least quarterly, with interest at the solvency valuation interest rate, within 5 years of the review date of the solvency valuation in which solvency deficiency is identified.
- (4) Each going concern unfunded liability or solvency deficiency shall be funded separately and not combined with any other going concern unfunded liability or solvency deficiency.
- (5) Where a solvency deficiency has been amortized, the reviewer may recalculate any special payments for any going concern unfunded liability that has not been amortized and the employer may make the special payments as recalculated instead of the special payments calculated at the review date relating to the establishment of the going concern unfunded liability.
- (6) As an alternative to the calculation of minimum special payments under paragraphs (3) (c) and (d), the payments may be determined by reference to a schedule of payments determined as follows:
- (a) each scheduled payment shall be a constant percentage of the projected future payroll of members determined using the same actuarial assumptions as used in the going concern valuation, on the date of original establishment of the going concern unfunded liability or the solvency deficiency;
 - (b) the present value of the scheduled payments over time at the date of establishment of the unfunded liability or the solvency deficiency using the interest rate assumed in the going concern valuation or solvency valuation, as applicable, shall be equal to the amount of the liability being liquidated; and
 - (c) the amortization periods for each series of scheduled payments shall be the same as the respective periods under paragraphs (3)(c) and (d).
- (7) The minimum remaining special payments referred to in paragraph (3)(a) shall be determined after utilizing any unused actuarial gains existing on January 1, 1997 .
- (8) Where the rate of special payments has been greater than the minimum rate required under subsection (3) by the making of special payments in advance or any additional payments, the amount of special payments for subsequent periods may be reduced provided that the outstanding balance of any going concern unfunded liability or solvency deficiency shall at no time be greater than it would have been had the special payments required under subsection 12(3) been made, taking into account the effect of any application of an actuarial gain or a solvency gain in accordance with section 13.
- (9) Where the period covered by a report filed under section 5 has passed and no new report has been filed with the superintendent, an employer shall continue to make payments in accordance with the requirements of the most recent report filed until a new report is filed.
- (10) In the event of over contribution by the employer, an employer shall receive a refund of the over contribution.
- (11) In the event of under contribution by the employer, an employer is required to, within 60 days of the filing of the report, remit all monthly amounts that have not yet been paid into the

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pension fund, calculated from the date on which they are required to be made to the date of filing the report with the superintendent, plus interest at the going concern valuation rate or the solvency valuation rate, as applicable.

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Corner Brook Pulp and Paper Limited pensions

12.1 (1) In this section

- (a) "acceptable rating" means the rating given by a credit rating agency to an issuer at the time of the issuance or renewal of a letter of credit that is at least equal to one of the following ratings:
 - (i) A, from Dominion Bond Rating Service Limited,
 - (ii) A, from Fitch Ratings,
 - (iii) A2, from Moody's Investors Service, or
 - (iv) A, from Standard & Poor's Ratings Services;
 - (b) "credit union" means
 - (i) a credit union to which the *Credit Union Act, 2009* applies,
 - (ii) a cooperative credit society, or
 - (iii) a credit union incorporated and regulated by or under an Act of Canada or another province;
 - (c) "issuer" means a bank or credit union that has an acceptable rating by 2 credit rating agencies;
 - (d) "pension plans" means
 - (i) the Pension Plan for Unionized Employees of Corner Brook Pulp and Paper Limited, and
 - (ii) the Pension Plan for Non-Union Salaried Employees of Corner Brook Pulp and Paper Limited;
 - (e) "trust fund" means the settled property, letters of credit, cash, securities or other property and all proceeds thereof, held by the Corner Brook Pulp and Paper Limited Pension Trust, the beneficiaries of which are the pension plans;
 - (f) "trustees" means the trustees of the trust fund; and
 - (g) "value of letter of credit" means the lesser of
 - (i) the combined solvency deficiency where there is a solvency deficiency in both pension plans and where there is a solvency deficiency in only one pension plan, the solvency deficiency in that pension plan, and
 - (ii) the face amount of the letter of credit as approved by the superintendent;
- (2) Corner Brook Pulp and Paper Limited shall obtain a letter of credit for the pension plans.

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- (3) The letter of credit shall be an irrevocable, unconditional standby letter of credit that
- (a) is in accordance with the rules of International Standby Practices 1998 (publication No. 590 of the International Chamber of Commerce);
 - (b) is payable only in Canadian currency;
 - (c) is issued or confirmed by an issuer who is a member of the Canadian Payments Association ;
 - (d) has a face amount that shall not exceed \$88,000,000.00; and
 - (e) provides that
 - (i) the letter of credit is issued to the trust for the benefit of the pension plans,
 - (ii) the issuer will pay the face amount of the letter of credit on demand from the trustees without inquiring whether the trustees have a right to make the demand,
 - (iii) the insolvency, liquidation or bankruptcy of Corner Brook Pulp and Paper Limited shall have no effect on the rights and obligations of the issuer and the trustees, and
 - (iv) the letter of credit may not be amended during the term of the letter of credit.
- (4) Notwithstanding subparagraph (3)(e)(iv), during the term of the letter of credit the face amount may be increased or decreased in accordance with the trust and the approval of the superintendent.
- (5) The letter of credit shall stay in force until a deficit no longer exists in the pension plans.
- (6) At least 30 days before the expiry date of the term or any renewal term of the letter of credit, Corner Brook Pulp and Paper Limited shall provide written confirmation to the superintendent stating
- (a) that the letter of credit has been renewed or replaced;
 - (b) the name of the issuer;
 - (c) the face amount; and
 - (d) the term of the letter of credit.
- (7) The solvency assets of the pension plans shall, in addition to the assets referred to in subparagraphs 11(c)(i) to (iv), include the value of the letter of credit which shall be allocated between the pension plans in the manner required by the superintendent.
- (8) For the purposes of an actuarial review required under section 5, the value of the letter of credit may be applied to reduce the special payments required under subparagraph 12(3)(d) that have accrued before the review date of the actuarial valuation but have not been remitted to the pension funds of the pension plans.
- (9) Where the pension plans are terminated by the superintendent or otherwise, the proceeds of the trust fund shall be allocated between the pension plans in the manner required by the superintendent.
- (10) Notwithstanding subsection (9), the proceeds of the trust fund shall only be allocated to one or both of the pension plans if the assets in the pension fund for that plan are less than the value of benefits provided under that pension plan.
- (11) Where the proceeds of the trust fund are allocated to one or both of the pensions plans under subsection (9) and surplus assets remain in that plan after the payment of all benefits provided

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under the pensions plan, the surplus assets shall be paid to Corner Brook Pulp and Paper Limited.

(12) Notwithstanding this section, for the purposes of subparagraph 32(1)(b)(ii) of the Act, the amount of special payments accrued is considered to be the amount by which

- (a) the aggregate amount of special payments that would have been remitted to the pension fund

exceeds

- (b) the aggregate amount of special payments made to the pension funds.

[51/17 s1](#)

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Utilization of actuarial gain and solvency gain

13. (1) Where an actuarial report with a review dated on or after January 1, 1997 reveals

- (a) an actuarial gain under a pension plan with respect to a period which begins on or after January 1, 1997 ; and
- (b) there is no new solvency deficiency nor any unamortized balance of any previous solvency deficiency first established on or after the January 1, 1997

the actuarial gain shall first be applied to reduce the outstanding balance of any going concern unfunded liability with the oldest established going concern unfunded liabilities being amortized or reduced before the later ones.

(2) Where the outstanding balance of a going concern unfunded liability is reduced under subsection (1), the balance remaining may be reamortized over the same or a shorter period.

(3) Where there is no going concern unfunded liability or solvency deficiency, the actuarial gain referred to in subsection (1) may, subject to sections 21 and 22, be applied to reduce the contribution of the employer to the normal actuarial cost of the plan, be applied to increase benefits under the plan, be left in the fund, or paid or transferred to the employer.

(4) Where an actuarial gain is not utilized as of the review date on which the actuarial gain is reported, any subsequent utilization of the actuarial gain is subject to the requirements of subsections (1), (2) and (3).

(5) Where a report with a review date on or after January 1, 1997 discloses a solvency gain, the special payments referred to in paragraph 12(3)(d) shall be adjusted as follows:

- (a) if the solvency gain is greater than or equal to the present value of the special payments under paragraph 12(3)(d), the special payments may be reduced to zero; and
- (b) if the solvency gain is less than the present value of the special payments under paragraph 12(3)(d), the monthly rate of the special payments shall not be changed but the amortization period or periods for the special payments may be reduced so as to reduce the excess to zero.

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PART IV COMMUTED VALUE AND TRANSFER

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Commuted value

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14. (1) The commuted value of a pension benefit determined under a defined benefit provision shall, at a minimum,
- (a) be determined in a manner that complies with the Canadian Institute of Actuaries Recommendations for the Computation of Transfer Values from Registered Pension Plans, as amended, or another method as determined or approved by the superintendent;
 - (b) be determined as of the date of cessation of membership, death, retirement, or termination of a pension plan; and
 - (c) be adjusted, in respect of the period between the date determined under paragraph (a), at a date not earlier than the end of the month immediately preceding the payment or transfer of the commuted value out of the plan, with interest at a rate not less than the rate of interest that was assumed in determining the commuted value over the same period of time.
- (2) The commuted value of a pension benefit determined under a defined contribution provision, shall be the value of the accumulated contributions with interest made to the pension fund by or in respect of a member of former member.
- (3) If at the date of determination of the commuted value the former member has an unconditional entitlement to optional forms of a pension benefit or to optional commencement dates, the option that has the greatest value shall be used to determine the commuted value.

[114/96 s14](#)

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Transfer

15. (1) For the purpose of this section, any transfer considered to impair the solvency of a pension plan is not permitted under the Act.
- (2) The transfer value of a pension benefit as of a given date shall be determined by multiplying the commuted value, as determined in accordance with section 14 by the most recently determined solvency ratio.
- (3) Payment out of the fund of the transfer value calculated in subsection (2) shall not be considered to impair the solvency of the plan and is permitted under this Act.
- (4) Subject to subsection (5), where a pension plan has a solvency ratio that is equal to 1.00, a transfer shall not be considered to impair the solvency of the plan for the purpose of section 40(4) of the Act but the superintendent may, on the written request of an administrator, permit an administrator to refuse the transfer if the superintendent agrees with the administrator's assessment that the transfer would materially impair the solvency of the plan.
- (5) Where an administrator of a pension plan has reason to believe that the solvency ratio of the plan may have been reduced to a value less than 0.9 since the last valuation, the administrator shall not permit any transfers without the prior approval of the superintendent and have a new solvency ratio determined by an actuary.
- (6) Where the commuted value is calculated on a basis more generous than the minimum basis prescribed by section 14, the actuary shall confirm that the transfer will not impair the solvency ratio of the plan.
- (7) Notwithstanding subsection (1), where a pension plan has a solvency ratio that is less than 1.00, the administrator of the plan may transfer the whole of the commuted value of a pension benefit if
- (a) the administrator is satisfied that an amount equal to the solvency deficiency for the individual transfer has been remitted to the pension fund; or

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- (b) the solvency deficiency for the individual transfer is less than 5% of the Year's Maximum Pensionable Earnings for that year and the aggregate of transfer deficiencies for all transfers made since the last review date do not exceed 5% of the market value of the assets of the plan at that time.

(8) Where the transfer value calculated in (2) is less than the commuted value, the balance including interest, calculated at the rate credited to member contributions under section 9, shall be transferred by the administrator within 5 years of the date of the initial transfer and any transfer subsequent to the initial transfer shall be in accordance with subsection (7).

(9) Any amounts transferred under a reciprocal transfer agreement that has been filed with the superintendent is subject to subsections (2) through (8).

(10) For the purpose of determining a transfer value under Part VI of the Act, the value of any pension benefit payable to a spouse of a member shall be based on the age of the spouse of the member at the date of termination, and no allowance need be made for the possibility of the member acquiring a different spouse after the date of termination.

(11) An administrator of a pension plan shall not make payment

- (a) under subparagraphs 40(1)(a)(ii) and 40(2)(a)(ii) of the Act, unless the retirement savings arrangement meets the requirements of the superintendent; or
- (b) under subparagraphs 40(1)(a)(iii) and 40(2)(a)(iii) of the Act, unless the contract to purchase the deferred life annuity meets the requirements of the superintendent and payments under the deferred life annuity shall not commence before the earliest date that the member may retire under the plan.

(12) The payment or transfer of the transfer value shall be made within 180 days of the date of determination of the commuted value.

[114/96 s15; 24/17 s1](#)

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Exercise of options

16. (1) A member or former member of a pension plan who makes an election under section 40 of the Act shall deliver a completed direction to the administrator within 60 days following cessation of membership or a person entitled to make an election under Part VI of the Act shall deliver a completed direction to the administrator, within 60 days following receipt of notice of entitlement of member.

(2) The administrator shall comply with an election made under subsection (1) within 60 days of receipt of all information required by the administrator to comply with the election.

(3) The administrator shall not transfer the commuted value or a portion of a pension benefit except where the transferee agrees to administer the amount transferred as a pension benefit in accordance with the Act.

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Limitations for transfer

17. Where the transfer value does not exceed the limitations for transfer under the *Income Tax Act* (Canada), the transfer value may be transferred only into a life income fund or a locked in retirement account or other retirement arrangement approved by the superintendent.

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Retirement savings arrangement

18. (1) The superintendent shall, for the purpose of this section, establish and maintain a list that contains

(a) the name of every savings institution and insurance company that has filed a certified specimen contract that complies with the Act, these regulations and the requirements of the superintendent; and

(b) a description of each certified specimen contract filed with the superintendent that complies with the Act, these regulations and the requirements of the superintendent.

(2) A savings institution or insurance company shall not transfer or accept a transfer unless

(a) the contract used for the transfer is in the form of a certified specimen contract, as amended where applicable, that has been filed with the superintendent and complies with the Act, these regulations and the requirements of the superintendent; and

(b) the savings institution or insurance company

(i) has been notified in writing by the superintendent that the name and specimen contract are on the list, and

(ii) has not been notified in writing by the superintendent that either its name or its specimen contract has been removed from the list.

(3) For the purpose of this section, a certified specimen contract, or an amendment to a certified specimen contract, is considered to meet the requirements of subsection (2) if the superintendent has provided written notice of compliance to the savings institution or insurance company that filed it.

(4) The superintendent may, without affecting the duties or liability of a savings institution or insurance company in relation to any transfer or contract, remove the savings institution or insurance company, or any certified specimen contract in name, from the list established under subsection (1) if

(a) the savings institution or insurance company is using a contract or an amendment to a contract, that is not in the form of the certified specimen contract; or

(b) the savings institution or insurance company has acted in breach of any of its obligations under this section.

(5) A copy of the contract, including contractual obligations required by the superintendent, shall be provided to the applicant at the time the application to transfer the locked in money is completed.

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PART V SURPLUS AND TRANSFER OF PLAN ASSETS

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Calculation of surplus

19. For purpose of calculating surplus under a continuing pension plan

(a) "assets" shall mean the market value of investments held by the pension fund plus any cash balances and accrued or receivable income items; and

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- (b) "liabilities" shall mean the greater of the going concern liabilities and the liabilities determined under section 11.

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Surplus withdrawal application continuing plan

20. (1) An application by an employer for the consent of the superintendent to a surplus withdrawal from a continuing pension plan shall be accompanied by

- (a) a certified copy of the notice as required by the superintendent, details on the classes of persons who received notice, and the date the last notice was distributed; and
- (b) a current report prepared on the basis of a going concern valuation demonstrating that a surplus exists and that there are no special payments required to be made to the pension fund.

(2) The superintendent shall not consent to surplus withdrawal by the employer from a continuing pension plan unless

- (a) the superintendent is satisfied, based on reports provided with the application, that the plan has a surplus;
- (b) the plan provides for the withdrawal of surplus by the employer while the plan continues in existence, or the applicant satisfies the superintendent that the applicant is otherwise entitled to withdraw the surplus;
- (c) funds amounting to the greater of
 - (i) an amount equal to at least 2 years of the employer's current service costs, and
 - (ii) an amount equal to 25% of the liabilities of the pension plan calculated on the basis of a solvency valuation

is retained in the pension fund as surplus; and

- (d) the applicant and the plan are in compliance with all other requirements under the Act regarding the payment of surplus money out of a pension fund.

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Contribution holidays

21. An employer may take a contribution holiday if a pension plan has a surplus and permits a contribution holiday, provided that the contribution holiday does not reduce the surplus to less than 10% of the value of the liabilities under the plan, determined as of the last review date calculated on the basis of a solvency valuation.

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Surplus withdrawal application - plan termination

22. The superintendent shall not consent to an application for surplus withdrawal in respect of a pension plan that is being terminated, in whole or in part, unless

- (a) the superintendent is satisfied, based on the reports provided that the plan has a surplus;

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- (b) the plan provides for payment of surplus to the employer on termination of the plan;
- (c) all liabilities of the plan, calculated for the purpose of the termination of the plan, have been paid;
- (d) the application is accompanied by a certified copy of the notice as required by the superintendent, details on the classes of persons who received the notice, and the date the last notice was distributed; and
- (e) the applicant and the plan are in compliance with all other requirements under the Act in respect of the payment of surplus money out of a pension fund.

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**PART VI
TERMINATION**

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Entitlement on plan termination

23. (1) An administrator of a pension plan shall comply with an election made by a person on the termination of the plan no later than 30 days following receipt of the election or, if later, 30 days following receipt of notice that the termination report has been approved by the superintendent.

(2) Where a person entitled to receive a notice of entitlement as directed by the superintendent dies before receipt of the statement or forwarding of the election to the administrator of the plan and the date of death is before the expiry date of the period during which the recipient was entitled to elect an option, the spouse of the recipient on the date of death is entitled

- (a) to receive a lump sum payment equal to the commuted value which the recipient was entitled to transfer under subsection 40(3) of the Act; or
- (b) to an immediate or deferred pension benefit, the commuted value of which is at least equal to the commuted value referred to in paragraph (a).

(3) If the person entitled to a statement referred to in subsection (2) does not have a spouse on the date of death, the recipient's named beneficiary or personal representative is entitled to be paid an amount equal to the lump sum payment referred to in paragraph (2)(a).

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Reduction of benefits upon termination of plan

24. For the purpose of section 66 of the Act, the basis for the reduction of benefits, the methods of allocating and distributing assets, and the priorities for determining benefits is one of the following:

- (a) a method that meets the following conditions:
 - (i) assets shall be allocated firstly to provide for benefits equal to the value of contributions, with interest made by and transferred from another plan in respect of members and former members,
 - (ii) to the extent that assets have not been allocated under subparagraph (i), assets shall be allocated to provide for accrued benefits in respect of which no unfunded liability was established or, if an unfunded liability was established, that liability has been amortized at the date of termination of the plan, and

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- (iii) to the extent that assets have not been allocated under subparagraphs (i) and (ii), assets shall be allocated to provide for accrued benefits in respect of which a going concern unfunded liability or solvency deficiency has not been amortized at the date of the termination of the plan;
- (b) a method that meets the following conditions:
 - (i) assets shall be allocated firstly to provide for benefits equal to the value of contributions, with interest made by and transferred from another plan in respect of members and former members,
 - (ii) to the extent that assets have not been allocated under subparagraph (i), assets shall be allocated to provide for accrued benefits established 2 or more years before the date of termination, provided that the superintendent may relegate the priority of any benefit improvements made in the last 5 years to a more recent effective date selected by the superintendent, and
 - (iii) to the extent that assets have not been allocated under subparagraphs (i) and (ii), assets shall be allocated to provide for the accrued benefits in order of the date in which the benefits were established, starting with the earliest date; and
- (c) a method that is approved in writing by the superintendent.

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Payments upon plan termination

25. Where an employer is required or liable to make payments into a pension fund in accordance with subsection 61(1) of the Act, the employer shall make those payments within 30 days of the date of termination of the plan.

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Payments upon plan termination to fund benefits

25.1 (1) The amount required to be paid under subsection 61(2) of the Act shall be divided into equal payments that are calculated over a period of not more than 5 years commencing from the date of termination of the pension plan.

(2) Payments shall be made at least quarterly, with interest at the solvency valuation rate, commencing from the date of termination of the pension plan.

(3) Notwithstanding subsection (2), the first payment is due no later than 2 weeks following the date that the report required by the superintendent under subsection 60(2) of the Act is filed by the administrator of the pension plan.

(4) Notwithstanding subsections (2) and (3), where the report required by the superintendent under subsection 60(2) of the Act is filed by the administrator of the pension plan later than 6 months after the date of termination of the pension plan, the payment for the quarter in which the report is filed and earlier quarters is due no later than 2 weeks following the date that the report is filed.

(5) An administrator of a pension plan shall continue to file annual information returns and actuarial valuation reports as required under the Act until the amount under subsection (1) has been paid in full.

(6) A report under subsection (5) shall show

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- (a) the gain or the loss in the pension plan since the valuation date of the immediately preceding report as a result of differences between the actual experience and the experience anticipated by the assumptions made in the previous report; and
 - (b) where a loss referred to in paragraph (a) is shown, the amount required to liquidate the loss within the remainder of the period of not more than 5 years commencing from the date of termination of the pension plan.
- (7) The loss shown in a report under subsection (6) shall be
- (a) funded separately under subsection 61(2) of the Act and not combined with the amount under subsection (1) of these regulations; and
 - (b) paid by equal payments made at least quarterly, with interest at the solvency valuation rate, within the remainder of the period of not more than 5 years commencing from the date of termination of the pension plan.

[103/11 s2](#)

**PART VII
MARRIAGE BREAKDOWN**

[Back to Top](#)**Interpretation**

26. (1) In this Part words and phrases have the same meaning as in Part VI of the Act.

(2) Where all or part of a pension benefit under a pension plan of a member is required to be distributed to that person's spouse under a court order or separation agreement, a notice of intention and a certified copy of the court order or agreement shall be filed with the administrator before the administrator may effect a division or distribution.

(3) In the case of a court order, an administrator shall not administer a division of a pension benefit in accordance with a court order until all appeals have been finally determined or the time for appealing has expired.

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27. (1) Except where a claim of a spouse has been filed jointly by the member and his or her spouse, on receiving a claim of spouse, an administrator shall, within 30 days of receipt of the claim, provide a copy of the claim to the member and provide, to both the member and his or her spouse, a notice of entitlement of spouse containing the following information:

- (a) where the member is not entitled to a deferred pension benefit under a pension plan, the value of the pension benefit available for transfer as of the date of marriage breakdown;
- (b) for a defined benefit plan, where a pension benefit has not matured, the commuted value of the pension benefit available for transfer as of the date of marriage breakdown;
- (c) for a defined contribution plan, where a pension benefit has not matured, the accumulated value of the member's account available for transfer as of the date of marriage breakdown;
- (d) for a defined benefit plan, where a pension benefit has matured, the commuted value of the pension benefit available for transfer as of the date of marriage breakdown;
- (e) transfer options available to the spouse;

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(f) options to take a separate pension from the plan available to the spouse; and

(g) a copy of the last annual statement sent to the member.

(2) Within 60 days of receiving the notice of entitlement of spouse, the spouse shall deliver a completed direction to the administrator indicating the election chosen.

(3) Where a member objects to the division on one of the grounds set out in subsection (4), a member shall deliver, within 60 days of receiving the notice of entitlement of spouse, a notice of objection of member to the administrator including documentary evidence to establish the grounds for objection.

(4) The grounds for objection under subsection (3) are that

(a) the court order or separation agreement has been varied or is of no force or effect;

(b) the terms of the court order or separation agreement have been or are being satisfied by other means; and

(c) proceedings have been commenced in a court of competent jurisdiction in Canada to appeal or review the court order or to challenge the terms of the separation agreement.

(5) Subject to subsection (3), an administrator shall comply with the direction made under subsection (2) within 60 days of receipt of all information required by the administrator to comply with the direction.

(6) Where section 53 of the Act applies, an administrator shall comply with the joint direction of the spouse and member or court order within 60 days of receipt of all information required by the administrator to comply with the direction or court order.

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Fees

28. The fee to effect a division under Part VI of the Act to be paid to a pension plan by the spouse and member shall not exceed the following:

(a) \$150 for a defined contribution plan;

(b) \$500 for a defined benefit plan; and

(c) \$650 for a pension plan containing defined contribution and defined benefit provisions.

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Commuted value

29. (1) Where the calculation of the commuted value of a pension benefit or a portion of a pension benefit is required for an unmatured pension in a defined benefit or a defined contribution plan, the member's pension is calculated as if the member terminated employment on the date of election and in accordance with the Canadian Institute of Actuaries Recommendations for the Computation of Transfer Values from Registered Pension Plans.

(2) The commuted value of a pension benefit that is not a deferred pension benefit or an immediate pension benefit under a pension plan shall be determined as if the member had terminated employment on the date of marriage breakdown.

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30. (1) The proportionate share of a matured pension under a defined contribution plan or of a matured or unmatured pension under a defined benefit plan shall be determined in accordance with the following formula:

$$\text{proportionate share} = P(A/B)$$

where:

A = pensionable service accumulated by the member from the date of marriage to the date of marriage breakdown, excluding any pensionable service for that period purchased by and credited to the member after the date of marriage breakdown;

B = total pensionable service accumulated by the member to the date that is the earlier of

- (a) the date the spouse's share was transferred,
 - (b) the date the limited member begins to receive a separate pension, and
 - (c) the date the limited member begins to receive a payment of benefits from the plan;
- and

P = percentage of the pension benefit to be credited to the spouse under the court order or separation agreement.

(2) The proportionate share of an unmatured pension under a defined contribution plan shall be determined in accordance with the following formula:

$$\text{proportionate share} = P(A - B)$$

where:

A = the total of

- (a) contributions to the plan to the credit of the member on the date of marriage breakdown, and
- (b) net investment returns allocated, or that are to be allocated, in respect of those contributions to the date the spouse's share is transferred by the plan;

B = the total of

- (c) contributions to the credit of the member on the date of marriage of the member and spouse, and
- (d) the net investment returns allocated, or that are to be allocated, in respect of those contributions to the date the spouse's share is transferred by the plan; and

P = percentage of the pension benefit to be credited to the spouse under the court order or separation agreement.

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31. (1) An administrator may pay out a cash settlement, instead of a division of a pension benefit, to a limited member where the value of the annual benefit payable to the limited member meets the requirements of paragraphs 44(2)(b) and (c) of the Act.

- (2) An administrator is required, at the time of the member's retirement to
 - (a) obtain the commuted value of the member's pension as of the pension commencement date of the member;
 - (b) determine the limited member's share by applying the proportionate share, calculated in accordance with these regulations, of the commuted value of the member's pension benefit;
 - (c) transfer the limited member's share of the member's pension benefit to a separate account in the plan in the name of the limited member;
 - (d) adjust the value of the member's pension benefit in accordance with these regulations; and
 - (e) provide an accounting to both the member and limited member with respect to the recalculation of the pension benefits.

(3) Where a member terminates employment prior to the pension commencement date of the limited member, the limited member is entitled to a share of a termination benefit under the plan based on the limited member's proportionate share of the member's pension benefit calculated in accordance with these regulations.

(4) In the event of the wind-up of a pension plan before the pension commencement date of the limited member, the limited member is entitled to a payment of a share of any wind-up benefit paid to the member based on the limited member's proportionate share of the member's pension benefit in accordance with these regulations.

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Limited members - immediate

32. An administrator is required to

- (a) obtain a recalculation of the member's pension as of the date of marriage breakdown;
- (b) determine the limited member's share by applying the proportionate share, calculated in accordance with these regulations, to the recalculated value;
- (c) transfer the limited member's share of the member's pension benefit to a separate account in the plan in the name of the limited member;
- (d) readjust the member's pension benefit in accordance with these regulations; and
- (e) provide an accounting to both the member and limited member with respect to the recalculation of the pension benefits.

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Adjustment of pension

33. (1) Where a spouse has transferred his or her share from a pension plan or becomes a limited member of the plan, a member's pension or pension benefit shall be adjusted as follows:

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- (a) if the member is entitled to a deferred pension under the plan, the member's pensionable service shall be reduced by the following amount of service:

$$R = P \times S$$

where

R = amount total service is to be reduced in calculating the member's benefit after the transfer or division of the pension benefit;

P = the proportionate share calculated in accordance with these regulations; and

S = the total service of the member including service before, during and after the marriage; and

- (b) if the member is not entitled to a deferred pension benefit under the plan, the amount paid or transferred to the credit of the spouse or spouse's estate is deducted from the commuted value of the pension or pension benefit at the time of adjustment.

(2) An adjustment under subsection (1) does not affect a member's eligibility in relation to a pension or pension benefit under a pension plan.

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Limitation

34. The aggregate of

- (a) the commuted value of the pension benefit paid to a member; and
 (b) the commuted value of the pension benefit paid to the spouse of a member

under this Part shall not be greater than the commuted value of the pension or pension benefit that would have been payable to the member had the marriage breakdown not occurred.

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Information from plan

35. (1) A limited member or a spouse who has filed a notice of intention is entitled to receive from the administrator

- (a) at the time of marriage breakdown; and
 (b) on an annual basis

information in respect of a pension plan in accordance with these regulations and as required by the superintendent.

(2) Notwithstanding subsection (1), on or before December 31, 1997, an administrator is not required to provide information under subsection (1) unless the spouse or limited member requests the information in writing or a pension plan provides for the disclosure of information on an annual basis.

(3) An administrator shall give a limited member, until the limited member is entitled to receive a separate pension under a pension plan, 30 days' advance written notice of any transaction relating to the member's pension benefit under the plan by reason of the retirement or death of the member or a direction given to the plan by the member.

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(4) When a limited member is entitled to receive a separate pension from a pension plan, the limited member shall be treated as a member of the plan for information, disclosure and reporting purposes and is no longer entitled to information under subsection (1) regarding the pension benefit of the member.

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**PART VIII
GENERAL**

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Prescribed classes

36. The prescribed classes of employees referred to in the Act are employees who fall within any of the following classes:

- (a) employees who are paid a salary;
- (b) employees who are paid on an hourly basis;
- (c) employees who are members of a trade union;
- (d) employees who are not members of a trade union;
- (e) supervisory employees;
- (f) management employees;
- (g) executive employees;
- (h) employees who are officers of the employer;
- (i) employees who are significant shareholders of the employer; or
- (j) employees belonging to other identifiable group of employees as is acceptable to the superintendent.

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Exception from section 33 of the Act

37. A prescribed circumstance referred to in section 33 of the Act is a division of a pension benefit in accordance with Part VI of the Act.

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Disability

38. For the purpose of paragraph 44(2)(a) of the Act, disability means a mental or physical disability that is likely to shorten considerably the life expectancy of a member or former member, that has been verified in writing by a medical practitioner.

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Interpretation of investment regulations

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38.1 (1) In this section and section 39,

- (a) "federal regulations" means the *Pension Benefits Standards Regulations, 1985* (Canada); and
- (b) "Schedule III" means Schedule III to the federal regulations.

(2) In interpreting Schedule III for the purpose of section 39, expressions used in Schedule III and defined in the *Pension Benefits Standards Act, 1985* (Canada) or the federal regulations have the meanings assigned to them by that federal Act or those federal regulations, as the case may be, except for the references in subsection (3).

(3) A reference in Schedule III to

- (a) "administrator" shall be read as a reference to "administrator" as defined in the Act;
- (b) "employee" shall be read as a reference to "employee" as defined in the Act;
- (c) "employer" shall be read as a reference to "employer" as defined in the Act;
- (d) "insured plan" shall be read as a reference to "insured plan" as defined in these regulations;
- (e) "member" shall be read as a reference to "member" as defined in the Act;
- (f) "pension benefit" shall be read as a reference to "pension benefit" as defined in the Act;
- (g) "plan" shall be read as a reference to "pension plan" as defined in the Act;
- (h) "spouse or common-law partner" shall be read as a reference to "principal beneficiary" as defined in the Act; and
- (i) "superintendent" shall be read as a reference to "superintendent" as defined in the Act.

(4) The references to "1994" in subparagraphs 12(1)(a)(ii), 13(1)(a)(ii) and 14(a)(ii) of Schedule III shall be read as "1996".

(5) The references to "filed under subsection 12(2) of the Act" in subsections 12(3) and 13(3) of Schedule III shall be read as "filed with the superintendent".

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Investment regulations

39. (1) Notwithstanding the provisions of a pension plan or any instrument governing a pension plan, the assets of the plan shall be invested and the investments made in accordance with Schedule III and this section.

(2) Where a provision of Schedule III differs from a corresponding provision under the laws of a designated province, the superintendent may, in the case of a pension plan having members in that designated province, apply, in whole or in part, that corresponding provision instead of the provision of Schedule III.

(3) An administrator or fundholder of a pension plan shall maintain a current record clearly identifying each of the plan's investment and the name in which each investment is registered.

- (4) Every pension plan shall provide that the money of the pension fund are to be
 - (a) invested in accordance with Schedule III; and

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(b) invested

- (i) in a name that clearly indicates that the investment is held in trust for the plan and, where the investment is capable of being registered, registered in that name,
- (ii) in the name of a financial institution or a nominee of it, in accordance with a custodial agreement or trust agreement, entered into on behalf of the plan with the financial institution, that clearly indicates that the investment is held for the plan, or
- (iii) in the name of The Canadian Depository for Securities Limited, or a nominee of it, in accordance with a custodial agreement or trust agreement, entered into on behalf of the plan with a financial institution, that clearly indicates that the investment is held for the plan.

(5) For the purposes of subsection (4), "custodial agreement" means an agreement providing that

- (a) an investment made or held on behalf of a pension plan under the agreement
 - (i) constitutes part of the plan's pension fund, and
 - (ii) shall not constitute an asset of the custodian or nominee; and
- (b) records shall be maintained by the custodian that are sufficient to allow the ownership of any investment to be traced to the plan.

(6) The administrator of a pension plan shall, before the later of July 1, 1997 and the day on which the plan is registered, establish, on behalf of the plan, a written statement of investment policies and procedures in respect of the plan's portfolio of investments and loans, having regard to all factors that may affect the funding and solvency of the plan and the ability of the plan to meet its financial obligations, including all of the following:

- (a) categories of investments and loans, including derivatives, options and futures;
- (b) diversification of the investment portfolio;
- (c) asset mix and rate of return expectations;
- (d) liquidity of investments;
- (e) the lending of cash or securities;
- (f) the retention or delegation of voting rights acquired through investments;
- (g) the method of, and the basis for, the valuation of investments that are not regularly traded at a public exchange; and
- (h) related party transactions permitted under section 17 of Schedule III and the criteria to be used to establish whether a transaction is nominal or immaterial to the plan.

(7) The statement of investment policies and procedures referred to in subsection (6) shall include a description of the factors referred to in that subsection and the relationship of those factors to those policies and procedures.

(8) If a pension plan is a defined benefit plan, the administrator shall submit the statement of investment policies and procedures referred to in subsection (6) to the actuary of the plan on or before the later of

- (a) 60 days after the day on which the statement is established; and
- (b) the day on which the actuary is appointed.

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(9) Investments made on or before January 1, 1997 that are not in compliance with this section, Schedule III and the investment policy of the plan

- (a) may be retained until the earlier of the fixed maturity date or January 1, 2000 if they are investments with a fixed maturity date; and
- (b) must be in compliance no later than January 1, 2000 if they are not investments with a fixed maturity date.

(10) Every investment made after January 1, 1997 must comply with this section, Schedule III and the investment policy of the plan.

(11) An administrator of a pension plan shall review and confirm or amend the statement of investment policies referred to in subsection (6) at least once in each plan year.

(12) Where a pension plan is a defined benefit plan, the administrator shall submit any amendments to the investment policy statement to the actuary within 60 days of an amendment to the statement.

[114/96 s39; 29/13 s3](#)

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Designated provinces

40. The following provinces and territories of Canada are designated as provinces or territories in which there is in force legislation substantially similar to the Act:

- (a) the Province of Alberta ;
- (b) the Province of British Columbia ;
- (c) the Province of Manitoba ;
- (d) the Province of New Brunswick ;
- (e) the Northwest Territories ;
- (f) the Province of Nova Scotia ;
- (g) the Province of Ontario ;
- (h) the Province of Quebec ;
- (i) the Province of Saskatchewan ; and
- (j) the Yukon Territory .

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**PART IX
APPLICATION**

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Application to public sector plans

41. (1) The Act applies to all public sector pension plans.

(2) Notwithstanding subsection (1), the following provisions of the Act shall not apply to the Uniformed Services Pension Plan and Teachers' Pension Plan:

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- (a) subsection 20(1) with respect to void amendments;
- (b) section 35 with respect to funding;
- (c) section 39 with respect to the 50% rule;
- (d) section 40 with respect to portability;
- (e) section 41 with respect to pre-retirement death benefits;
- (f) the 2 year period of time prescribed for required vesting under subsection 43(1); and
- (g) paragraph 48(2)(a) with respect to marriage breakdown.

(2.1) Notwithstanding subsection (1), the following provisions of the Act shall not apply to the Members of the House of Assembly Pension Plan:

- (a) subsection 20(1) with respect to void amendments;
- (b) section 35 with respect to funding;
- (c) section 39 with respect to the 50% rule;
- (d) the 2 year period of time prescribed for required vesting under subsection 43(1); and
- (e) section 29 with respect to early retirement for members elected for the first time on or after November 30, 2015.

(3) Notwithstanding subsection (1), the following provisions of the Act shall not apply to the Public Service Pension Plan:

- (a) subsection 20(1) with respect to void amendments;
- (b) section 35 with respect to funding;
- (c) section 39 with respect to the 50% rule; and
- (d) the 2 year period of time prescribed for required vesting under subsection 43(1).
- (4) Notwithstanding subsection (1), the Memorial University Pension Plan is
 - (a) exempt for the period from April 1, 2016 to December 31, 2018 from the requirement that the employer pay an amount under paragraph 12(3)(d) of these regulations;
 - (b) exempt from the requirement under paragraph 12(3)(c) of these regulations to liquidate the going concern unfunded liability arising from the cost of providing indexed benefits in relation to past service under section 24.1 of the *Memorial University Pensions Act* within the prescribed 15 year period and is instead permitted to liquidate this liability within 40 years from the day that indexing is effective; and
 - (c) exempt for the period from April 1, 2016 to March 31, 2017 from the requirement that the employer pay an amount under paragraph 12(3)(c) of these regulations.

(4.1) Notwithstanding paragraphs (4)(a) and (c), in the event of the termination of the Memorial University Pension Plan, an amount that would have been payable under paragraphs 12(3)(c) and (d) had the exemptions not been given shall be paid by the employer to the fund.

(4.2) Notwithstanding paragraph (4)(c), money required to be paid by the employer during the period from April 1, 2016 to March 31, 2017 shall be added to the end of the going concern special payment schedules in effect on April 1, 2016.

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(4.3) The going concern special payment schedules in effect on April 1, 2016 based on the actuarial report of December 31, 2015 shall recommence on April 1, 2017 and shall be adjusted to add

- (a) one year of accrued interest; and
- (b) one additional year for payment.

(4.4) The interest referred to in subsection (4.3) shall be based on the going concern discount rate from the December 31, 2015 actuarial report.

(5) Notwithstanding subsection (1), the following provisions of the Act shall not apply to the Provincial Court Judges' Pension Plan:

- (a) section 35 with respect to funding; and
- (b) section 39 with respect to the 50% rule.

[114/96 s41](#); [6/01 s1](#); [135/03 s1](#); [122/04 s1](#); [40/06 s1](#); [51/09 s1](#); [2/13 s1](#); [13/16 s1](#);
[106/17 s1](#); [107/17 s1](#)

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Exemptions from the Act or regulations

42. (1) A pension plan established before January 1, 1997 is exempt from the requirements of section 38 of the Act where the superintendent considers, and notifies the administrator in writing, that the provisions of the plan relating to the allocation and distribution of its surplus assets during the continuation of the plan or on termination, or both are sufficiently unclear to enable amendment of the plan in order that the plan may comply with section 38 of the Act.

- (2) Where
 - (a) a plan provides a benefit in respect of a person entitled to a benefit and the benefit is in excess of the maximum benefit or contribution limit that could be applicable to the plan under the *Income Tax Act* (Canada); or
 - (b) the commuted value of a benefit is in excess of the maximum limit that can be transferred to another plan or to a retirement savings arrangement under the *Income Tax Act* (Canada),

the amount of the pension benefit, surplus asset allocation or commuted value that is in excess of that maximum limit is exempt from section 44 of the Act and shall not be treated as locked in for the purpose of these regulations.

(3) Where a plurality of the members of a pension plan is employed in a designated province that plan may be excepted, subject to agreement with the designated province from a registration or audit under the Act, and for the purpose of ascertaining where the plurality of the members is employed, members not employed in the province or a designated province shall not be counted.

[114/96 s42](#)

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Exemption

42.1 (1) Notwithstanding paragraph 12(3)(d), a solvency deficiency limited to the value of the benefit commonly referred to as the 45 and 10 vested termination benefit under section 4.5(a) of the Pension Plan for Employees of the Iron Ore Company of Canada and Associated and Subsidiary Companies Unionized Employees Text as amended and re-stated as of March 1, 1999 shall be paid by the employer to the pension fund at the time the liability becomes due under the pension plan.

Pension Benefits Act Regulations, N.L.R. 114/96

(2) Notwithstanding subsection (1), in the event of the termination of the plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the employer to the fund.

[43/03 s2](#)

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Municipalities pension plan exemption

42.2 (1) The Newfoundland and Labrador Municipal Employees Benefits Inc. Pension Plan shall be exempt from the requirement of paragraph 12(3)(d) for the period December 31, 2015 to December 31, 2020 in respect of the solvency deficiency of the plan.

(2) Notwithstanding subsection (1), in the event of the termination of the plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the participating employers to the fund.

[40/06 s2; 36/10 s1; 85/13 s1; 91/17 s1](#)

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Town of Happy Valley-Goose Bay retirement plan exemption

42.3 (1) The Retirement Plan for Employees of the Town of Happy Valley-Goose Bay is exempt from the requirement of paragraph 12(3)(d) for the period of December 31, 2015 to December 31, 2020 in respect of the solvency deficiency of the plan.

(2) Notwithstanding subsection (1), in the event of the termination of the plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the Town of Happy Valley-Goose Bay to the fund.

[13/11 s1; 126/13 s1; 24/17 s2](#)

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City of St. John's retirement benefit plan exemption

42.4 (1) The Retirement Benefit Plan for the Employees of the City of St. John's is exempt from the requirement of paragraph 12(3)(d) for the period of December 31, 2015 to December 31, 2020 in respect of the solvency deficiency of the plan.

(2) Notwithstanding subsection (1), in the event of the termination of the plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the City of St. John's to the fund.

[127/13 s1; 25/17 s1](#)

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St. John's Transportation Commission exemption

42.5 (1) The Pension Plan for the Union Employees of the St. John's Transportation Commission and the Pension Plan for the Non-Union Employees of the St. John's Transportation Commission are exempt from the requirement of paragraph 12(3)(d) for the period of December 31, 2016 to December 31, 2020 in respect of the solvency deficiency of the plans.

(2) Notwithstanding subsection (1), in the event of the termination of either plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the St. John's Transportation Commission to the fund.

[53/15 s1; 25/17 s2](#)

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Town of Grand Falls-Windsor exemption

42.6 (1) The Defined Benefit Retirement Plan for Employees of the Town of Grand Falls-Windsor is exempt from the requirement of paragraph 12(3)(d) for the period of December 31, 2013 to December 31, 2016 in respect of the solvency deficiency of the plan.

(2) Notwithstanding subsection (1), in the event of the termination of the plan, an amount that would have been payable under paragraph 12(3)(d) had the exemption not been given shall be paid by the Town of Grand Falls-Windsor to the fund.

[54/15 s1](#)

**PART X
REPEAL AND COMMENCEMENT**

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Repeal

43. The Pension Benefits Act Regulations, 1985, Newfoundland Regulations 279/84, 3/91, 54/94, 63/95, 74.1/95 and 41/96, are repealed.

[114/96 s43](#)

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Commencement

44. These regulations come into force the date of commencement of the *Pension Benefits Act, 1997*.

[114/96 s44](#)

Schedule

[Rep. by 29/13 s4]

[29/13 s4](#)

*Solvency Funding Relief Regulations, N.L.R. 30/08***This is an official version.**

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Important Information

(Includes details about the availability of printed and electronic versions of the Statutes.)

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REGULATION 30/08**

Solvency Funding Relief Regulations
under the
Pension Benefits Act, 1997
(O.C. 2008-137)

Amended by:

110/11

**NEWFOUNDLAND AND LABRADOR
REGULATION 30/08**

Solvency Funding Relief Regulations
under the
Pension Benefits Act, 1997
(O.C. 2008-137)

(Filed May 26, 2008)

Under the authority of section 78 of the *Pension Benefits Act, 1997*, the Lieutenant-Governor in Council makes the following regulations.

Dated at St. John's , May 21, 2008

Gary Norris
Clerk of the Executive Council

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Short title

1. These Regulations may be cited as the *Solvency Funding Relief Regulations* .

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Interpretation

2. (1) In these Regulations,
 - (a) "acceptable rating" means the rating given by a credit rating agency to an issuer at the time of the issuance or renewal of a letter of credit that is at least equal to one of the following ratings:

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- (i) A, from Dominion Bond Rating Service Limited,
 - (ii) A, from Fitch Ratings,
 - (iii) A2, from Moody's Investors Service, or
 - (iv) A, from Standard & Poor's Ratings Services;
- (b) "Act" means the *Pension Benefits Act, 1997* ;
- (c) "bank" means a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act (Canada)* ;
- (d) "credit union" means a credit union to which the *Credit Union Act* applies or a cooperative credit society or credit union incorporated and regulated by or under an Act of Canada or another province;
- (e) "default" means the occurrence of one of the following:
- (i) the written notification to the superintendent that the administrator intends to terminate or wind up the whole plan under subsection 60(1) of the Act,
 - (ii) the amendment of the plan, resolution by the employer or coming into force of any other measure that effects the termination of the whole plan,
 - (iii) the superintendent's declaration under subsection 59(1) of the Act that terminates the whole plan,
 - (iv) the filing of any application or petition by the employer, or against the employer, under the *Companies' Creditors Arrangement Act (Canada)* , the *Bankruptcy and Insolvency Act (Canada)* or the *Winding-up and Restructuring Act (Canada)*,
 - (v) the termination of the whole plan,
 - (vi) the non-renewal of a letter of credit referred to in Part III for its full face amount unless
 - (A) it has been replaced by another letter of credit for the same face amount at least 30 days before the beginning of the following plan year,
 - (B) an amount equal to the face amount of the letter of credit has been remitted to the pension fund at least 30 days before the beginning of the following plan year, or
 - (C) the face amount has been reduced in accordance with section 23 , or
 - (vii) the failure by an employer to comply with a direction issued by the superintendent under section 11 of the Act with respect to the face amount of the letters of credit required by subsection 16 (2);
- (f) "holder" means a trust company that is licensed to carry on business in Canada and that has entered into a trust agreement with the employer or, if the employer is not the administrator, with the employer and the administrator;
- (g) "initial solvency deficiency" means the solvency deficiency of a plan that emerged on the date on which the valuation that identified the deficiency was performed, as reported in an actuarial report filed with the Superintendent of Pensions that values the plan as of a date between
- (i) January 1, 2007 to January 1, 2009, or

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(ii) January 1, 2010 to January 1, 2013;

(h) "issuer" means a bank or credit union that has an acceptable rating and that is not the employer or affiliated with the employer within the meaning of subsection 2(2) of the *Canada Business Corporations Act* ; and

(i) "special payment" means a payment or one of a series of payments that is determined in accordance with section 12 of the *Pension Benefits Act Regulations*, or section 6 , 7 or 16 of these Regulations.

(2) Except as otherwise provided, expressions used in these Regulations have the same meaning as in the *Pension Benefits Act Regulations* .

[30/08 s2; 110/11 s1](#)

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Application

3. (1) These Regulations apply to the funding of a defined benefit plan and, except as otherwise provided, the *Pension Benefits Act Regulations* also apply to the funding of a plan under these Regulations.

(2) For the purposes of these Regulations, an initial solvency deficiency shall be calculated in accordance with the solvency deficiency in section 11 of the *Pension Benefits Act Regulations*, except that

(a) the present value of any special payment referred to in subparagraphs 11 (c)(ii), (iii) and (iv) of the *Pension Benefits Act Regulations* calculated in respect of the funding of a solvency deficiency that emerged before the emergence of the initial solvency deficiency shall be zero; and

(b) for the purposes of Parts II and III , that definition shall be interpreted as including the present value of the special payments calculated with respect to an initial unfunded liability that are due in the next 10 years.

(3) For the purposes of these Regulations, any special payment that would have been required to be made under paragraph 12(3)(d) of the *Pension Benefits Act Regulations*, with respect to the funding of a solvency deficiency that emerged before the emergence of the initial solvency deficiency is not required to be made.

(4) In the case of an inconsistency between these Regulations and the *Pension Benefits Act Regulations*, these Regulations shall prevail.

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Non-application

4. These Regulations do not apply to

(a) a plan that is established after January 1, 2007 unless the plan is formed as a result of a merger of plans one or more of which was established before January 1, 2007 or is formed as a result of a splitting of a plan that was established before January 1, 2007 ; or

(b) a plan defined as a multi-employer pension plan under the *Pensions Benefits Act*, 1997 .

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Filing date application

5. (1) Plans may only be funded under these Regulations if all of the payments that are owed to the pension fund before the day on which the initial solvency deficiency emerges, as required by section 8 of the *Pension Benefits Act Regulations*, have been made as of the filing date of the actuarial report that shows the emergence of that initial solvency deficiency.

(2) Notwithstanding section 12 of the *Pension Benefits Act Regulations*, the funding of a plan shall be considered to meet the standards for solvency if the funding is in accordance with Part I, II or III of these Regulations.

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PART I NEW 5 YEAR FUNDING

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General funding rules

6. (1) Notwithstanding paragraph 12(3)(d) of the *Pension Benefits Act Regulations*, an initial solvency deficiency of a plan may be funded by special payments sufficient to liquidate the initial solvency deficiency by equal annual payments over a period not exceeding 5 years from the day on which the initial solvency deficiency emerged.

(2) Where the initial solvency deficiency is funded in accordance with this Part, the administrator of the plan shall notify the superintendent in writing at the time of filing of an actuarial report after the coming into force of these Regulations.

(3) Where a solvency deficiency emerges after the day on which the initial solvency deficiency emerged, the new solvency deficiency shall be calculated, for the purpose of paragraph 12(3)(d) of the *Pension Benefits Act Regulations*, in accordance with a solvency valuation in section 11 of those Regulations and that valuation shall be interpreted as including the present value of the special payments referred to in subsection (1).

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PART II NEW 10 YEAR FUNDING

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General funding rules

7. (1) Notwithstanding paragraph 12(3)(d) of the *Pension Benefits Act Regulations*, an initial solvency deficiency of a plan may be funded in accordance with Part I, but the remittance to the pension fund of a portion of the special payments determined under that Part may be deferred as if the initial solvency deficiency were funded by special payments sufficient to liquidate the initial solvency deficiency by equal annual payments over a period not exceeding 10 years from the day on which the initial solvency deficiency emerged.

(2) The initial solvency deficiency may be funded in accordance with this Part only if less than one third of the members and less than one third of the former members excluding members object before the date indicated in the statement referred to in paragraph 8 (1)(j).

(3) Notwithstanding the fact that the special payments set out in subsection (1) may be made over a period that exceeds the period applicable under Part I, for the purposes of subsection 32(1) of the Act, the amount by which the aggregate amount of special payments that would have

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been remitted to the pension fund in accordance with that Part from the day on which the initial solvency deficiency emerged, as adjusted to take into account the actuarial gains that were applied under subsection 13(1) of the *Pension Benefits Act Regulations*, plus interest, exceeds the aggregate amount of special payments made to the pension fund in accordance with this Part, plus interest, shall be considered to be an amount accrued to the pension fund.

(4) Interest shall be calculated by using the interest rate that was assumed in valuing the liabilities of the plan for the purpose of calculating the initial solvency deficiency.

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Information to be provided

8. (1) The administrator shall provide the following information to the members and former members:

- (a) the solvency ratio of the plan as of the day on which the initial solvency deficiency emerged;
- (b) the amount of the initial solvency deficiency;
- (c) a description of the extent to which the members and former members' benefits would be reduced if the plan were fully terminated and wound up with the solvency ratio referred to in paragraph (a);
- (d) a statement indicating that extending the period for funding the initial solvency deficiency as permitted by this Part may result in a lower value of the plan assets during the funding period than would be the case if the deficiency were funded over a period not exceeding 5 years and that the longer funding period may also extend the period during which the plan assets are less than the plan liabilities;
- (e) the special payments that would have been made during the first plan year covered by the actuarial report referred to in paragraph 9 (b) if the initial solvency deficiency were to be funded in accordance with Part I;
- (f) the special payments that are to be made during the first plan year covered by the actuarial report referred to in paragraph 9 (b) if the initial solvency deficiency is funded in accordance with this Part;
- (g) a statement indicating that an actuarial report is to be filed at least annually with the superintendent while the plan is being funded in accordance with this Part;
- (h) a statement indicating that the plan may be funded in accordance with this Part only if less than one third of the members object and less than one third of the former members object;
- (i) a statement indicating that the superintendent's approval is not required to fund the initial solvency deficiency in accordance with this Part;
- (j) a statement indicating that the members and former members may object to the proposal to fund the plan in accordance with this Part by sending an objection to the administrator at the address and by the date indicated in the statement, and that date shall not be less than 30 days after the day on which the other information required to be provided under this section is provided by the administrator;
- (k) a statement indicating that if the plan is funded in accordance with this Part, amendments to the plan that increase the pension benefits will be restricted for the first 5 plan years of funding in accordance with this Part; and

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- (l) a statement setting out the right of access to the documents described in subsection 25(7) of the Act.

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Documents etc. to be filed

9. The administrator shall file the following documents and information with the superintendent:

- (a) written notification that the initial solvency deficiency is to be funded in accordance with this Part;
- (b) the actuarial report valuing the plan as of the day on which the initial solvency deficiency emerged;
- (c) a written statement confirming that a resolution of the board of directors of the employer has been passed, if the employer is a corporation, or, if the employer is not a corporation, an approval of the persons who have the authority to direct or authorize the actions of that body, has been given, authorizing the special payment schedule calculated in accordance with this Part; and
- (d) a written statement confirming that the information set out in section 8 has been provided to the members and former members and that less than one third of the members have objected and less than one third of the former members have objected.

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New solvency deficiency

10. Where a solvency deficiency emerges after the day on which the initial solvency deficiency emerged, the new solvency deficiency shall be calculated, for the purposes of paragraph 12(3)(d) of the *Pension Benefits Act Regulations*, in accordance with a solvency valuation in section 11 of those Regulations, and that the valuation shall be interpreted as including

- (a) the present value of the special payments referred to in section 7 ; and
- (b) the present value of the special payments calculated with respect to an initial unfunded liability that are due in the period that is the greater of
 - (i) the 5 years following the emergence of the new solvency deficiency, and
 - (ii) the period then remaining of the 10 years following the emergence of the initial solvency deficiency.

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Termination of plan

11. Where a plan is fully terminated and on the day on which it terminates the liabilities of the plan exceed its assets, the lesser of the amount determined in subsection 7 (3) and the amount by which the liabilities of the plan exceed its assets shall immediately be remitted to the pension fund.

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Ceasing 10 year funding

12. (1) A plan may cease to be funded under this Part, beginning on the first day of a plan year, by giving written notice to the superintendent not later than 6 months after the beginning of that plan year.

(2) The notice shall indicate whether the plan has a surplus as of the first day of the plan year.

(3) Where funding ceases, section 12 of the *Pension Benefits Act Regulations* applies in respect of the plan except as otherwise provided under this Part.

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Calculating surplus

13. A surplus in respect of a plan shall be determined in the manner prescribed by section 19 of the *Pension Benefits Act Regulations* as if the plan had been fully terminated.

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Plan with surplus

14. Where a plan ceases to be funded in accordance with this Part and the plan has a surplus as of the first day of the plan year, this Part ceases to apply to the plan on the first day of that plan year.

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Plan without surplus

15. (1) Where a plan ceases to be funded in accordance with this Part and the plan does not have a surplus as of the first day of the plan year, section 12 of the *Pension Benefits Act Regulations* applies except as follows:

- (a) when funding ceases before the sixth plan year,
 - (i) the administrator shall have an actuarial report prepared in which the present value of the special payments referred to in section 7 shall be zero valuing the plan as of the first day of the plan year in which funding ceases,
 - (ii) the amount by which the aggregate amount of special payments that would have been made to the pension fund in accordance with Part I from the day on which the initial solvency deficiency emerged to the day on which funding ceases, as adjusted to take into account the actuarial gains that were applied under subsection 13(1) of the *Pension Benefits Act Regulations*, plus interest, exceeds the aggregate amount of special payments made to the pension fund in accordance with this Part, plus interest, shall immediately be remitted to the pension fund,
 - (iii) a remaining initial solvency deficiency disclosed by the actuarial report, which shall be calculated by including the amount remitted in accordance with subparagraph (ii) as an asset of the pension fund, shall be considered to have emerged as of the day on which the initial solvency deficiency emerged,

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- (iv) the remaining initial solvency deficiency calculated under subparagraph (iii) shall be funded by special payments sufficient to liquidate that initial solvency deficiency by equal annual payments over a period not exceeding 5 years minus the number of years that the plan was funded in accordance with this Part, and
 - (v) the special payments set out in section 7 shall continue to be made until the first special payment required to fund the remaining initial solvency deficiency referred to in subparagraph (iii) is made to the pension fund; and
- (b) when funding ceases after the fifth plan year,
- (i) the administrator shall have an actuarial report prepared as of the first day of the plan year in which funding ceases, and
 - (ii) the amount by which the aggregate amount of special payments that would have been made to the pension fund in accordance with Part I from the day on which the initial solvency deficiency emerged to the day on which funding ceases, as adjusted to take into account the actuarial gains that were applied under subsection 13(1) of the *Pension Benefits Act Regulations*, plus interest, exceeds the aggregate amount of special payments made to the pension fund in accordance with this Part, plus interest, shall immediately be remitted to the pension fund.
- (2) Interest shall be calculated by using the interest rate that was assumed in valuing the liabilities of the plan for the purpose of calculating the initial solvency deficiency.

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PART III 10 YEAR FUNDING WITH LETTERS OF CREDIT

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General funding rules

16. (1) Notwithstanding paragraph 12(3)(d) of the *Pension Benefits Act Regulations*, an initial solvency deficiency of a plan may be funded by special payments sufficient to liquidate the initial solvency deficiency by equal annual payments over a period not exceeding 10 years from the day on which the initial solvency deficiency emerged.

- (2) The initial solvency deficiency may be funded in accordance with this Part where the employer
- (a) obtains letters of credit for each of the first 5 plan years of funding under this Part, for the amount representing the difference between the present value, at the end of each plan year, of the remaining special payments under this Part and the present value of the remaining special payments that would have been required to be made to liquidate the initial solvency deficiency as if it had been funded under Part I; and
 - (b) maintains letters of credit for the sixth plan year of funding and for each plan year after that year, representing the present value at the beginning of each plan year of the remaining special payments under this Part.
- (3) The present value of the remaining special payments shall be determined by using the interest rate that was assumed in valuing the liabilities of the plan for the purpose of calculating the initial solvency deficiency.

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Letter of credit

17. (1) A letter of credit required by this Part shall be an irrevocable, unconditional standby letter of credit that

- (a) is in accordance with the rules of International Standby Practices 1998 (**publication No. 590 of the International Chamber of Commerce**) ;
- (b) is payable only in Canadian currency;
- (c) is issued or confirmed by an issuer who is a member of the Canadian Payments Association that has been assigned an acceptable rating; and
- (d) provides that
 - (i) the letter of credit is made out to the holder's benefit,
 - (ii) the issuer will pay the face amount of the letter of credit on demand from the holder without inquiring whether the holder has a right to make the demand,
 - (iii) the bankruptcy of the employer shall have no effect on the rights and obligations of the issuer and the holder set out in the letter of credit,
 - (iv) the letter of credit will expire on the day on which the plan's year ends,
 - (v) the letter of credit will automatically be renewed for the full face amount for further one-year periods on the expiry date referred to in subparagraph (iv) unless the issuer notifies the holder, in writing, of the non-renewal not less than 90 days before the expiry date, and
 - (vi) the letter of credit may not be amended during the term of the letter of credit and may not be assigned except to another holder.

(2) A letter of credit shall be obtained not later than the day on which the actuarial report is filed with the superintendent, under subsection 16(2) of the Act, for the first plan year of funding, and at least 30 days before the beginning of each subsequent plan year that is covered by it.

(3) The letter of credit shall immediately be provided to the holder.

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When letter of credit not required

18. Where separate letters of credit have been obtained for each plan year, a letter of credit is not required to be automatically renewed after the fifth year following the plan year for which it was obtained.

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Where face amount less than amount required

19. Where the face amount of a letter of credit obtained or maintained in accordance with this Part for a plan year is less than the amount required by subsection 16 (2) for that plan year, the employer shall make up the difference either by increasing the amount of letters of credit or by making additional payments to the pension fund no later than on the day on which the next quarterly

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payment is made to the pension fund in accordance with subsection 12(3) of the *Pension Benefits Act Regulations*.

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Trust agreement

20. (1) The employer and, where the employer is not the administrator of the plan, the administrator shall enter into a trust agreement or shall amend any existing trust agreement it may have with the holder regarding the letters of credit referred to in this Part.

- (2) The trust agreement shall provide that
 - (a) the holder shall hold the letters of credit in Canada in trust for the plan;
 - (b) the definition "default" in section 2 applies to the agreement;
 - (c) the employer shall immediately notify, in writing, the holder and the superintendent and, where the employer is not the administrator of the plan, the administrator of a default;
 - (d) where not otherwise notified under paragraph (c), the administrator shall notify, in writing, the holder and the superintendent of a default immediately after becoming aware of it;
 - (e) on receipt of the notice referred to in paragraph (c) or (d), the holder shall immediately make a demand for payment of the face amount of all of the letters of credit held in respect of the plan;
 - (f) on receipt of a written notice of default from a person other than the employer or the administrator, the holder shall
 - (i) immediately notify, in writing, the employer, the administrator and the superintendent of the notice, and
 - (ii) make a demand for payment of the face amount of all of the letters of credit held in respect of the plan unless the administrator provides a written notice to the holder within 30 days after receipt of the notice that the default has not occurred;
 - (g) where a holder makes a demand for payment of a letter of credit held for the plan, it shall notify, in writing, the employer, the administrator and the superintendent that it has made the demand;
 - (h) the holder shall immediately notify, in writing, the employer, the administrator and the superintendent where the issuer does not pay the face amount of a letter of credit after a demand for payment has been made;
 - (i) the holder shall not make a demand for payment where a letter of credit expires without being renewed, or the face amount is being reduced, in accordance with this Part;
 - (j) the administrator shall notify the holder of a circumstance when a letter of credit may expire, or when the face amount of a letter of credit may be reduced, in accordance with this Part; and
 - (k) the administrator shall provide the holder with a copy of the statements referred to in paragraph 21 (1)(e) and subsection 21 (2) and with a copy of the written notice referred to in paragraph 27 (a).

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Documents etc. to be filed

21. (1) The administrator shall file the following documents and information with the superintendent for the first plan year of funding of the initial solvency deficiency:

- (a) written notification that the initial solvency deficiency is to be funded in accordance with this Part;
- (b) the actuarial report valuing the plan as of the day on which the initial solvency deficiency emerged;
- (c) a written statement confirming that a resolution of the board of directors of the employer has been passed, if the employer is a corporation, or, if the employer is not a corporation, an approval of the persons who have the authority to direct or authorize the actions of that body, has been given, authorizing the special payment schedule calculated in accordance with this Part;
- (d) a copy of each letter of credit in effect for the plan year;
- (e) a written statement from the administrator that the letters of credit comply with this Part; and
- (f) a copy of the trust agreement set out in section 20 together with the name and address of the holder of the letters of credit.

(2) For each subsequent plan year of funding, the administrator shall file with the superintendent copies of all subsequent letters of credit that have been obtained by the employer and a written statement, for each letter of credit filed, that it complies with this Part.

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Statement to members

22. Where the administrator provides the written statement under subsection 25(4) of the Act, the administrator shall also provide the following information:

- (a) the amount of the initial solvency deficiency;
- (b) the fact that the deficiency is to be funded in accordance with this Part by equal annual payments over a period not exceeding 10 years; and
- (c) the aggregate face amount of all of the letters of credit that are held by the holder in respect of the plan.

[30/08 s22](#)

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Reduction of the face amount of a letter of credit

23. (1) The face amount of a letter of credit may be reduced, effective the beginning of a plan year, by

- (a) the amount by which the aggregate amount of payments that the employer has made to the pension fund in the previous plan year exceeds the total of the required special payments and the normal cost of the plan for that year as shown in an actuarial report that

Solvency Funding Relief Regulations, N.L.R. 30/08

was filed with the superintendent for that year in accordance with subsection 16(2) of the Act; or

- (b) the amount by which the aggregate face amount of all of the letters of credit that are held by the holder in respect of the plan exceeds the amount set out in paragraph 16 (2)(a) or (b).

- (2) The face amount of the letter of credit shall not be reduced following a default.

[30/08 s23](#)

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New solvency deficiency

24. Where a solvency deficiency emerges after the day on which the initial solvency deficiency emerged, the new solvency deficiency shall be calculated, for the purposes of paragraph 12(3)(d) of the *Pension Benefits Act Regulations*, in accordance with a solvency valuation in section 11 of those Regulations and that valuation shall be interpreted as including

- (a) the present value of the special payments referred to in subsection 16 (1); and
- (b) the present value of the special payments calculated with respect to an initial unfunded liability that are due in the period that is the greater of
 - (i) the 5 years following the emergence of the new solvency deficiency, and
 - (ii) the period then remaining of the 10 years following the emergence of the initial solvency deficiency.

[30/08 s24](#)

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Failure to pay letter of credit

25. On receipt of the notice from a holder that an issuer has not paid the face amount of a letter of credit after a demand for payment has been made, the employer shall remit to the pension fund no later than 30 days after the day on which the demand for payment was made, an amount equal to the face amount of that letter of credit.

[30/08 s25](#)

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Occurrence of default

26. (1) Where a default occurs, the amount by which the aggregate amount of special payments that would have been remitted to the pension fund in accordance with Part I from the day on which the initial solvency deficiency emerged, as adjusted to take into account the actuarial gains that were applied under subsection 13(1) of the *Pension Benefits Act Regulations*, plus interest, exceeds the aggregate amount of special payments made to the pension fund in accordance with this Part, plus interest, shall immediately be remitted to the pension fund.

(2) Except where a plan is fully terminated, the administrator shall have an actuarial report prepared in which the present value of the special payments referred to in subsection 16 (1) shall be zero valuing the plan as of the last day of the plan year in which the default occurs and shall file a copy of the report with the superintendent in accordance with subsection 16(2) of the Act.

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(3) A remaining initial solvency deficiency disclosed by the actuarial report prepared in accordance with subsection (2) shall be calculated by including as an asset an amount remitted to the pension fund in accordance with subsection (1) and the remaining initial solvency deficiency shall be considered to have emerged as of the day on which the initial solvency deficiency emerged.

(4) The remaining initial solvency deficiency calculated under subsection (3) shall be funded by special payments sufficient to liquidate that initial solvency deficiency by equal annual payments over a period not exceeding 5 years minus the number of years that the plan was funded in accordance with this Part.

[30/08 s26](#)

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Ceasing 10 year funding

27. A plan may cease to be funded in accordance with this Part, beginning on the first day of a plan year, where

- (a) the administrator gives written notice to the superintendent not later than 6 months after the beginning of that plan year;
- (b) the amount by which the aggregate amount of special payments that would have been remitted to the pension fund in accordance with Part I from the day on which the initial solvency deficiency emerged, as adjusted to take into account the actuarial gains that were applied under paragraph 13(1) of the *Pension Benefits Act Regulations*, plus interest, exceeds the aggregate amount of special payments made to the pension fund in accordance with this Part, plus interest, is remitted to the pension fund at least 30 days before the plan's year end; and
- (c) an actuarial report is prepared in accordance with subsection 26 (2) and any remaining initial solvency deficiency is calculated and funded in accordance with subsections 26 (3) and (4) as if a default occurred, except that the actuarial report shall be prepared valuing the plan as of the first day of the plan year in which funding ceases.

[30/08 s27](#)

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Initial solvency funding deficiency, January 1, 2010 to January 1, 2013

27.1 For the period of January 1, 2010 to January 1, 2013, an initial solvency deficiency referred to in paragraph 2(g)(ii) may be funded using one of the following methods:

- (a) by funding the initial solvency deficiency in accordance with Part I where solvency funding relief under Part I has not previously been applied;
- (b) by extending the solvency funding period from 5 years to 10 years in accordance with Part II; or
- (c) by extending the solvency funding period to 10 years in accordance with Part III.

[110/11 s2](#)

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Repeal

28. These regulations are repealed on January 1, 2023.

[110/11 s3](#)

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Commencement

29. These Regulations are considered to have come into force on January 1, 2007 .

[30/08 s29](#)

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Important Information

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RSNL1990 CHAPTER C-36

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Amended:

1992 c54 s3 (Rep. before being proclaimed); 1993 c53 s4; 1994 c28 s4; 1996 cR-10.1 s20; 1996 cJ-1.1 s192; 1997 c13 s11; 2001 cN-3.1 s2; 2004 c14; 2007 cS-13.01 s107; 2007 cT-9.1 s5; 2010 c31 s6

CHAPTER C-36

**AN ACT TO REVISE AND REFORM THE LAW
RESPECTING CORPORATIONS**

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- (b) the offeror shall notify each affected dissenting offeree of the date, place and consequences of the application and of his or her right to appear and be heard in person or by counsel.

1986 c12 s323

[Back to Top](#)**Powers of court**

328. (1) Upon an application to a court under section 324, the court may determine whether another person is a dissenting offeree who should be joined as a party, and the court shall then fix a fair value for the shares of all dissenting offerees.

(2) A court may appoint 1 or more appraisers to help the court to fix a fair value for the shares of a dissenting offeree.

(3) The final order of the court shall be made against the offeror in favour of each dissenting offeree and for the amount of his or her shares as fixed by the court.

1986 c12 s324

[Back to Top](#)**Additional powers of court**

329. In connection with proceedings under this Part, a court may make an order it thinks appropriate and it may

- (a) fix the amount of money or other consideration that is required to be held in trust under section 322;
- (b) order that the money or other consideration be held in trust by a person other than the offeree-corporation;
- (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date the dissenting offeree sends or delivers the dissenting offeree's share certificates under section 320 until the date of payment; or
- (d) order that money payable to a shareholder who cannot be found be paid to the Minister of Finance and in that case subsection 356(3) shall apply.

1986 c12 s325

PART XVI
LIQUIDATION AND DISSOLUTION

[Back to Top](#)**Application of Part**

330. (1) This Part does not apply to a corporation that is insolvent within the meaning of the *Bankruptcy Act* (Canada) or that is a bankrupt within the meaning of that Act.

(2) Proceedings taken under this Part to dissolve or to liquidate and dissolve a corporation shall be stayed where the corporation is found, in a proceeding under the *Bankruptcy Act* (Canada), to be insolvent within the meaning of that Act.

1986 c12 s326

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Corporations Act, R.S.N.L. 1990, c. C-36, Part XVI

Revival application

331. (1) Where a body corporate is dissolved under this Part and section 461 an interested person may apply to the registrar to have the body corporate revived.

(2) Articles of revival in prescribed form shall be sent to the registrar.

(3) Upon receipt of articles of revival, the registrar shall issue a certificate of revival in accordance with section 393.

(4) A body corporate is revived on the date shown on the certificate of revival, and afterward the body corporate, subject to the reasonable terms that may be imposed by the registrar and in the case of an insurance company the Superintendent of Insurance and to the rights acquired by a person after its dissolution, has the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved.

1986 c12 s327; 1987 c38 Sch A; 1990 c52 s2; [1997 c13 s11](#)

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Dissolution if no shares

332. A corporation that has not issued shares may be dissolved by resolution of all the directors.

1986 c12 s328

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Dissolution if no property

333. A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders or, where it has issued more than 1 class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

1986 c12 s329

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Dissolution where property disposed of

334. A corporation that has property or liabilities or both may be dissolved by special resolution of the shareholders or, where it has issued more than 1 class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote, where

- (a) by the special resolution the shareholders authorize the directors to cause the corporation to distribute property and discharge liabilities; and
- (b) the corporation has distributed property and discharged liabilities or adequately provided for the payment of the liabilities before it sends articles of dissolution to the registrar under section 335.

1986 c12 s330; 1987 c38 Sch A

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Articles of dissolution and effect

335. (1) Articles of dissolution in prescribed form shall be sent to the registrar in respect of a corporation described in section 332, 333 or 334.

(2) Upon receipt of articles of dissolution, the registrar shall issue a certificate of dissolution in accordance with section 393.

- (3) The corporation stops existing on the date shown in the certificate of dissolution.

1986 c12 s331

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Proposing liquidation and dissolution

336. (1) The directors of a corporation may propose, or in accordance with section 224 a shareholder who is entitled to vote at an annual meeting of the corporation may make a proposal for, the voluntary liquidation and dissolution of the corporation.

(2) Notice of a meeting of shareholders at which voluntary liquidation and dissolution is to be proposed shall set out the terms of liquidation and dissolution.

(3) A corporation may liquidate and dissolve by special resolution of the shareholders or, where the corporation has issued more than 1 class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

1986 c12 s332; 1987 c38 Sch A

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Certificate of intent to dissolve

337. (1) A statement of intent to dissolve in prescribed form shall be sent to the registrar.

(2) Upon receipt of a statement of intent to dissolve, the registrar shall issue a certificate of intent to dissolve in accordance with section 393.

(3) Upon issue of a certificate of intent to dissolve, the corporation shall stop carrying on business except to the extent necessary for the dissolution, but its corporate existence continues until the registrar issues a certificate of dissolution.

(4) After issue of a certificate of intent to dissolve, the corporation shall

- (a) immediately send notice of it to each known creditor of the corporation;
- (b) immediately publish notice of it in the *Gazette* and once in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice of it in jurisdictions where the corporation was carrying on business at the time it sent the statement of intent to dissolve to the registrar;
- (c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge its obligations and to do all other acts required to liquidate its business; and
- (d) after giving the notice required under paragraphs (a) and (b) and adequately providing for the payment or discharge of its obligations, distribute its remaining property, either in money or in kind, among its shareholders, according to their respective rights.

1986 c12 s333

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Liquidation under supervision of court

338. (1) The registrar or an interested person may, during the liquidation of a corporation, apply to a court for an order that the liquidation be continued under the supervision of the court as provided in this Part, and upon the application the court may so order and make a further order it thinks appropriate.

Corporations Act, R.S.N.L. 1990, c. C-36, Part XVI

(2) An applicant under this section shall give the registrar notice of the application, and the registrar is entitled to appear and be heard in person or by counsel.

1986 c12 s334

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Revocation of intent to dissolve

339. (1) At any time after issue of a certificate of intent to dissolve and before issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked by sending to the registrar a statement of revocation of intent to dissolve in prescribed form, where the revocation is approved in the same manner as the resolution under subsection 336(3).

(2) Upon receipt of a statement of revocation of intent to dissolve, the registrar shall issue a certificate of revocation of intent to dissolve in accordance with section 393.

(3) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the corporation may continue to carry on its business.

1986 c12 s335

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Articles of dissolution

340. (1) Where a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection 337(4), the corporation shall prepare articles of dissolution.

(2) Articles of dissolution in prescribed form shall be sent to the registrar.

(3) Upon receipt of articles of dissolution, the registrar shall issue a certificate of dissolution in accordance with section 393.

(4) The corporation stops existing on the date shown in the certificate of dissolution.

1986 c12 s336

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Dissolution by registrar

341. (1) Where a corporation

- (a) has not started business within 3 years after the date shown in its certificate of incorporation;
- (b) has not carried on its business for 3 consecutive years;
- (c) fails to send a return, notice, document or prescribed fee to the registrar as required under this Act; or
- (d) is in default for a period of 1 year in sending to the registrar a fee, notice or document required by this Act,

the registrar may dissolve the corporation by issuing a certificate of dissolution under this section or the registrar may apply to a court for an order dissolving the corporation, in which case section 346 applies.

(2) Notwithstanding subsection (1), the registrar shall not dissolve a corporation under this section until the registrar has

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- (a) given to the corporation 120 days' notice of the registrar's decision to dissolve the corporation; and
 - (b) published in the *Gazette* notice of the registrar's decision to dissolve the corporation.
- (3) Notwithstanding subsection (1), unless cause to the contrary has been shown or an order has been made by the court under section 377 the registrar may, after expiry of the period referred to in subsection (2), issue a certificate of dissolution in prescribed form.
- (4) The corporation stops existing on the date shown in the certificate of dissolution.

1986 c12 s337; 1987 c38 s15

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Dissolution by court

342. (1) The registrar or an interested person may apply to a court for an order dissolving a corporation where the corporation has

- (a) failed for 2 or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders;
- (b) contravened section 28, sections 42 to 45, or section 260 or 262; or
- (c) obtained a certificate under this Act by misrepresentation.

(2) An applicant under this section shall give the registrar notice of the application, and the registrar is entitled to appear and be heard in person or by counsel.

(3) Upon an application under this section or section 341, the court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the court, and the court may make another order it thinks appropriate.

- (4) Upon receipt of an order under this section, section 341 or section 343, the registrar shall
- (a) where the order is to dissolve the corporation, issue a certificate of dissolution in prescribed form; or
 - (b) where the order is to liquidate and dissolve the corporation under the supervision of the court, issue a certificate of intent to dissolve in prescribed form and publish notice of the order in the *Gazette*.

(5) The corporation stops existing on the date shown in the certificate of dissolution.

1986 c12 s338

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Further grounds

343. (1) A court may order the liquidation and dissolution of a corporation or an affiliated corporation upon the application of a shareholder or security holder, creditor, director or officer

- (a) where the court is satisfied that, in respect of a corporation or an affiliate,
 - (i) an act or omission of the corporation or an affiliate effects a result,
 - (ii) the business or affairs of the corporation or an affiliate are or have been carried on or conducted in a manner, or

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- (iii) the powers of the directors of the corporation or an affiliate are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a security holder, creditor, director or officer; or

- (b) where the court is satisfied that

- (i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or

- (ii) it is just and equitable that the corporation should be liquidated and dissolved.

(2) Upon an application under this section, a court may make the order under this section or section 371 that it thinks appropriate.

- (3) Sections 371 and 372 apply to an application under this section.

1986 c12 s339; 1987 c38 Sch A

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Court supervision

344. (1) An application to a court to supervise a voluntary liquidation and dissolution under section 338 shall state the reasons, verified by an affidavit of the applicant, why the court should supervise the liquidation and dissolution.

(2) Where a court makes an order applied for under section 338, the liquidation and dissolution of the corporation shall be continued under the supervision of the court in accordance with this Act.

1986 c12 s340

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Application to court

345. (1) An application to a court under section 343 shall state the reasons, verified by an affidavit of the applicant, why the corporation should be liquidated and dissolved.

(2) Upon an application under section 343, the court may make an order requiring the corporation and a person having an interest in the corporation or claim against it to show cause, at a time and place specified in the order, not less than 4 weeks after the date of the order, why the corporation should not be liquidated and dissolved.

(3) Upon an application under section 343, the court may order the directors and officers of the corporation to provide to the court all material information known to or reasonably ascertainable by them, including

- (a) financial statements of the corporation;
- (b) the name and address of each shareholder of the corporation; and
- (c) the name and address of each known creditor or claimant, including a creditor or claimant with unliquidated, future or contingent claims, and a person with whom the corporation has a contract.

- (4) A copy of an order made under subsection (2) shall be

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- (a) published as directed in the order, at least once in each week before the time appointed for the hearing, in a newspaper published or distributed in the place where the corporation has its registered office; and
 - (b) served upon the registrar and each person named in the order.
- (5) Publication and service of an order under this section shall be effected by the corporation or by another person and in the manner that the court may order.

1986 c12 s341

[Back to Top](#)**Powers of court**

346. In connection with the dissolution or the liquidation and dissolution of a corporation, the court may, where it is satisfied that the corporation is able to pay or adequately provide for the discharge of all its obligations, make an order it thinks appropriate including

- (a) an order to liquidate;
- (b) an order appointing a liquidator, with or without security, fixing his or her remuneration and replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration and replacing inspectors or referees;
- (d) an order determining the notice to be given to an interested person, or dispensing with notice to a person;
- (e) an order determining the validity of claims made against the corporation;
- (f) an order, at any stage of the proceedings, restraining the directors and officers from
 - (i) exercising their powers, or
 - (ii) collecting or receiving a debt or other property of the corporation, and from paying out or transferring property of the corporation, except as permitted by the court;
- (g) an order determining and enforcing the duty or liability of a present or former director, officer or shareholder,
 - (i) to the corporation, or
 - (ii) for an obligation of the corporation;
- (h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of assets for the purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;
- (i) an order disposing of or destroying the documents and records of the corporation;
- (j) upon the application of a creditor, the inspectors or the liquidator, an order giving directions on a matter arising in the liquidation;
- (k) after notice has been given to all interested parties, an order relieving a liquidator from an omission or default on the terms that the court thinks appropriate and confirming an act of the liquidator;

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- (l) an order approving a proposed interim or final distribution to shareholders in money or in property;
- (m) an order disposing of property belonging to creditors or shareholders who cannot be found;
- (n) upon the application of a director, officer, security holder, creditor or the liquidator,
 - (i) an order staying the liquidation on the terms and conditions that the court thinks appropriate,
 - (ii) an order continuing or discontinuing the liquidation proceedings, or
 - (iii) an order to the liquidator to restore to the corporation all its remaining property; and
- (o) after the liquidator has rendered his or her final account to the court, an order dissolving the corporation.

1986 c12 s342; 1987 c38 Sch A

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Commencement of court order

347. The liquidation of a corporation starts when a court makes an order for the liquidation.

1986 c12 s343

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Effect of court order

348. (1) Where a court makes an order for liquidation of a corporation,

- (a) the corporation continues in existence but shall stop carrying on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and
- (b) the powers of the directors and shareholders stop and vest in the liquidator, except as specifically authorized by the court.

(2) The liquidator may delegate the powers vested in the liquidator by paragraph (1)(b) to the directors or shareholders.

1986 c12 s344

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Appointment of liquidator

349. (1) Where making an order for the liquidation of a corporation or at any time afterward, the court may appoint a body corporate or a person, including a director, officer or shareholder of the corporation, as liquidator of the corporation.

(2) Where an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the court until the office of liquidator is filled.

1986 c12 s345

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Duties of liquidator

350. A liquidator shall,

- (a) immediately after his or her appointment, give notice of the appointment to the registrar and to each claimant and creditor known to the liquidator;
- (b) immediately publish notice in the *Gazette* and by insertion once a week for 2 consecutive weeks in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice of it in every jurisdiction where the corporation carried on business, requiring a person
 - (i) indebted to the corporation, to render an account and pay to the liquidator at the time and place specified an amount owing,
 - (ii) possessing property of the corporation, to deliver it to the liquidator at the time and place specified, and
 - (iii) having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 2 months after the 1st publication of the notice;
- (c) take into his or her custody and control the property of the corporation;
- (d) open and maintain a trust account for the money of the corporation;
- (e) keep accounts of the money of the corporation received and paid out by the liquidator;
- (f) maintain separate lists of the shareholders, creditors and other persons having claims against the corporation;
- (g) where the liquidator determines that the corporation is unable to pay or adequately provide for the discharge of its obligations, apply to the court for directions;
- (h) deliver to the court and to the registrar, at least once in every 12 month period after his or her appointment or more often as the court may require, financial statements of the corporation in the form required by section 258 or in another form that the liquidator may think appropriate or that the court may require;
- (i) pay the costs of liquidation out of the property of the corporation and pay or make adequate provision for all claims against the corporation; and
- (j) after his or her final accounts are approved by the court, distribute the remaining property of the corporation among the shareholders according to their respective rights.

1986 c12 s346

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Powers of liquidator

351. (1) A liquidator may

- (a) retain lawyers, accountants, engineers, appraisers and other professional advisers;
- (b) bring, defend or take part in a civil, criminal or administrative action or proceeding in the name and on behalf of the corporation;
- (c) carry on the business of the corporation as required for an orderly liquidation;
- (d) sell by public auction or private sale property of the corporation;

Corporations Act, R.S.N.L. 1990, c. C-36, Part XVI

- (e) do all acts and execute documents in the name and on behalf of the corporation;
- (f) borrow money on the security of the property of the corporation;
- (g) settle or compromise claims by or against the corporation; and
- (h) do all other things necessary for the liquidation of the corporation and distribution of its property.

(2) A liquidator is not liable where the liquidator relies in good faith upon

- (a) financial statements of the corporation represented to the liquidator by an officer of the corporation or in a written report of the auditor of the corporation to reflect fairly the financial condition of the corporation; or
- (b) an opinion, a report or a statement of a lawyer, an accountant, an engineer, an appraiser or other professional adviser retained by the liquidator.

(3) Where a liquidator has reason to believe that a person has in his or her possession or under his or her control, or has concealed, withheld or misappropriated property of the corporation, the liquidator may apply to the court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

(4) Where the examination referred to in subsection (3) discloses that a person has concealed, withheld or misappropriated property of the corporation, the court may order that person to restore it or pay compensation to the liquidator.

1986 c12 s347

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Final accounts and dissolution

352. (1) Within 1 year after his or her appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator shall apply to the court

- (a) for approval of the liquidator's final accounts and for an order permitting the liquidator to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights; or
- (b) for an extension of time, setting out the reasons for the extension.

(2) Where a liquidator fails to make the application required by subsection (1), a shareholder of the corporation may apply to the court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(3) A liquidator shall give notice of the liquidator's intention to make application under subsection (1) to the registrar, each inspector appointed under section 346, each shareholder and a person who provided a security or fidelity bond for the liquidation, and the liquidator shall publish the notice in a newspaper published or distributed in the place where the corporation has its registered office or as otherwise directed by the court.

(4) Where the court approves the final accounts rendered by a liquidator, the court shall make an order

- (a) directing the registrar to issue a certificate of dissolution;
- (b) directing the custody or disposal of the documents and records of the corporation; and
- (c) discharging the liquidator.

Corporations Act, R.S.N.L. 1990, c. C-36, Part XVI

(5) The liquidator shall immediately send a certified copy of the order referred to in subsection (4) to the registrar.

(6) Upon receipt of the order referred to in subsection (4), the registrar shall issue a certificate of dissolution in accordance with section 393.

(7) The corporation stops existing on the date shown in the certificate of dissolution.

1986 c12 s348

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Right to distribution in money

353. (1) Where, in the course of liquidation of a corporation, the shareholders resolve or the liquidator proposes

- (a) to exchange all or substantially all the property of the corporation for securities of another body corporate that are to be distributed to the shareholders; or
- (b) to distribute all or part of the property of the corporation to the shareholders in kind,

a shareholder may apply to the court for an order requiring the distribution of the property of the corporation to be in money.

(2) Upon application under subsection (1), the court may order

- (a) that all the property of the corporation be converted into and distributed in money; or
- (b) that the claims of a shareholder applying under this section be satisfied by a distribution in money, in which case section 310 applies.

1986 c12 s349

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Custody of records

354. A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce the documents and records for 6 years following the date of its dissolution or until the expiry of a shorter period that may be ordered under subsection 352(4).

1986 c12 s350

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Continuation of actions after dissolution

355. (1) In this section "shareholder" includes the heirs and legal representatives of a shareholder.

(2) Notwithstanding the dissolution of a corporation under this Act,

- (a) a civil, criminal or administrative action or proceeding started by or against the corporation before its dissolution may be continued as if the corporation had not been dissolved;
- (b) a civil, criminal or administrative action or proceeding may be brought against the corporation within 2 years after its dissolution as if the corporation had not been dissolved; and
- (c) notwithstanding subsection 357(1), property that would have been available to satisfy a judgment or order if the corporation had not been dissolved remains available for that

Corporations Act, R.S.N.L. 1990, c. C-36, Part XVI

purpose.

(3) Service of a document on a corporation after its dissolution may be effected by serving the document upon a person shown in the last notice filed under section 175 or 183.

(4) Notwithstanding the dissolution of a corporation, a shareholder to whom its property has been distributed is liable to a person claiming under subsection (2) to the extent of the amount received by that shareholder upon the distribution, and an action to enforce that liability may be brought within 2 years after the date of the dissolution of the corporation.

(5) A court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to the conditions that the court thinks appropriate and, where the plaintiff establishes his or her claim, the court may refer the proceedings to a referee or other officer of the court who may

- (a) add as a party to the proceedings before the referee or other officer of the court each person who was a shareholder found by the plaintiff;
- (b) determine the amount that each person who was a shareholder should contribute towards satisfaction of the plaintiff's claim; and
- (c) direct payment of the amounts so determined.

1986 c12 s351

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Unknown claimants

356. (1) Upon the dissolution of a corporation, the portion of the property distributable to a creditor or shareholder who cannot be found shall be converted into money and paid to the Minister of Finance.

(2) A payment under subsection (1) is satisfaction of the debt or claim of the creditor or shareholder.

(3) Notwithstanding subsection 357(1), where a person establishes that he or she is entitled to money paid to the Minister of Finance under this Act, the Minister of Finance shall pay an equivalent amount to that person out of the Consolidated Revenue Fund.

1986 c12 s352

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Vesting of property in Crown

357. (1) Property of a body corporate that has not been disposed of at the date of its dissolution vests in the Crown.

(2) The Lieutenant-Governor in Council upon the report of the Attorney General may dispose of property vested in the Crown under subsection (1).

(3) Where a body corporate is revived under section 331, property other than money that vested in the Crown under subsection (1) and that has not been disposed of shall be returned to the body corporate; and there may be paid to the body corporate out of the Consolidated Revenue Fund

- (a) an amount equal to money received by the Crown under subsection (1); and
- (b) where property other than money vested in the Crown under subsection (1) and that property has been disposed of, an amount equal to the lesser of
 - (i) the value of that property at the date it vested in the Crown, and

Corporations Act, R.S.N.L. 1990, c. C-36, Part XVI

(ii) the amount realized by the Crown from the disposition of that property.

(4) This section applies to bodies corporate whether incorporated or registered in Newfoundland and Labrador or the Province of Newfoundland and Labrador or not, dissolved before as well as to those dissolved after January 1, 1987 .

(5) The property of a body corporate which was dissolved before January 1, 1987 and which has not come into the ownership of another person is considered to have vested in the Crown on January 1, 1987 .

1986 c12 s353; 1987 c38 s16; [2001 cN-3.1 s2](#)

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Property automatically reverts

358. (1) Notwithstanding section 357, where a body corporate that is dissolved for failure to apply for a certificate of continuance applies to be revived before January 1, 1990 ownership of that body corporate's property other than money that vested in the Crown and property that has been disposed of by the Crown shall automatically revert in the body corporate, when it is revived.

(2) Where a body corporate under subsection (1) is revived, the Crown shall pay to that body corporate out of the Consolidated Revenue Fund an amount equal to money received by the Crown under subsection 357(1).

(3) Where the Crown has disposed of property before a body corporate under subsection (1) is revived there shall be paid to the body corporate out of the Consolidated Revenue Fund, where property other than money vested in the Crown under subsection 357(1) and that property has been disposed of, an amount equal to the lesser of

- (a) the value of the property at the date it vested in the Crown; and
- (b) the amount realized by the Crown from the disposition of that property.

(4) Where the property of a body corporate vests in the Crown, the Crown is not liable in tort by reason only of the property being so vested, but this subsection does not affect the liability of the Crown in respect of a period after the Crown, or a person acting for the Crown, has in fact taken possession or control of the property.

1988 c55 s1

PART XVII INVESTIGATION

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Investigation ordered

359. (1) A security holder or the registrar may apply, without giving notice to other interested parties or upon the notice that the court may require, to the court for an order directing an investigation to be made of the corporation and an affiliated corporation.

- (2) Where, upon an application under subsection (1), it appears to the court that
 - (a) the business of the corporation or an affiliate is or has been carried on with intent to defraud a person;
 - (b) the business or affairs of the corporation or an affiliate are or have been carried on or conducted, or the powers of the directors are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a security holder;



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chapter R-15.1

SUPPLEMENTAL PENSION PLANS ACT

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 SUPPLEMENTAL PENSION PLANS

CHAPTER I

APPLICATION AND INTERPRETATION

1. This Act applies to pension plans provided

(1) for employees who report for work at an establishment of their employer located in Québec or, if not, who receive their remuneration from such an establishment, provided, in the latter case, they do not report for work at any other establishment of their employer;

(2) for employees not referred to in paragraph 1 who, while residing in Québec and being employed by an employer whose main establishment is located in Québec, work outside Québec, provided the plans are not governed by an Act of a legislative body other than the Parliament of Québec which provides for a deferred pension.

1989, c. 38, s. 1.

2. This Act does not apply to

(1) a pension plan to which the employer is not required to make contributions. However, it applies to a pension plan where membership therein is a condition precedent to membership in another plan to which an employer is required to make contributions or, conversely, where membership therein is conditioned by membership in that other plan; where that is the case, such pension plans are deemed, for the purposes of this Act, to constitute a single pension plan;

(2) a pension plan established for employees who are also members of a plan governed by this Act, if their employer makes contributions to both plans in their respect and if, under the terms of the other plan, they are entitled to benefits at least equal to the maximum benefits which may be paid under the terms of a registered pension plan defined in section 1 of the Taxation Act (chapter I-3);

(3) a profit sharing plan or a deferred profit sharing plan referred to in Titles I and II of Book VII of Part I of the Taxation Act;

(4) a pension plan established by an Act, the Government or the Office of the National Assembly, unless the Act, the Government or the Office of the National Assembly renders the plan subject to this Act;

(5) *(subparagraph repealed)*;

(6) a voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1).

The Government may, by regulation and on the conditions it determines, exempt any pension plan or category of pension plan it designates from the application of all or part of this Act, particularly by reason of the special characteristics of the plan or category or by reason of the complexity of the Act in relation to the number of members in the plan. The Government may also prescribe special rules applicable to the plan or category.

A regulation made under the second paragraph may, if it so provides, have retroactive effect from a date that is prior to the date of its coming into force but not prior to 31 December of the penultimate year preceding the year in which it was published in the *Gazette officielle du Québec* under section 8 of the Regulations Act (chapter R-18.1). The regulation, if it is made in relation to a pension plan administered by the Commission de la construction du Québec or a mandatary of the Commission de la construction du Québec may, if it so provides, have retroactive effect from a date that is prior to the date of its coming into force.

1989, c. 38, s. 2; 1991, c. 25, s. 178; 1995, c. 46, s. 30; 1993, c. 45, s. 1; 1999, c. 40, s. 254; 2000, c. 41, s. 1; 2002, c. 52, s. 7; 2009, c. 1, s. 1; 2011, c. 8, s. 1; 2013, c. 26, s. 135; 2015, c. 20, s. 55.

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SUPPLEMENTAL PENSION PLANS

2.1. This Act, except sections 6, 64 and 107, the first paragraph of section 110 and section 171.1, which apply with the necessary modifications, does not apply to a pension plan if

(1) all the members of the pension plan are persons connected with the employer within the meaning of subsection 3 of section 8500 of the Income Tax Regulations (Consolidated Regulations of Canada, 1978, chapter 945) and membership in the plan is optional and is restricted to those persons;

(2) only employees described in section 1 may become members of the pension plan; and

(3) active membership in the plan ceases when the member ceases to be a person connected with the employer

Moreover, such a pension plan is deemed, for the purposes of section 98, not to be a pension plan governed by this Act.

A pension plan to which the first paragraph applies becomes subject to this Act upon being amended to allow other persons to become members.

2000, c. 41, s. 2.

3. For the purposes of this Act,

“**actuary**” means any member of the Canadian Institute of Actuaries having the title of “Fellow” or a status recognized as equivalent by such Institute;

“**accountant**” means any person who, being a member of the professional order of accountants listed in Schedule I to the Professional Code (chapter C-26), is authorized under the Act constituting the order to act as an accountant for the purposes of a provision of this Act.

1989, c. 38, s. 3; 1994, c. 40, s. 457; 2012, c. 11, s. 32.

4. For the purposes of this Act, any person who avails himself of the services of a worker who is not an employee and makes contributions to a pension plan in respect of such worker is deemed to be the worker’s employer.

1989, c. 38, s. 4; 1999, c. 40, s. 254.

5. Any provision of a pension plan which is incompatible with this Act is without effect.

However, a pension plan may contain provisions that are more advantageous to members or beneficiaries than those contained in this Act.

1989, c. 38, s. 5; 1999, c. 40, s. 254.

CHAPTER II

PENSION PLANS

DIVISION I

NATURE

§ 1. — *General provisions*

6. A pension plan is a contract under which retirement benefits are provided to the member, under given conditions and at a given age, the funding of which is ensured by contributions payable either by the employer only, or by both the employer and the member.

 SUPPLEMENTAL PENSION PLANS

Every pension plan, with the exception of insured plans, shall have a pension fund into which, in particular, contributions and the income derived therefrom are paid. The pension fund shall constitute a trust patrimony appropriated mainly to the payment of the refunds and pension benefits to which the members and beneficiaries are entitled.

1989, c. 38, s. 6.

§ 2. — *Types of plans*

7. A defined contribution pension plan is a plan under which employer contributions and, where applicable, member contributions, or the method used for calculating them, are set in advance and the normal pension payable is based on the amounts credited to the member.

A defined benefit pension plan is a plan under which the normal pension payable is either a set amount, independent of the member's remuneration, or an amount corresponding to a percentage of the member's remuneration.

A defined benefit-defined contribution pension plan is a plan under which employer contributions and, where applicable, member contributions and the normal pension, or the method used for calculating them, are set in advance.

1989, c. 38, s. 7.

8. A contributory pension plan is a plan to which member contributions are paid by the members.

1989, c. 38, s. 8.

9. An insured pension plan is a plan under which refunds and pension benefits are at all times guaranteed by an insurer.

1989, c. 38, s. 9.

10. Only an insurer who is authorized to carry on life insurance business in Québec or elsewhere in Canada where an agreement referred to in section 249 is applicable may guarantee the refunds or pension benefits provided under a pension plan.

1989, c. 38, s. 10.

11. A multi-employer pension plan is a plan in which the members are the employees of two or more employers.

However, a plan is not considered to be a multi-employer pension plan if the following conditions are met:

(1) the employers who are parties to the plan are either subsidiaries of the same parent company or a parent company and its subsidiaries;

(2) the plan provides that the subsidiaries that are parties to the plan and the parent company agree that the plan not be considered to be a multi-employer pension plan.

The employers party to a plan to which the second paragraph applies are solidarily liable for the obligations incumbent upon each employer under the plan or under this Act.

1989, c. 38, s. 11; 2000, c. 41, s. 3.

12. A parent company is a legal person which controls another company, which is, by that fact, a subsidiary of the parent company.

Supplemental Pension Plans Act, C.Q.L.R., c. R-15.1

SUPPLEMENTAL PENSION PLANS

A legal person controls another legal person if it holds, directly or indirectly, otherwise than as security, securities entitling it to elect in all cases a majority of the directors of that other legal person.

1989, c. 38, s. 12.

DIVISION II

ESTABLISHMENT AND EFFECTIVE DATE

13. A pension plan becomes effective on the earlier of the following dates:

(1) the date from which, for the purposes of determining the normal pension, the employees' service is taken into account as it is completed;

(2) the date on which member contributions begin to be collected.

1989, c. 38, s. 13.

14. Unless an extension is granted by Retraite Québec, any person who establishes a pension plan shall set it down in writing not later than 90 days after the day on which the plan becomes effective.

The text of the plan shall indicate

(1) the name of the employer who is a party to the plan:

(2) the number of members required to constitute the pension committee responsible for the administration of the plan, together with the conditions and time limits applicable to the designation or replacement of the members;

(3) the requirements for membership and withdrawal;

(4) the contributory or non-contributory nature of the plan;

(5) the optional or compulsory nature of membership in the plan;

(6) in the case of a multi-employer pension plan, the conditions for participation and for withdrawal of an employer;

(7) the normal retirement age;

(8) where the plan is guaranteed, the name of the insurer;

(9) the member and employer contributions, or the method used for calculating the contributions;

(9.1) whether or not the members contribute to amortization payments and, if applicable, the method for calculating them;

(10) in the case of a defined benefit plan or a defined benefit-defined contribution pension plan, the normal pension or the method used for calculating the normal pension;

(11) the nature of the refunds and pension benefits, the method used for calculating benefits or refunds, if any, and the conditions to be met to be entitled thereto;

(12) if applicable, the powers under which the pension committee is authorized to transfer benefits accumulated by a member under the plan or any asset of the plan to another plan, and the rules applicable to such a transfer;

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SUPPLEMENTAL PENSION PLANS

(12.1) if applicable, the powers under which the pension committee is authorized to make the final payment of all or part of the benefits of a member or beneficiary by purchasing an annuity from an insurer under the conditions provided for by the plan's annuity purchasing policy, and the rules applicable to such a payment;

(13) the effective date of the plan;

(14) the fiscal year of the plan;

(15) the conditions on which and the person or persons by whom the plan may be amended;

(16) the conditions and procedure for allocating surplus assets or, in the case of a pension plan to which Chapter X applies, the balance of surplus assets referred to in the third paragraph of section 230.2, in the event of termination of the plan;

(16.1) *(subparagraph replaced)*;

(17) in the case of a pension plan to which Chapter X applies, the conditions and procedure for appropriating all or part of the balance of surplus assets referred to in the third paragraph of section 146.8, either to the payment of the value of the additional obligations arising from an amendment to the plan, to the refund of member contributions or to the transfer of amounts to the employer or to a combination of those appropriation methods and, if applicable, the nature of the amendments that may be the object of such an appropriation;

(18) in the cases referred to in section 146.9.2, the conditions and procedure for appropriating all or part of the surplus assets, either to the payment of employer contributions, to the payment of the value of additional obligations arising from an amendment to the plan or to a combination of these appropriation methods and, if applicable, the nature of the amendments that may be the object of such an appropriation.

1989, c. 38, s. 14; 1992, c. 60, s. 1; 2000, c. 41, s. 4; 2006, c. 42, s. 1; 2015, c. 20, a. 61; 2015, c. 29, s. 1.

14.1. Unless expressly provided by this Act, no provision of a defined benefit plan or defined benefit-defined contribution pension plan may operate to make the following conditional on an extrinsic factor so that they are limited or reduced:

(1) the crediting of service or the accumulation of benefits under the plan;

(2) the amount or value of the benefits accumulated in respect of service prior to the date on which the value of the obligations arising from the plan are established with regard to the member or beneficiary whose rights are at stake.

The following, in particular, are considered to be extrinsic factors:

(1) the financial position of the pension fund;

(2) employer contributions paid in relation to the obligations arising from the pension plan with regard to the member or beneficiary;

(3) the exercised discretionary powers attributed exclusively to a person other than a member or beneficiary;

(4) certification or cancellation of the certification of an association of employees;

(5) technological or economic changes in the employer's enterprise or the division, merger, alienation or closing down of the enterprise; and

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(6) the withdrawal of an employer from the pension plan or the termination of the pension plan.

2008, c. 21, s. 1.

15. Any insurance contract under which an insurer guarantees refunds and pension benefits provided under a pension plan is an integral part of the plan; however, where a plan is not insured, the contract is part of the plan only to the extent that the recipient of the insured refunds or pension benefits continues to be a member of the said plan.

1989, c. 38, s. 15.

16. Where a pension plan becomes effective before it is registered with Retraite Québec, the employer or, where a pension committee has been formed, the pension committee shall notify Retraite Québec thereof in writing within 30 days.

The notice shall indicate, in addition to the name and address of the employer who is a party to the plan, the effective date of the plan and, if applicable, the date on which member contributions began to be collected. The notice shall also indicate in a concise manner

- (1) the type of plan established;
- (2) the normal pension or the method used for calculating the normal pension;
- (3) the member or employer contributions or the method used for calculating the contributions;
- (4) where applicable, the name and address of the person to whom powers have been delegated.

1989, c. 38, s. 16; 2015, c. 20, s. 61.

17. *(Repealed).*

1989, c. 38, s. 17; 2000, c. 41, s. 5.

18. A pension plan whose registration is revoked by Retraite Québec under section 32 shall cease to be effective on the date of revocation.

A pension plan which is not registered or whose registration is deemed to be revoked under section 32.1 shall cease to be effective as soon as

- (1) the plan is terminated and has no assets; and
- (2) no member or beneficiary has any rights or benefits remaining under the plan or under this Act.

1989, c. 38, s. 18; 2000, c. 41, s. 6; 2015, c. 20, s. 61.

DIVISION III

AMENDMENT

19. No amendment to a pension plan may become effective before the date it is registered with Retraite Québec, except in the following cases:

(1) where the object of the amendment is the participation of another employer in a pension plan, in which case the amendment becomes effective on the date determined pursuant to section 13;

(1.1) where the object of the amendment is the withdrawal of a bankrupt employer from the multi-employer pension plan, in which case the amendment becomes effective on the date of the bankruptcy;

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(2) where the amendment is to become effective on a given date prior to its registration, in which case the amendment may, provided it is registered, become effective on that date.

1989, c. 38, s. 19; 2000, c. 41, s. 7; 2015, c. 20, s. 61.

20. No amendment to a pension plan which cancels refunds or pension benefits, limits eligibility therefor or reduces the amount or value of the benefits of members or beneficiaries may become effective, if made under a collective agreement or an arbitration award in lieu thereof or rendered compulsory by an order or decree, before the date on which the collective agreement, award or order becomes effective and, in other cases, before the date the notice provided for in section 26 is sent.

However, the limit set under the first paragraph in respect of the effective date of an amendment reducing benefits does not apply

(1) where the amendment is made to allow the plan to remain a registered pension plan within the meaning of section 1 of the Taxation Act (chapter I-3);

(2) where the affected members or beneficiaries have agreed to the amendment and where the effective date of the amendment is the date of the bankruptcy pursuant to subparagraph 1.1 of the first paragraph of section 19, provided Retraite Québec has authorized the amendment.

If an amendment reducing pension benefits pertains to the normal pension, the method used for calculating the normal pension or any other pension benefit established on the basis of such pension or method, it may only apply to the service that is subsequent to the effective date of the amendment and if such an amendment pertains to the assumptions referred to in the second paragraph of section 61, it may only apply to the determination of the benefits accrued to a member at a date that is subsequent to the effective date of the amendment. These restrictions are not applicable, however, in the cases mentioned in the second paragraph.

1989, c. 38, s. 20; 1991, c. 25, s. 179; 1992, c. 60, s. 2; 2000, c. 41, s. 8; 2015, c. 20, s. 61.

21. No amendment to a pension plan may reduce a pension benefit the payment of which began prior to the date on which the amendment became effective.

1989, c. 38, s. 21.

21.1. *(Repealed).*

2000, c. 41, s. 9; 2006, c. 42, s. 2; 2015, c. 29, s. 2.

21.2. *(Repealed).*

2000, c. 41, s. 9; 2015, c. 29, s. 2.

21.3. *(Repealed).*

2008, c. 21, s. 2; 2015, c. 29, s. 2.

22. Any amendment made to a pension plan for the purpose of converting the plan into a plan of another type or substituting a new employer for the former employer is subject to the authorization of Retraite Québec and the conditions it may fix.

In addition, if the amendment is intended to convert benefits resulting from the application of provisions which grant members defined benefits for service credited to them under the plan up to the date on which the amendment becomes effective, into amounts which, credited as defined contributions, will be used to purchase a pension of an indeterminate amount, such an amendment may be authorized only if the value of the benefits of every member who agrees to the conversion is equal to or greater than the value to which he would have been entitled had the plan been terminated on the date on which the amendment is to become

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effective. However, the latter value shall be established without taking into account the rights which may result from the application of subdivision 4.1 of Division II of Chapter XIII.

1989, c. 38, s. 22; 1992, c. 60, s. 3; 2000, c. 41, s. 10; 2015, c. 20, s. 61.

23. The remuneration received or, as the case may be, the hours of work completed prior to an amendment mentioned in section 22 shall be taken into account for the application of section 34.

1989, c. 38, s. 23; 2000, c. 41, s. 11.

CHAPTER III

REGISTRATION OF PENSION PLANS AND AMENDMENTS

24. Every pension plan and every amendment to a pension plan shall be registered with Retraite Québec.

The employer or, where a pension committee has been formed, the pension committee shall file an application for registration with Retraite Québec, accompanied with

(1) a copy of the plan or amendment, certified by the employer or by the committee, and, where the plan is insured, a copy of the insurance contract, certified by the insurer;

(2) where the application is for the registration of the plan, the name and address of the employer or, in the case of a pension committee, the names and addresses of the committee members;

(3) the employer's written acknowledgment of the obligations incumbent upon the employer under the plan or amendment, unless

(a) the committee attests that it has obtained such acknowledgment from the employer and that the acknowledgment may, on request, be filed with Retraite Québec;

(b) the amendment has been made mandatory by a new legislative or regulatory provision giving no latitude to the employer; or

(c) the amendment is being made pursuant to Chapter X.1 or results from the application of section 199;

(4) *(subparagraph repealed)*;

(5) *(subparagraph repealed)*;

(6) any other document or information prescribed by regulation;

(7) the fees prescribed by regulation.

1989, c. 38, s. 24; 2000, c. 41, s. 12; 2006, c. 42, s. 3; 2015, c. 20, s. 61.

25. Unless an extension is granted by Retraite Québec, every application for the registration of a pension plan shall be filed not later than 90 days after the date on which the plan becomes effective; every application for the registration of an amendment whose object is the participation of another employer in a pension plan shall be filed not later than the last day of the twelfth month following the month in which the amendment becomes effective.

1989, c. 38, s. 25; 2000, c. 41, s. 13; 2015, c. 20, s. 61.

26. A pension committee which proposes to apply for the registration of an amendment shall inform the members thereof

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(1) by transmitting to each member a written notice setting out the object of the proposed amendment and its effective date, and stating that the text of the amendment may be examined at the committee's office and at the employer's establishment specified, which must be located within 150 km of the member's place of employment or, where the employer has no establishment within that distance, that the text may be obtained, without charge, on written request; or

(2) by publishing the notice in a newspaper circulated in the localities where at least half of the members reside or, only as concerns active members, by sending the notice to the employer who, on receipt thereof, shall post it in a conspicuous place within the establishment, in an area ordinarily frequented by the members. However, the means of information provided for in this subparagraph cannot be used if the object of the proposed amendment is

- the cancellation of refunds or pension benefits, new conditions limiting eligibility therefor or a reduction in the amount or value of the benefits of members or beneficiaries;
- an amendment to the plan pertaining to the appropriation or allocation of surplus assets;
- the merging of the assets and liabilities of several plans;
- the division of the plan's assets and liabilities among several plans.

A copy of the notice shall also be transmitted to Retraite Québec.

Where the amendment is made pursuant to a collective agreement or an arbitration award in lieu thereof, or is rendered compulsory by an order or decree, this section does not apply in respect of active members who are subject to the collective agreement, arbitration award or order or decree and represented by a certified association within the meaning of the Labour Code (chapter C-27).

1989, c. 38, s. 26; 1992, c. 60, s. 4; 2000, c. 41, s. 14; 2006, c. 42, s. 4; 2015, c. 20, s. 61; 2015, c. 29, s. 3.

27. Retraite Québec shall send, to the applicant whose application for registration meets the requirements prescribed by this Act, an acknowledgment of receipt showing the date of receipt of the application.

If the application for registration is incomplete, Retraite Québec shall forthwith notify the applicant, and specify the information which remains to be filed.

1989, c. 38, s. 27; 2015, c. 20, s. 61.

28. Retraite Québec may, after giving the interested parties an opportunity to present observations, refuse to register a pension plan, or part thereof, or an amendment which, in its opinion, is not in conformity with this Act. It shall inform the parties by means of a written notice specifying the reasons for its refusal.

1989, c. 38, s. 28; 1997, c. 43, s. 649; 2015, c. 20, a. 61.

29. Upon registering a pension plan or an amendment, Retraite Québec shall notify the applicant. Retraite Québec shall assign a number to each plan it registers.

1989, c. 38, s. 29; 2000, c. 41, s. 15; 2015, c. 20, s. 61.

30. Every pension plan or amendment in respect of which an application for registration has been acknowledged is deemed to be registered if, 90 days after the date indicated in the acknowledgment, the applicant has not received from Retraite Québec a request for additional information, a notice extending the period of examination of the application, a notice of refusal or a notice of registration.

1989, c. 38, s. 30; 2000, c. 41, s. 16; 2015, c. 20, s. 61.

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31. The registration of a pension plan or of an amendment does not constitute proof of its conformity with this Act.

1989, c. 38, s. 31.

32. Retraite Québec may revoke the registration of a pension plan in either of the following cases:

(1) if, by reason of a merger under Chapter XII, the members or beneficiaries no longer have any benefits under the plan or this Act, and the plan no longer holds any assets;

(2) if the plan ceases to be governed by this Act.

Moreover, Retraite Québec may, after giving the interested parties an opportunity to present observations, revoke the registration of any part of the plan or of an amendment which is not in conformity with this Act.

Retraite Québec shall notify the interested parties of any revocation of registration by means of a written notice specifying the reasons therefor.

1989, c. 38, s. 32; 1997, c. 43, s. 650; 2000, c. 41, s. 17; 2015, c. 20, s. 61.

32.1. The registration of a terminated pension plan is deemed to be revoked 60 days after the later of

(1) the date of expiry of the time limits provided for in sections 210 and 210.1 or determined by Retraite Québec for the satisfaction of the rights of the employer, the members and the beneficiaries under the plan and under this Act; and

(2) the date on which the orders of Retraite Québec concerning the plan are complied with.

2000, c. 41, s. 18; 2015, c. 20, s. 61.

CHAPTER IV

MEMBERSHIP

33. An employee eligible for membership in a pension plan becomes a member of the plan from the first of the following:

(1) when contributions to the plan are paid by the employee or by the employer on behalf of the employee;

(2) when the employee meets the membership requirements set out in the plan.

The employee shall remain a member until all benefits accumulated by him under the plan are paid, in particular, by means of a transfer to another plan, by the replacement of his pension pursuant to section 92 or upon termination of the plan.

The holder of an insured annuity purchased directly from an insurer, otherwise than pursuant to section 98 or to the plan's annuity purchasing policy established in accordance with Division II.1 of Chapter XI, using benefits accrued under the plan shall remain a member of the plan.

1989, c. 38, s. 33; 1992, c. 60, s. 5; 2000, c. 41, s. 19; 2015, c. 29, s. 4.

34. Unless another plan providing similar benefits in which he is eligible for membership is established, an employee is entitled to become a member of a pension plan, on the same conditions as those applicable to other members, if his employment is similar or identical to that of members belonging to the class of employees for whom the plan is established and if, in the calendar year preceding his application for membership, he met either of the following requirements:

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(1) he received from the employer a remuneration equal to or greater than 35% of the Maximum Pensionable Earnings, established for the reference year in accordance with the Act respecting the Québec Pension Plan (chapter R-9);

(2) he completed at least 700 hours of employment with the employer.

The optional or compulsory nature of the membership does not constitute a requirement for the purposes of the first paragraph.

Where an employee has been employed by two or more employers participating in a multi-employer pension plan, the minimum remuneration required shall be determined on the basis of the overall remuneration from, or the overall hours of work for, each of the participating employers, in either of the following cases:

(1) the employees eligible for membership in the plan are governed by the same collective agreement or arbitration award in lieu thereof;

(2) the participating employers are a parent company and its subsidiaries or subsidiaries of the same parent company.

1989, c. 38, s. 34; 2000, c. 41, s. 20.

35. Retraite Québec may order a pension committee to accept, as member of the plan, every employee who meets the requirements set out in section 34

(1) where it is of the opinion that, in view, in particular, of the nature and requirements of the employment concerned, those of the elements serving to determine the class of employees for whom the plan is established which are invoked as grounds to dismiss the employee's application for membership are unreasonable;

(2) where there is a dispute as to whether or not the employee belongs to the class of employees for whom the plan is established.

1989, c. 38, s. 35; 2015, c. 20, s. 61.

36. For the purposes of this Act, every member of a pension plan is deemed to be an active member

(1) until he ceases to be a member in accordance with the withdrawal requirements or until he no longer meets the eligibility requirements fixed by the plan;

(2) until his period of continuous employment, as defined in section 54, is terminated;

(3) until he dies.

The plan may, however, provide that the member remains an active member for a given period after the end of his period of continuous employment. Notwithstanding the second paragraph of section 5, the said period, increased by any period of layoff with a right of recall referred to in section 54, shall not exceed 24 consecutive months.

1989, c. 38, s. 36; 1994, c. 24, s. 1; 1999, c. 40, s. 254; 2000, c. 41, s. 21.

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CHAPTER V

CONTRIBUTIONS

DIVISION I

TYPE OF CONTRIBUTIONS

2015, c. 29, s. 5.

37. The member contribution is the contribution that an active member is required to pay or the amount he elects to pay with a concurrent contribution by the employer.

The employer contribution is the contribution that the employer is required to pay.

An additional voluntary contribution is the amount that a member elects to pay without a concurrent contribution by the employer.

1989, c. 38, s. 37.

38. A current service contribution is the amount that the employer and, as the case may be, the active members are required to pay to ensure payment of the refunds and pension benefits provided under the pension plan in respect of service completed during a fiscal year of the plan and credited under the plan and, in the case of a plan to which Chapter X applies, to establish a stabilization provision, determined in accordance with section 125, in respect of those obligations.

The part of the current service contribution intended to establish the stabilization provision is to be called a current service stabilization contribution.

1989, c. 38, s. 38; 2015, c. 29, s. 6.

38.1. The following are amortization payments:

(1) the technical amortization payment, intended to amortize the unfunded actuarial liability determined in accordance with section 131;

(2) the stabilization amortization payment, intended to amortize the unfunded actuarial liability determined in accordance with section 132; and

(3) improvement amortization payments, intended to amortize any unfunded actuarial liability determined in accordance with section 134.

2015, c. 29, s. 7.

38.2. The special improvement payment is a payment that, in respect of the additional obligations arising from an amendment to the pension plan, must be paid in accordance with section 139.

2015, c. 29, s. 7.

38.3. The special annuity purchasing payment is a payment that may be required on a payment of benefits made in accordance with the annuity purchasing policy and that, if applicable, must be calculated and paid in accordance with the provisions provided for in section 142.4.

2015, c. 29, s. 7.

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DIVISION II

PAYMENT OF CONTRIBUTIONS

2015, c. 29, s. 8.

39. The employer shall, in each fiscal year of the pension plan, pay as employer contributions an amount which, when added to the member contributions, is equal to or greater than,

- (1) in the case of an insured plan, the current service contribution as established in section 40;
- (2) in the case of an uninsured plan, the sum of the following amounts:
 - (a) the current service contribution determined in accordance with sections 128 and 129; and
 - (b) the sum of the amortization payments determined for the fiscal year and the special improvement payments payable during the fiscal year.

In the case of a multi-employer plan, the employer contribution shall be paid jointly by the employers who are parties to the plan.

1989, c. 38, s. 39; 2006, c. 42, s. 5; 2008, c. 21, s. 30; 2015, c. 29, s. 9.

39.1. Notwithstanding section 39, Retraite Québec may authorize an employer, to the extent and for the period determined by Retraite Québec, to pay a lesser contribution into the pension fund than would otherwise be required if

- (1) the pension plan is a designated plan within the meaning of section 8515 of the Income Tax Regulations (C.R.C., c. 945) on the date on which the amount of contribution to be paid is determined;
- (2) the said Regulations exclude the payment as an eligible contribution of all or part of the contribution that should be paid by the employer pursuant to section 39; and
- (3) all members and beneficiaries agree thereto.

The agreement referred to in subparagraph 3 of the first paragraph is not required if the contribution reduction is less than or equal to the sum of the current service stabilization contribution and the stabilization amortization payment.

2000, c. 41, s. 22; 2006, c. 42, s. 6; 2015, c. 20, s. 61; 2015, c. 29, s. 10.

40. In the case of an insured plan, the current service contribution shall correspond to the premium required by the insurer to guarantee the refunds and pension benefits to which the members are entitled in respect of service completed in any fiscal year of the plan and credited under the plan.

Furthermore, where an insurer guarantees refunds and pension benefits in respect of service credited for a period prior to the current fiscal year of the plan, the required premium shall, to ensure that the plan remains insured, be paid to the insurer in a lump sum as soon as the service is credited or the related benefits are improved under the plan.

1989, c. 38, s. 40.

41. The employer contribution, less the portion the employer is relieved of paying under section 42.1 or that relates to a special improvement payment, must be paid in as many instalments as there are months in the fiscal year of the plan, each being paid not later than the last day of the month following the month for which it is made.

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The monthly payments shall be of equal amounts. However, if they relate to the current service contribution, the monthly payments may represent an hourly rate or a rate of the remuneration of or a percentage of the total payroll for the active members; the rate or proportion shall be uniform unless it is established by reference to a variable authorized by Retraite Québec.

In the case of a pension plan to which Chapter X applies, where the employer contribution is not determined at the beginning of the fiscal year, the employer shall, until an actuarial valuation report is transmitted to Retraite Québec, continue to pay the monthly amounts fixed for the preceding fiscal year. If the contribution so paid is less than what should have been paid according to the report, the first monthly amount payable after the transmission of the report to Retraite Québec shall be increased by the difference between the monthly amounts paid and the amounts that should have been paid according to the report, plus any portion of the contribution the employer is relieved of paying under section 42.1 and the interest provided for in section 48 where applicable. The amount of the contribution may also be adjusted if the contribution that should have been paid according to the report is less than what was paid.

1989, c. 38, s. 41; 2000, c. 41, s. 23; 2006, c. 42, s. 7; 2008, c. 21, s. 31; 2015, c. 20, s. 61; 2015, c. 29, s. 11.

42. If the amortization period for an unfunded actuarial liability begins in the course of a fiscal year of the plan, the amortization payment determined in relation to that liability for that year must be paid in as many monthly payments as there are months in the portion of the fiscal year included in the amortization period.

1989, c. 38, s. 42; 2006, c. 42, s. 8; 2015, c. 29, s. 12.

42.1. Under the conditions prescribed by regulation, an employer may, on providing the pension committee with a letter of credit established in accordance with the regulation, be relieved of paying all or part of the portion of the employer contribution determined for the current fiscal year of the pension plan in respect of the stabilization amortization payment payable during the year.

The total amount of such letters of credit may not exceed 15% of the liabilities of the plan, determined on a funding basis.

2006, c. 42, s. 9; 2008, c. 21, s. 32; 2010, c. 41, s. 1; 2015, c. 29, s. 13.

42.2. Employer contributions that are technical amortization payments or stabilization amortization payments, except those paid by letter of credit, must be the subject of special monitoring. Employer contributions paid in excess of the contributions required must be included as well.

Member contributions that are technical amortization payments or stabilization amortization payments must also be the subject of special monitoring.

Interest on those contributions, at the rate of return obtained on the investment of the plan assets, reduced by the investment and administration fees, must be included as well.

2015, c. 29, s. 13.

43. Every person or body who or which collects member contributions or additional voluntary contributions shall, on or before the last day of the month following the month in which they are received, pay such contributions into the pension fund on behalf of the members or, in the case of an insured plan, to the insurer.

1989, c. 38, s. 43.

44. All member contributions and additional voluntary contributions and, in the case of a defined contribution plan, all employer contributions shall bear interest, from the first day of the month following the month in which they are payable into the pension fund or to the insurer,

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(1) in the case of an uninsured plan other than a defined contribution plan, at the rate of return derived from the investment of the plan assets, less investment expenses and administration costs, or, if the plan so provides and to the extent that the contribution relates to refunds or pension benefits that remain insured, at the monthly rate of return on personal five-year term deposits with chartered banks, as compiled by the Bank of Canada;

(2) in the case of a defined contribution plan, at the rate of return derived from the investment of all the assets of the plan or, where the plan so provides, of only such part of the assets as may be related to a particular group of members, less investment expenses and administration costs;

(3) in the case of an insured plan, at the monthly rate referred to in subparagraph 1 or, if the plan so provides, at the rate of return derived from the investment of the insurer's assets that are not included in the separate groups of assets constituted by the insurer, less, in the last case, investment expenses and administration costs.

However, if the plan provides that the members may direct what investments are made with all or part of the contributions credited to their accounts or if additional voluntary contributions are invested into a separate uninsured plan, all such investments shall be excluded from the plan assets for the purposes of subparagraphs 1 and 2 of the first paragraph, and the contributions so invested shall bear interest at the rate of return on such investments.

The provisions of this section which are applicable to the contributions paid under a defined contribution plan also apply to the contributions paid under terms in a defined benefit plan that are identical to those of a defined contribution plan.

1989, c. 38, s. 44; 2000, c. 41, s. 24.

45. Despite subparagraph 2 of the first paragraph of section 44, employer contributions paid under a defined contribution pension plan may, if the plan so provides, bear interest at the rate of return on the investment of the contributions paid by the members under that plan or another pension plan which may or may not be governed by this Act, insofar as the investment is decided by the members.

1989, c. 38, s. 45.

45.1. Where the interest due on the amounts credited to a member is to be calculated on the basis of the return obtained on the assets invested, and the investment results in a loss, such amounts may be reduced proportionally to the fraction that the amount of the loss is of such assets.

1992, c. 60, s. 6.

46. Unless provided in the plan, the method used for calculating the rates of return and the method used for applying the monthly rate of interest shall, for the purposes of sections 44 and 45, be determined by the actuary or the accountant selected by the pension committee; in the case of an insured plan, the methods shall be determined by the insurer.

The method used to calculate the loss incurred by the assets and the resulting reduction of the value of the contributions shall, for the purposes of section 45.1, be determined in the same way.

1989, c. 38, s. 46; 1992, c. 60, s. 7.

47. Where a member or beneficiary has become entitled to a benefit under the terms of the pension plan,

— additional voluntary contributions,

— member or employer contributions paid under a defined contribution plan or under terms in a defined benefit plan that are identical to those of a defined contribution plan, and

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— member contributions above the limit set by section 60,

shall continue, subject to the provisions of section 45.1, to bear interest at the rate prescribed by section 44 or 45 until such contributions are used to replace a pension under section 92, are transferred in accordance with section 98 or are refunded, or until an additional pension is purchased with such contributions as provided in section 83.

1989, c. 38, s. 47; 1992, c. 60, s. 8; 2000, c. 41, s. 25.

48. Unless a pension plan or, in the case of an insured plan, an insurance contract sets a higher rate of interest, any contribution which has not been paid into the pension fund or to the insurer shall bear interest, from the last day of the month following the month for which it should have been paid or, as the case may be, the last day of the month following the month in which it was collected, at the rate prescribed by section 44 or 45 or, in the case of the employer contribution under a defined benefit plan, at the rate of return of the pension fund.

1989, c. 38, s. 48; 2000, c. 41, s. 26.

49. Until contributions and accrued interest are paid into the pension fund or to the insurer, they are deemed to be held in trust by the employer, whether or not the latter has kept them separate from his property.

1989, c. 38, s. 49.

50. The employer shall, on remitting the contributions, inform the pension committee or, in the case of an insured pension plan, the insurer, of the reason for any significant variation in the contributions payable into the pension fund or to the insurer.

1989, c. 38, s. 50.

51. The pension committee or, in the case of an insured pension plan, the insurer shall notify Retraite Québec of any unpaid contribution within 60 days after it becomes due.

1989, c. 38, s. 51; 2000, c. 41, s. 27; 2015, c. 20, s. 61.

52. Unless they have exercised the prudence, diligence and care that a reasonable person would have exercised in comparable circumstances or unless, in the same circumstances they were unaware of the default, the directors of a legal person which, as an employer, is a party to a pension plan, shall be solidarily liable for contributions which become due and remain unpaid during their term in office, with interest, up to a contributory period of six months.

In the case of a multi-employer pension plan that is not considered as such pursuant to section 11, the directors of a subsidiary are liable for the contributions only if the parent company fails to pay the contributions referred to in the first paragraph. Where the directors of the subsidiary also fail to pay the contributions for which they are liable under this paragraph, the directors of the parent company become liable for the contributions.

The six-month limit set out in the first paragraph does not apply where the pension fund is managed by the employer.

1989, c. 38, s. 52.

53. A director shall be liable under section 52 only in either of the following cases:

(1) where the legal person has been prosecuted within two years after the date the unpaid contribution became due and full satisfaction of the amount awarded by judgment was not obtained upon execution;

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(2) where the legal person was, within two years of the date the unpaid contribution became due, the subject of a winding-up order or became bankrupt within the meaning of the Bankruptcy and Insolvency Act (Revised Statutes of Canada, 1985, chapter B-3) and the claim filed has not been discharged.

1989, c. 38, s. 53.

CHAPTER VI

REFUNDS AND PENSION BENEFITS

DIVISION I

GENERAL PROVISIONS

54. The period of continuous employment of an employee is the period during which the employee is employed by an employer, regardless of periods of temporary interruption and periods of disability during which the member continues to accumulate benefits. A period of layoff with a right of recall shall not, for the purposes of this paragraph and notwithstanding the second paragraph of section 5, be considered to be a period of temporary interruption beyond 24 consecutive months, unless the plan so permits and the employee consents thereto.

A change of employer does not, for the purposes of a pension plan, interrupt the period of continuous employment of an employee, provided Retraite Québec authorized the transfer of obligations in the cases referred to in section 22 or in Chapter XII.

In the case of a multi-employer pension plan, even where it is not considered as such pursuant to section 11, a change of employer does not interrupt the period of continuous employment of an employee if the former employer and the successor employer are parties to the plan.

1989, c. 38, s. 54; 1994, c. 24, s. 2; 2015, c. 20, s. 61.

55. The credited service of a member is the service counted under the terms of a pension plan for the vesting or calculation of pension benefits.

1989, c. 38, s. 55.

56. *(Repealed).*

1989, c. 38, s. 56; 2000, c. 41, s. 28.

57. Unless approved by Retraite Québec,

- employer contributions paid under a defined contribution plan or under terms in a defined benefit plan which are identical to those of a defined contribution plan,
- the method used for calculating the employer contributions, and
- the method used for calculating the normal pension payable under the terms of a defined benefit plan or a defined contribution-defined benefit plan,

shall not, with respect to members of the same class of employees and for the same period of credited service, vary according to the number of years of employment or of credited service.

1989, c. 38, s. 57; 2015, c. 20, s. 61.

58. Except in the following cases, a pension paid under a pension plan must be a life pension and may not be paid in any other form during the lifetime of the member or, in the case of a spouse's pension, during the lifetime of the spouse:

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(1) the temporary pension provided for in section 91.1 and the pension derived from that pension;

(2) a pension provided for in section 67.2; and

(3) the bridging benefit representing the fraction of a pension which, under the terms of the pension plan, must be paid to the member or beneficiary until a date that is neither earlier than the date on which the member becomes eligible for an early retirement pension payable under the Act respecting the Québec Pension Plan (chapter R-9), the Canada Pension Plan (Revised Statutes of Canada, 1985, chapter C-8), the Old Age Security Act (Revised Statutes of Canada, 1985, chapter O-9) or an income security program prescribed by regulation, nor later than the date on which the member becomes eligible for a retirement pension under such an Act or program.

A plan to which Chapter X applies, however, may provide that payment of a pension may be suspended for a given period at the request of the member when the member is re-employed by the employer party to the plan or, in the case of a multi-employer plan, even a plan not considered to be a multi-employer plan pursuant to section 11, by one of the employers who are parties to the plan, subject to the following conditions:

(1) if the suspension begins before the first day of the month following the month during which the member attains 65 years of age or, in the case of a member who attains 65 years of age on the first day of a month, before that day, the member accumulates new benefits in respect of his work during the period of suspension preceding that day, in accordance with the terms and conditions provided under the plan for employees of his class, up to the maximum period of service that may be credited to him under the pension plan for the purpose of calculating the normal pension;

(2) if the pension suspended is a retirement pension reduced by reason of payment having begun before the normal retirement age, the reduction must be recalculated at the end of the suspension;

(3) if the suspension continues or begins after the day referred to in subparagraph 1, the pension of which payment was suspended shall be adjusted to take account of any recalculation of the reduction pursuant to subparagraph 2 and of any new accumulated benefits referred to in subparagraph 1. The adjustment formula shall be the same as that prescribed in the plan, pursuant to the second paragraph of section 79, for the amount of pension not paid during a postponement period.

Furthermore, the additional pension resulting from the contributions paid during suspension of the pension shall be established in accordance with the rules set forth in section 78 for the calculation of the minimum value of the pension resulting from contributions paid during a postponement period.

A member who is entitled to a retirement pension, other than the normal pension, the payment of which is suspended under the second paragraph may, after the day mentioned in subparagraph 1 of that paragraph, apply for the payment of the pension as provided in section 77, which applies with the necessary modifications.

Suspension of the pension ends upon termination of the member's period of continuous employment or at the time established under paragraph 2 of section 80.

1989, c. 38, s. 58; 1994, c. 24, s. 3; 1997, c. 19, s. 5; 2000, c. 41, s. 29; 2008, c. 21, s. 3.

59. The periodic amounts payable as pension benefits, except in the case of the pension provided for in section 67.2, shall be equal unless

(0.1) the pension is adjusted under the second paragraph of section 58 or the second or third paragraph of section 67.4;

(1) the pension is replaced

(a) by a temporary pension provided for in section 91.1 or a pension derived therefrom, in which cases only the periodic amounts relating to that part of the pension that is not replaced must be equal;

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(b) by a pension referred to in section 92;

(2) each payable amount is uniformly increased by reason of the application, in determining the pension, of an index or rate specified in the plan, by reason of a redetermination of the pension pursuant to section 89.1 or by reason of the option authorized by subparagraph 2 of the first paragraph of section 93 or is uniformly modified by reason of a redetermination of the pension pursuant to the fifth paragraph of section 87, by reason of options authorized by section 91.1 or by subparagraphs 3, 4 and 6 of the first paragraph of section 93 or by reason of the partition of benefits between the member and the member's spouse in accordance with Chapter VIII;

(3) the pension is replaced by a lump sum payment or by a series of payments made pursuant to subparagraph 4 or 6 of the first paragraph of section 93;

(4) the pension is increased by reason of the termination of a disability pension under the Act respecting the Québec Pension Plan (chapter R-9) when the member reaches 65 years of age; or

(5) the amounts payable as a bridging benefit referred to in the first paragraph of section 58 are reduced pursuant to the plan on a date that occurs between the dates mentioned in that paragraph.

1989, c. 38, s. 59; 1997, c. 19, s. 6; 2000, c. 41, s. 30; 2008, c. 21, s. 4.

60. The member contributions described in section 38 paid by a member, including accrued interest, established at the time of the earliest of the following events, shall not be used to pay more than 50% of the value

(1) of any pension benefit to which the member becomes entitled, including benefits related thereto;

(1.1) of any benefit to which the member would have become entitled, including benefits related thereto, if the member had retired on the date of application for payment of the benefit, in the case of a benefit paid under subdivision 0.1 of Division III of Chapter VI;

(2) of any benefit to which a beneficiary becomes entitled, where the member dies before becoming entitled to a pension pursuant to subparagraph 2 of the first paragraph of section 86.

In addition, if the member contributes to amortization payments, the member's member contributions, with accrued interest, reduced by the excess contributions calculated in accordance with the first paragraph may not be used to pay more than the value referred to in that paragraph.

This section does not apply

(1) to pension benefits accrued under the terms of a defined contribution pension plan;

(2) to pension benefits accrued under terms in a defined benefit pension plan which are identical to those of a defined contribution pension plan;

(3) to benefits resulting from a transfer of benefits or assets, even a transfer other than a transfer under Chapter VII;

(4) to the additional pension referred to in the third paragraph of section 58, in the second paragraph of section 67.4 or in section 78 or 83;

(5) to that part of any pension benefits accrued for a period of service which, even though no employer contributions were paid in respect of the member, was nevertheless credited by reason of the exercise by the member of an election offered to him under the plan for that purpose, insofar as it is provided that all the obligations arising from the election, as estimated at the date the election is exercised, are to be borne by the member. In such a case, the value of the obligations, determined on the basis of the assumptions referred to in section 61, must be equal, at that date, to the amount paid by the member;

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(6) to a benefit to which subparagraph 1 of the first paragraph applies and which was purchased with amounts to be refunded, or is the result of the conversion of a benefit other than a life pension;

(7) *(subparagraph repealed)*;

(8) to a pension provided for in section 67.2.

1989, c. 38, s. 60; 1992, c. 60, s. 9; 1994, c. 24, s. 4; 2000, c. 41, s. 31; 2008, c. 21, s. 5; 2015, c. 29, s. 14.

60.1. *(Repealed)*.

2000, c. 41, s. 32; 2015, c. 29, s. 15.

61. The value of a pension benefit to which section 60 applies shall be determined at the date of vesting on the basis of the actuarial assumptions determined by regulation.

However, with the authorization of *Retraite Québec* and on the conditions it fixes, the value may be determined on the basis of the actuarial assumptions determined by the plan, provided the resulting value is always equal to or greater than the value that would result from the application of the first paragraph.

1989, c. 38, s. 61; 1999, c. 40, s. 254; 2000, c. 41, s. 33; 2015, c. 20, s. 61; 2015, c. 29, s. 16.

62. Any benefit determined on the basis of the normal pension shall, where the pension is established with reference to the progression of the member's remuneration in the course of his period of employment, take into account the progression until the end of the member's period of continuous employment, except

(1) where the pension plan provides that the pension will cease to be established with reference to the progression of the member's remuneration before the end of the member's period of continuous employment, provided that date is not prior to the date on which the member ceases to be an active member;

(2) where the pension plan is amended to provide that, in respect of service credited to the member from the effective date of the amendment, the pension shall cease to be established with reference to the progression of the member's remuneration.

1989, c. 38, s. 62.

63. In the case of an insured plan, or of an uninsured plan under which refunds or pension benefits are guaranteed by an insurer, coverage for service completed in the course of a fiscal year of the plan and credited under such plan shall be granted as the insurer receives contributions from the employer or from the pension committee.

Coverage for service credited in respect of any period prior to the current fiscal year of the plan shall be granted upon receipt of the total amount of the premium required by the insurer.

1989, c. 38, s. 63.

63.1. Where a pension plan cannot continue to be a registered pension plan as defined in section 1 of the Taxation Act (chapter I-3), either because the value of the benefits accrued to a member or a beneficiary under defined-benefit provisions exceeds the amount which may be transferred directly to another plan or because the amount of contributions paid each year into the pension fund under defined-contribution provisions exceeds the limits imposed, the pension committee must refund the excess to the member or beneficiary concerned.

1992, c. 60, s. 10; 2000, c. 41, s. 34.

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64. The designation of beneficiaries and the revocation thereof are governed by articles 2445 to 2459 of the Civil Code, with the necessary modifications.

1989, c. 38, s. 64; 1999, c. 40, s. 254; 2000, c. 41, s. 35.

65. With the exception of sections 63, 63.1, 64, 67, 83, 84, 86 and 93, this chapter does not apply to additional voluntary contributions.

1989, c. 38, s. 65; 2000, c. 41, s. 36.

DIVISION II

REFUNDS

66. A member who ceases to be an active member is entitled to a refund of the value of the benefits accrued to the member if less than 20% of the Maximum Pensionable Earnings established pursuant to the Act respecting the Québec Pension Plan (chapter R-9) for the year in which the member ceases to be an active member. This right may be exercised, before a pension commences to be paid to the member under the plan, by applying within 90 days after receiving the statement provided for in section 113 and, subsequently, every five years from the date on which the member ceased to be an active member, within 90 days after the date of expiry of the fifth year.

Where the requirements set out in the first paragraph are met, the pension committee may refund the value of the member's pension to the member in satisfaction of the member's rights under the plan. The committee must first send a notice to the member requesting instructions as to the refund formula; where no reply is received within 30 days of the sending of the notice, the committee may make the refund, which possibility shall be mentioned in the notice.

1989, c. 38, s. 66; 2000, c. 41, s. 37.

66.1. A member who has ceased to be an active member, whose period of continuous employment has ceased and who has not been residing in Canada for at least two years is entitled to a refund of the value of the benefits accrued to the member.

2000, c. 41, s. 38.

67. Every member who ceases to be an active member is entitled to withdraw the value of additional voluntary contributions credited to his account, with accrued interest, except if the contributions have been used to purchase a pension or, subject to section 102, if the amounts come from a transfer, even otherwise than under section 98.

The right to withdraw contributions may be exercised by applying within 90 days after receiving the statement provided for in section 113 and, subsequently, every five years from the date on which the member ceased to be an active member, within 90 days after the date of expiry of the fifth year.

1989, c. 38, s. 67; 2000, c. 41, s. 39.

67.1. Notwithstanding the second paragraph of section 5, no pension plan may provide for refunds contrary to the provisions of this Act.

However, this section does not prevent a plan from allowing more time for the exercise of the right to a refund.

2000, c. 41, s. 40.

Supplemental Pension Plans Act, C.Q.L.R., c. R-15.1

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DIVISION III

PENSION BENEFITS

§ 0.1. — *Phased retirement benefits*

2008, c. 21, s. 6.

67.2. A pension plan to which Chapter X applies or which is referred to in paragraph 1 of section 116 may provide that a pension be paid, on application, to a member who is employed by an employer party to the plan and who meets the following conditions:

- (1) the member makes an agreement to that effect with the employer;
- (2) the member is at least 60 years of age or, if under 60 years of age, the member is at least 55 years of age and, if the period of continuous employment ended on the date payment of the pension begins, would be entitled to an early retirement pension without any reduction by reason of payment having begun before the normal retirement age; and
- (3) the member is under 65 years of age.

2008, c. 21, s. 6.

67.3. The details of the pension paid under section 67.2 are set under the agreement referred to in that section. However, the annual amount of the pension may not exceed,

- (1) in the case of a member who receives a retirement pension under the plan or is entitled to a retirement pension that is suspended at the time the member applies for payment of the pension, 60% of the annual amount of the pension to which the member is entitled at that time, not considering any benefits referred to in section 83 or 104; or,
- (2) in the case of a member not referred to in subparagraph 1 who is not receiving a retirement pension under the plan on the date the member applies for payment of the pension, 60% of the annual amount of any pension to which the member would have been entitled if the member had retired on that date, not considering any benefits referred to in section 83 or 104, the spouse's right to a pension referred to in section 87, or the options provided for in the plan.

In case of conflict, the details set out in the agreement prevail over those set out in the plan.

Neither the agreement nor, despite the second paragraph of section 5, the plan may contain provisions that allow the payment of the pension payable under section 67.2 if the member is 65 years of age or over. In addition, the member may not receive, for the same period, that pension and another benefit payable under the plan, except benefits referred to in section 67.5, 83 or 104.

The payment of any benefit, other than benefits referred to in section 67.5, 83 or 104, that the member receives at the time the member applies for payment of a pension provided for in section 67.2, is suspended for the period during which the member receives that pension. The plan may provide that the payment of benefits provided for in section 67.5, 83 or 104 is suspended at the request of the member who receives a pension provided for in section 67.2.

2008, c. 21, s. 6.

67.4. The remuneration paid during the period beginning with the payment of a benefit referred to in this subdivision and ending on the date on which the payment of the retirement pension begins or begins again, or the date the member reaches 65 years of age, whichever occurs first, may not be taken into consideration for the calculation of the benefits relating to credited service that does not relate to that period, unless it is to the advantage of the member.

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Also, the following adjustments apply:

(1) in the case referred to in subparagraph 1 of the first paragraph of section 67.3, if contributions are paid during that period, the member is entitled to an additional pension determined in accordance with the rules set forth in section 78 for the calculation of the minimum value of the pension resulting from the contributions paid during a postponement period. In addition, if the retirement pension of the member was reduced by reason of payment having begun before the normal retirement age, the reduction must be recalculated at the end of the suspension of payment provided for in section 67.3; and

(2) in the case referred to in subparagraph 2 of the first paragraph of section 67.3, if contributions were paid during that same period, the member is entitled to a pension that cannot be less than the pension resulting from the application of the rules set forth in section 78.

The adjustments provided for in the second paragraph also apply to the benefits referred to in section 83 or 104, the payment of which was suspended under the fourth paragraph of section 67.3.

2008, c. 21, s. 6.

67.5. A pension plan which, without being a defined contribution plan, includes provisions identical to those of that type of plan, and a plan referred to in paragraph 2 or 3 of section 116 may provide that a benefit other than a pension be paid, on application, to a member at least 55 years of age but under 65 years of age who is employed by an employer party to the plan with whom the active member makes an agreement to that effect.

The details of the benefit are set under the agreement, with the proviso that the annual amount of the benefit may not exceed 60% of the ceiling on the life income the member could receive under a replacement pension purchased under section 92. That amount is established at the beginning of the year during which payment of the benefit begins, based on the amounts credited to the member at that date and the age of the member at the end of the preceding year. The amount must be redetermined at the beginning of each year. Neither the agreement nor, despite the second paragraph of section 5, the plan may contain provisions that are more advantageous than those contained in this section.

In case of conflict, the details set out in the agreement prevail over those set out in the plan.

The value of the benefits to which the member is entitled, established on the date the benefit is paid, is reduced by the amount of that benefit.

2008, c. 21, s. 6.

§ 1. — *Deferred pension*

68. A deferred pension is a retirement pension, payment of which is deferred until normal retirement age.

A deferred pension shall have the same characteristics as the normal pension, except

(1) those relating to a postponed pension referred to in sections 76 to 80;

(2) the pension supplement provided by the pension plan for the payment of a minimum normal pension, which may, with the authorization of Retraite Québec, not be counted for the purpose of determining the deferred pension.

1989, c. 38, s. 68; 2015, c. 20, s. 61.

69. Every member who ceases to be an active member is entitled to a deferred pension equal to or greater than the normal pension.

1989, c. 38, s. 69; 2000, c. 41, s. 41.

Supplemental Pension Plans Act, C.Q.L.R., c. R-15.1

SUPPLEMENTAL PENSION PLANS

§ 1.1. — *Early benefit*

1997, c. 19, s. 7.

69.1. Any active member whose working time is reduced pursuant to an agreement with his employer and who is 10 years or less under normal retirement age or who has attained or exceeded that age is entitled, on request, for each year covered by the agreement, to the payment, in a lump sum, of a benefit equal to the lowest of the following amounts:

- (1) 70% of the reduction in his remuneration resulting from the reduction in his working time during the year;
- (2) 40% of the Maximum Pensionable Earnings for the year concerned established pursuant to the Act respecting the Québec Pension Plan (chapter R-9);
- (3) the value of his benefits under the plan, established on the assumption that he ceases to be an active member on the date on which he applies for the payment of the benefit.

Notwithstanding the second paragraph of section 5, the plan may not contain provisions that are more advantageous than those contained in the first paragraph. Moreover, an active member may not receive, in the same year, the benefit provided for in this section and that provided for in section 67.5 or a pension payable under section 77 or replacing that pension.

The reduction in the member's pension resulting from the payment of the benefit provided for in this section may not exceed the amount of the benefit. Moreover, the remuneration paid during the period in which the member is entitled to the benefit shall not be taken into consideration for the computation of the benefits relating to credited service that does not relate to that period, unless it is to the advantage of the member.

The employer shall, within 60 days of the date on which he becomes party to an agreement referred to in the first paragraph, transmit to the pension committee the name of every member to whom that paragraph applies.

1997, c. 19, s. 7; 2000, c. 41, s. 42; 2008, c. 21, s. 7.

§ 2. — *Early retirement pension*

70. An early retirement pension is a retirement pension, payment of which begins before normal retirement age.

1989, c. 38, s. 70.

71. Every member whose period of continuous employment is terminated within 10 years of the date on which the member will attain normal retirement age is entitled to an early retirement pension.

However, a member who is entitled to a deferred pension may, whether or not he has terminated continuous employment, receive early payment of that pension if he applies therefor within 10 years of attaining the normal retirement age fixed by the plan giving him entitlement to the deferred pension.

1989, c. 38, s. 71; 1992, c. 60, s. 11; 2000, c. 41, s. 43.

72. The value of the early retirement pension shall be equal to or greater than the value of the normal pension, discounted on the date on which payment of the early retirement pension begins.

1989, c. 38, s. 72.

Supplemental Pension Plans Act, C.Q.L.R., c. R-15.1

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§ 3. — *Normal pension*

73. A normal pension is a retirement pension, payment of which begins at normal retirement age.

Normal retirement age shall not be later than the first day of the month following the month in which the member attains 65 years of age.

1989, c. 38, s. 73.

74. Unless section 76 prescribes the postponement of the normal pension, every active member, except an active member who has received a retirement pension under the pension plan, is entitled to the normal pension on attaining normal retirement age.

1989, c. 38, s. 74; 2008, c. 21, s. 8.

§ 4. — *Postponed pension*

75. A postponed pension is a retirement pension, payment of which begins after normal retirement age.

1989, c. 38, s. 75.

76. The normal pension of a member shall be postponed if, after normal retirement age, he remains employed by the employer by whom he was employed at normal retirement age.

1989, c. 38, s. 76.

77. Every member is entitled, on application, to the payment of all or part of his normal pension during the postponement period but only to the extent necessary to offset any permanent reduction in remuneration that occurred during such period.

However, unless otherwise stipulated in the pension plan, the member may, following an agreement with his employer, receive all or part of his pension, regardless of the limit set by the first paragraph.

No member may exercise this right more than once per twelve-month period, except pursuant to an agreement with the pension committee.

1989, c. 38, s. 77.

78. If contributions are paid during the postponement period, the resulting additional amount of pension shall be of a value equal to or greater than that of the benefits that could be purchased, at the end of the postponement period, with the member contributions paid during such period, including accrued interest. The additional pension must also meet the requirements set out in section 84.

1989, c. 38, s. 78; 2000, c. 41, s. 44.

79. Where all or part of a normal pension is postponed, the amount of pension not paid during the postponement period shall be adjusted at the end of the postponement.

The pension plan shall prescribe the adjustment formula.

1989, c. 38, s. 79.

80. Postponement of the normal pension ends

(1) upon termination of the member's period of continuous employment with the employer by whom he was employed at normal retirement age;

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(2) when, by reason of the postponement, the plan no longer qualifies as a registered pension plan as defined in section 1 of the Taxation Act (chapter I-3).

1989, c. 38, s. 80; 1991, c. 25, s. 180.

81. Where a normal pension is postponed under this Act or where a pension plan allows a member who is entitled to a pension that has become payable to replace all or part of it, if he decides to postpone it until after normal retirement age, by an adjusted pension, the adjustment shall be made so as to ensure that the pension payable at the end of the postponement is actuarially equivalent to the pension the payment of which would have begun at normal retirement age, had the pension not been postponed.

The actuarially equivalent pension shall be determined on the basis of the assumptions referred to in section 61 and which, at the date the member attained normal retirement age, were used to determine the value of the pension benefits to which section 60 applies and to which the member is entitled on that date.

1989, c. 38, s. 81; 2000, c. 41, s. 45.

§ 5. — *Disability pension*

82. The value of the pension granted under the pension plan to a member who has become disabled and who, for that reason, had to terminate his employment with an employer who is a party to the plan or cease to be an active member, shall be equal to or greater than the value of the benefits to which the member would have been entitled had he not become disabled, discounted on the date payment of the pension begins.

1989, c. 38, s. 82.

82.1. Notwithstanding section 58, the plan may provide that payment of the disability pension is interrupted when the member ceases to be disabled within the meaning of the plan.

The value of the benefits accumulated by the member in respect of service credited under the plan before payment of the disability pension begins shall not, at the time payment of the pension is interrupted, be less than the amount *m* calculated according to the following formula:

$$a \times \frac{b}{c} = m$$

where

“*a*” represents the value of the benefits accumulated by the member on the date on which payment of the disability pension begins, established regardless of the value of that pension;

“*b*” represents the value of a pension of \$1 paid annually beginning on the date on which payment of the disability pension is interrupted and on each anniversary date thereafter;

“*c*” represents the value of a pension of \$1 paid annually beginning on the date on which payment of the disability pension begins and on each anniversary date thereafter.

Values are established on the date on which payment of the disability pension is interrupted, on the basis of the assumptions referred to in section 61 and used on that date to determine the value of the pension benefits to which section 60 applies.

1994, c. 24, s. 5; 2000, c. 41, s. 46.

Supplemental Pension Plans Act, C.Q.L.R., c. R-15.1

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§ 6. — *Additional pension*

83. Except in the case of a defined contribution plan, every member whose member contributions, with accrued interest, exceed the limit set by section 60, or who is credited with voluntary additional contributions, is entitled, from the date on which a pension other than a pension provided for in section 67.2 begins to be paid to him under the pension plan, to purchase an additional pension with such excess amount or contributions and accrued interest.

The plan may, however, allow the member to choose between the additional pension purchased with his additional voluntary contributions and any other benefits of equal value determined by the plan.

1989, c. 38, s. 83; 2008, c. 21, s. 9.

84. The additional pension shall be determined on the basis of the assumptions referred to in section 61 and which, at the date of determination of the pension, are used to determine the value of other benefits to which section 60 applies and which are vested on that date.

In addition, the additional pension shall have the same characteristics as the normal pension, except the pension supplement provided by the pension plan for the payment of a minimum normal pension.

1989, c. 38, s. 84; 2000, c. 41, s. 47.

§ 7. — *Survivor benefits*

85. For the purposes of this subdivision, the spouse of a member is the person who, on the day of reference defined in the second paragraph,

(1) is married to or in a civil union with the member;

(2) has been living in a conjugal relationship with a member who is neither married nor in a civil union, whether the person is of the opposite or the same sex, for a period of not less than three years, or for a period of not less than one year if

— at least one child is born, or to be born, of their union;

— they have adopted, jointly, at least one child while living together in a conjugal relationship; or

— one of them has adopted at least one child who is the child of the other, while living together in a conjugal relationship.

Spousal status is established as at either the day a member begins receiving payment of a retirement or disability pension, a pension that replaces it or a bridging benefit, or the day preceding the death of the member, whichever date is adopted by the pension plan, or, if neither is adopted, whichever date occurs first. However, if the member dies without having received payment of such a pension or benefit, spousal status is established as at the day preceding the death.

For the purposes of subparagraph 2 of the first paragraph, the birth or adoption of a child prior to the period of conjugal relationship existing on the day as of which spousal status is established may qualify a person as a spouse.

Notwithstanding subparagraph 1 of the first paragraph, a person who is legally separated from bed and board on the day as of which spousal status is established is not entitled to any benefit under this subdivision unless the person is the member's successor or was named in a notice sent by the member under section 89.

1989, c. 38, s. 85; 1999, c. 14, s. 26; 2000, c. 41, s. 48; 2002, c. 6, s. 194; 2008, c. 21, s. 10.

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86. Where a member dies without having received payment of a retirement or disability pension, a pension that replaces it or a bridging benefit, the member's spouse or, if there is no spouse, the member's successors shall be entitled to a lump sum benefit equal to or greater than

- (1) the value of any retirement or disability pension to which the member was entitled prior to death; or
- (2) if the member was not entitled to a retirement or disability pension prior to death, the value of the deferred pension to which the member would have been entitled had the member ceased to be an active member on that day and not died.

The value of the benefit provided for in the first paragraph shall be determined without reference to the assumptions as to survival or mortality for the period prior to the first payment of the pension. Moreover, the following shall be added, where applicable, to the value of the benefit:

- (1) any voluntary additional contribution credited to the account of the member and any member contribution paid in excess of the limit set in section 60, with accrued interest, as well as any amounts previously transferred, even otherwise than under section 98, with accrued interest, or the value of the pension purchased with those amounts without reference to the death of the member; and
- (2) any interest accrued between the date of death and the date of payment of the lump sum benefit, at the rate used for determining the value thereof.

This section does not apply if the surviving spouse of the member is entitled, upon the member's death, to a pension equal to or greater than the benefit provided for in this section.

1989, c. 38, s. 86; 1997, c. 19, s. 8; 1999, c. 40, s. 254; 2000, c. 41, s. 49; 2008, c. 21, s. 11; 2015, c. 29, s. 17.

87. The spouse of a member is entitled to a pension from the death of the member if, before his death, the member was receiving any of the following pensions:

- (1) a retirement or disability pension or a pension that replaces it;
- (2) a pension the amount of which is adjusted to take into account an amount equal to the benefits determined under the Old Age Security Act (Revised Statutes of Canada, 1985, chapter O-9), the Act respecting the Québec Pension Plan (chapter R-9) or a similar plan within the meaning of paragraph *u* of section 1 of the latter Act;
- (3) *(subparagraph repealed)*;
- (4) a bridging benefit referred to in the first paragraph of section 58.

The spouse is also entitled to a pension as of the death of the member if, before the death, the member was entitled to a pension referred to in the first paragraph, the payment of which was suspended under the second paragraph of section 58 or under section 67.3.

The amount of the spouse's pension must be equal to or greater than 60% of the amount of the member's pension, including,

- (1) when the member dies during the period during which payment of the pension was suspended under section 58 or 67.3, the proceeds of the adjustment of the pension required by section 58 or 67.4 at the end of the period of suspension; and
- (2) during the period of replacement, the amount of any temporary pension and, until the date on which the member, had the member survived, would have ceased receiving it, the amount of any bridging benefit.

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The amount calculated in accordance with the third paragraph is increased by an amount equal to or greater than 60% of the amount of the pension provided for in section 83 or 104 that the member was receiving before the member's death or the payment of which was suspended under section 58 or 67.3, adjusted, if the member died while the pension was suspended, as provided for in section 58 or 67.4, with the necessary modifications.

The sum of the pension provided for the spouse and the member's pension, reduced accordingly, shall, on the date payment of the pension begins, be at least actuarially equivalent to the pension the member would have received had it not been for the benefit granted to the spouse by this section. In addition, if payment of a pension provided for in section 83 or 104 began before the date a person acquired the status of spouse of the member, the pension must be redetermined at that date to take into account the spouse's entitlement to the pension provided for in this section.

1989, c. 38, s. 87; 1997, c. 19, s. 9; 2000, c. 41, s. 50; 2008, c. 21, s. 12.

88. Where a member whose pension was postponed dies during the postponement period, his spouse shall be entitled to a pension the value of which shall be equal to or greater than the higher of

(1) the value of the pension the spouse would have been entitled to receive pursuant to section 87 if payment of the postponed pension had begun on the day preceding the death of the member, unless the spouse has waived such pension; and

(2) the value of the death benefit the spouse would have been entitled to receive pursuant to section 86.

Where only part of the pension has been postponed, the spouse is entitled, in addition to the pension to which he is entitled pursuant to section 87 in respect of the partial pension the member was receiving, to a pension the value of which must be equal to or greater than the higher of the values described in the first paragraph, reduced by multiplying it by the fraction that the part of the postponed pension is of the total pension.

Where the member does not have a spouse, his successors shall be entitled to the pension benefit referred to in section 86, reduced as provided in the second paragraph of this section in the case of partial postponement of the pension.

1989, c. 38, s. 88; 1994, c. 24, s. 6; 1999, c. 40, s. 254.

88.1. The spouse of a member may waive the rights conferred by this subdivision by transmitting to the pension committee a statement containing the information prescribed by regulation. The spouse may also revoke the waiver provided the committee is notified in writing before the member's death or, in the case of the pension referred to in the second paragraph of section 87, before the first payment of the member's pension.

A waiver under this section does not entail a waiver of the rights which may devolve upon the spouse as the member's successor. In addition, notwithstanding such a waiver, the pension plan is deemed, for the purposes of article 415 of the Civil Code, to be governed by an Act which grants a right to death benefits to the surviving spouse.

2000, c. 41, s. 51.

89. The right of a member's spouse to benefits under this subdivision is terminated by separation from bed and board, divorce or marriage annulment, by the dissolution or annulment of their civil union or by the cessation of conjugal relationship except if the member has notified the pension committee in writing to pay the pension to the spouse notwithstanding the divorce, annulment of marriage, separation from bed and board, dissolution or annulment of the civil union or cessation of conjugal relationship.

1989, c. 38, s. 89; 1999, c. 40, s. 254; 2000, c. 41, s. 52; 2002, c. 6, s. 195.

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89.1. Where a member's pension has been established having regard to the right of the member's spouse to a pension under section 87 and the spouse's right is terminated pursuant to section 89, the member is entitled, on request to the pension committee, to a pension redetermination as of the effective date of the judgment granting the separation from bed and board, the divorce or the annulment of marriage, as of the date of dissolution of the civil union or as of the date of the cessation of the conjugal relationship. The redetermined pension shall be in the same amount and have the same characteristics as the pension that would be payable to the member at the date of redetermination had the member not had a spouse on the date the payment of the pension began.

Unless the pension committee has received the notice provided for in section 89, it must also redetermine the member's pension if the benefits accrued to the member under the plan are partitioned, pursuant to section 107 or 110, subsequent to the first payment to the member of a pension established having regard to the spouse's right to a pension under section 87.

The redetermination of a pension under this section cannot alone operate to reduce the amount of a pension paid to the member.

2000, c. 41, s. 52; 2002, c. 6, s. 196.

90. Payment of a pension to a spouse shall not cease by reason of the fact that the spouse has remarried, has contracted a civil union or is living in a conjugal relationship with another person of the opposite or the same sex.

1989, c. 38, s. 90; 1999, c. 14, s. 27; 2002, c. 6, s. 197.

DIVISION III.1

VARIABLE BENEFITS

2015, c. 29, s. 18.

90.1. A pension plan that includes defined contribution provisions may allow a member who has ceased to be an active member or, on the death of such a member, the member's spouse to elect to receive variable benefits from the funds the member or spouse holds under the defined contribution provisions, on the conditions and within the time prescribed by regulation.

2015, c. 29, s. 18.

DIVISION IV

OPTIONS

91. *(Repealed).*

1989, c. 38, s. 91; 1991, c. 25, s. 181; 2000, c. 41, s. 53.

91.1. Every member or spouse who has become entitled to a pension under a pension plan is entitled, under conditions prescribed by regulation, to replace the pension, in whole or in part, before payment begins, by a temporary pension the amount of which is fixed by him before payment begins and which meets the following requirements:

(1) the annual amount of the pension must not exceed 40% of the Maximum Pensionable Earnings established pursuant to the Act respecting the Québec Pension Plan (chapter R-9) for the year in which payment of the pension begins, that limit being reduced, where applicable, by the annual amount of any other temporary benefit to which he is entitled under the plan;

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(2) payment of the temporary pension must not begin more than 10 years before the member or spouse attains normal retirement age, and must end no later than the last day of the month following the month in which the member or spouse attains 65 years of age.

Notwithstanding subparagraph 2 of the first paragraph, the pension plan may allow a member or spouse who is more than 10 years under normal retirement age and who has become entitled to a pension to elect, before payment of the pension begins, to replace it by a pension the amount of which is adjusted by reference to the benefits determined under the Old Age Security Act, the Act respecting the Québec Pension Plan or a similar plan within the meaning of paragraph *u* of section 1 of the latter Act. In such a case, the annual amount of the replacement pension increased, where applicable, by the annual amount of any other temporary benefit to which the member or the spouse is entitled under the plan shall not exceed the lesser of

(1) 40% of the Maximum Pensionable Earnings established pursuant to the Act respecting the Québec Pension Plan for the year in which payment of the pension begins; and

(2) the amount of the temporary benefit to which the member or spouse would be entitled if the entire life pension were converted into a temporary pension ceasing on the last day of the month following the month in which the member or the spouse attains 65 years of age.

Upon attaining the age which is 10 years under normal retirement age, a member or spouse who is receiving a pension under the second paragraph is entitled to elect to replace it by a temporary pension which meets the conditions set out in the first paragraph.

Notwithstanding the second paragraph of section 5, the plan may not contain provisions that are more advantageous than those contained in this section.

The value of the temporary pension shall be equal to or greater than the value of the pension or of the part of the pension it replaces, discounted on the date of the replacement.

1997, c. 19, s. 10; 2000, c. 41, s. 54.

92. Every member or spouse who has become entitled to a pension under a pension plan is entitled, under conditions prescribed by regulation, to replace the pension by a life or temporary pension, purchased under a contract, the amount of which may vary each year. The pension may also, in the cases determined by regulation, be replaced by a lump-sum payment.

1989, c. 38, s. 92; 1997, c. 19, s. 11.

92.1. Unless payment of the pension is guaranteed for a longer period, a member who has become entitled to a pension under a pension plan is entitled to elect, before payment of the pension begins, to replace it by a pension the payment of which is guaranteed for 10 years.

2000, c. 41, s. 55.

93. The pension plan may permit a member or the spouse of a member who has become entitled to a pension to elect, before payment of the pension begins, to replace all or part of the pension

(1) *(subparagraph repealed)*;

(2) by a pension the amount of which is increased periodically according to an index or at a rate provided in the plan;

(3) by a pension the amount of which is adjusted by reason of provisions relating to the payment of benefits payable after the death of the member or his spouse, or by reason of amendments to such provisions; unless the spouse consents thereto, before the date on which payment of the member's pension begins, the amount of the spouse's pension which results from the election shall not be less than 60% of the amount of the member's pension;

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(4) by a single payment or a series of payments in the event of a physical or mental disability that reduces life expectancy;

(5) *(subparagraph repealed)*;

(6) by other benefits prescribed by regulation.

The replacement value shall be equal to or greater than the value of the replaced pension, discounted at the time of replacement.

No option other than those mentioned in the first paragraph may be permitted by the plan.

1989, c. 38, s. 93; 1997, c. 19, s. 12; 2000, c. 41, s. 56.

93.1. Despite sections 91.1 to 93, a member who has become entitled to a pension provided for in section 67.2 may not replace it.

2008, c. 21, s. 13.

DIVISION V

INTEGRATION

94. Where a pension plan provides that, for the purpose of determining the normal pension, all or part of the benefits payable under the public plan established by the Act respecting the Québec Pension Plan (chapter R-9) or the Canada Pension Plan (Revised Statutes of Canada, 1985, chapter C-8) will serve to reduce the member's benefits, the reduction shall not be greater than the amount m calculated according to the following formula:

$$r \times \frac{a}{35} = m$$

where

“ r ” represents all or part of the benefit payable under the public plan;

“ a ” represents the number of years of service credited under the pension plan.

The fraction $a/35$ shall not be greater than 1.

No reduction other than the reduction made by reference to the retirement benefit payable under the public plan may be made in determining the normal pension.

1989, c. 38, s. 94; 2000, c. 41, s. 57.

95. The amount of the benefit payable under a public plan that is required to be deducted under a pension plan shall, if necessary, be established on the basis of an estimation from the time the member becomes entitled to a pension under the plan and without reference to any reduction of that benefit subsequent to a partition of benefits between spouses.

If, under the plan, the deferred pension is determined with reference to the remuneration paid to the member after he became entitled to a deferred pension, the amount shall be established at a date not subsequent to the date of the last remuneration included in the calculation.

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Moreover, where the amount is an estimation, it shall be based on data that are compatible with those used for the determination of the benefits paid under the public plan at the date of estimation.

1989, c. 38, s. 95; 2000, c. 41, s. 58.

96. In no case may benefits derived from an amendment to a public plan referred to in section 94 be taken into account for the determination of a benefit if that results in a reduction of the benefits of the member, except

(1) where the member applies therefor, provided the resulting benefit is of an equal or greater value;

(2) where the pension plan is amended to take into account the new benefits derived from the public plan, provided only the pension benefits relating to service credited after the amendment are reduced;

(3) where the benefit concerned is not determined on the basis of the normal pension, or where the value of the benefit exceeds the value of the deferred pension, provided the plan is amended to provide for the reduction of the benefit or excess value and only the benefits the payment of which begins after the amendment are reduced.

1989, c. 38, s. 96; 2000, c. 41, s. 59.

97. The normal pension determined with reference to a benefit payable under the terms of a public plan referred to in section 94 shall not be reduced again to take into account an amendment to the public plan or an increase of the benefit.

The same rule applies in respect of any other benefit determined with reference to the benefit payable under the terms of a social security program established by law.

1989, c. 38, s. 97.

CHAPTER VII

TRANSFERS OF BENEFITS AND ASSETS

98. Every plan member is entitled, subject to the conditions and time limits set out in this chapter, to transfer to such pension plan as he indicates

(1) the additional voluntary contributions credited to his account, with accrued interest;

(2) the amount corresponding to the value of any pension benefit, including a benefit guaranteed by an insurer, to which the member is entitled but of which payment has not begun. Such value must be equal to or greater than,

(a) where the transfer is applied for within the time limit set out in subparagraph 1 of the second paragraph of section 99, the value of the member's pension benefit determined pursuant to section 61;

(b) where the transfer is not applied for within that time limit, the value of the member's pension benefit determined with reference to related benefits and on the basis of the assumptions referred to in section 61 which are used, on the day the transfer is applied for, to determine the value of other pension benefits to which section 60 applies and which are vested on that date;

(3) the member contributions which exceed the limit set by section 60, with accrued interest;

(4) the amounts previously transferred, even otherwise than under this chapter, with accrued interest, or the amount corresponding to the value of the pension purchased with the amounts transferred; that value must be determined on the basis of the assumptions referred to in section 61 which are used, at the date of vesting of the pension if the transfer is applied for within the time limit set out in subparagraph 1 of the second

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paragraph of section 99 or at the date the transfer is applied for in other cases, to determine the value of other pension benefits to which section 60 applies and which are vested on that date.

Interest calculated, until the date of transfer, at the rate used to determine the value of the pension benefit to which the member is entitled shall be added to the values referred to in subparagraphs a and b of subparagraph 2 and in subparagraph 4 of the first paragraph.

For the purposes of this section, the expression “pension plan” includes, in addition to the pension plans governed by this Act, any pension plan or annuity contract prescribed by regulation.

1989, c. 38, s. 98; 2000, c. 41, s. 60.

99. The right to a transfer under section 98 may be exercised by a member who is at least 10 years under the normal retirement age set by the plan. However, a pension plan may prohibit members who, upon termination of continuous employment, would be entitled to an early retirement pension equal to or greater than the normal pension from making transfers to another pension plan.

Moreover, this right may be exercised within one of the following time limits:

- (1) within 90 days from receipt of a statement pursuant to section 113;
- (2) subsequently and not later than the date provided for in paragraph 3, every five years from the date on which the member ceased to be an active member, within 90 days from the date of expiry of every fifth year;
- (3) within 90 days from the date on which a member who ceased to be an active member attains an age which is 10 years under normal retirement age.

The age restriction in respect of the member and the prohibition referred to in the first paragraph, and the time limit fixed in subparagraph 3 of the second paragraph do not apply to the transfer of amounts from a defined contribution plan or to the transfer of contributions paid under terms in a defined benefit plan that are identical to those of a defined contribution plan. A member who is less than 10 years under normal retirement age or who has attained or exceeded normal retirement age is entitled to transfer those amounts at all times, insofar as payment of the pension has not begun.

The pension committee has 60 days from the receipt of a transfer application to effect the transfer.

1989, c. 38, s. 99; 2000, c. 41, s. 61.

100. *(Repealed).*

1989, c. 38, s. 100; 2000, c. 41, s. 62.

101. The conditions set out in sections 143 to 146 for the payment of the benefits of members and beneficiaries apply to the payment of transferred amounts.

1989, c. 38, s. 101; 2006, c. 42, s. 10.

102. Unless the pension plan provides that the amount must be used for the purchase of a pension, a member who ceases to be an active member is entitled to the refund of any amount transferred, even otherwise than under this chapter, which would have been refundable under the pension plan from which it was transferred.

1989, c. 38, s. 102; 1997, c. 19, s. 13; 2000, c. 41, s. 63.

103. Unless the pension plan sets a higher rate of interest, and subject to the provisions of section 45.1, any amount transferred, even otherwise than under this chapter, bears interest, from the date of the transfer

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and until a pension is purchased with such amount or such amount is refunded under section 102, at the rate prescribed by section 44 or 45 if the amount is transferred to a pension plan governed by this Act.

1989, c. 38, s. 103; 1992, c. 60, s. 12; 2000, c. 41, s. 64.

104. From the date payment of a pension other than a pension provided for in section 67.2 begins, a member is entitled to the pension purchased with amounts transferred, even otherwise than under this chapter, which were not refunded pursuant to section 102.

1989, c. 38, s. 104; 2000, c. 41, s. 65; 2008, c. 21, s. 14.

105. The amount of the pension paid under a pension plan governed by this Act and purchased with amounts transferred, even otherwise than under this chapter, shall be determined on the basis of the assumptions referred to in section 61 which, at the date of determination of the pension, are used to determine the value of other pension benefits to which section 60 applies and which are vested on that date.

The pension shall have the same characteristics as the normal pension, except the pension supplement provided by the plan for the payment of a minimum normal pension.

This section does not apply to a pension purchased with amounts transferred under section 106.

1989, c. 38, s. 105; 2000, c. 41, s. 66.

106. Where the transfer is made at the request of a member who availed himself of a general agreement prescribing the conditions of transfer, between pension plans, of benefits or assets in respect of a given group of members, the benefits attributed to the member following the transfer shall be equal to or greater than the benefits which, determined on the basis of the assumptions referred to in section 61 which, at the date of the transfer, are used to determine the value of other pension benefits to which section 60 applies and which are vested on that date, would have resulted from the transfer to a plan not governed by this Act of the assets related to the benefits that the member had accumulated before the transfer.

1989, c. 38, s. 106; 2000, c. 41, s. 67.

CHAPTER VIII

TRANSFER OF BENEFITS BETWEEN SPOUSES

107. In the event of separation from bed and board, divorce or marriage annulment or the dissolution otherwise than by death or the annulment of a civil union, the benefits accumulated by a member under a plan shall, upon application in writing to the pension committee, be partitioned between the member and his spouse to the extent provided in the Civil Code or by a court judgment or a notarized joint declaration dissolving a civil union.

Where the court or the notarized declaration awards to the spouse of a member, in payment for a compensatory allowance, benefits accumulated by the member under a pension plan, the benefits shall, upon application in writing to the pension committee, be transferred to the spouse to the extent provided by the court judgment or by the notarized declaration.

1989, c. 38, s. 107; 2002, c. 6, s. 198.

108. Upon presentation of an application for separation from bed and board, divorce or marriage annulment, for the dissolution or annulment of a civil union or for the payment of a compensatory allowance, the member and his or her spouse are entitled, upon application in writing to the pension committee, to obtain a statement of the benefits accumulated by the member under the plan and the value thereof at the date of the institution of the action; the statement shall also contain any other information prescribed by regulation. The benefits and the value thereof shall be determined according to the rules fixed by regulation.

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The spouse may thereupon examine the text of the pension plan and the documents referred to in section 114, on the conditions provided therein.

The member and the member's spouse are also entitled to receive a statement of benefits, upon an application in writing to the pension committee, for the purposes of pre-hearing mediation concerning a family matter or of a joint procedure before a notary for the dissolution of their civil union. The statement shall contain the information determined by regulation.

1989, c. 38, s. 108; 2000, c. 41, s. 68; 2002, c. 6, s. 199.

109. Except as provided by regulation, the benefits awarded to the spouse following partition of the benefits of the member or as payment for a compensatory allowance can only be used for the purchase of a life pension, whether or not the benefits have been transferred to a pension plan contemplated in section 98.

However, the benefits awarded to the spouse following a seizure for non-payment of support in accordance with articles 694 and following of the Code of Civil Procedure (chapter C-25.01) shall be paid in a lump sum, subject to the terms and conditions prescribed by regulation.

1989, c. 38, s. 109; 2000, c. 41, s. 69; I.N. 2016-01-01 (NCCP).

110. In the event of cessation of conjugal relationship between a spouse, within the meaning of subparagraph 2 of the first paragraph of section 85, and a member of the plan, the member and spouse may, in the ensuing year, agree in writing to a partition of the benefits accumulated by the member under the pension plan; such an agreement cannot, however, confer on the spouse more than 50% of the value of such benefits.

For that purpose, the member and the spouse shall be entitled to obtain, upon application in writing to the pension committee, the statement described in section 108 and established at the date on which they ceased to live together in a conjugal relationship.

An agreement under the first paragraph may also apply to the amounts transferred to another pension plan pursuant to section 98.

Section 109 applies to benefits conferred on the spouse pursuant to an agreement referred to above. In addition, articles 694 and following of the Code of Civil Procedure (chapter C-25.01) apply, with the necessary modifications, to the partition of benefits agreed upon between the spouses for the purposes of this section.

1989, c. 38, s. 110; 2000, c. 41, s. 70; I.N. 2016-01-01 (NCCP).

110.1. The cost of producing the statement referred to in section 108 and the expenses incurred for effecting the transfer of benefits between spouses may be claimed from the spouses only up to the limit fixed by the Minister, after consultation with Retraite Québec, and published in the *Gazette officielle du Québec*. The limit may vary according to the type of plan.

The costs and expenses claimed from the spouses shall be divided equally between them, unless they decide to opt for another form of apportionment. Payment of the amount that must be borne by each spouse may be effected by the pension committee through a reduction of the value of the spouse's benefits, unless that spouse chooses another method of payment.

1994, c. 24, s. 7; 2015, c. 20, s. 61.

CHAPTER IX

INFORMATION TO MEMBERS

111. The pension committee shall provide to each member or employee eligible for membership a written summary of the pension plan, including each of the particulars referred to in the second paragraph of section

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14, together with a brief description of a member's rights and obligations under the plan and this Act and a statement of the principal advantages of membership in the pension plan.

The documents shall be provided within 90 days following

- (1) the date on which the employee becomes eligible for membership under the plan or becomes a member; or
- (2) the date of registration of the pension plan.

The employer shall transmit, in writing, to the pension committee such information concerning employees eligible for membership as is necessary for the purposes of this section.

1989, c. 38, s. 111; 2000, c. 41, s. 71.

111.1. If a pension plan provides that the pension paid to members is reduced by direct or indirect reference to the benefits payable under a public plan referred to in section 94, any document provided to a member, a beneficiary or an eligible employee concerning the benefits payable under the pension plan or the manner of calculating them must mention the reduction and the manner of calculating it.

2000, c. 41, s. 72.

112. Within nine months after the end of every fiscal year, the pension committee shall transmit to each member and beneficiary a document containing a summary of the provisions of the pension plan that were amended during the last fiscal year and a brief description of the rights and obligations arising therefrom, together with an annual statement containing the information prescribed by regulation in particular with respect to

- (1) the benefits accrued to the member during the last fiscal year and from the beginning of membership in the plan until the end of the last fiscal year; and
- (2) the financial position of the pension plan.

The pension committee is not required to send an annual statement to members to whom a statement was sent under section 113 indicating their accrued benefits as of a more recent date.

1989, c. 38, s. 112; 2000, c. 41, s. 73; 2008, c. 21, s. 15.

112.1. The pension committee shall, within 60 days of the payment of the benefit referred to in section 69.1, provide the member with a statement containing the information determined by regulation and concerning, in particular, the effect of the payment on the annual amount of normal pension resulting from the service credited to him.

1997, c. 19, s. 13.

113. Within 60 days after the date on which the pension committee is informed that a member has ceased to be an active member, it shall provide to the member, or to any other person entitled to a refund or pension benefit, a statement setting out the information prescribed by regulation and specifying, as of the date of the event giving entitlement thereto, the amount of the refund or the nature and value of the benefit, and the nature of and the requirements for entitlement to other benefits provided under the plan.

In addition, within 60 days of a written request therefor, the pension committee shall, without charge, provide the member with the aforementioned statement, updated on the basis of the most recent data available; the updating shall include a new determination of the value of the member's benefits only where the member may exercise the right of transfer provided for in section 98.

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Moreover, within 30 days of a written request therefor, the pension committee shall, without charge, provide the member with the data used to prepare the statement or to update it, in particular the data used to calculate the benefits to which he is entitled.

1989, c. 38, s. 113; 2000, c. 41, s. 74.

113.1. When it has been notified that an association has been formed to represent, for the purposes of the pension plan, active members not represented by a certified association, non-active members or beneficiaries of the plan, the pension committee must enclose a notice giving such information as it possesses with respect to the name and address of the association, its purpose and admission procedures with the following documents sent to the persons the association is mandated to represent:

- (1) the annual statement sent out under section 112; and
- (2) the notice sent to the members and beneficiaries under the second paragraph of section 146.4, the third paragraph of section 196 or the first paragraph of section 230.4.

The exemption provided by the second paragraph of section 112 does not dispense the pension committee from sending members the notice provided for in the first paragraph.

2008, c. 21, s. 16; I.N. 2016-05-15.

113.2. If an association referred to in section 113.1 requests the name and address of the persons it is meant to represent, the pension committee must inform each person concerned of the request in a notice enclosed with the first of the following documents to be sent to the person after the committee receives the request:

- (1) the annual statement sent under section 112; or
- (2) the statement provided under the first paragraph of section 113.

The notice must include a note explaining that the person concerned may, within 30 days of receiving the notice, consent to the committee's sending the information in question to the association concerned.

The committee must provide the association with the name and address of the persons who gave their consent

- (1) within 30 days following the expiry of the deadline given in the second paragraph, as regards persons who gave their consent after receiving a notice enclosed with the annual statement sent out under section 112; or
- (2) at the latest 30 days after the end of the fiscal year of the plan during which consent was given, as regards persons who gave their consent after receiving a notice enclosed with the statement provided for under the first paragraph of section 113.

The committee is not required to comply more than once with a request made under the first paragraph by the same association. If it does, it may charge a fee.

2008, c. 21, s. 16.

114. Within 30 days of a written request therefor, the pension committee shall permit an employee eligible for membership or a member or beneficiary to examine, without charge, during usual working hours, the text of the pension plan or any other document prescribed by regulation. The pension committee shall, subject to the same conditions, permit a member or beneficiary to examine the terms of the plan as they stood on any date included in the period during which the employee concerned was a member.

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The examination shall take place either at the office of the pension committee or at the establishment of the employer designated by the committee, whichever is closer to the applicant's residence.

Where a copy of a document for which an examination request was made is sent without charge, within 30 days of the request, to the person who made the request, the pension committee is dispensed from the obligation to permit examination of the document.

1989, c. 38, s. 114; 2000, c. 41, s. 75.

115. The pension committee is not required to provide documents without charge to any one person more than once within a period of 12 months.

The same applies in respect of requests for the examination of documents.

1989, c. 38, s. 115.

CHAPTER X

SOLVENCY AND FUNDING

2006, c. 42, s. 11.

DIVISION I

GENERAL PROVISIONS

2006, c. 42, s. 11.

116. This chapter does not apply

(1) to an insured pension plan in respect of which the insurer has undertaken to pay all costs and satisfy all rights arising from the termination of the plan;

(2) to an uninsured pension plan under which the benefits to which the members and beneficiaries are entitled derive only and at all times from amounts credited to them; or

(3) to an uninsured pension plan under which the benefits to which the members and beneficiaries are entitled are either pension benefits and refunds that are insured at all times or benefits described in paragraph 2.

1989, c. 38, s. 116; 2000, c. 41, s. 76; 2006, c. 42, s. 11.

117. For the purposes of this chapter, a defined benefit-defined contribution plan shall be considered to be a defined benefit plan.

1989, c. 38, s. 117; 2006, c. 42, s. 11.

118. Every pension plan must be the subject of an actuarial valuation

(1) at the date on which it becomes effective;

(2) no later than at the date of the end of the last fiscal year of the plan occurring within three years after the date of the last complete actuarial valuation of the plan;

(3) at the date of the agreement with the insurer for the purposes of a payment of benefits made in accordance with the plan's annuity purchasing policy;

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(4) in the case of an amendment having an impact on the funding of the plan, at the date determined under section 121;

(5) at the date of the end of the fiscal year of the plan that precedes a fiscal year in which surplus assets are appropriated to the payment of employer contributions under section 146.8; or

(6) whenever required by Retraite Québec, at the date set by Retraite Québec.

If an actuarial valuation referred to in subparagraph 2 of the first paragraph determines that the funding level of the plan is less than 90%, the plan must be the subject of a complete actuarial valuation not later than the end date of the following fiscal year and the end date of each subsequent fiscal year, until the funding level reaches at least 90%.

An actuarial valuation required under the first or second paragraph must be complete. However, the valuations required under subparagraphs 3, 4 and 5 of the first paragraph may be partial, but only if, in the case of a valuation referred to in subparagraph 4 or 5, the date of the valuation corresponds to the date of the end of the fiscal year of the plan and no complete actuarial valuation is required under this Act or by Retraite Québec at that date.

1989, c. 38, s. 118; 2006, c. 42, s. 11; 2015, c. 20, s. 61; 2015, c. 29, s. 19; I.N. 2016-04-01.

119. The pension committee must transmit a report to Retraite Québec on every actuarial valuation referred to in section 118

(0.1) not later than the expiry of the time granted under section 25 for filing the application for registration of the plan in the case of an actuarial valuation required under subparagraph 1 of the first paragraph of section 118;

(1) within nine months after the date of the actuarial valuation in the case of an actuarial valuation required under subparagraph 2, 4 or 5 of the first paragraph or the second paragraph of that section; or

(1.1) within four months after the date of the actuarial valuation in the case of an actuarial valuation required under subparagraph 3 of the first paragraph of that section;

(2) within the time fixed by Retraite Québec, which shall be at least 60 days, in the case of an actuarial valuation required under subparagraph 6 of the first paragraph of that section.

A report on an actuarial valuation not referred to in section 118 must be transmitted to Retraite Québec within nine months after the date of the actuarial valuation.

All reports on an actuarial valuation transmitted to Retraite Québec must be accompanied by a summary drawn up on the form provided by Retraite Québec, along with the attestations and documents mentioned in the form.

1989, c. 38, s. 119; 2000, c. 41, s. 77; 2006, c. 42, s. 11; 2009, c. 1, s. 4; 2015, c. 20, s. 61; 2015, c. 29, s. 20.

119.1. If, at the date of the end of a fiscal year of the pension plan, no actuarial valuation is required under subparagraph 2 of the first paragraph of section 118, the pension committee must send Retraite Québec, no later than four months after that date, a notice informing it of the financial position of the pension plan at that date.

The information to be contained in the notice and the attestations and documents to be included with it are prescribed by regulation.

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Any certification required for the purposes of the notice must be carried out in accordance with the first paragraph of section 122, which applies with the necessary modifications.

2015, c. 29, s. 21; 2015, c. 20, s. 61.

120. The funding of a pension plan must be based on an actuarial valuation report prepared at the request of the pension committee and transmitted to Retraite Québec. Unless the report concerns a partial actuarial valuation carried out under the conditions set out in the third paragraph of section 118, it must refer to a complete actuarial valuation of the plan.

Except in the case provided for in section 121, an actuarial valuation report that has been transmitted to Retraite Québec can be amended or replaced only at the request of or with the authorization of Retraite Québec and subject to the conditions fixed by Retraite Québec. If a report is amended or replaced, any unfunded actuarial liability determined by the valuation must be re-established and any actuarial certification required for the purposes of such valuation must be renewed.

1989, c. 38, s. 120; 2006, c. 42, s. 11; 2015, c. 20, s. 61; I.N. 2016-04-01.

121. Any amendment to a pension plan having an impact on the funding of the plan must be considered for the first time not later than the latest of the following dates:

(1) the date of the end of the last fiscal year of the plan, the date of which is not later than the date the amendment is made; or

(2) the date of the end of the last fiscal year of the plan, the date of which is not later than the date the amendment becomes effective.

If the actuarial valuation report was transmitted to Retraite Québec and an amendment which should have been considered under the first paragraph was not taken into account, the report must be amended or replaced.

However, an amendment resulting in a reduction of the obligations of the plan must be considered for the first time at the date it becomes effective.

1989, c. 38, s. 121; 2006, c. 42, s. 11; 2015, c. 20, s. 61; 2015, c. 29, s. 22.

122. Every certification required for the purpose of a partial actuarial valuation must reflect the financial position of the plan at the date of the actuarial valuation, estimated on the basis, in particular, of the actual rate of return of the pension fund, changes in interest rates determined on a solvency basis and the contributions actually paid into the pension fund since the last complete actuarial valuation of the plan.

If a partial actuarial valuation pertains to the amendments to a pension plan, it is limited to the determination of the value of the additional obligations arising from any amendment considered for the first time in the valuation or to the determination, on a funding basis, of the variation in the current service contribution arising from the amendment. The determination of the value or of the variation must be based on the same assumptions and methods as were used for the most recent complete actuarial valuation, unless those assumptions and methods are not appropriate in view of the nature of the amendment made to the pension plan.

However, if the amendment to the pension plan increases the pensions already in payment and the additional obligations arising from the amendment are guaranteed by an insurer at the date on which the actuarial valuation report is prepared, the value of the obligations may be assumed to correspond to the premium paid to the insurer, discounted at the date of actuarial valuation according to the rate of return of the pension fund.

1989, c. 38, s. 122; 2006, c. 42, s. 11.

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122.1. For the purposes of this chapter, the assets and liabilities of a pension plan are both reduced by an amount corresponding to the sum of the following values:

- (1) the value of any additional voluntary contributions paid into the pension fund, with accrued interest;
- (2) the value of the contributions paid into the pension fund under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan, with accrued interest;
- (3) the value of amounts received by the pension plan following a transfer, even otherwise than under Chapter VII, with accrued interest.

However, in the case of a floor plan, the assets and liabilities of a plan are not to be reduced by the value referred to in subparagraph 2.

2015, c. 29, s. 23.

122.2. For the purposes of this chapter, the letters of credit provided by the employer under section 42.1 that may be considered in the plan's assets cannot exceed 15% of the liabilities of the plan.

2015, c. 29, s. 23.

DIVISION II

FUNDING

2006, c. 42, s. 11; 2015, c. 29, s. 24.

§ 1. — *Determination of funding*

2015, c. 29, s. 24.

123. For the purpose of determining the funding level of a pension plan at the date of an actuarial valuation, the plan's liabilities must be equal to the value of the obligations arising from the plan taking into account the service credited to the members.

A pension plan is funded if, at the date of the actuarial valuation, the plan's assets are equal to or greater than its liabilities.

1989, c. 38, s. 123; 2006, c. 42, s. 11; 2008, c. 21, s. 33; 2015, c. 29, s. 24.

124. For the sole purpose of establishing the funding level of a pension plan at the date of an actuarial valuation,

- (1) the plan's assets must be increased by the special improvement payment prescribed in section 139; and
- (2) the plan's liabilities must be increased by the value of the additional obligations arising from any amendment to the plan considered for the first time at the date of the valuation, calculated on the assumption that the effective date of the amendment is the valuation date.

The funding level of a pension plan at the date of the actuarial valuation is the percentage that the plan's assets are of its liabilities.

1989, c. 38, s. 124; 2006, c. 42, s. 11; 2015, c. 29, s. 24; I.N. 2016-04-01.

125. Every pension plan must provide for the establishment of a stabilization provision whose target level is determined in the manner prescribed by regulation, in particular by using a scale that is to be applied

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according to certain criteria, including the target set out in the plan's investment policy in effect at the date of each actuarial valuation required under section 118.

1989, c. 38, s. 125; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

126. The funding method used in an actuarial valuation must be consistent with generally accepted actuarial principles and be based on the assumption that the pension plan is perpetual.

The actuarial assumptions and methods used to determine the funding level of a plan must be suited, in particular, to the type of plan concerned, its obligations and the position of the pension fund.

1989, c. 38, s. 126; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

127. The method for smoothing the market value of the assets of the pension plan may not level the short-term fluctuations in that value over a period exceeding five years.

1989, c. 38, s. 127; 1994, c. 24, s. 8; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

128. The current service contribution must be equal to or greater than the sum of

(1) the value of the obligations arising from the pension plan in respect of credited service completed over the course of the fiscal year or the part of the fiscal year referred to in paragraph 1 of section 140; and

(2) the value of the stabilization provision in respect of those obligations, according to the target level determined in accordance with section 125.

The contribution may, however, be less if it is determined using a method which, at all times, keeps the plan partially funded or fully funded at the required funding level taking into account the plan stabilization provision target level less five percentage points.

1989, c. 38, s. 128; 2006, c. 42, s. 11; 2015, c. 29, s. 24; 2016, c. 13, s. 68

129. The value of the obligations referred to in sections 123, 124 and 128 which, under the plan, are to increase according, in particular, to the progression of the members' remuneration must include the estimated amount of those obligations when they become payable, assuming that contingencies based on actuarial assumptions as to survival, morbidity, mortality, employee turnover, eligibility for benefits or other factors will occur.

Furthermore, any pension benefit increase provided for by the plan which becomes effective after the benefits begin to be paid must be taken into account in determining that value.

1989, c. 38, s. 129; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

§ 2. — *Funding deficiencies*

2015, c. 29, s. 24.

130. There are three types of funding deficiencies: the technical actuarial deficiency, the stabilization actuarial deficiency and the improvement unfunded actuarial liability.

1989, c. 38, s. 130; 2000, c. 41, s. 78; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

131. The technical actuarial deficiency corresponds, at the date of an actuarial valuation, to the amount by which the plan's liabilities exceed its assets, increased by the value of any amortization payments remaining to be paid to amortize any improvement unfunded actuarial liability determined in a prior actuarial valuation.

1989, c. 38, s. 131; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

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132. The actuarial stabilization deficiency corresponds, at the date of an actuarial valuation, to the amount by which the plan's liabilities, reduced by the technical actuarial deficiency determined in accordance with section 131 and increased by the value of the stabilization provision target level less five percentage points, exceed its assets, increased by the value of the amortization payments remaining to be paid to amortize any improvement unfunded actuarial liability determined in a prior actuarial valuation.

1989, c. 38, s. 132; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

133. The interest rate used to establish the value of the improvement amortization payments referred to in sections 131 and 132 is the same as the one used to establish the liabilities of the plan.

1989, c. 38, s. 133; 2000, c. 41, s. 79; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

134. An improvement unfunded actuarial liability corresponds, at the date of an actuarial valuation, to the value of the additional obligations arising from any amendment to the plan, except for the amendment referred to in section 139, considered for the first time in the valuation, increased by the value of the stabilization provision target level in respect of those obligations and reduced, if applicable, by the amount corresponding to the part of the value of those obligations that is paid for by appropriation of the plan's surplus assets.

1989, c. 38, s. 134; 1994, c. 24, s. 9; 2000, c. 41, s. 80; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

134.1. *(Replaced).*

2006, c. 42, s. 11; 2015, c. 29, s. 24.

135. The amortization payments that, if applicable, remain to be paid in relation to any improvement unfunded actuarial liability determined in a prior actuarial valuation may only be eliminated if, at the date of the actuarial valuation, the assets of the pension plan are equal to or greater than its liabilities, increased by the value of the stabilization provision target level less five percentage points.

1989, c. 38, s. 135; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

135.1. *(Replaced).*

1998, c. 2, s. 40; 2006, c. 42, s. 11.

135.2. *(Replaced).*

1998, c. 2, s. 40; 2006, c. 42, s. 11.

135.3. *(Replaced).*

1998, c. 2, s. 40; 2006, c. 42, s. 11.

135.4. *(Replaced).*

1998, c. 2, s. 40; 2006, c. 42, s. 11.

135.5. *(Replaced).*

1998, c. 2, s. 40; 2006, c. 42, s. 11.

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 § 3. — *Amortization of funding deficiencies*

2015, c. 29, s. 24.

136. Every funding deficiency must be amortized by dividing it into as many amounts as there are full months included in the amortization period.

1989, c. 38, s. 136; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

137. The monthly amortization payable for any fiscal year of the pension plan, and any part of such a fiscal year, included in the amortization period must be established as a set amount at the date the unfunded actuarial liability is determined. However, if the members contribute to amortization payments, the monthly payments may represent an hourly rate or a rate of the remuneration of or a percentage of the total payroll for the active members; the rate or percentage must be uniform unless it is established by reference to a variable authorized by Retraite Québec.

1989, c. 38, s. 137; 2006, c. 42, s. 11; 2015, c. 29, s. 24; 2015, c. 20, s. 61.

138. The amortization period for an unfunded actuarial liability begins at the date of the actuarial valuation in which the unfunded liability is determined. It expires at the end of a fiscal year of the pension plan that ends

- (1) no later than 10 years after the date of the valuation, if the liability is a technical actuarial deficiency;
- (2) no later than 10 years after the date of the valuation, if the liability is a stabilization actuarial deficiency; or
- (3) no later than five years after the date of the valuation, if the liability is an improvement unfunded actuarial liability.

1989, c. 38, s. 138; 2000, c. 41, s. 81; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

 § 4. — *Special improvement payment*

2015, c. 29, s. 24.

139. If the actuarial valuation used to determine the value of the additional obligations arising from an amendment to the pension plan shows that the plan's funding level, determined without reference to the amendment, is less than 90%, a special improvement payment equal to the value of the additional obligations, at the date of the valuation, increased by the value of the stabilization provision target level in respect of those obligations, must be paid into the pension fund.

The special improvement payment is payable in full as of the day following the date of the valuation.

1989, c. 38, s. 139; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

 § 5. — *Miscellaneous provisions*

2015, c. 29, s. 24.

140. In addition to the other elements prescribed by regulation, an actuarial valuation must determine

- (1) the current service contribution, expressed in currency or as a rate or percentage of the remuneration of active members, for the fiscal year or the part of the fiscal year of the pension plan that immediately follows the date of the valuation and for every fiscal year that follows until the date of the next actuarial valuation to which it is subject under subparagraph 2 of the first paragraph of section 118;

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- (2) the total amount of the current service contribution and the amount of the part of that contribution referred to in subparagraph 2 of the first paragraph of section 128;
- (3) the plan's assets and liabilities;
- (4) the amount of each deficiency and that of the related amortization payment; and
- (5) the amounts recorded under section 42.2.

1989, c. 38, s. 140; 2000, c. 41, s. 82; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

DIVISION III**SOLVENCY**

2015, c. 29, s. 24.

141. For the purpose of determining the solvency of a pension plan at the date of an actuarial valuation, the plan's assets must be established according to their liquidation value, or an estimate of that value, and be reduced by the estimated amount of the administration costs to be paid out of the pension fund, assuming that the pension plan is terminated on the valuation date.

The pension plan's liabilities must be equal to the value of the obligations arising from the plan, assuming that the plan is terminated on the valuation date.

A pension plan is solvent if its assets are equal to or greater than its liabilities.

1989, c. 38, s. 141; 2006, c. 42, s. 50; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

142. For the sole purpose of establishing the degree of solvency of a pension plan at the date of an actuarial valuation,

- (1) the plan's assets must be increased by the special improvement payment prescribed in section 139; and
- (2) the plan's liabilities must be increased by the value of the additional obligations arising from any amendment to the plan considered for the first time on the date of the valuation, calculated on the assumption that the effective date of the amendment is the valuation date.

The degree of solvency of a pension plan at the date of an actuarial valuation is the percentage that the plan's assets are of its liabilities.

1989, c. 38, s. 142; 1997, c. 19, s. 15; 2006, c. 42, s. 50; 2008, c. 21, s. 17; 2006, c. 42, s. 11; 2015, c. 29, s. 24.

142.1. If the plan expressly provides that the amount of a member's pension is to be established with reference to the progression of the member's remuneration after termination, the value of the pension must be established assuming that the plan is terminated in such circumstances that the benefits accrued to the member in respect of the pension must be estimated at their maximum value. If the plan provides for other obligations whose value depends on the circumstances in which the plan is terminated, they must be included in the liabilities to the extent provided in the scenario used for that purpose by the actuary in charge of the valuation.

If the liabilities established in accordance with subparagraph 2 of the first paragraph of section 142 and with the first paragraph of this section are less than the value of the obligations arising from the pension plan, assuming that the plan is terminated on the valuation date in such circumstances that the benefits accrued to

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the members must be estimated at their maximum value, the valuation report must also indicate the latter value.

2015, c. 29, s. 24.

142.2. The liabilities of a pension plan under which refunds or benefits are guaranteed by an insurer must, for the purpose of determining the plan's solvency, include the value corresponding to those benefits, and the plan's assets must include an amount equal to that value.

2015, c. 29, s. 24.

142.3. The values referred to in subparagraph 2 of the first paragraph of section 142 and in section 142.1 are determined by applying sections 211 and 212 and subparagraph 1 of the second paragraph of section 212.1, with the necessary modifications. In the case of pensions already in payment, inasmuch as they are not guaranteed by an insurer at the valuation date, those values must be determined according to an estimation of the premium that an insurer would charge to guarantee the pensions at the valuation date.

2015, c. 29, s. 24.

DIVISION III.1

FUNDING RELATING TO ANNUITY PURCHASING POLICY

2015, c. 29, s. 24.

142.4. A payment of benefits made in accordance with the annuity purchasing policy of a pension plan must meet the funding requirements prescribed by regulation.

If those requirements are not met, a special annuity purchasing payment, calculated in the manner determined by regulation, must be paid as prescribed in that regulation.

2015, c. 29, s. 24.

DIVISION IV

FUNDING POLICY

2015, c. 29, s. 24.

142.5. The person or body who may amend the pension plan must establish a written funding policy that meets the requirements prescribed by regulation, review it regularly and send it to the pension committee without delay.

2015, c. 29, s. 24.

DIVISION V

CONDITIONS GOVERNING THE PAYMENT OF BENEFITS

2006, c. 42, s. 11.

143. The value of any benefit to which a member or a beneficiary becomes entitled under a pension plan and which corresponds to the following amounts must be paid in full:

- (1) additional voluntary contributions credited to the member's account, with accrued interest;

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(2) member or employer contributions paid in respect of a member under terms in a defined benefit plan that are identical to those of a defined contribution plan, with accrued interest; and

(3) amounts credited to a member's account following a transfer, even a transfer other than a transfer under Chapter VII, with accrued interest.

The benefit provided for in section 67.5, the one provided for in section 69.1 and the periodic amounts payable as pension benefits must also be paid in full.

The value of any other benefit may be paid out of the pension fund only in proportion to the degree of solvency of the plan, up to 100%, as established in the last actuarial valuation report transmitted to Retraite Québec or, if the degree of solvency is more recent, in the notice prescribed by section 119.1 sent to Retraite Québec. A pension plan may however provide that the 100% limit does not apply or establish a limit of more than 100%

1989, c. 38, s. 143; 2006, c. 42, s. 11; 2008, c. 21, s. 33; 2015, c. 20, s. 61; 2015, c. 29, s. 25.

144. The actuary responsible for preparing the actuarial valuation report of the pension plan must determine whether the payment of the benefits that are transferable under an agreement referred to in section 106 could reduce the degree of solvency of the plan or, where that degree exceeds 100%, reduce it to a percentage lower than 100%.

If so, the payment of benefits is permitted only in the proportion fixed by the actuary to avoid such a consequence.

1989, c. 38, s. 144; 2006, c. 42, s. 11.

145. The value of the benefits which, under section 143 or 144, cannot be paid may be paid up to 5% of the maximum pensionable earnings established under the Act respecting the Québec Pension Plan (chapter R-9) for the year during which the payment is to be made; the total amounts so paid since the last actuarial valuation may not, however, exceed 5% of the assets determined at the time of the actuarial valuation to ascertain the solvency of the pension plan.

1989, c. 38, s. 145; 2000, c. 41, s. 83; 2006, c. 42, s. 11.

145.1. Despite the limits set in sections 143 to 145, the value of the benefits paid must be equal to or greater than the sum of the contributions paid by the member concerned and the amounts credited to the member's account following a transfer, even a transfer other than a transfer under Chapter VII, with accrued interest.

2006, c. 42, s. 11.

146. The balance of the value of the benefits which, under the terms of sections 143 to 145.1, cannot be paid must be funded and paid within five years after the date of the initial payment or not later than the date on which the member concerned attains normal retirement age if that age is attained before the expiry of the five-year period, in the following cases:

(1) the member or beneficiary does not have the option of maintaining his benefits in the pension plan;

(2) the plan provides for the payment of the value of members' and beneficiaries' benefits in a proportion that is greater than the degree of solvency of the plan.

1989, c. 38, s. 146; 2006, c. 42, s. 11; 2015, c. 29, s. 26.

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CHAPTER X.1**APPROPRIATION OF SURPLUS ASSETS**

2006, c. 42, s. 12.

DIVISION I**PROVISIONS OF THE PENSION PLAN**

2015, c. 29, s. 27.

146.1. Surplus assets may, during the life of a pension plan, be appropriated to the refund or payment of benefits or the payment of the value of the additional obligations arising from an amendment to the plan, but only in accordance with this chapter and in compliance with the plan provisions required under subparagraph 17 or 18 of the second paragraph of section 14.

2000, c. 41, s. 84; 2006, c. 42, s. 13; 2015, c. 29, s. 27.

146.2. All provisions concerning the appropriation of surplus assets during the life of a pension plan must be grouped in an easily identifiable section of the plan.

The same applies to any provision concerning the allocation of surplus assets in the event of termination of the plan.

2000, c. 41, s. 84; 2006, c. 42, s. 13; 2015, c. 29, s. 27.

146.3. The members and beneficiaries must be informed and consulted before any amendment to the plan under section 146.2.

2000, c. 41, s. 84; 2006, c. 42, s. 13; 2015, c. 29, s. 27.

146.3.1. *(Replaced).*

2006, c. 42, s. 13; 2008, c. 21, s. 34; 2015, c. 29, s. 27.

146.3.2. *(Replaced).*

2006, c. 42, s. 13; 2015, c. 29, s. 27.

146.3.3. *(Replaced).*

2006, c. 42, s. 13; 2008, c. 21, s. 34; 2015, c. 29, s. 27.

146.3.4. *(Replaced).*

2006, c. 42, s. 13; 2015, c. 29, s. 27.

146.3.5. *(Replaced).*

2006, c. 42, s. 13; 2015, c. 29, s. 27.

146.3.6. *(Replaced).*

2006, c. 42, s. 13; 2015, c. 29, s. 27.

146.4. For the purposes of the consultation, the pension committee shall send every member and beneficiary of the plan a written notice which, in addition to containing the information required under subparagraph 1 of the first paragraph of section 26, indicates

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- (1) the plan provisions relating to the allocation or appropriation of surplus assets in force on the date of the notice;
- (2) the text of the plan provisions arising from the amendment; and
- (3) any other information prescribed by regulation.

The notice must also inform the members and beneficiaries that they may notify the pension committee in writing of their opposition to the proposed amendment to the plan provisions within 60 days after the notice is sent or, as applicable, after the date on which the notice required under the third paragraph is published, whichever is later.

Unless all members and beneficiaries have been personally advised, the pension committee must also publish a notice of the proposed amendment in a daily newspaper circulated in the region in Québec where the greatest number of active members reside. The notice must also specify that persons who have not received a personal notice but believe they must be consulted may declare their status to the pension committee within 60 days after the notice is published and that, if they are able to establish their status, they are entitled to receive a copy of the notice required under the second paragraph and, if applicable, to notify the committee in writing of their opposition to the proposed amendment.

The notice given under this section is considered to be the notice referred to in section 26.

2000, c. 41, s. 84; 2006, c. 42, s. 15; 2015, c. 29, s. 27.

146.5. On the expiry of the time for expressing opposition, the pension committee shall count the notices of opposition received.

If 30% or more of the members and beneficiaries are opposed to the proposed amendment, it is deemed rejected and cannot be made.

The pension committee shall immediately inform the employer concerned, as well as each of the plan members and beneficiaries and the person or body who may amend the pension plan, of the results.

2000, c. 41, s. 84; 2005, c. 5, s. 1; 2006, c. 42, s. 16; 2015, c. 29, s. 27.

DIVISION II**PLANS TO WHICH CHAPTER X APPLIES**

2006, c. 42, s. 14; 2015, c. 29, s. 27.

146.6. The appropriation, under this division, of the surplus assets of a pension plan to which Chapter X applies, determined without reference to the portion of the assets and that of the liabilities described in section 122.1, is only permitted if, according to the actuarial valuation of the plan, the following conditions are met:

- (1) on a funding basis, the plan's assets are equal to or greater than its liabilities, increased by the value of the stabilization provision target level plus five percentage points; and
- (2) on a solvency basis, the plan's assets are equal to or greater than 105% of its liabilities.

2000, c. 41, s. 84; 2006, c. 42, s. 17; 2015, c. 29, s. 27.

146.7. The maximum amount of surplus assets that may be used is equal to the lesser of the following amounts, determined at the date of the actuarial valuation:

- (1) the amount by which the surplus assets determined on a funding basis exceed the minimum set under paragraph 1 of section 146.6; and

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(2) the amount by which the surplus assets determined on a solvency basis exceed the minimum set under paragraph 2 of that section.

In the case of a partial actuarial valuation, the maximum amount of surplus assets is equal to the lesser of the amounts given by the actuary who certifies that a complete actuarial valuation carried out at the date of the valuation would have allowed the determination, in accordance with the first paragraph, of amounts equal to or greater than the amounts given.

2000, c. 41, s. 84; 2006, c. 42, s. 18; 2015, c. 29, s. 27.

146.8. The amount of surplus assets that may be used over the course of a fiscal year must first be appropriated to the payment of the employer and member current service contributions, up to the lesser of the amount of the employer or member contributions recorded, respectively, under the first and second paragraphs of section 42.2 and the amount of the employer or member current service contributions.

If the amount of surplus assets that may be used is less than the total amount of employer and member contributions recorded under section 42.2, the appropriation under the first paragraph must be proportional to the contributions recorded, respectively, under the first and second paragraphs of that section.

If there is a balance of surplus assets, up to 20% of the balance may, per fiscal year of the plan and in accordance with its provisions, be appropriated to the payment of the value of the additional obligations arising from an amendment to the plan or to the payment of member contributions or be transferred to the employer.

Any amount appropriated to the payment of the employer current service contributions or to the payment of the value of the additional obligations arising from an amendment or transferred to the employer must be deducted from the amounts recorded under section 42.2. The same applies to any amount appropriated to the payment of member current service contributions.

2000, c. 41, s. 84; 2015, c. 29, s. 27.

146.9. The pension plan may provide that the appropriation of surplus assets to the payment of current service contributions may, despite the caps provided for in the first paragraph of section 146.8, apply beyond the amount of the contributions recorded under section 42.2.

2000, c. 41, s. 84; 2006, c. 42, s. 19; 2015, c. 29, s. 27.

146.9.1. The appropriation of surplus assets to the payment of employer contributions and, if applicable, member contributions ceases on the date of the end of a fiscal year for which an actuarial valuation or a notice referred to in section 119.1 shows that the conditions set out in section 146.6 are no longer met.

2015, c. 29, s. 27.

DIVISION III**OTHER PLANS**

2015, c. 29, s. 27.

146.9.2. This division concerns the pension plans to which Chapter X does not apply.

It also concerns the portion of the assets and that of the liabilities of a pension plan to which Chapter X applies that are excluded under section 122.1.

2015, c. 29, s. 27.

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146.9.3. The surplus assets of a pension plan may be appropriated to the payment of the value of the additional obligations arising from an amendment to the plan, provided that the amount applied for that purpose is limited to the part of the assets that exceeds the value of the obligations arising from the plan, established without reference to the additional obligations arising from the amendment, assuming that the plan is terminated.

2015, c. 29, s. 27.

146.9.4. The portion of the assets of the pension plan that exceeds the value of the obligations arising from the plan, assuming that the plan is terminated, may be appropriated to the payment of employer contributions.

The appropriation of the surplus assets of a pension plan to the payment of employer contributions ceases as soon as the condition set out in the first paragraph is no longer met.

2015, c. 29, s. 27.

CHAPTER X.2

 SPECIAL PROVISIONS RELATING TO CERTAIN MULTI-EMPLOYER PENSION PLANS

2015, c. 7, s. 1.

DIVISION I

 SCOPE

2015, c. 7, s. 1.

146.10. This chapter applies to multi-employer defined benefit-defined contribution pension plans, in force on 18 February 2015, that may not be amended unilaterally by a participating employer. Such plans are called “negotiated contribution plans”.

This chapter does not apply to multi-employer pension plans governed by a regulation under the second paragraph of section 2, other than the Regulation providing new relief measures for the funding of solvency deficiencies of pension plans in the private sector (chapter R-15.1, r. 4.1), but does apply to pension plans subject to Division III.3 of the Regulation respecting the exemption of certain pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 8).

2015, c. 7, s. 1.

DIVISION II

 CONTRIBUTIONS AND BENEFITS

2015, c. 7, s. 1.

146.11. Despite the first paragraph of section 39, the employer is only required to pay, in each fiscal year of the plan, the employer contribution stipulated in the plan.

Despite the third paragraph of section 41, the employer contribution may not be adjusted unless the adjustment has been negotiated with the employer.

2015, c. 7, s. 1.

146.12. The sum of the employer contribution and the member contributions payable in each fiscal year of the pension plan must be equal to or greater than the sum of the following amounts:

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- (1) the current service contribution determined in accordance with sections 128 and 129;
- (2) the estimated amount of the administration costs to be paid out of the pension fund during the fiscal year; and
- (3) the sum of the amortization payments determined for the fiscal year and the special improvement payments payable during the fiscal year.

2015, c. 7, s. 1; 2015, c. 29, s. 28.

146.13. No employer may appropriate the surplus assets of the pension plan to the payment of the employer contribution unless a fiscal rule so requires, nor may an employer, despite section 42.1, be relieved of paying the employer contribution by a letter of credit.

2015, c. 7, s. 1.

146.14. *(Repealed).*

2015, c. 7, s. 1; 2015, c. 29, s. 29.

146.15. Section 60 does not apply to negotiated contribution plans.

2015, c. 7, s. 1; 2015, c. 29, s. 30.

DIVISION III

FUNDING RULES

2015, c. 7, s. 1.

§ 1. — *Special provisions*

2015, c. 7, s. 1.

146.16. Despite subparagraph 2 of the first paragraph of section 118 and subparagraph 1 of the first paragraph of section 119, a negotiated contribution plan must be the subject of an actuarial valuation at the date of the end of each fiscal year and the valuation report must be sent to Retraite Québec within six months after the date of the valuation.

2015, c. 7, s. 1; 2015, c. 20, s. 61; 2015, c. 29, s. 31.

146.17. Any amendment to a negotiated contribution plan having an impact on the obligations arising from the plan must be considered for the first time according to the rules set out in section 121.

2015, c. 7, s. 1.

146.18. The provisions of section 125, concerning the establishment of a stabilization provision, do not apply to negotiated contribution plans.

2015, c. 7, s. 1; 2015, c. 29, s. 32.

146.18.1. Section 134, except the exception it provides for, applies to all plan amendments considered for the first time.

Section 139 applies on a solvency basis.

2015, c. 29, s. 33.

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146.19. Despite section 138, the maximum amortization period of any actuarial deficiency is 12 years.

2015, c. 7, s. 1; 2015, c. 29, s. 33.

§ 2. — *Conditions governing payment of benefits*

2015, c. 7, s. 1.

146.20. The value of the benefits accrued to a member or a beneficiary and referred to in the third paragraph of section 143 must be paid in proportion to the degree of solvency of the plan as established in the last actuarial valuation that precedes the date of the application for transfer and for which the report has been sent to Retraite Québec.

Sections 145 and 146 do not apply to negotiated contribution plans. An employer may however, before the date of payment, pay an additional amount into the pension fund for the payment of all or part of the value of the benefits that cannot be paid under the first paragraph.

Despite sections 20 and 21, a pension plan may be amended to provide that, in cases when the degree of solvency of the plan exceeds 100%, the value of the benefits must be paid in a proportion that is less than the degree of solvency of the plan but equal to or greater than 100%. Such an amendment may only be made in the circumstances described in section 146.35, which applies with the necessary modifications.

2015, c. 7, s. 1; 2015, c. 20, s. 61.

146.21. A payment made in accordance with section 146.20 constitutes a final payment of the benefits accrued to a member or beneficiary.

2015, c. 7, s. 1.

146.22. For the purposes of the assignment of a member's benefits or the seizure of such benefits for non-payment of support, the degree of solvency of the plan as established in the last actuarial valuation that precedes the date of their valuation and for which the report has been sent to Retraite Québec must be taken into account in determining the value of the member's benefits.

2015, c. 7, s. 1; 2015, c. 20, s. 61.

DIVISION IV

RESTRUCTURING

2015, c. 7, s. 1.

§ 1. — *Recovery plan*

2015, c. 7, s. 1.

146.23. When the report on an actuarial valuation of a negotiated contribution plan indicates that the contributions provided for in the pension plan are insufficient, a recovery plan must be prepared by the person or body who may amend the plan.

2015, c. 7, s. 1.

146.24. The recovery plan must set out the measures to be taken to ensure that the funding of the pension plan is in conformity with the law.

These measures may include an increase in the employer contribution, an increase in member contributions, or the establishment of such contributions in the case of a non-contributory plan, or an

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amendment reducing benefits that is applicable to service completed before or after the effective date of the amendment.

2015, c. 7, s. 1.

146.25. No measure set out in a recovery plan may reduce, on a funding basis, the value of the benefits in payment in a proportion greater than that applicable to the value of the benefits of active members.

2015, c. 7, s. 1.

146.26. The measures in the recovery plan must not reduce the pension plan's liabilities below the value of its assets either on a solvency basis or on a funding basis.

2015, c. 7, s. 1.

146.27. The recovery plan must include certification by an actuary that implementing the measures set out in the plan, as of the date of the actuarial valuation showing insufficient contributions, would result in sufficient contributions being made to the plan.

2015, c. 7, s. 1.

146.28. The recovery plan must be sent to Retraite Québec by the pension committee within 18 months after the date of the actuarial valuation.

2015, c. 7, s. 1; 2015, c. 20, s. 61.

§ 2. — *Amendment reducing benefits*

2015, c. 7, s. 1.

146.29. An amendment reducing pension benefits set out in a recovery plan may, without being agreed to as required under section 20, become effective before the date set under the first paragraph of that section or apply to service completed before the effective date of the amendment.

2015, c. 7, s. 1.

146.30. The effective date of an amendment reducing benefits set out in a recovery plan may not precede the date following that of the actuarial valuation showing insufficient contributions.

2015, c. 7, s. 1.

146.31. Despite section 21, an amendment set out in a recovery plan may reduce a pension benefit the payment of which began before the effective date of the amendment.

2015, c. 7, s. 1.

146.32. No amendment reducing benefits may have an effect on amounts or benefits already paid at the date of its registration.

2015, c. 7, s. 1.

§ 3. — *Adoption of recovery plan*

2015, c. 7, s. 1.

146.33. The recovery plan is adopted if, at the end of the consultation process set out in this section, less than 30% of the members and beneficiaries of the pension plan are opposed to it.

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The pension committee must send every member and beneficiary a written notice informing them of the purpose and effective date of the amendments set out in the recovery plan, and the consequences set out in sections 146.39 and 146.40 for failure to adopt a recovery plan. The notice must also inform them that they may notify the pension committee of their opposition to the recovery plan within 60 days after the notice is sent or after the notice required under the third paragraph is published, whichever is later.

Unless all members and beneficiaries of the pension plan have been personally notified, the pension committee must publish a notice containing the information required under the second paragraph. The rules set out in the third paragraph of section 146.4 apply with the necessary modifications.

2015, c. 7, s. 1; I.N. 2016-05-15.

146.34. The consultation set out in section 146.33 is not required in the following circumstances:

(1) the text of the pension plan or an ancillary document registered with a body similar to Retraite Québec includes, as of 18 February 2015, a provision allowing the reduction of benefits accrued to members and beneficiaries;

(2) the pension plan was amended in accordance with section 146.35 after 2 April 2015 to allow, within the scope of a recovery plan, the reduction of benefits accrued to members and beneficiaries.

2015, c. 7, s. 1; 2015, c. 20, s. 61.

146.35. A pension plan may only be amended as described in paragraph 2 of section 146.34 if, at the end of the consultation process set out in this section, less than 30% of the members and beneficiaries are opposed to it.

The pension committee must send every member and beneficiary of the pension plan a written notice, separate from the notice required under section 146.33, that states, in addition to the information required under subparagraph 1 of the first paragraph of section 26, the consultation process required in the absence of a pension plan provision allowing the reduction of benefits when contributions are insufficient. The notice must also inform them that they may notify the pension committee of their opposition to the proposed amendment within 60 days after the notice is sent or after the notice required under the third paragraph is published, whichever is later.

Unless all members and beneficiaries of the pension plan have been personally notified, the pension committee must publish a notice containing the information required under the second paragraph. The rules set out in the third paragraph of section 146.4 apply with the necessary modifications.

2015, c. 7, s. 1; 2015, c. 29, s. 34.

146.36. A notice given under section 146.33 or 146.35 is considered to be the notice required under section 26.

Section 113.1 applies to such a notice.

2015, c. 7, s. 1.

146.37. An application for the registration of amendments set out in the recovery plan must be filed with Retraite Québec not later than 24 months after the date of the actuarial valuation showing insufficient contributions.

Registration of such amendments is not subject to the authorization of Retraite Québec required under subparagraph 2 of the second paragraph of section 20.

2015, c. 7, s. 1; 2015, c. 20, s. 61.

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§ 4. — *Failure to produce a recovery plan*

2015, c. 7, s. 1.

146.38. In a case of failure to produce a recovery plan or a required accompanying document, fees equal to those payable in a case of failure to produce the report on the actuarial valuation showing insufficient contributions must be paid to Retraite Québec for each full month of delay.

2015, c. 7, s. 1; 2015, c. 20, s. 61.

146.39. In a case of failure to produce an application for the registration of an amendment to the pension plan for the purpose of implementing a recovery plan or a required accompanying document, active members cease to accumulate benefits on the date of default.

Such termination does not constitute termination of active membership.

The plan must be amended to specify the period during which benefits are not accumulated under the first paragraph.

Restoring these benefits constitutes an amendment to the plan.

2015, c. 7, s. 1.

146.40. If no recovery plan or amendment for the purpose of increasing contributions or reducing member and beneficiary benefits under such a plan is filed with Retraite Québec within 60 months after the date of the actuarial valuation showing insufficient contributions, the person or body who may amend the pension plan must terminate it.

The date of termination is the date of expiry of that 60-month time limit.

2015, c. 7, s. 1; 2015, c. 20, s. 61.

DIVISION V

RIGHTS OF MEMBERS AND BENEFICIARIES ON WINDING-UP

2015, c. 7, s. 1.

146.41. The benefits accrued under a pension plan to a member or beneficiary affected by the withdrawal of an employer from a negotiated contribution plan shall be paid in accordance with sections 236 and 237, which apply with the necessary modifications.

The notice referred to in section 200 must not include the information required under paragraph 2 of that section. However, it must mention, if applicable, the cap referred to in the third paragraph.

Despite sections 20 and 21, the pension plan may provide for a cap on the degree of solvency applicable to the payment of the value of the benefits, such as the cap permitted by section 146.20, in the circumstances described in that section, which applies with the necessary modifications.

2015, c. 7, s. 1; 2015, c. 29, s. 35.

146.42. Sections 240.2 and 308.3 do not apply to negotiated contribution plans.

However, the members and beneficiaries of the plan whose benefits were paid under the third paragraph of section 146.20 are considered, in the event of the withdrawal of the employer or the termination of the plan within three years of the date of payment of their benefits, to be members for the sole purpose of the distribution of surplus assets with respect to the value of their accrued benefits that is equal to the difference

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between the degree of solvency of the plan on the date of withdrawal or termination and the degree of solvency of the plan applied on the payment of their benefits.

The same applies if the plan is terminated within three years after the date of a payment made under the third paragraph of section 146.41.

2015, c. 7, s. 1.

146.43. Surplus assets determined on the withdrawal of an employer or the termination of the plan may only be allocated to the members and beneficiaries and shall be distributed among them proportionately to the value of their accrued benefits.

2015, c. 7, s. 1.

146.44. The provisions of subdivision 4 of Division II of Chapter XIII, concerning the debts of an employer in the event of the withdrawal of the employer or the termination of the plan, apply to negotiated contribution plans only with respect to contributions provided for in the plan that are unpaid at the date of the withdrawal or termination.

However, an employer may, before the date of payment, pay into the pension fund an additional amount to cover all or part of the amount to be funded to ensure full payment of the benefits of the members or beneficiaries affected by the withdrawal of an employer or the termination of a pension plan.

The amounts paid by an employer under the second paragraph must be applied to paying the benefits of the members or beneficiaries which relate to that employer.

2015, c. 7, s. 1.

146.45. *(Repealed).*

2015, c. 7, s. 1; 2015, c. 29, s. 36.

CHAPTER XI**ADMINISTRATION OF A PENSION PLAN****DIVISION I****ADMINISTRATION**

147. Every pension plan shall, from its registration, be administered by a pension committee composed of at least one member, designated as and when provided in the pension plan, who is neither a party to the plan nor a third person to whom, under section 176, a loan may not be granted, and the following members:

(1) one member designated by the active members at the meeting held pursuant to section 166 or, in the absence of such a designation, one plan member designated as and when provided in the plan; and

(2) one member designated by the non-active members and beneficiaries at that meeting or, in the absence of such a designation, one plan member or beneficiary designated as and when provided in the plan.

1989, c. 38, s. 147; 2000, c. 41, s. 85.

147.1. At the meeting held pursuant to section 166, the active members as a group and the non-active members and beneficiaries as a group may each designate a pension committee member in addition to those designated under section 147.

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An additional member designated under the first paragraph has the same rights as other committee members except the right to vote. Section 156 does not apply in respect of an additional member.

2000, c. 41, s. 86.

148. The term of office of a member of a pension committee shall not exceed three years.

A member of the committee, whose term of office has expired, shall remain in office until he is reappointed or replaced.

1989, c. 38, s. 148.

149. Until its registration, a pension plan which is effective and for which a pension committee has yet to be formed shall be administered by the employer.

The employer shall, for the administration of the pension plan, have the powers, obligations and liability of a pension committee.

1989, c. 38, s. 149.

150. Except in the case of an insured plan, the pension committee shall act in the capacity of a trustee.

1989, c. 38, s. 150.

150.1. The pension committee may, at any time, submit its recommendations to the person or body who may amend the pension plan as to any eventual amendments to the pension plan.

2000, c. 41, s. 87.

151. The pension committee shall exercise the prudence, diligence and skill that a reasonable person would exercise in similar circumstances; it must also act with honesty and loyalty in the best interest of the members or beneficiaries.

The members of the pension committee shall use in the administration of the pension plan all relevant knowledge or skill that they possess or, by reason of their profession or business, ought to possess.

1989, c. 38, s. 151.

151.1. The pension committee is presumed to have acted with prudence where it acted in good faith on the basis of an expert's opinion.

2006, c. 42, s. 20.

151.2. The pension committee may adopt internal by-laws establishing its rules of operation and governance. The committee ensures that they are complied with and reviews them regularly.

The internal by-laws determine, in particular,

- (1) the duties and obligations of the committee members;
- (2) the rules of ethics to which those persons are subject;
- (3) the rules governing the appointment of the chair, vice-chair and secretary;
- (4) the procedure for meetings and the frequency of meetings;
- (5) the measures to be taken to provide professional development to committee members;

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- (6) the measures to be taken to quantify and manage risks;
- (7) internal controls;
- (8) the books and registers to be kept;
- (9) the rules to be followed when selecting, remunerating, supervising or evaluating delegates, representatives or service providers; and
- (10) the standards that apply to the services rendered by the committee, namely the standards on communicating with plan members and beneficiaries.

In the event of a discrepancy between the text of the pension plan and the text of the internal by-laws as regards the operation and governance of the committee, the latter prevails. However, in the case of the following subjects, the internal by-laws prevail only if the text of the pension plan expressly so provides:

- (1) the rules governing the appointment of the chair, vice-chair and secretary of the pension committee as well as their duties and obligations;
- (2) quorum and the granting of a casting vote at committee meetings; and
- (3) the proportion of committee members who must participate in a decision in order for it to be valid.

2006, c. 42, s. 20; 2015, c. 29, s. 37.

151.3. The secretary of the pension committee or any other person appointed by the committee provides the committee members with the documents and information needed to administer the pension plan.

Committee members have access to all information on the plan and may obtain a copy of any document. However, they may not have access to personal information unless it is required in the performance of their duties.

2006, c. 42, s. 20.

152. Subject to such limitations or prohibitions as may be set out in the pension plan, the pension committee may delegate all or part of its powers, except those conferred by sections 243.3 and 243.7, or be represented by a third person for a specific act.

To such extent as is permitted by the instrument of delegation, the person or body to whom or which the pension committee has delegated powers may subdelegate all or part of such powers.

1989, c. 38, s. 152; 2000, c. 41, s. 88.

153. The person or body exercising delegated powers shall assume the same obligations and incur the same liability as those the pension committee or one of its members would have had to assume or have incurred if the powers had been exercised by the pension committee. The same applies to service providers and representatives who exercise a discretionary power belonging to the committee.

1989, c. 38, s. 153; 2006, c. 42, s. 21.

154. The pension committee is accountable for the person to whom it has delegated powers if, among other things, it was not authorized to do so; if it was so authorized, it is accountable only for the care with which it selected the delegatee and gave him instructions.

Service providers and representatives who exercise a discretionary power belonging to the pension committee are considered to be delegates.

1989, c. 38, s. 154; 1994, c. 24, s. 11; 2006, c. 42, s. 22.

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154.1. The pension committee selects and hires the the delegates, representatives and service providers.

2006, c. 42, s. 23.

154.2. Delegates, representatives and service providers must submit reports on their work to the pension committee.

Delegates, representatives and service providers must report to the pension committee in writing any situation noted in the normal course of their duties that might adversely affect the financial interests of the pension fund and that requires correction.

If the pension committee fails to take immediate corrective measures, the delegatee, representative or service provider must send a copy of the report to Retraite Québec.

A person who, acting in good faith, sends a report to the committee or Retraite Québec under the second or third paragraph may not be held liable.

2006, c. 42, s. 23; 2015, c. 20, s. 61.

154.3. Delegates, representatives and service providers must provide the pension committee with the documents and information they receive from government authorities and that call into question the conformity of the plan or its administration with this Act.

2006, c. 42, s. 23.

154.4. Delegates, representatives and service providers may not exclude or limit their liability. Any clause to that effect is null.

Any clause to that effect in a contract terminated or in effect on 13 December 2006 is null if it is abusive.

The abusive nature of such a clause is assessed, with the necessary modifications, with reference to the articles of the Civil Code on consumer contracts and contracts of adhesion.

2006, c. 42, s. 23.

155. Except in the case of the renewal of a designation or the designation of a new member under section 167, the pension committee shall, within 30 days after a member having the right to vote takes office, reexamine the delegations of powers to determine those that are to be maintained and those that are to be revoked.

The revocation of a delegation carries with it the revocation of every subdelegation made by the delegatee, if any.

1989, c. 38, s. 155; 2000, c. 41, s. 89.

156. Every member of the pension committee is presumed to have approved any decision made by the other members. He shall be solidarily liable therefor with the other members unless he expresses his dissent without delay.

He is also presumed to have approved any decision made in his absence unless he makes his dissent known to the other members, in writing, within a reasonable time after becoming aware of the decision.

1989, c. 38, s. 156; 1999, c. 40, s. 254.

Not in force

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156.1. In the cases provided for by regulation, and for the amounts and on the conditions prescribed therein, the pension committee must furnish a guarantee securing the pension fund against losses which may result from theft or embezzlement and a guarantee covering the liability, except that which derives from the failure to act with honesty and loyalty, that may be incurred by a member of the pension committee or the person to whom the committee has delegated a power or given a mandate by reason of his functions.

1993, c. 45, s. 2.

157. *(Repealed).*

1989, c. 38, s. 157; 1994, c. 24, s. 12; 2000, c. 41, s. 90.

158. No member of a pension committee may exercise his powers in his own interest or in the interest of a third person nor may he place himself in a situation of conflict between his personal interest and the duties of his office.

If the committee member is himself a member or a beneficiary of the plan, he shall exercise his powers in the common interest, considering his own interest to be the same as that of the other members or beneficiaries of the plan.

1989, c. 38, s. 158.

159. Every member of a pension committee shall, without delay, notify the committee in writing of any interest he has in an enterprise that is susceptible of causing his personal interest to conflict with the duties of his office, and of any rights, other than those arising from the plan, he may have in or may invoke against the pension fund, specifying, where such is the case, the nature and value of the rights.

The pension committee shall keep at its office a register in which every interest or right notified to it pursuant to the first paragraph shall be recorded. Any interested person may examine the register without charge during usual working hours, and the limit set out in section 115 does not apply to such an examination.

1989, c. 38, s. 159.

160. Unless otherwise stipulated, the fiscal year of a pension plan ends on 31 December each year; the fiscal year shall not exceed or include less than 12 months unless authorized by Retraite Québec.

1989, c. 38, s. 160; 2015, c. 20, s. 61.

161. The pension committee shall, within six months after the end of each fiscal year of the pension plan or, in the case of the first fiscal year of the plan, within any additional period granted by Retraite Québec, transmit to Retraite Québec an annual statement drawn up on the form it provides, along with the attestations and documents mentioned in the form.

It shall cause to be prepared, within the same time limit, a financial report containing a statement of the plan's assets and a statement of revenues and expenditures for the fiscal year just ended. The report must be audited by an accountant, except in the cases prescribed by regulation.

1989, c. 38, s. 161; 1994, c. 24, s. 13; 2000, c. 41, s. 91; 2006, c. 42, s. 24; 2008, c. 21, s. 18; 2015, c. 20, s. 61.

161.1. *(Repealed).*

1994, c. 24, s. 14; 2000, c. 41, s. 92; 2006, c. 42, s. 25.

161.2. *(Repealed).*

1994, c. 24, s. 14; 2000, c. 41, s. 93.

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162. Unless otherwise stipulated, the members of the pension committee are not entitled to any remuneration and the administration costs shall be borne by the pension fund. The cost of the professional development of committee members is an administration cost.

1989, c. 38, s. 162; 2006, c. 42, s. 26.

162.1. The pension committee compensates members who sustain a loss in the performance of their duties and who have committed no fault.

If a member has committed a fault other than a deliberate or gross fault and is covered by liability insurance, the committee may compensate up to the amount of the deductible. Before making a decision, the committee must take the adverse effect of the fault on the financial interests of the pension assets and other circumstances into consideration.

2006, c. 42, s. 27.

163. Every refund or payment of pension benefits made by the pension committee shall constitute a full discharge where the committee has grounds to believe, on the basis of the information at its disposal, that the persons to whom they are made are the persons who are entitled thereto and the refunds or payments are, in other respects, in conformity with the law and the terms of the plan.

Such discharge is valid only with respect to the sums actually paid, or the value thereof.

1989, c. 38, s. 163.

163.1. The pension committee may, in the course of the general administration of the pension plan, offset a debt of a member or beneficiary toward the pension fund against a pension benefit or refund payable to the member or beneficiary up to the greater of

- (1) 25% of the pension benefit or refund; and
- (2) 1/12 of the amount to be recovered, without exceeding 50% of the pension benefit or refund.

However, the offset may be applied against up to 100% of a pension benefit or refund if the debtor consents thereto in writing.

As well, a debt of a deceased member may be offset by the committee against the total amount of the death benefit payable to the member's successors.

2000, c. 41, s. 94.

164. Where several persons claim the same benefit under a pension plan, the pension committee may be fully discharged by depositing the amount due with the General Deposit Office of Québec or with a trust company which is, in that case, required to fulfil the obligations prescribed by article 216 of the Code of Civil Procedure (chapter C-25.01), which applies adapted as required.

1989, c. 38, s. 164; I.N. 2016-01-01 (NCCP).

165. The pension committee shall transmit to Retraite Québec the name and last-known address of every untraceable member or beneficiary who is entitled to a refund or to the payment of pension benefits or other amounts due to him following the withdrawal of an employer from a multi-employer pension plan or the termination of a pension plan.

If Retraite Québec is able, with the information at its disposal, to locate the member or beneficiary, it shall notify him to communicate with the pension committee at the address indicated.

1989, c. 38, s. 165; 2000, c. 41, s. 95; 2015, c. 20, s. 61.

Supplemental Pension Plans Act, C.Q.L.R., c. R-15.1

SUPPLEMENTAL PENSION PLANS

165.1. As soon as it is informed thereof, the pension committee shall notify Retraite Québec in writing of any effective or proposed division or merger of the pension plan.

1992, c. 60, s. 13; 2000, c. 41, s. 96; 2015, c. 20, s. 61.

166. Within six months after the end of each fiscal year of the plan, or within such additional period as may be granted by Retraite Québec, the pension committee shall, by written notice, call each member and beneficiary and the employer to a meeting held to

(1) allow the members, the beneficiaries and the employer to be informed of the amendments made to the plan, the entries recorded in the register kept pursuant to section 159 and the financial position of the plan;

(2) enable the group formed of active members, on the one hand, and the group formed of non-active members and beneficiaries, on the other hand, to decide whether or not to designate a pension committee member under section 147 or 147.1 and, if the decision is affirmative, to proceed with the designation either in the manner proposed by the committee or, if none is proposed or if the group refuses the manner proposed, in a manner, determined by the group, which allows the designation to be made at that meeting;

(3) *(subparagraph repealed)*;

A decision relating to a matter mentioned in subparagraph 2 of the first paragraph shall be made, for each group, by a majority of the votes cast by its members.

The subjects determined by regulation must, in addition, appear on the agenda of the meeting.

The pension committee shall, in addition, render an account of its administration at that meeting.

1989, c. 38, s. 166; 1994, c. 24, s. 15; 2000, c. 41, s. 97; 2005, c. 5, s. 2; 2015, c. 20, s. 61; 2015, c. 29, s. 38.

166.1. *(Repealed)*.

2005, c. 5, s. 3; 2015, c. 29, s. 39.

167. If a member of the pension committee designated pursuant to section 166 having the right to vote is absent or unable to act or if such a seat on the committee is vacant, the other members of the committee shall designate a new member to fill the seat until the next meeting held pursuant to that section.

The committee may act likewise in case of a delay in replacing any other member having the right to vote that must be designated as and when provided for in the pension plan.

1989, c. 38, s. 167; 1999, c. 40, s. 254; 2000, c. 41, s. 98.

DIVISION II

INVESTMENTS

168. Only the pension committee, the person or body to whom or which that power has been delegated or, if the pension plan so provides, the members of the plan may decide how the assets of the plan are to be invested. Where the plan authorizes members to distribute all or part of the amounts credited to them among various investments, it must offer a minimum of three investment options which not only are diversified and involve varying degrees of risk and expected return but also allow the creation of portfolios that are generally well-adapted to the needs of the members.

Investments shall be made according to law and investments selected by the pension committee or the delegatee shall, in addition, be made in conformity with the investment policy.

1989, c. 38, s. 168; 2000, c. 41, s. 99.

 SUPPLEMENTAL PENSION PLANS

169. The pension committee shall establish and adopt a written investment policy, giving particular consideration to the type of pension plan and its characteristics, financial obligations and funding policy.

1989, c. 38, s. 169; 2015, c. 29, s. 40.

170. Unless *Retraite Québec* authorizes, on the conditions it fixes, that the investment policy be simplified, the policy must set out

- (1) the expected rate of return;
- (2) the degree of risk involved in the investment portfolio, particularly as regards price fluctuations;
- (3) liquidity requirements;
- (4) the proportion of assets that may be invested in debt securities and equity securities, respectively;
- (5) the permitted categories and sub-categories of investments;
- (6) investment portfolio diversification measures conducive to an overall reduction of the degree of risk;
- (7) rules and a time schedule applicable to the valuation of the investment portfolio and to the monitoring of the management of the investment portfolio and those applicable to the review of the investment policy.

Unless they are already set out in the plan, the policy must also include

- (1) rules regarding the solvency of borrowers and the security required for granting loans out of the assets, in particular the lending of securities and hypothecary loans;
- (2) rules applicable to the exercise of the voting rights attached to the securities forming part of the assets;
- (3) the basis for the valuation of investments that are not traded on an organized market;
- (4) rules applicable to the use of futures contracts, options, share purchase warrants or share rights or other financial instruments;
- (5) rules regarding the loans that may be raised by the pension committee.

In the event of a discrepancy between the internal by-laws and the investment policy as regards any matter mentioned in this section, the latter prevails.

1989, c. 38, s. 170; 2006, c. 42, s. 28; 2015, c. 20, s. 61.

171. All deposits and investments of the assets of the pension plan must be made in the name of the pension fund or for its account.

Moreover, the assets of the plan may not serve to secure any obligations other than those of the plan.

1989, c. 38, s. 171; 2000, c. 41, s. 100.

171.1. Unless it is reasonable in the circumstances to act otherwise, the pension committee must endeavour to constitute a diversified portfolio so as to minimize the risk of major losses.

2000, c. 41, s. 101.

172. The assets of the pension plan may not be invested, directly or indirectly, in securities controlled by the employer in a proportion greater than 10% of their book value.

Supplemental Pension Plans Act, C.Q.L.R., c. R-15.1

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For the purposes of the first paragraph, the letter of credit provided by an employer under section 42.1 is considered to be a security in which the assets of the pension plan are invested and whose book value is equal to the amount of the letter of credit.

For the purposes of this section, a security is controlled by the employer in particular if it is issued by the employer or by a partnership or legal person more than 50% of the voting rights of which are held by the employer.

1989, c. 38, s. 172; 2000, c. 41, s. 102; 2006, c. 42, s. 29.

173. *(Repealed).*

1989, c. 38, s. 173; 1994, c. 24, s. 16; 2000, c. 41, s. 103.

174. Except in the case of securities traded on an organized market, the assets of the pension plan shall not be invested in securities issued by a legal person to whom a loan out of such assets is prohibited under sections 176 and 177.

1989, c. 38, s. 174.

175. The assets of a pension plan shall not be invested, directly or indirectly, in shares carrying more than 30% of the voting rights attached to the shares of a legal person.

The 30% limit does not apply to the shares of a legal person referred to in paragraph *c.1, c.2 or c.3* of section 998 of the Taxation Act (chapter I-3).

1989, c. 38, s. 175.

176. No loan out of the assets of the pension plan may be granted

(1) to a member of a pension committee, a delegatee or, where that member or delegatee is a legal person or group without juridical personality, to the directors, officers or employees of the legal person or group;

(2) to an employees' association representing members or to its directors, officers or employees;

(3) to the spouse or child of any person referred to in paragraph 1 or 2;

(4) where the employer is a legal person and administers all or part of the plan,

(a) to a shareholder, associate or member who holds directly or indirectly more than 10% of the capital stock of the legal person or to his spouse or child;

(b) to a shareholder, associate or member or to his spouse or child if, together, they hold directly or indirectly more than 10% of the capital stock of the legal person;

(5) where the employer administers all or part of the plan, to any legal person more than 10% of the capital stock of which is directly or indirectly held by the employer;

(6) to a legal person, other than the employer, more than 10% of the capital stock of which is held by a person referred to in paragraph 1, 2, 3 or 4;

(7) to a legal person, other than the employer, more than 50% of the capital stock of which is held by a group composed exclusively of persons referred to in paragraph 1, 2 or 4, of the employer where he administers all or part of the plan, or of the spouse or child of any of them;

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(8) to a legal person, other than the employer, controlled by a person referred to in paragraph 1, 2, 3 or 4, or by the employer where he administers all or part of the plan, or by a group composed exclusively of such persons.

1989, c. 38, s. 176.

177. Despite section 176, a loan secured in the manner prescribed by regulation may be granted

(1) to a member or to the spouse or child of a member;

(2) to the employer;

(3) to a parent company and a subsidiary provided that one of the companies is the employer and that the total loans granted to them do not exceed 10% of the total book value of the assets of the pension plan.

1989, c. 38, s. 177.

178. For the purposes of sections 176 and 177, spouses are persons married to or in a civil union with each other or persons of opposite sex or the same sex who have been living in a conjugal relationship for a period of not less than three years, or for a period of not less than one year if

— at least one child is born, or to be born, of their union;

— they have adopted, jointly, at least one child while living in a conjugal relationship; or

— one of them has adopted at least one child who is the child of the other, while living in a conjugal relationship.

For the purposes of the same sections, a natural or legal person is deemed to hold the shares held, directly or indirectly, by a legal person controlled by such natural or legal person. A person who holds, directly or indirectly, otherwise than as security, securities entitling him to elect in all cases a majority of the directors of a legal person controls that legal person.

1989, c. 38, s. 178; 1999, c. 14, s. 28; 2002, c. 6, s. 200.

179. If, as a result of an unforeseen or uncontrollable event, the assets of the pension plan cease to be invested according to law, the pension committee shall, within a reasonable time after it has knowledge of the event, take every step necessary to regularize the situation.

1989, c. 38, s. 179.

180. Every person who makes an investment otherwise than according to law is, by that sole fact and without further proof of wrongdoing, liable for any resulting loss.

The members of a pension committee who approved such an investment are, by that sole fact and without further proof of wrongdoing, solidarily liable for any resulting loss.

However, such persons incur no liability under this section if they acted in good faith on the basis of an expert's opinion.

1989, c. 38, s. 180; 2006, c. 42, s. 30.

181. Any investment made in contravention of the law may be annulled by judicial action on the application of Retraite Québec or any interested person.

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The court may order any person who is liable under section 180 to pay to the pension fund an amount equal to the resulting loss or to the sums so invested.

1989, c. 38, s. 181; 2015, c. 20, s. 61.

182. No fee, commission or other benefit in respect of any transaction relating to the investment of the assets of the pension plan may be paid or granted

- (1) to the members of a pension committee, to a delegatee or to the spouse or children of any of them;
- (2) to the employer, to the employer's employees responsible for the administration of all or part of the plan, or, where the employer is a legal person, to the directors or officers of the legal person;
- (3) to the persons or groups referred to in section 176.

The first paragraph does not apply, however, to a person or group referred to therein if such benefit is ordinarily granted to him or it in the performance of his or its duties and if it corresponds to what is usually granted in respect of such a transaction.

1989, c. 38, s. 182.

DIVISION II.1

ANNUITY PURCHASING POLICY

2015, c. 29, s. 41.

182.1. If a pension plan has an annuity purchasing policy that meets the requirements prescribed by regulation, payment of all or part of a pension benefit in accordance with that policy constitutes, on the date of the first payment by the insurer, as stipulated in the agreement entered into for that purpose, final payment of the benefits of the members and beneficiaries covered by that agreement.

The annuity purchasing policy only applies to pensions if, on the date of the agreement with the insurer, they are in payment or an application for payment of benefits has been filed.

2015, c. 29, s. 41.

182.2. The members and beneficiaries whose benefits have been paid in accordance with section 182.1 retain, for three years, their status as a member or beneficiary under the plan for the purposes of the provisions relating to the allocation of surplus assets in the event of termination of the plan. They also retain their status, for the same period, in the event of the employer's bankruptcy or insolvency which, following the employer's withdrawal from the plan or the termination of the plan, results in a reduction of the members' or beneficiaries' benefits.

Whenever the first paragraph must be applied, the notice required under section 207.4 must also state the rules set out in this section.

2015, c. 29, s. 41.

DIVISION III

PROVISIONAL ADMINISTRATION

183. Retraite Québec may, for the period it fixes, assume the administration of all or part of a pension plan or entrust it to the person or body it designates in any of the following cases:

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(1) where Retraite Québec or the investigator it has designated is making an inquiry into the plan's conformity with the law or into its administration;

(2) where, in the opinion of Retraite Québec, the plan or the administration thereof is not in conformity with this Act;

(3) where, in the opinion of Retraite Québec, the pension committee, a member of that committee, a delegatee or, where the member or delegatee is a legal person or a group without juridical personality, any of its directors has committed a malversation, a breach of trust or other form of misconduct;

(4) where Retraite Québec becomes aware that the pension committee or a person to whom it has delegated powers has failed to comply with an order issued by Retraite Québec.

1989, c. 38, s. 183; 2000, c. 41, s. 104; 2015, c. 20, s. 61.

184. Before deciding to place the pension plan under provisional administration, Retraite Québec shall give the pension committee and, where such is the case, the person or body whose administration or conduct is questioned an opportunity to present observations. However, in cases of emergency, Retraite Québec may make its decision before giving them such an opportunity, provided it does so within 15 days of the decision.

1989, c. 38, s. 184; 1997, c. 43, s. 651; 2000, c. 41, s. 105; 2015, c. 20, s. 61.

185. Retraite Québec shall transmit its decision to the pension committee and, where such is the case, the person or body whose administration or conduct is questioned and to the employer. It shall also, where the decision contemplates the provisional administration of the whole pension plan, transmit it to the members and to every certified association representing members.

1989, c. 38, s. 185; 2000, c. 41, s. 106; 2015, c. 20, s. 61.

186. The provisional administrator shall, to the extent set out in the decision of Retraite Québec, exercise the powers of the pension committee; the committee, or the person or body to whom or which such powers have been delegated, becomes, to the same extent, disqualified from exercising such powers.

The provisional administrator shall have the same obligations and liability as the pension committee.

1989, c. 38, s. 186; 2015, c. 20, s. 61.

187. After having decided to place the pension plan under provisional administration on any of the grounds set out in subparagraph 2 or 3 of the first paragraph of section 183 and having given the person or body whose administration or conduct is questioned an opportunity to present observations, Retraite Québec may dismiss that person or body and disqualify him or it from exercising such functions for a period of five years. In that case, Retraite Québec may, on the conditions and in the manner it determines, see to the replacement of the dismissed person or body.

Section 185 applies to every decision of Retraite Québec made under this section.

1989, c. 38, s. 187; 1997, c. 43, s. 652; 2000, c. 41, s. 107; 2015, c. 20, s. 61.

188. Retraite Québec, where it assumes the provisional administration of all or part of the pension plan, or the provisional administrator designated by it may amend the plan to bring it into conformity with the law or to protect the rights of members or beneficiaries.

Before amending the plan, Retraite Québec shall give the employer, the members and every certified association representing members an opportunity to present observations. Retraite Québec shall register every amendment made under this section.

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Where the designated provisional administrator proposes to amend the pension plan, he shall, before amending the plan, transmit the notice provided for in section 26 to the pension committee, to the employer, to the members and to every certified association representing members. In that case, Retraite Québec may, in addition to the grounds set out in section 28, refuse to register the amendment applied for if it is of the opinion that the amendment is not in the interest of the members or beneficiaries.

1989, c. 38, s. 188; 1997, c. 43, s. 653; 2000, c. 41, s. 108; 2015, c. 20, s. 61.

189. Every amendment to the plan whether it is made by Retraite Québec or by the designated provisional administrator shall become effective on the date it is registered and shall be binding on the employer and members.

1989, c. 38, s. 189; 2015, c. 20, s. 61.

190. Retraite Québec, where it assumes the provisional administration of all or part of the pension plan or, with the approval of Retraite Québec, the designated provisional administrator may terminate the plan or, where two or more employers are parties to the plan, amend the plan to allow for the withdrawal of an employer in accordance with Chapter XIII, which applies with the necessary modifications.

Notice of the date of termination or of the effective date of the amendment with an indication of the members affected shall be given to the pension committee, to the employer, to the members affected and to every certified association representing members.

1989, c. 38, s. 190; 2000, c. 41, s. 109; 2015, c. 20, s. 61.

191. Retraite Québec shall determine the remuneration and the allowances and indemnities, if any, to be paid to the designated provisional administrator.

Retraite Québec is entitled to the reimbursement of expenses it has incurred for the provisional administration or for lending any of its officers to the designated provisional administrator.

1989, c. 38, s. 191; 2015, c. 20, s. 61.

192. At the request of Retraite Québec, the designated provisional administrator shall make an inventory.

In addition, the designated provisional administrator shall, on the conditions and in the manner determined by Retraite Québec, take out liability insurance or give any other security to guarantee his administration.

1989, c. 38, s. 192; 2015, c. 20, s. 61.

193. Without prejudice to the right to claim reimbursement before the court, the expenses relating to the provisional administration shall be borne by the pension fund unless Retraite Québec elects to assume them.

1989, c. 38, s. 193; 2015, c. 20, s. 61.

CHAPTER XII

DIVISION AND MERGER

194. Any division of the assets and liabilities of a pension plan among several plans or any merger of all or part of the assets and liabilities of several pension plans into a single plan, in particular where an employer sells, assigns or otherwise disposes of his enterprise, is subject to the authorization of Retraite Québec and to such conditions as it may prescribe.

1989, c. 38, s. 194; 2015, c. 20, a. 61.

195. Retraite Québec shall not authorize a division of the assets and liabilities of a pension plan unless the value of the assets to be transferred is equal to the sum of

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(1) the market value of the assets which, assuming that the plan is terminated on the effective date of the proposed division, should be allocated, pursuant to sections 220 to 225, to the group of benefits to which the members or beneficiaries affected are entitled; and

(2) the market value of the additional share of assets that would be allocated to that group of benefits if the surplus remaining after the distribution of assets were itself distributed between the groups of benefits constituted pursuant to subdivision 3 of Division II of Chapter XIII, in such manner that the assets of the plan were distributed among the groups proportionately to the value of the obligations arising from the plan from which the benefits in each of the groups derive.

The value of the obligations referred to in subparagraph 2 of the first paragraph must be determined as provided in Division II of Chapter X and be reduced by the value of the obligations arising from the plan with respect to any portion of a funding deficiency remaining to be paid at the date of division.

Any contribution which, at the date of division, an employer that is a party to a multi-employer pension plan has failed to pay into the pension fund or, as the case may be, to the insurer must be deducted from the share of the assets which is allocated to the group of benefits pertaining to that employer pursuant to the first paragraph. Moreover, the amount determined under the first paragraph must be adjusted to take into account the return on the investment of the plan assets, calculated according to the change in the market value of the assets from the effective date of the division to the date of the transfer, and the contributions paid in respect of and the pension benefits paid to the members and beneficiaries affected during that period.

Furthermore, *Retraite Québec* may not authorize such a division except where the plan into which a portion of the assets to be divided is to be transferred includes provisions which, in respect of the allocation of any surplus assets in case of termination and to their appropriation during the life of the plan, are identical as to their effects to the provisions of the plan from which such assets are to be transferred. In verifying whether the effects are identical as required by this paragraph, only the terms in force when the application for authorization is made shall be considered.

Moreover, where, in the hypothetical situation described in the first paragraph, the value of the allocated assets is not sufficient to pay all the benefits of the affected members or beneficiaries and where a new employer will be required, after the division, to assume responsibility for the obligations related to such benefits, the authorization of *Retraite Québec* may be made conditional to mandatory payment into the pension fund by the employer then responsible for those obligations of an amount to form part of the assets to be transferred, equal to the amount to be funded to ensure full payment of such benefits.

1989, c. 38, s. 195; 1992, c. 60, s. 14; 2000, c. 41, s. 110; 2006, c. 42, s. 31; 2015, c. 20, s. 61; 2015, c. 29, s. 42.

195.0.1. In the event of division of a pension plan, the amounts recorded under section 42.2 are distributed among the pension plans resulting from the division proportionately to their respective liabilities.

2015, c. 29, s. 43.

195.1. In addition, where a pension plan is governed both by this Act and by an Act of a legislative body other than the Parliament of Québec, *Retraite Québec* may, if it considers it is necessary to protect the rights of the members and beneficiaries subject to this Act, order the division of the assets and liabilities of the plan, on the date, within the time and on the conditions it fixes, so that the assets pertaining to those members and beneficiaries are transferred to another pension plan.

The order is issued to the person or body who may amend the pension plan involved, to the person or body who administers the plan and to the person or body who may establish a pension plan for the members and beneficiaries mentioned in the first paragraph. The rights of those members and beneficiaries are established on the date of the division and according to the provisions of the plan that are registered and in force on that date.

2010, c. 41, s. 2; 2015, c. 20, s. 61.

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196. Retraite Québec may only authorize the merger of all or part of the assets and liabilities of several plans if the degree of solvency of the absorbing plan after the merger

(1) is at least 85% or, in the case of the merger of plans to which the same employer is a party, at least 100%; or

(2) is not more than five percentage points below the degree of solvency, before the merger, of the absorbing plan or the absorbed plan.

In addition, Retraite Québec may only authorize the merger if all the plans include terms which, in relation to the allocation of surplus assets determined upon termination, have identical effects or unless the applicable terms of the absorbing plan are more advantageous for the members and beneficiaries than the applicable terms of the absorbed plan. Nor shall Retraite Québec authorize the merger unless all the plans include terms which, in relation to the appropriation of surplus assets during the life of the plan, have identical effects. In verifying the effects of the applicable terms, only the terms in force when the application for authorization is made shall be considered.

In other cases, the merger may still be authorized if all the members and beneficiaries of the absorbed plan who are affected by the merger are informed by the pension committee by means of a notice in writing and if less than 30% of them are opposed to the merger. The provisions of sections 146.4 and 146.5 apply, with the necessary modifications, in respect of the procedure to be followed to inform and consult the said members and beneficiaries.

Moreover, if the proposed merger is to affect all the members or beneficiaries of the plans concerned, Retraite Québec shall not grant its authorization unless all of the assets of every plan concerned are merged. If that is not the case, the authorization shall be granted only on the condition that the assets to be merged from any plan only part of the members or beneficiaries of which are affected be determined, as far as their benefits are concerned, in accordance with the provisions of section 195, which apply with the necessary modifications.

If the merger is authorized, only the terms of the absorbing plan shall, as far as the employer's right to appropriate surplus assets of the plan to the payment of the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions and the allocation of surplus assets in the case of termination are concerned, be applicable to the members and beneficiaries of the absorbed plan who are affected by the merger.

1989, c. 38, s. 196; 1992, c. 60, s. 15; 2000, c. 41, s. 111; 2006, c. 42, s. 32; 2015, c. 20, s. 61; 2015, c. 29, s. 44.

197. Any remuneration received or, as the case may be, any hours of employment completed before a division or merger must be taken into account for the purposes of section 34.

1989, c. 38, s. 197; 2000, c. 41, s. 112.

CHAPTER XIII

RIGHTS OF MEMBERS AND BENEFICIARIES ON WINDING-UP

DIVISION I

WITHDRAWAL FROM MULTI-EMPLOYER PLAN AND TERMINATION OF PLAN

§ 1. — *Withdrawal from multi-employer pension plan*

198. The withdrawal of an employer from a multi-employer pension plan is conditional upon the amendment of the plan to that effect. The amendment of the plan is subject to authorization by Retraite Québec.

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The date of withdrawal is the effective date of the amendment. If the amendment is made following the bankruptcy of the employer, the effective date of the amendment is the date of the bankruptcy. If the amendment is made because the employer no longer has active members in its employ, the amendment becomes effective not later than on the end date of the fiscal year in which the last member ceases to accumulate benefits.

The persons affected by the withdrawal are

- (1) the active members in the employ of the employer at the date of withdrawal;
- (2) the non-active members at that date whose active membership ended while they were in the employ of the employer; and
- (3) the beneficiaries at that date of a pension benefit that derives from the benefit of a member whose active membership ended while the member was in the employ of the employer.

1989, c. 38, s. 198; 2000, c. 41, s. 114; 2015, c. 20, s. 61; 2015, c. 29, s. 45.

199. If an employer that is a party to a multi-employer pension plan is bankrupt or becomes insolvent, within the meaning of the Bankruptcy and Insolvency Act (Revised Statutes of Canada, 1985, chapter B-3), the plan must be amended to allow for the withdrawal of the employer and, where applicable, for substitution of another employer. If the person authorized under the plan to make such an amendment fails to do so within 30 days after the pension committee is informed of the insolvency or bankruptcy, the pension committee shall proceed with the amendment.

1989, c. 38, s. 199; 1997, c. 43, s. 654; 2000, c. 41, s. 114.

199.1. If an employer that is a party to a multi-employer pension plan no longer has active members in its employ, the plan must be amended to allow for the withdrawal of the employer. If the person authorized under the plan to make such an amendment fails to do so within 30 days after the pension committee is informed of the fact that the employer no longer has active members in its employ, the pension committee shall proceed with the amendment.

In the case of an employer all of whose employees covered by the plan are hired on an ad hoc, fixed term basis, the plan need only be amended if 12 months have elapsed since the employer ceased to have active members in its employ.

2015, c. 29, s. 46.

200. Before applying for the registration of an amendment allowing for the withdrawal of an employer from a multi-employer pension plan, the pension committee shall, in addition to informing the members as required by section 26, send to every member and beneficiary affected by the withdrawal a notice informing them

- (1) of the degree of solvency of the plan as established in the last actuarial valuation or, if more recent, in the notice sent to Retraite Québec under section 119.1;
- (2) of the effect of full payment of benefits under the plan, particularly as concerns the application of the plan provisions required under subparagraph 16 of the second paragraph of section 14 and, if applicable, section 240.2;
- (3) that the benefits of non-active members and beneficiaries affected by the withdrawal and whose pension is in payment at the date of withdrawal will be paid by means of a pension paid, as prescribed by regulation, by an insurer selected by the pension committee; and
- (4) that the benefits of members and beneficiaries affected by the withdrawal, other than those to whom paragraph 3 applies, will be paid by means of a transfer under section 98, which applies with the necessary

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modifications, or, as applicable, by means of the payment in a lump sum or the transfer into a registered retirement savings plan of the portion of their accrued benefits that is refundable.

1989, c. 38, s. 200; 1992, c. 60, s. 17; 2000, c. 41, s. 114; 2015, c. 29, s. 47; 2015, c. 20, s. 61.

201. An application for registration of an amendment allowing for the withdrawal of an employer from a multi-employer pension plan must include, in addition to what is required by section 24,

- (1) the name of the withdrawing employer and the effective date of the amendment;
- (2) the names of the members and beneficiaries affected, with the status of each, at the date referred to in paragraph 1, as an active member, a non-active member whose pension is not in payment, a non-active member whose pension is in payment or a beneficiary; and
- (3) a copy of the notice provided for in section 200, together with a declaration of the pension committee certifying that the notice has been sent to every member and beneficiary affected.

1989, c. 38, s. 201; 2000, c. 41, s. 114.

202. Within 60 days after the application for registration is filed with Retraite Québec, the pension committee shall require the withdrawing employer to pay any contribution the employer has failed to pay into the pension fund or, as the case may be, to the insurer.

Within the same time or within such additional time as Retraite Québec may grant, the pension committee shall file with Retraite Québec a report establishing the benefits accrued to each member and beneficiary affected and the value thereof, and containing the information prescribed by regulation. The report must be prepared by an actuary; in the case of a plan referred to in paragraph 2 of section 116, it can be prepared by the pension committee. The value of the benefits accrued to the members and beneficiaries must be determined at the effective date of the amendment allowing for the withdrawal of the employer or, with the authorization of and subject to the conditions determined by Retraite Québec, at the date of the next full actuarial valuation of the plan.

If, within the time prescribed in the second paragraph, the pension committee sends a notice to Retraite Québec certifying that the employer has paid all unpaid contributions in full and, where Chapter X applies to the pension plan, a declaration of an actuary attesting that the plan is solvent at the effective date of the amendment, the pension committee is dispensed from filing the report provided for in the second paragraph.

1989, c. 38, s. 202; 1992, c. 60, s. 18; 2000, c. 41, s. 114; 2015, c. 20, s. 61.

203. Retraite Québec may not authorize the amendment of a multi-employer pension plan to allow for the withdrawal of an employer, unless

- (1) the report or, as the case may be, the notice and declaration sent to Retraite Québec pursuant to section 202 are in conformity with this Act; and
- (2) the pension committee attests that the contributions referred to in the first paragraph of section 202 have been paid into the pension fund or to the insurer or will not likely be recovered, despite the pension committee's demands, by reason of the bankruptcy or insolvency of the employer.

1989, c. 38, s. 203; 1992, c. 60, s. 19; 1997, c. 43, s. 655; 2000, c. 41, s. 114; 2015, c. 20, s. 61.

§ 2. — *Termination of pension plan*

204. Except if termination is precluded by agreement or the pension plan is a plan rendered compulsory by an order or decree which does not authorize termination, an employer — or, in the case of a multi-employer pension plan, even not considered as such under section 11, the employers jointly, — may terminate the plan

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by means of a written notice of termination to the members and beneficiaries affected, to every certified association representing members, to the pension committee and, where applicable, to the insurer.

The notice shall indicate the date of termination and the names of the members and beneficiaries affected. The date of termination may in no case be subsequent to the day preceding the day on which the benefits of the last member or beneficiary under the plan have been paid in full. Moreover, unless every member whose active membership in the plan is to cease upon or after the termination of the plan consents thereto in writing, the date of termination may not precede the date on which member contributions cease to be collected or the date occurring 30 days before the date on which the notice of termination is given to the active members.

1989, c. 38, s. 204; 1992, c. 60, s. 20; 2000, c. 41, s. 114.

205. Retraite Québec may terminate a pension plan

(1) if, without having transmitted a notice of termination, the employer — or, in the case of a multi-employer pension plan, even not considered as such under section 11, every employer — fails to collect member contributions or to pay employer contributions or the member contributions collected into the pension fund or to the insurer;

(2) where the pension committee, a person or body to whom powers have been delegated or any party to the plan fails to comply with an order issued by Retraite Québec under this Act; or

(3) where the plan has no more active members.

Before terminating the plan, Retraite Québec must allow the pension committee at least 10 days to present observations.

1989, c. 38, s. 205; 1992, c. 60, s. 21; 1997, c. 43, s. 656; 2000, c. 41, s. 114; 2015, c. 20, s. 61.

205.1. *(Replaced).*

1992, c. 60, s. 22; 2000, c. 41, s. 114.

206. A decision of Retraite Québec terminating a pension plan shall indicate the date of termination and the names of the members and beneficiaries affected.

The decision shall be communicated to the pension committee, which shall forthwith transmit it to every member and beneficiary affected, to every certified association representing members affected, to the employer and, where applicable, to the insurer.

1989, c. 38, s. 206; 1992, c. 60, s. 23; 2000, c. 41, s. 114; 2015, c. 20, s. 61.

207. In addition to the members and beneficiaries whose benefits under the plan have not been paid in full before the date of termination, the members referred to in the second paragraph of section 211 are persons affected by the termination of a pension plan.

1989, c. 38, s. 207; 1992, c. 60, s. 24; 2000, c. 41, s. 114.

207.1. Within 15 days after receipt of a notice of termination from the employer or a decision of Retraite Québec terminating the pension plan, the pension committee shall transmit to Retraite Québec, to the employer and to every certified association representing members a declaration of termination containing the information prescribed by regulation, together with the attestations and documents prescribed by regulation.

1992, c. 60, s. 25; 2000, c. 41, s. 114; 2015, c. 20, s. 61.

207.2. Within 90 days after receipt of a notice of termination or a decision terminating the pension plan, the pension committee shall transmit to Retraite Québec a termination report establishing the benefits accrued to each member and beneficiary affected and the value thereof, and containing the information prescribed by

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regulation. The report must be prepared by an actuary; in the case of a plan referred to in paragraph 2 of section 116, the report can be prepared by the pension committee. Retraite Québec shall forthwith send an acknowledgment of receipt to the pension committee, indicating the date on which it received the report.

The pension committee shall also provide a copy of the report to the employer and to every certified association representing members, informing them that they may present written observations to the committee within the time limit set out in the first paragraph. The committee must send the report in a timely manner so as to allow the employer and the certified associations at least 10 days to present observations.

If applicable, the copy of the report sent to the employer must be accompanied by a notice, a copy of which must be sent to Retraite Québec, indicating that any amount due by the employer according to the report must be paid into the pension fund or to the insurer, as applicable.

2000, c. 41, s. 114; 2015, c. 20, s. 61; 2015, c. 29, s. 48.

207.3. The pension committee shall transmit to each member and beneficiary affected a copy of the termination declaration, a statement of benefits and of the value thereof, together with the following information:

- (1) the various methods for full payment of benefits, including, where applicable, an indication of the pension fund to which benefits could be transferred, and the other options available to the member or beneficiary;
- (2) the procedure for choosing a method, including, where applicable, that applicable to a share of the surplus assets;
- (3) the indication that the termination report and the data used to establish the benefits and the value thereof can be consulted, free of charge, either at the office of the pension committee or at the employer's establishment designated by the committee, whichever is closer to the applicant's residence;
- (4) the indication that the member or beneficiary must make choices and exercise options among those referred to in subparagraphs 1 and 2 before the expiry of the time limit set out in the first paragraph of section 207.2 and may present written observations to the pension committee; and
- (5) any other information determined by regulation.

The committee must transmit the statements in a timely manner so as to allow the members and beneficiaries at least 10 days to make choices, exercise options and present observations to the pension committee pursuant to subparagraph 4 of the first paragraph.

2000, c. 41, s. 114.

207.4. Unless all members and beneficiaries who may have rights under the pension plan or under this Act have been personally advised, the pension committee shall publish in a daily newspaper circulated in the region in Québec where the greatest number of active members reside at the date of termination a notice inviting all persons who, though they did not receive the statement provided for in section 207.3, believe they have rights under the plan or under this Act to present their claim to the pension committee before the expiry of the time limit set out in the first paragraph of section 207.2.

The committee must make sure that the notice is published in a timely manner so as to allow interested persons at least 10 days to present their claim pursuant to the first paragraph. In the case of a multi-employer pension plan, even not considered as such under section 11, the notice must be published with respect to each employer that is a party to the plan in the region in Québec where the greatest number of members in the employ of the employer reside at the date of termination.

2000, c. 41, s. 114.

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207.5. *(Repealed).*

2000, c. 41, s. 114; 2015, c. 29, s. 49.

207.6. A pension plan may not be amended after the date of termination, except to allow any increase in pension benefits resulting from the allocation of surplus assets.

This section shall not operate to prevent Retraite Québec from registering an amendment to the plan made before the date of termination after that date.

2000, c. 41, s. 114; 2015, c. 20, s. 61; 2015, c. 29, s. 50.

DIVISION II

WINDING-UP

§ 1. — *Interpretation and scope*

208. In this division, the term “date of termination”, where used in relation to a multi-employer pension plan that is amended to allow for the withdrawal of an employer, means the date at which the value of the benefits accrued to the members and beneficiaries affected is determined.

1989, c. 38, s. 208; 1992, c. 60, s. 26; 2000, c. 41, s. 116.

209. Sections 216 and 218 do not apply to the payment in full of the benefits of members or beneficiaries affected by the withdrawal of an employer from a multi-employer pension plan or by the termination of a pension plan where the value of the plan assets is equal to or greater than the value of its liabilities, both values being established in accordance with this chapter at the date of termination. If the plan assets nevertheless do not permit payment in full of the benefits of the members and beneficiaries affected, the payment shall be proportional to the value of their accrued benefits.

1989, c. 38, s. 209; 2000, c. 41, s. 116.

§ 2. — *Calculation of benefits and order of priority for their payment*

209.1. Within 30 days after Retraite Québec authorizes an amendment allowing for the withdrawal of an employer from a multi-employer pension plan, the pension committee shall pay in full the benefits of each member and beneficiary affected who has applied therefor, in accordance with the terms of the report transmitted pursuant to the second paragraph of section 202, if any.

2000, c. 41, s. 117; 2015, c. 20, s. 61.

210. No earlier than 30 and no later than 60 days after the date on which the termination report is received by Retraite Québec, unless additional time is granted by Retraite Québec, the pension committee shall pay in full the benefits of each member and beneficiary affected in accordance with the termination report and this Act.

However, the committee may not proceed under the first paragraph if, within 30 days after receipt of the termination report, Retraite Québec orders the pension committee to postpone the operation for the period determined by Retraite Québec or if Retraite Québec orders pursuant to section 240.4 that an irregularity found in the report be remedied within a specified time. In the latter case, the pension committee shall submit a revised termination report to Retraite Québec, which shall acknowledge receipt thereof. The committee shall proceed to make full payment within 30 days after the expiry of the postponement period or within 30 days after the date on which Retraite Québec receives the revised report.

Notwithstanding the first paragraph, the payment in full of the benefits of a member or beneficiary in accordance with the termination report may be deferred to the date of the satisfaction of the entitlement to

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surplus assets where the member so requests or where, given the method chosen by the member or beneficiary, the Taxation Act (chapter I-3) prescribes that all benefits under the plan be paid in a lump sum. Moreover, where Retraite Québec permits the employer to spread the payment of an amount due by the employer over a period of time pursuant to section 229, Retraite Québec may determine terms and conditions whereby benefits may be paid in full when payment by the employer is completed.

The pension committee may, however, at any time if the plan is solvent and with the authorization of Retraite Québec if the plan is not solvent, pay, in whole or in part and subject to the conditions it fixes, a pension, other than a pension provided for in section 67.2, that is in payment or suspended at the date of termination of the pension plan or a pension the first instalment of which becomes payable after that date. Where the amount of pension benefits paid exceeds the benefits allocated to the recipient in the termination report for the period covered by the pension benefits, the recipient shall repay the overpayment; otherwise, the overpayment may be deducted from the benefits that remain to be paid to him.

1989, c. 38, s. 210; 1992, c. 60, s. 27; 2000, c. 41, s. 118; 2008, c. 21, s. 19; 2015, c. 20, s. 61.

210.1. The share of the surplus assets to which a member or beneficiary is entitled may be paid in a lump sum or, to the extent permitted by the Taxation Act (chapter I-3), be transferred as provided for in section 98, which applies with the necessary modifications, or be used for the purchase of an annuity or another benefit, according to the option specified by the member or beneficiary to the pension committee.

2000, c. 41, s. 119; 2015, c. 29, s. 51.

211. Every member affected by the termination of a pension plan who was still active on the date of termination is entitled, in respect of the service credited to him under the plan to the date of termination, to the value of the normal pension, including benefits ancillary to any pension to which he would have been entitled if he had retired on the day preceding the date of termination.

Where the termination of the plan is brought about by the division, merger, alienation or closing down of an enterprise or part of an enterprise, the same applies to every member whose active membership in the plan ceased during the period extending from the date the members were informed of the event and the date of termination.

The amount of the pension shall, where the pension plan provides that it is to be calculated according to the progression of the member's remuneration, be determined so as to take the progression into account until the date of termination, unless the plan provides expressly that it must be taken into account beyond the date of termination.

1989, c. 38, s. 211; 1994, c. 24, s. 17; 2000, c. 41, s. 120.

212. The value of the benefits accrued to the members and beneficiaries affected by the withdrawal of an employer from a multi-employer pension plan or by the termination of a pension plan shall be determined at either of the following dates, on the basis of the assumptions referred to in section 61 that were used at that date to determine the value of the pension benefits to which section 60 applies that were vested at that date:

(1) the date the member ceased to be an active member, if the benefits whose value is being determined are those accrued to

(a) a member whose active membership ended before the withdrawal or termination and who, at the date of termination, had already opted, within the time limit set out in subparagraph 1 of the second paragraph of section 99, for the satisfaction of his or her rights under the plan or still had time to exercise such an option, or a beneficiary whose rights under the plan derive from the service credited to such a member; or

(b) a member to whom the second paragraph of section 211 applies; or

(2) the date of termination, if the benefits whose value is being determined are those accrued to any other member or beneficiary affected by the withdrawal or termination.

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The benefits accrued to the members and beneficiaries referred to in subparagraph 1 of the first paragraph shall bear interest, from the date their value is determined to the date of termination, at the rate used for the purposes of the determination.

The first paragraph does not apply to a pension that must be insured pursuant to section 237 or to a pension referred to in paragraph 3 of section 200.

1989, c. 38, s. 212; 1994, c. 24, s. 18; 2000, c. 41, s. 121.

212.1. The value of the assets of a terminated pension plan at the date of termination shall be established according to their liquidation value or an estimate thereof, reduced by the estimated amount of the costs to be paid out of the pension fund upon termination.

The liabilities of a terminated pension plan at the date of termination shall comprise, in addition to the value of the benefits determined under section 212, the value of any pension that must be insured pursuant to section 237, such value being determined

(1) in cases where the pension was insured before the date of termination, on the basis of the assumptions referred to in section 61 that were used at that date;

(2) in cases where the pension was insured after the date of termination but before the preparation of the termination report, by discounting at the date of termination the premium paid to the insurer, according to the estimated rate of return of the pension fund from the date of termination to the date on which the pension was insured; and

(3) in all other cases, by discounting at the date of termination according to the estimated rate of return of the pension fund, for the period extending from the date of termination to the date of the termination report, the premium that would have been paid to an insurer at the date of the termination report, increased by a margin that allows for any variation in the cost of purchasing the pension between the latter date and the probable date of purchase.

In the cases referred to in subparagraphs 2 and 3 of the second paragraph, the liabilities shall also comprise the value of the pension payments to be made to a member by the pension fund between the date of termination and the date the pension begins to be paid by an insurer, such value being determined according to the rate referred to in the relevant subparagraph.

2000, c. 41, s. 122.

213. *(Replaced).*

1989, c. 38, s. 213; 1992, c. 60, s. 28; 1994, c. 24, s. 18.

214. *(Repealed).*

1989, c. 38, s. 214; 2000, c. 41, s. 123.

215. *(Repealed).*

1989, c. 38, s. 215; 2000, c. 41, s. 123.

216. Any benefit derived from obligations arising from an amendment to the pension plan related to service completed in a period preceding the effective date of the amendment shall, for payment purposes, be reduced

(1) by 100%, if the period from the effective date of the amendment to the date of termination is less than one year;

(2) by 80%, if the period is one year or more, but less than two years;

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- (3) by 60%, if the period is two years or more, but less than three years;
- (4) by 40%, if the period is three years or more, but less than four years;
- (5) by 20%, if the period is four years or more, but less than five years.

1989, c. 38, s. 216; 1992, c. 60, s. 29; 2000, c. 41, s. 124.

217. Except in the case of a share of the surplus assets, any amount due to a member or beneficiary which, pursuant to the pension plan and the provisions of this Act, must be paid following the withdrawal of an employer from a multi-employer pension plan or the termination of the plan shall bear interest, from the date of termination to the date of payment, at the rate used to determine the value of the person's accrued benefits. The rate of interest must be the rate mentioned in section 44 or 45 and which is applicable to the contributions paid under the plan if the amount due is due

- (1) under a defined contribution plan;
- (2) under provisions of the plan which relate to additional voluntary contributions;
- (3) under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan;
- (4) as member contributions that exceed the limits set under section 60; or
- (5) as amounts credited to the plan following a transfer, even a transfer other than a transfer under Chapter VII.

1989, c. 38, s. 217; 1992, c. 60, s. 30; 2000, c. 41, s. 125; 2006, c. 42, s. 33.

218. Where an employer withdraws from a multi-employer pension plan or a pension plan is terminated, the amounts to which the members and beneficiaries affected are entitled shall be paid out in the following order:

- (1) amounts corresponding to the following values, concurrently:
 - (a) the value of the additional voluntary contributions paid into the pension fund or to the insurer;
 - (b) the value of the member or employer contributions paid into the pension fund under provisions which, in a defined benefit plan, are identical to those of a defined contribution plan; and
 - (c) the value of amounts received by the pension plan following a transfer, even a transfer other than a transfer under Chapter VII;
- (2) the value of other benefits, excluding those referred to in subparagraph 4, accrued under the plan and reduced under section 216;
- (3) the value of any benefit reduction under section 216; and
- (4) the value of benefits payable to members under pension plan terms granting them compensation for cessation of continuous employment due to technological or economic changes in the employer's enterprise or to the division, merger, alienation or closing down of the enterprise.

If the assets are insufficient for the full satisfaction of the rights that are collocated in the same rank, payment shall be made proportionately to the value of the benefits concerned.

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The benefits referred to in the first and second paragraphs are the benefits accrued under the plan at the date of termination. The value of those benefits must be established at that date, and is increased by the interest calculated in accordance with section 217.

1989, c. 38, s. 218; 1992, c. 60, s. 31; 2000, c. 41, s. 126; 2006, c. 42, s. 34.

§ 3. — *Distribution of the assets*

219. *(Repealed).*

1989, c. 38, s. 219; 1992, c. 60, s. 32.

220. Where an employer withdraws from a multi-employer pension plan or a multi-employer pension plan is terminated, the assets of the plan shall be distributed among the groups of benefits constituted pursuant to this subdivision, according to the value of the benefits in each group and the order of payment established by this Act.

The assets of the plan shall, for the purpose of such distribution, be increased by the amount representing the contributions that any employer who is a party to the plan has, at the date of termination, failed to pay into the pension fund or to the insurer.

1989, c. 38, s. 220; 2000, c. 41, s. 127.

221. The benefits of the members or beneficiaries not affected by the withdrawal of an employer from a multi-employer pension plan shall be determined at the date of termination, in accordance with sections 211 to 216.

1989, c. 38, s. 221; 2000, c. 41, s. 128.

222. Where an employer withdraws from a multi-employer pension plan, the benefits accumulated under the plan by the members or beneficiaries shall be divided into two groups, one of which shall consist of the benefits of the persons affected by the withdrawal.

Where two or more employers withdraw simultaneously from a multi-employer pension plan, the group of benefits of the members or beneficiaries affected by the withdrawal shall be distributed in accordance with section 223.

1989, c. 38, s. 222; 2000, c. 41, s. 129.

223. In the event of termination of a multi-employer plan, the benefits accumulated under the plan by the members or beneficiaries shall be divided into as many groups as there are employers, each group consisting of the benefits accumulated by members in respect of employment with the employer to whom the group of benefits pertains.

1989, c. 38, s. 223; 2000, c. 41, s. 203.

224. Where a member has been employed by more than one participating employer of a multi-employer pension plan, the benefits accumulated under the plan by that member shall, upon the withdrawal of one of the employers or upon the termination of the plan, be included in the group of benefits pertaining to the last employer by whom he was employed while he was an active member.

However, the first paragraph does not apply if the plan provides that, in such a case, the benefits accumulated by the member in respect of his employment with one of the employers shall be included in the group of benefits pertaining to that employer.

1989, c. 38, s. 224; 2000, c. 41, s. 130.

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225. Upon the withdrawal of an employer from a multi-employer pension plan or upon the termination of a multi-employer pension plan, the remainder of the benefits accrued to the members and beneficiaries affected by the previous withdrawal of an employer shall form a separate group of benefits.

1989, c. 38, s. 225; 2000, c. 41, s. 131.

226. *(Repealed).*

1989, c. 38, s. 226; 2000, c. 41, s. 131; 2015, c. 29, s. 52.

227. Any contribution which, at the date of termination of the pension plan, an employer who is a party to a multi-employer plan has failed to pay into the pension fund or to the insurer, as the case may be, must be deducted from that portion of the assets which is allocated to the group of benefits pertaining to that employer.

1989, c. 38, s. 227; 2000, c. 41, s. 132.

§ 4. — *Debts of the employer*

228. The amount to be funded to ensure full payment of the benefits of the members or beneficiaries affected by the withdrawal of an employer from a multi-employer pension plan or the termination of a pension plan shall constitute a debt of the employer. The amount to be funded shall be established at the date of termination.

If, at the date of termination, the employer has failed to pay contributions into the pension fund or to the insurer, as the case may be, the debt shall be the amount by which the amount to be funded exceeds such contributions.

In the case of a multi-employer plan, this section applies to every employer who is a party to the plan and to whom a group of benefits under subdivision 3 consisting of the benefits of the members or beneficiaries affected by the withdrawal or termination pertains.

1989, c. 38, s. 228; 1992, c. 60, s. 33; 2000, c. 41, s. 133.

228.1. No provision of a defined benefit plan or defined benefit-defined contribution pension plan may operate to limit or reduce the obligations of an employer towards the plan because of the withdrawal of the employer from the pension plan or the termination of the pension plan.

2008, c. 21, s. 20.

229. Any amount owed by an employer under section 228 must, upon its determination, be paid into the pension fund or to the insurer, as the case may be. However, Retraite Québec may, on the conditions it determines, allow any employer to spread the payment of such amount over a period of not more than five years.

Any amount not paid into the pension fund or to the insurer shall bear interest from the date of default, at the rate determined pursuant to section 61 that was applicable at the date of termination.

1989, c. 38, s. 229; 2000, c. 41, s. 134; 2015, c. 20, s. 61.

230. Any amount paid by an employer under this subdivision, including any amount recovered after the date of termination, particularly in respect of contributions outstanding and unpaid at the date of termination, shall be applied to the payment of benefits of members or beneficiaries in the order of priority established under this Act.

1989, c. 38, s. 230; 2000, c. 41, s. 135.

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§ 4.0.1. — *Payment options in the event of insufficient assets*

2009, c. 1, s. 2.

230.0.0.1. This subdivision applies to pension plans to which Chapter X applies if

(1) the pension plan is amended to allow for the withdrawal of a participating employer or it is terminated;

(1.1) the employer who is a party to the plan is bankrupt or subject to an order or judgment under the Companies' Creditors Arrangement Act (R.S.C. 1985, c. C-36), Part III of the Bankruptcy and Insolvency Act (R.S.C. 1985, c. B-3) or the Winding-up Act (R.S.C. 1985, c. W-11);

(2) the date of withdrawal of the employer or the date of termination of the plan is subsequent to 30 December 2008 and the date of the employer's bankruptcy or the date of the order or the judgment referred to in paragraph 1.1;

(2.1) *(paragraph repealed)*;

(3) on the date of withdrawal of the employer or termination of the plan, the assets do not permit payment in full of the benefits of the members and beneficiaries affected by the withdrawal or termination; and

(4) the assets necessary to pay the benefits are not likely to be recovered.

2009, c. 1, s. 2; 2010, c. 41, s. 3; 2011, c. 32, s. 1; 2015, c. 29, s. 53.

230.0.0.2. *(Repealed)*.

2009, c. 1, s. 2; 2015, c. 29, s. 54.

230.0.0.3. A member or beneficiary affected by the withdrawal of an employer or the termination of a plan, to whom a pension is being paid on the date of withdrawal or termination and whose benefits are reduced by reason of insufficient assets, may request that his or her pension be guaranteed by an insurer or choose a pension paid out of the assets administered by Retraite Québec under section 230.0.0.4.

2009, c. 1, s. 2; 2015, c. 20, a. 61; 2015, c. 29, s. 55.

230.0.0.4. Retraite Québec shall exercise the powers of the pension committee with respect to the members and beneficiaries of a pension plan who chose the method of payment provided for in section 230.0.0.3 and over the assets of the plan that correspond to the part of the benefits of the members and beneficiaries payable under section 218. The pension committee, or the person or body to which such powers have been delegated or granted, becomes, to the same extent, disqualified from exercising such powers.

Retraite Québec may administer all or some of the plans together. In such a case, the plans administered together are deemed, for that purpose, to constitute a single plan.

In the exercise of such powers, Retraite Québec shall have the same obligations and liability as the pension committee.

2009, c. 1, s. 2; 2015, c. 20, s. 61; 2015, c. 29, s. 56.

230.0.0.5. Despite any other provision, with regard to the assets of a pension plan administered by Retraite Québec, only the members referred to in section 230.0.0.4 are considered members of the plan.

2009, c. 1, s. 2; 2015, c. 20, a. 61.

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230.0.0.6. Unless Retraite Québec elects to assume them, the expenses relating to the administration of the plan by Retraite Québec are borne by the part of the pension fund it administers.

2009, c. 1, s. 2; 2015, c. 20, s. 61.

230.0.0.7. Retraite Québec may, in accordance with the terms and conditions prescribed by regulation of the Government, amend the pension plan to improve the benefits of the members and beneficiaries referred to in section 230.0.0.4.

2009, c. 1, s. 2; 2015, c. 20, s. 61.

230.0.0.8. Section 243 does not apply to a decision made by Retraite Québec in the capacity of a trustee or while exercising the powers conferred on it by this subdivision.

2009, c. 1, s. 2; 2015, c. 20, s. 61.

230.0.0.9. Retraite Québec must have an insurer guarantee the pension it pays to the members and beneficiaries referred to in section 230.0.0.4 not later than the end of the tenth fiscal year of the pension plan that follows the fiscal year during which Retraite Québec began exercising the powers of the pension committee with respect to those members and beneficiaries.

The second, third and fourth paragraphs of section 237 then apply, with the necessary modifications.

2009, c. 1, s. 2; 2011, c. 32, s. 2; 2015, c. 20, s. 61; 2015, c. 29, s. 57.

230.0.0.10. If the assets of the plan administered by Retraite Québec are insufficient to pay the pensions as required, to have them guaranteed by an insurer or to pay the expenses relating to the administration, Retraite Québec may reduce the pensions of the members and beneficiaries.

2009, c. 1, s. 2; 2015, c. 20, s. 61; 2015, c. 29, s. 58.

230.0.0.11. The Government may make any regulation required for the purposes of this subdivision. It may, in particular,

(1) set the rules applicable to the determination of the value of the benefits accrued to the members and beneficiaries and to the distribution of the assets and liabilities of a pension plan to determine which part of the pension fund of the plan must be administered by Retraite Québec;

(2) prescribe the terms and conditions that make it possible to improve the benefits of the members and beneficiaries referred to in section 230.0.0.4; and

(3) prescribe the terms and conditions for reducing the pensions paid by Retraite Québec.

2009, c. 1, s. 2; 2015, c. 20, s. 61; 2015, c. 29, s. 59.

230.0.0.12. *(Repealed).*

2010, c. 41, s. 4; 2015, c. 29, s. 60.

§ 4.1. — *Distribution of surplus assets in the event of termination*

230.0.1. *(Section renumbered).*

2000, c. 41, s. 136; 2015, c. 29, s. 61.



See section 230.1.

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230.1. The surplus assets of a terminated pension plan shall be equal to the amount by which the value of its assets as determined in accordance with section 212.1 exceeds the value of its liabilities as determined in accordance with that section.

In the case of a multi-employer pension plan, even not considered as such under section 11, or of a multi-employer pension plan that has already been amended to allow for the withdrawal of an employer, the surplus assets must be determined in respect of each employer as provided in subdivision 3.

1992, c. 60, s. 34; 2000, c. 41, s. 137; 2015, c. 29, s. 62; 2000, c. 41, s. 136; 2015, c. 29, s. 61.

230.1.1. *(Replaced).*

2000, c. 41, s. 138; 2015, c. 29, s. 62.

230.2. Any surplus assets of a terminated pension plan are first allocated concurrently to the employer and to the members and beneficiaries with benefits under defined benefit provisions, up to the amount of the contributions recorded, respectively, under the first and second paragraphs of section 42.2.

If the amount of surplus assets is less than the total amount of employer and employee contributions recorded under section 42.2, they must be allocated proportionately to the contributions recorded, respectively, under the first and second paragraphs of that section.

Any remaining surplus assets must be allocated in accordance with the conditions and procedure set out in the plan.

The portion allocated to the members and beneficiaries is apportioned among them proportionately to the value of their accrued benefits or according to another method set out in the plan.

1992, c. 60, s. 34; 2000, c. 41, s. 139; 2015, c. 29, s. 62.

230.3. *(Replaced).*

1992, c. 60, s. 34; 2000, c. 41, s. 140; 2015, c. 29, s. 62.

230.4. *(Replaced).*

1992, c. 60, s. 34; 2000, c. 41, s. 141; 2015, c. 29, s. 62.

230.5. *(Repealed).*

1992, c. 60, s. 34; 2000, c. 41, s. 142.

230.6. *(Replaced).*

1992, c. 60, s. 34; 2015, c. 29, s. 62.

230.7. *(Replaced).*

1992, c. 60, s. 34; 1994, c. 24, s. 20; 2000, c. 41, s. 143; 2006, c. 42, s. 35; 2015, c. 29, s. 62.

230.8. *(Replaced).*

1992, c. 60, s. 34; 2015, c. 29, s. 62.

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§ 5. — *Miscellaneous provisions***231.** *(Repealed).*

1989, c. 38, s. 231; 2000, c. 41, s. 144.

232. *(Repealed).*

1989, c. 38, s. 232; 2000, c. 41, s. 144.

233. *(Repealed).*

1989, c. 38, s. 233; 2000, c. 41, s. 144.

234. *(Repealed).*

1989, c. 38, s. 234; 2000, c. 41, s. 144.

235. *(Repealed).*

1989, c. 38, s. 235; 2000, c. 41, s. 144.

236. The right to benefits, other than a pension referred to in section 237, accrued under a pension plan to a member affected by the termination of the plan, shall be satisfied by means of a transfer under section 98, which applies with the necessary modifications. However, if a member whose pension was not in payment at the date of termination dies before the transfer is effected, the member's rights, except any entitlement to surplus assets, shall instead be satisfied by the payment of a lump sum benefit to the member's spouse or, if there is no spouse, to the member's successors.

For the purposes of this section, a member's spouse is the person who meets the requirements set out in section 85.

1989, c. 38, s. 236; 2000, c. 41, s. 145.

237. With the exception of a pension provided for in section 67.2 and the variable benefits provided for in section 90.1, the vested pension of a member or beneficiary affected by the termination of the pension plan, which is in payment or suspended on the date of the termination, shall be guaranteed by an insurer, according to the conditions prescribed by regulation.

The pension shall, subject to the exceptions prescribed by regulation, be a life pension and shall not be paid in any form other than that authorized by this Act.

If no pension of the type to which the member is entitled under the pension plan is available on the market, the pension committee may, in order to have an insurer guarantee the pension, replace the characteristics of the pension that make it unavailable on the market by similar characteristics that do not entail such a result.

The pension thus modified must, on the date payment begins, be of a value equal to that of the member's vested pension; however, if equal value cannot be attained because of the limits set under the Taxation Act (chapter I-3), an amount equal to the difference between the value of the pension to which the member is entitled and the value of the modified pension must be paid to the member in a lump sum. These values must be established on the basis of the actuarial assumptions referred to in section 61.

1989, c. 38, s. 237; 2000, c. 41, s. 146; 2006, c. 42, s. 36; 2008, c. 21, s. 21; 2015, c. 29, s. 63.

238. Any amount due to a member or beneficiary affected by the termination of the pension plan that is not claimed within three years after the expiry of the time limit provided in the first paragraph of section 207.2, shall be transferred to the Minister of Revenue; the amount may, however, be transferred before the expiry of that time if the only benefits remaining to be settled are due to untraceable members or

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beneficiaries. The transfer shall be accompanied by a statement setting out the amount due and indicating, where applicable, the name and last known address of the member or beneficiary.

The Unclaimed Property Act (chapter B-5.1) applies to the amount so transferred to the Minister of Revenue.

1989, c. 38, s. 238; 1997, c. 80, s. 76; 2000, c. 41, s. 147; 2005, c. 44, s. 54; 2011, c. 10, s. 98.

238.1. Subject to the provisions of section 238, failure by a person to assert his rights within the time prescribed by this Act shall deprive that person of the right to claim payment of the corresponding benefits out of the assets of the pension plan, unless that person shows, before the payment of the benefits of the affected members or beneficiaries begins, that it was impossible for him to act sooner or that he did not receive the information to which he was entitled under this Act for a reason outside his control.

1992, c. 60, s. 35.

239. The assets of an uninsured plan under which certain refunds or pension benefits are guaranteed by an insurer shall, where the plan is terminated or, in the case of a multi-employer pension plan, where an employer withdraws, include the value of the pension benefits guaranteed by the insurer, for the purposes of the settlement of the pension benefits of the members or beneficiaries affected by the withdrawal or termination.

1989, c. 38, s. 239; 2000, c. 41, s. 148.

240. If, in the case referred to in section 239, the value of the insured benefits accrued to the members or beneficiaries affected by a withdrawal from or the termination of a pension plan which the insurer would have to assume were it not for the withdrawal or termination exceeds the value of such benefits as established pursuant to this chapter, the insurer, at the request of the pension committee, must reduce its obligations towards those members and beneficiaries accordingly and insure the uninsured benefits of the members or beneficiaries, up to the amount of the excess.

This section shall not apply to impair the degree of solvency of the plan.

1989, c. 38, s. 240; 2000, c. 41, s. 149.

240.1. *(Repealed).*

1992, c. 60, s. 36; 1994, c. 24, s. 21; 2000, c. 41, s. 150.

240.2. The members whose active membership ended three years or less before the date of termination of the plan and whose rights were satisfied before that date shall remain members, notwithstanding the provisions of the second paragraph of section 33, for the sole purpose of the apportionment of any surplus assets which may be made pursuant to this Act.

Whenever the first paragraph must be applied, the notice required under section 207.4 must also state the rules set out in this section.

1992, c. 60, s. 36; 1994, c. 24, s. 22; 2000, c. 41, s. 151; 2015, c. 29, s. 64.

240.3. Retraite Québec may, where it considers it in the best interests of the members and beneficiaries, exempt a terminated pension plan or a pension plan that is amended to allow for the withdrawal of an employer from the application of any provision of this chapter, subject to the specified conditions.

1992, c. 60, s. 36; 1994, c. 24, s. 23; 2000, c. 41, s. 152; 2015, c. 20, s. 61; 2015, c. 29, s. 65.

240.4. If the content, transmission or publication of a document provided for in this chapter is not in conformity with the prescriptions of this Act or the regulations, Retraite Québec may order the application, within the time and on the conditions it fixes, of any remedial measure it indicates. The order extends the time

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allotted by this chapter for responding to the document until the date fixed by Retraite Québec or, if no date is fixed, until such time as Retraite Québec has certified to the person or body having received the order that the order has been complied with.

2000, c. 41, s. 153; 2015, c. 20, s. 61; 2015, c. 29, s. 66.

CHAPTER XIV**PROCEEDING BEFORE THE ADMINISTRATIVE TRIBUNAL OF QUÉBEC**

1997, c. 43, s. 657; 2006, c. 42, s. 37.

241. *(Repealed).*

1989, c. 38, s. 241; 1997, c. 43, s. 658; 2006, c. 42, s. 38.

242. *(Repealed).*

1989, c. 38, s. 242; 1997, c. 43, s. 659; 2006, c. 42, s. 38.

243. A person concerned may contest a decision or order of Retraite Québec before the Administrative Tribunal of Québec within 30 days of notification of the decision or order.

1989, c. 38, s. 243; 1997, c. 43, s. 660; 2006, c. 42, s. 39; 2015, c. 20, s. 61.

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(Repealed, 2015, c. 29, s. 67).

1992, c. 60, s. 37; 2015, c. 29, s. 67.

243.1. *(Repealed).*

1992, c. 60, s. 37; 2015, c. 29, s. 67.

243.2. *(Repealed).*

1992, c. 60, s. 37; 2000, c. 41, s. 203; 2015, c. 29, s. 67.

243.3. *(Repealed).*

1992, c. 60, s. 37; 2000, c. 41, s. 154; 2015, c. 29, s. 67.

243.4. *(Repealed).*

1992, c. 60, s. 37; 2015, c. 29, s. 67.

243.5. *(Repealed).*

1992, c. 60, s. 37; 2015, c. 29, s. 67.

243.6. *(Repealed).*

1992, c. 60, s. 37; 2000, c. 41, s. 155.

243.7. *(Repealed).*

1992, c. 60, s. 37; 1994, c. 12, s. 67; 1997, c. 63, s. 128; 2000, c. 41, s. 156; 2015, c. 29, s. 67.

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243.8. *(Repealed).*

1992, c. 60, s. 37; 2000, c. 41, s. 157; 2015, c. 29, s. 67.

243.9. *(Repealed).*

1992, c. 60, s. 37; 2015, c. 29, s. 67.

243.10. *(Repealed).*

1992, c. 60, s. 37; 2015, c. 29, s. 67.

243.11. *(Repealed).*

1992, c. 60, s. 37; 2015, c. 29, s. 67.

243.12. *(Repealed).*

1992, c. 60, s. 37; 2015, c. 29, s. 67.

243.13. *(Repealed).*

1992, c. 60, s. 37; 2015, c. 29, s. 67.

243.14. *(Repealed).*

1992, c. 60, s. 37; 2000, c. 41, s. 158; 2015, c. 29, s. 67.

243.15. *(Repealed).*

1992, c. 60, s. 37; 2000, c. 41, s. 159; 2015, c. 29, s. 67.

243.16. *(Repealed).*

1992, c. 60, s. 37; 2000, c. 41, s. 160; 2015, c. 29, s. 67.

243.17. *(Repealed).*

1992, c. 60, s. 37; 2000, c. 41, s. 161; 2015, c. 29, s. 67.

243.18. *(Repealed).*

1992, c. 60, s. 37; 2015, c. 29, s. 67.

243.19. *(Repealed).*

1992, c. 60, s. 37; 2015, c. 29, s. 67.

CHAPTER XV

REGULATIONS OF RETRAITE QUÉBEC

244. Retraite Québec may, by regulation,

(1) determine the form and content of any document, certificate or attestation prescribed by this Act and the regulations;

(2) determine the documents and information that must accompany every application for registration of a pension plan or amendment;

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(2.1) specify the conditions under which an employer may provide the pension committee with a letter of credit, as well as the form, amount and terms of such a letter;

(3) determine what income security programs are contemplated by section 58;

(3.0.1) *(subparagraph repealed)*;

(3.1) determine the rules applicable to the establishment of the benefits of the member to whom a benefit has been paid under section 69.1;

(3.1.1) determine, for the purposes of section 90.1, the conditions and time limits applicable to the payment of the variable benefits;

(3.2) determine, for the purposes of section 91.1, under what conditions a pension may be replaced by a temporary pension;

(4) determine, for the purposes of section 92, under what conditions a pension may be replaced, the terms and conditions of the replacement pension contract and the methods, assumptions, rules or factors applicable in computing the maximum annual amount of pension;

(5) determine the benefits which, pursuant to paragraph 6 of section 93, may replace a pension to which a member or his spouse has become entitled, and the conditions attached to such a replacement;

(6) determine, for the purposes of section 98, the plans or annuity contracts not governed by this Act that are included in the expression “pension plan” and the norms applicable to such plans or contracts, or make all or part of this Act and the regulations applicable to them;

(7) determine, for the purposes of section 108, 109 or 110, the rules applicable to the determination of the benefits of the member and their value before and after partition of such benefits, a seizure for non-payment of support or payment of a compensatory allowance, and to the payment of benefits awarded to the spouse, in particular, the rules governing the transfer of the sums of money to which the spouse is entitled, the interest payable thereon and the information to be provided to the spouse within the prescribed time, and the obligations incumbent upon the person responsible for managing the sums thus transferred;

(8) determine any document which may be examined pursuant to section 114;

(8.0.1) determine the information to be contained in the notice required under section 119.1 and the attestations and documents to be included with it;

(8.0.2) determine the manner for setting the target level of the stabilization provision required under section 125, and the criteria according to which any scale established is to be applied;

(8.0.3) for the purposes of section 142.4, determine the funding requirements to be met by a payment of benefits in accordance with the annuity purchasing policy and the method for calculating and paying the special annuity purchasing payment;

(8.0.4) prescribe the requirements regarding the funding policy required under section 142.5;

Not in force

(8.1) determine the cases where a pension committee must furnish the guarantees described in section 156.1, and prescribe the amounts and the terms and conditions of such guarantees;

(8.2) prohibit that the assets of a pension plan be encumbered with an immovable hypothec or determine the maximum proportion of the book value of the assets of a plan that may be encumbered with an immovable hypothec;

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- (8.3) *(subparagraph repealed)*;
- (8.4) determine the cases in which the audit of the financial report referred to in section 161 is not required;
- (8.5) determine the subjects, other than those mentioned in the first paragraph of section 166, that must be placed on the agenda of the annual meeting;
- (9) limit or prohibit the investment of the assets of a pension plan in certain forms of investments;
- (10) determine the security which must be furnished by persons or bodies to whom or which a loan may be granted under section 177;
- (10.1) prescribe the requirements regarding the annuity purchasing policy referred to in section 182.1;
- (11) determine the methods, assumptions, rules or factors which are applicable or prohibited for the purpose of calculating any contribution or benefit, refund, interest rate or rate of return and, where applicable, their actuarial value;
- (12) determine the methods, assumptions, rules or factors which are applicable or prohibited for the purpose of calculating the assets and liabilities of a plan and distributing them among the groups of benefits in particular upon the withdrawal of an employer from or the termination of a multi-employer plan, for the purpose of determining the value of the benefits of members and beneficiaries in particular for the purposes of Chapter XIII, and for the purposes of a conversion of the plan into a plan of another type, the division of the assets and liabilities of a plan among several plans or the merger of the assets and liabilities of several plans;
- (12.0.1) determine the conditions to be met by a pension insured pursuant to paragraph 3 of section 200 or section 237;
- (12.1) *(subparagraph repealed)*;
- (13) determine the procedure for any matter within its competence, the applicable time limits and the required documents;
- (14) prescribe the fees payable for the financing of expenses incurred by Retraite Québec for the administration of this Act and the regulations and for any formality prescribed by this Act or the regulations, including fees which may be imposed as a penalty for a delay in carrying out such a formality or failure to provide within the time allotted any information or document provided for in this Act or required by Retraite Québec;
- (15) determine, among the provisions of any regulation made under this section, those provisions the contravention of which is punishable under Chapter XVII.

A regulation under subparagraph 4 of the first paragraph relating to factors applicable in computing the maximum annual amount of a replacement pension is not subject to the requirements of sections 8 and 17 of the Regulations Act (chapter R-18.1) as regards publication and the date of coming into force where Retraite Québec is of the opinion that the urgency of the situation justifies that it be so exempted.

A regulation made under subparagraph 8.2 or 9 may prescribe the cases in which and the types of plans to which it applies. It may also prescribe the conditions on which it applies to loans or investments existing on the date it comes into force.

To the extent that it relates to the application, with or without amendment, of a standard of practice of the Canadian Institute of Actuaries, a regulation under this section is not subject to the requirements of sections 8 and 17 of the Regulations Act (chapter R-18.1) as regards publication and the date of coming into force and may, if it so provides, have retroactive effect to a date that is prior to the date of its coming into force but not

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prior to the date the standard is approved by the Actuarial Standards Board of the Canadian Institute of Actuaries.

The regulations of Retraite Québec shall be submitted to the Government for approval.

1989, c. 38, s. 244; 1992, c. 60, s. 38; 1993, c. 45, s. 3; 1994, c. 24, s. 24; 1997, c. 19, s. 16; 1997, c. 43, s. 661; 2000, c. 41, s. 162; 2006, c. 42, s. 40; 2008, c. 21, s. 22; 2009, c. 1, s. 3; 2008, c. 21, s. 35; 2015, c. 20, s. 61; 2015, c. 29, s. 68.

CHAPTER XVI

FUNCTIONS AND POWERS OF RETRAITE QUÉBEC

245. In addition to the other functions conferred on it by this Act, Retraite Québec shall ensure that pension plans are administered and operated according to law.

1989, c. 38, s. 245; 2011, c. 36, s. 25; 2015, c. 20, s. 61.

246. To exercise its functions under this Act, Retraite Québec, in addition to the other powers conferred on it by this Act, the Act respecting Retraite Québec (chapter R-26.3) and the Act respecting the Québec Pension Plan (chapter R-9), may

- (1) *(paragraph repealed)*;
- (2) provide information in the form of general or specific instructions regarding the administration of this Act;
- (3) carry out the inspection of any pension plan;
- (4) prepare, or cause to be prepared, any document prescribed or required by this Act and not furnished in accordance with this Act or the requirements of Retraite Québec, at the expense of the person who is required to furnish it;
- (5) in the case of a pension plan to which Chapter X does not apply, require from the pension committee or the insurer, on the conditions and within the time limits established by Retraite Québec, any document or information it considers necessary to measure the funding or solvency of the plan;
- (6) require from the pension committee or the insurer, on the conditions and within the time limits established by Retraite Québec, any document or information it considers necessary to ascertain whether a pension plan, an actuarial valuation or a document required under this Act or required by Retraite Québec is in conformity with this Act or with the requirements of Retraite Québec;
 - (6.1) require, subject to the conditions and within the time it fixes, that the pension committee or any party to a contract referred to in section 92 or to a pension plan or annuity contract to which sums may be transferred under section 98 provide it with any document or information Retraite Québec considers necessary for ascertaining that the requirements imposed by this Act in respect of the plan or contract are complied with;

(7) *(paragraph repealed)*.

1989, c. 38, s. 246; 1992, c. 60, s. 39; 1997, c. 19, s. 17; 2000, c. 41, s. 163; 2002, c. 52, s. 8; 2015, c. 20, s. 56; 2015, c. 20, s. 61.

247. For the purpose of inspecting a pension plan, any inspector appointed by Retraite Québec may, at any reasonable time, enter any premises where the pension committee, the person exercising a delegated power or any party to the plan keeps a document relating to the plan, examine such document, and take an extract therefrom or make a copy thereof.

Whoever has custody, possession or control of the document shall, on request, make it available to the inspector and facilitate his examination of it.

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On request, the inspector shall identify himself and exhibit a certificate, issued by Retraite Québec, attesting his capacity.

1989, c. 38, s. 247; 2015, c. 20, s. 61.

247.1. Retraite Québec, on the conditions it fixes, may authorize a departure from the limits established by a regulation made under subparagraph 8.2 or, with respect to immovable property investments, under subparagraph 9 of the first paragraph of section 244.

1994, c. 24, s. 25; 1999, c. 40, s. 254; 2015, c. 20, s. 61.

248. Retraite Québec may make an order directing the pension committee, the person exercising a delegated power or any party to the pension plan to take any remedial measure determined by Retraite Québec within the time and on the conditions it fixes, where it is of the opinion that

- (1) his or its action is contrary to sound financial practices;
- (2) the assumptions, methods or scenarios used
 - for the actuarial valuation of the plan,
 - for the fixing of the interest rate applicable to contributions, or
 - in the preparation of a report or any other document required by Retraite Québec,

do not accord with generally accepted actuarial or accounting principles;

(3) the assumptions, methods or scenarios used are inappropriate for the type of plan concerned or in view of its obligations, the financial position of the pension fund or the investment policy;

(4) *(subparagraph repealed)*;

(5) the pension plan or its administration is not in compliance with this Act, for instance by reason of the fact that the plan is not being wound up in accordance with the provisions of Chapter XIII; or

(6) the content of a document provided for in this Act or required by Retraite Québec is not in compliance with the requirements of this Act or of Retraite Québec.

In addition, if Retraite Québec considers it necessary in the best interests of the members and beneficiaries, it may order any person who has custody, possession or control of funds, securities or other assets of a pension plan not to dispose of them without the authorization of Retraite Québec or otherwise than in accordance with the conditions it fixes.

1989, c. 38, s. 248; 2000, c. 41, s. 164; 2006, c. 42, s. 41; 2015, c. 20, s. 61; 2015, c. 29, s. 69.

249. The Minister or Retraite Québec may enter into agreements according to law with any government, government department, international body or agency of a government or international body for the purposes of this Act or any other Act applicable, in whole or in part, to pension plans.

The agreements may, in particular,

(1) where a pension plan is governed both by this Act and by an Act of a legislative body other than the Parliament of Québec, determine on what conditions and to what extent each Act applies to the plan in respect of the employees referred to in section 1 who are parties to the plan and prescribe any other rule applicable to the plan;

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(2) determine on what conditions and to what extent this Act applies to benefits or assets transferred from a pension plan governed by this Act to a pension plan governed by an Act of a legislative body other than the Parliament of Québec;

(3) provide for the delegation of powers that this Act confers on Retraite Québec or that an Act of a legislative body other than the Parliament of Québec confers on a similar agency.

Every agreement bearing on a matter referred to in the second paragraph must be tabled in the National Assembly within 15 days after the date on which it is entered into if the Assembly is in session or, if not, within 15 days after the opening of the next session or resumption. The agreement acquires force of law from the time it is tabled in the National Assembly.

For the purposes of such an agreement, Retraite Québec may act as the mandatary of the department or agency with which the agreement has been made.

1989, c. 38, s. 249; 2000, c. 41, s. 165; 2015, c. 7, s. 2; 2015, c. 20, a. 61.

250. *(Repealed).*

1989, c. 38, s. 250; 1992, c. 60, s. 40; 2000, c. 41, s. 166; 2006, c. 42, s. 42; 2015, c. 20, s. 57.

251. *(Repealed).*

1989, c. 38, s. 251; 2009, c. 41, s. 8; 2015, c. 20, s. 57.

252. Every decision, order or notice of Retraite Québec that must be notified to the members or beneficiaries may be

(1) sent to the employer who shall, as soon as he receives it, post it conspicuously in his establishment in Québec employing the largest number of members concerned, in an area ordinarily frequented by them;

(2) published in a daily newspaper circulated in the locality where that establishment is situated; or

(3) sent to the members of the pension committee who are either plan members or persons designated by the plan members and beneficiaries and to every certified association representing plan members.

Where Retraite Québec uses either of the modes of transmission provided for in subparagraphs 1 and 2 of the first paragraph, a summary of the decision or order may be substituted for the integral text thereof.

1989, c. 38, s. 252; 2000, c. 41, s. 167; 2015, c. 20, s. 61.

253. Retraite Québec shall periodically post a bulletin on its website, containing information on its activities and the general instructions it provides pursuant to paragraph 2 of section 246.

1989, c. 38, s. 253; 2006, c. 42, s. 43; 2015, c. 20, s. 61.

254. Where, for the purposes of a decision, a problem arises as to the interpretation of this Act or a pension plan, Retraite Québec may, where it is of the opinion that the interest of the parties to the plan warrants a prompt solution of the problem, postpone its decision and submit the problem to the court by way of an application.

Article 142 of the Code of Civil Procedure (chapter C-25.01) applies, adapted as required.

1989, c. 38, s. 254; 1997, c. 43, s. 662; 2015, c. 20, s. 61; I.N. 2016-01-01 (NCCP).

255. Retraite Québec may apply to a judge of the Superior Court to obtain an injunction in respect of any matter contemplated by this Act.

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The application for an injunction shall in itself constitute an action.

The procedure provided for in the Code of Civil Procedure (chapter C-25.01) applies except that *Retraite Québec* cannot be required to give security.

1989, c. 38, s. 255; 2015, c. 20, s. 61; I.N. 2016-01-01 (NCCP).

256. *Retraite Québec* may, of its own initiative and without notice, intervene in any civil action or arbitration proceedings pertaining to this Act to participate in the trial.

1989, c. 38, s. 256; 1992, c. 60, s. 41; 2015, c. 20, s. 61; I.N. 2016-01-01 (NCCP).

256.1. *Retraite Québec* may intervene before the Administrative Tribunal of Québec in any proceeding relating to this Act at any time until the end of the hearing.

If it wishes to intervene, *Retraite Québec* shall send a notice to each of the parties and to the Tribunal; *Retraite Québec* is thereupon considered to be a party to the proceeding.

2000, c. 41, s. 168; 2015, c. 20, s. 61.

CHAPTER XVII

PENAL PROVISIONS

257. Every person is liable to a fine of \$500 to \$25,000 who:

(1) contravenes any provision of the first paragraph of section 14 or 16, sections 17, 25, 26, 39, 41, 42, 43, 51, 58, 119, 119.1, 142.5, 158, 159, 161, 166, 168, 169, 171.1 to 176, 179 and 210, subparagraph 1 of the first paragraph of section 252 and section 307;

(1.1) permits the allocation of all or part of the surplus assets determined upon termination of a pension plan otherwise than as provided in subdivision 4.1 of Division II of Chapter XIII;

(2) contravenes any regulatory provision made under subparagraph 9 of the first paragraph of section 244 where, for the purposes of subparagraph 15 of the first paragraph of the said section, such contravention is punishable by a penalty;

(3) contravenes any order issued by *Retraite Québec* under section 35, 240.4 or 248;

(4) makes a false declaration, hinders or attempts to hinder *Retraite Québec*, a member of its personnel, a provisional administrator, any person to whom *Retraite Québec* has delegated a power or any inspector appointed by *Retraite Québec*, in the carrying out of its or his duties;

(5) makes a false declaration for the purpose of obtaining

(a) a temporary pension under section 91.1;

(b) a temporary or life pension or a lump-sum payment under section 92;

(c) a temporary or life pension or a lump-sum payment payable under a pension plan or annuity contract prescribed by regulation pursuant to the third paragraph of section 98.

1989, c. 38, s. 257; 1992, c. 60, s. 42; 1997, c. 19, s. 18; 2000, c. 41, s. 169; 2006, c. 42, s. 44; 2015, c. 20, s. 61; 2015, c. 29, s. 70.

258. Every person is liable to a fine of not over \$2,000 who

(1) contravenes any provision of sections 111 to 114, 143 to 145, 165.1, 182, 200, 202, 207.1 to 207.4, 209.1, the second paragraph of section 310.1 and sections 313 and 314;

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(2) contravenes any regulatory provision other than the provision referred to in paragraph 2 of section 257, where, for the purposes of subparagraph 15 of the first paragraph of section 244, such contravention is punishable by a penalty.

1989, c. 38, s. 258; 1992, c. 60, s. 43; 2000, c. 41, s. 170; 2006, c. 42, s. 45; 2015, c. 29, s. 71.

259. Where any of the offences under sections 257 and 258 is committed by a legal person, the amount of the fine is three times the amount prescribed.

1989, c. 38, s. 259.

260. Every person who, through encouragement or advice or by his orders, incites another person to commit an offence under section 257 or 258 is guilty of the offence and of any other offence committed by the other person as a result of such encouragement, advice or orders, if he knew or ought to have known that it would probably result in the commission of the offence.

1989, c. 38, s. 260.

261. Every person who, by his act or omission, aids another person to commit an offence under section 257 or 258 is guilty of the offence as if he had committed it himself, if he knew or ought to have known that his act or omission would probably result in aiding the commission of the offence.

1989, c. 38, s. 261.

262. In the event of a subsequent offence, the fine is twice the amount prescribed for a first offence.

1989, c. 38, s. 262.

263. In determining the fines, the court shall take into account the prejudice involved and the benefits derived from the offence, if any.

1989, c. 38, s. 263.

CHAPTER XVIII

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

264. Unless otherwise provided by law, the following amounts or contributions are unassignable and unseizable:

- (1) all contributions paid or payable into the pension fund or to the insurer, with accrued interest;
- (2) all amounts refunded or pension benefits paid under a pension plan or this Act;
- (3) all amounts awarded to the spouse of a member following partition or any other transfer of benefits effected pursuant to Chapter VIII, with accrued interest, and the benefits deriving from such amounts.

Except as far as they derive from additional voluntary contributions or represent a portion of the surplus assets allocated after termination of the plan, any of the above-mentioned amounts that have been transferred to a pension plan contemplated by section 98, with accrued interest, any refunds of and benefits resulting from such amounts, and any pension or payment having replaced a pension pursuant to section 92 are also unassignable and unseizable.

1989, c. 38, s. 264; 1992, c. 60, s. 44; 1997, c. 19, s. 19; 2000, c. 41, s. 171.

265. *(Repealed).*

1989, c. 38, s. 265; 1992, c. 57, s. 690.

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266. Every natural or legal person and every body or group without juridical personality shall, if authorized under another Act to administer a pension plan governed by this Act, be regarded as pension committees.

1989, c. 38, s. 266.

ACT RESPECTING THE CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

267. *(Amendment integrated into c. C-2, s. 21).*

1989, c. 38, s. 267.

CITIES AND TOWNS ACT

268. *(Amendment integrated into c. C-19, s. 464).*

1989, c. 38, s. 268.

269. *(Amendment integrated into c. C-19, s. 465).*

1989, c. 38, s. 269.

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270. *(Amendment integrated into c. C-27.1, a. 704).*

1989, c. 38, s. 270.

271. *(Amendment integrated into c. C-27.1, a. 706).*

1989, c. 38, s. 271.

272. *(Amendment integrated into c. C-27.1, a. 707).*

1989, c. 38, s. 272.

273. *(Amendment integrated into c. C-27.1, a. 710).*

1989, c. 38, s. 273.

ACT RESPECTING LABOUR STANDARDS

274. *(Amendment integrated into c. N-1.1, s. 49).*

1989, c. 38, s. 274.

ACT RESPECTING THE QUÉBEC PENSION PLAN

275. *(Amendment integrated into c. R-9, s. 28).*

1989, c. 38, s. 275.

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ACT RESPECTING THE GOVERNMENT AND PUBLIC EMPLOYEES RETIREMENT PLAN

276. *(Amendment integrated into c. R-10, s. 108).*

1989, c. 38, s. 276.

PROFESSIONAL SYNDICATES ACT

277. *(Amendment integrated into c. S-40, s. 9).*

1989, c. 38, s. 277.

278. *(Amendment integrated into c. S-40, s. 14).*

1989, c. 38, s. 278.

279. *(Amendment integrated into c. S-40, s. 17).*

1989, c. 38, s. 279.

280. *(Amendment integrated into c. S-40, s. 21).*

1989, c. 38, s. 280.

281. *(Amendment integrated into c. S-40, s. 25).*

1989, c. 38, s. 281.

282. Every provision of another Act requiring the approval of the Régie as a condition precedent to the coming into force of a plan, an amendment or an agreement with respect to the transfer of benefits, obligations or assets is hereby repealed as to that requirement.

1989, c. 38, s. 282.

283. This Act replaces the Act respecting supplemental pension plans (chapter R-17).

1989, c. 38, s. 283; 1992, c. 60, s. 45; 2000, c. 41, s. 172.

284. Every registration of a plan made and every certificate of registration issued under the Act respecting supplemental pension plans (chapter R-17) remain valid.

The same applies to every other decision rendered under the said Act.

1989, c. 38, s. 284.

285. Every agreement entered into pursuant to section 74 of the Act respecting supplemental pension plans (chapter R-17) remains effective.

Such agreements may, however, be amended, replaced or repealed in accordance with this Act.

1989, c. 38, s. 285.

286. Subject to section 311.1, the Act respecting supplemental pension plans (chapter R-17) continues to apply to matters pending on 31 December 1989 before Retraite Québec, except matters related to the approval of amendments to a pension plan reducing the amounts or values of the benefits of the members or beneficiaries or concerning

— the conversion of the plan into a plan of another type,

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- the substitution of the employer who is a party to the plan,
- the division of the plan's assets and liabilities among several plans, or
- the merging of the assets and liabilities of several plans,

to which sections 20 to 23 and Chapter XII apply.

Any application for review filed after 31 December 1989 with respect to a decision rendered by Retraite Québec before that date shall be decided in accordance with the Act respecting supplemental pension plans.

This section shall not be construed as invalidating any thing that has been validly done.

1989, c. 38, s. 286; 1992, c. 60, s. 46; 2015, c. 20, s. 61.

286.1. With the exception of the application for review referred to in section 286 which remain subject to the Act respecting supplemental pension plans (chapter R-17), and subject to the provisions of sections 308.2 and 311.1, any applications for review pending before the Régie on 1 January 1993, or introduced after that date and relating to decisions rendered before that date, shall be decided according to the provisions of this Act as they read before that date.

Likewise, applications for review before the Régie and contestations before the Administrative Tribunal of Québec pending on 31 December 2000 or introduced after that date but relating to decisions rendered before that date shall be decided according to the provisions of this Act as they read before that date.

1992, c. 60, s. 47; 2000, c. 41, s. 173.

287. Proceedings for an offence against the Act respecting supplemental pension plans (chapter R-17) are instituted or continued in accordance with the said Act.

1989, c. 38, s. 287.

288. Unless otherwise provided by this chapter, this Act also applies in respect of service credited under a pension plan before 1 January 1990.

1989, c. 38, s. 288.

288.0.1. The orders made by the Government under section 2 as it read before 5 December 2000 are deemed to be regulations.

2000, c. 41, s. 174.

288.0.2. Section 2.1 only applies to a pension plan registered before 5 December 2000 if

- (1) the pension committee has made a written application to that effect to the Régie;
- (2) the pension plan has been amended, if necessary, to satisfy the requirements set out in the first paragraph of section 2.1;
- (3) all members and beneficiaries at the date of the application under subparagraph 1 have been notified in writing that their pension plan would no longer be subject to this Act and have consented thereto;
- (4) the fees prescribed by regulation have been fully paid to the Régie in respect of the last complete fiscal year of the plan; and
- (5) the Régie has revoked the registration of the plan, after making sure that all the conditions of this section were fulfilled.

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Section 2.1 only applies to a pension plan registered after 4 December 2000 that does not satisfy the requirements set out in that section at the date of its registration if the requirements set out in the first paragraph of this section are satisfied after the benefits that were transferred into the pension plan are transferred into another plan in accordance with section 98.

2000, c. 41, s. 174.

288.1. The provisions of any defined contribution pension plan that are in force on 31 December 2015 and that pertain to the allocation or appropriation of surplus assets apply, as of 1 January 2016, to the balance of surplus assets referred to in subparagraphs 16 and 17 of the second paragraph of section 14.

1992, c. 60, s. 48; 2000, c. 41, s. 203; 2015, c. 29, s. 72.

288.1.1. *(Replaced).*

2008, c. 21, s. 23; 2015, c. 29, s. 72.

288.2. The letters of credit provided in accordance with section 42.1 before 1 January 2016 are, as of that date, considered to be provided under that section as it applies from that date.

1992, c. 60, s. 48; 1997, c. 43, s. 664; 2000, c. 41, s. 175; 2015, c. 29, s. 72.

288.3. If contributions paid before 1 January 2016 were, in accordance with the plan, the subject of special monitoring to allow for the subsequent appropriation or allocation of surplus assets, those contributions must be recorded in accordance with section 42.2 as of that date. The special monitoring must be shown in the actuarial valuation of the plan as at 31 December 2015.

2008, c. 21, s. 24; 2015, c. 29, s. 72.

288.4. The conditions set out in section 20 do not apply to an amendment to a pension plan made before 1 January 2017 to remove the additional pension benefit referred to in section 60.1 or the equivalent benefit or portion of benefit offered by the plan to replace the additional pension benefit.

2015, c. 29, s. 72.

289. Subject to the provisions of section 45.1, member contributions or additional voluntary contributions paid by a member into the pension fund or to the insurer, as the case may be, before 1 January 1990, with accrued interest, if any, shall bear interest from 1 January 1990 at the rate referred to in section 44 or 45.

1989, c. 38, s. 289; 1992, c. 60, s. 49; 2000, c. 41, s. 176.

289.0.1. Where, before 1 January 2001, an uninsured pension plan other than a defined contribution plan provided that interest would be credited to member contributions or additional voluntary contributions at the monthly rate of return on personal five-year term deposits with chartered banks, as compiled by the Bank of Canada, such contributions, with interest accrued, shall bear interest, from that date and notwithstanding section 20, at the rate of return obtained on the investment of the plan assets, less investment expenses and administration costs.

The first paragraph applies to the contributions referred to therein to the extent that they relate to uninsured benefits or refunds.

2000, c. 41, s. 177.

289.1. Section 59, as it read prior to 5 June 1997, shall continue to apply to a pension to which the member or spouse is entitled on that same date the amount of which is adjusted to take into account an amount equal to the benefits determined under the Old Age Security Act (Revised Statutes of Canada, 1985,

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chapter O-9), the Act respecting the Québec Pension Plan (chapter R-9) or a similar plan within the meaning of paragraph *u* of section 1 of the latter Act.

1997, c. 19, s. 20.

289.2. Paragraph 4 of section 59 does not apply to a member whose pension was in payment before 1 January 2001.

2000, c. 41, s. 178.

290. Unless otherwise stipulated, section 60 does not apply to the benefit to which a member or beneficiary is entitled in respect of service credited under the plan for a period of employment prior to 1 January 1990, without prejudice to the application to that benefit of section 61.

1989, c. 38, s. 290; 1992, c. 60, s. 50.

290.1. (*Repealed*).

2000, c. 41, s. 179; 2015, c. 29, s. 73.

291. The value of the benefits to which section 60 does not apply and to which a member or a beneficiary is entitled in respect of service credited under the plan before 1 January 1990 shall be equal to or greater than the member contributions paid into the plan by the member before that date, with interest accrued to the date on which the value of the benefit is determined, calculated at the rate provided under the plan for the period prior to 1 January 1990 and, subject to the provisions of section 45.1, at the rate referred to in section 44 for the subsequent period.

The value of the benefit shall be determined at the date on which the member or beneficiary becomes entitled thereto, on the basis of the assumptions referred to in section 61 which are applicable to determine the value of other benefits vested at that date in respect of service credited after 31 December 1989.

1989, c. 38, s. 291; 1992, c. 60, s. 51; 2000, c. 41, s. 180.

291.1. Section 61, as it read before 1 January 2001, continues to apply to the determination of the value of the benefits accrued to members or beneficiaries made on the basis of an earlier date.

2000, c. 41, s. 181.

292. Articles 2445 to 2459 of the Civil Code apply, with the necessary modifications, to the revocation of the designation of any person who, on 31 December 1989, is a beneficiary designated by a member.

A member may, however, where the beneficiary is his spouse and the designation has been made without a stipulation as to the revocability or irrevocability of the designation, render the designation revocable by way of a writing to that effect transmitted to the pension committee or to the insurer before 1 January 1992. If the member dies before that date and had not transmitted such a writing, the designation of his spouse is deemed to be revocable.

Within 12 months after 31 December 1989, the pension committee or the insurer shall transmit a copy of this section to every member to whom the second paragraph applies.

1989, c. 38, s. 292; 1999, c. 40, s. 254; 2000, c. 41, s. 182.

292.1. With respect to a pension plan to which a municipality is a party, subdivision 0.1 of Division III of Chapter VI does not apply to members in the employ of the municipality unless the council of the municipality adopts a resolution explicitly providing that it applies to them.

2008, c. 21, s. 25.

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293. *(Repealed).*

1989, c. 38, s. 293; 2000, c. 41, s. 183.

294. *(Repealed).*

1989, c. 38, s. 294; 1994, c. 24, s. 26; 2000, c. 41, s. 183.

295. *(Repealed).*

1989, c. 38, s. 295; 1992, c. 60, s. 52; 2000, c. 41, s. 183.

296. *(Repealed).*

1989, c. 38, s. 296; 2000, c. 41, s. 183.

297. Any pension postponed before 1 April 1982 or between 1 April 1982 and 1 January 1990 shall be adjusted in such a manner as to ensure that the pension payable at the end of the postponement is actuarially equivalent, in the former case, to the pension the payment of which would have begun on 1 April 1982 had the pension not been postponed and, in the latter case, to the pension the payment of which would have begun on the date on which the member would have attained normal retirement age had the pension not been postponed.

Such adjustment must not create only surpluses in the pension fund of the plan nor must it create only unfunded liabilities.

1989, c. 38, s. 297.

298. The provisions of subdivision 7 of Division III of Chapter VI relating to the rights of a surviving spouse prevail, where the death of a member occurs after 31 December 1989, over any inconsistent provision which, before that date, gave entitlement to death benefits.

1989, c. 38, s. 298.

299. Service credited to a member under the pension plan before 1 January 1990 shall not be taken into account for the purposes of section 86, unless the plan is amended after 1 January 1990 to increase the benefits accumulated in respect of service credited before that date, in which case section 86 applies to the benefits resulting from the increase.

In addition, the successors of a member who dies between 31 December 1989 and 1 January 2001 shall be entitled to a lump sum benefit equal to or greater than the member contributions and additional voluntary contributions paid by the member before 31 December 1989, with interest accrued to the date of payment of the benefit, calculated at the rate provided in the plan for the period prior to 1 January 1990 and, subject to the provisions of section 45.1, at the rate referred to in section 44 for the subsequent period.

Where the death occurs after 31 December 2000, the benefit provided for in the second paragraph shall be made to the member's spouse or, if there is no surviving spouse, to the member's successors. However, the spouse may waive entitlement to such benefit, in which case section 88.1 applies, with the necessary modifications. Moreover, this paragraph does not apply if the surviving spouse is entitled, as of the member's death, to a pension the value of which is equal to or greater than the benefit provided for in the second paragraph.

For the purposes of this section, a member's spouse is the person who meets the requirements set out in section 85.

1989, c. 38, s. 299; 1992, c. 60, s. 53; 1999, c. 40, s. 254; 2000, c. 41, s. 184.

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299.1. A lump sum benefit payable under section 86 in respect of a death having occurred before 1 January 2001 shall bear interest, from that date until the date of payment, at the rate used to determine the amount of the benefit.

2000, c. 41, s. 185.

300. Section 87 does not apply to the spouse of a member where the member began to receive, before 1 January 1990, a pension the amount of which is adjusted to take into account an amount equal to the benefits determined under the Old Age Security Act (Revised Statutes of Canada, 1985, chapter O-9), the Act respecting the Québec Pension Plan (chapter R-9) or a similar plan within the meaning of paragraph *u* of section 1 of the latter Act or a pension under Division III of Chapter VI or subparagraph 2 or 3 of the first paragraph of section 93.

1989, c. 38, s. 300; 1997, c. 19, s. 21.

300.1. If a member dies during the period in which all or part of his pension is postponed, the second paragraph of section 299 does not apply; however, the value of the benefit provided for in that paragraph shall, in determining the spouse's benefits, be added to the value established under subparagraph 2 of the first paragraph of section 88 or, where there is no spouse, to the value of the benefit referred to in the third paragraph of that section.

1994, c. 24, s. 27.

300.2. Section 89, as it read before 1 January 2001, continues to apply to the exceptions provided for therein where the court judgment became effective or, as the case may be, the conjugal relationship ended after 31 August 1990 but before 1 January 2001.

2000, c. 41, s. 186.

300.3. The last paragraph of section 85 applies to a person separated from bed and board from a member who dies or whose pension begins to be paid, as the case may be, after 31 December 2000 regardless of the date on which the judgment granting separation from bed and board was rendered or became effective.

2000, c. 41, s. 186.

300.4. Section 89.1 only applies to divorces, marriage annulments, separations from bed and board, dissolutions or annulments of a civil union and cessations of conjugal relationship having become effective after 31 December 2000. However, whether or not benefits have been partitioned, an application under that section may be submitted by a member whose divorce, marriage annulment, separation from bed and board or cessation of conjugal relationship became effective before that date; the member's pension is established as of the date of the application and not as of the effective date of the judgment or cessation of conjugal relationship.

2000, c. 41, s. 186; 2002, c. 6, s. 201.

301. Notwithstanding section 94, an amount equal to the benefits determined under the Old Age Security Act (Revised Statutes of Canada, 1985, chapter O-9) may serve, in determining the normal pension, to reduce the benefits accumulated by a member in respect of service credited under the plan before 1 January 1990 to the extent provided for in the plan before that date.

In no case may the reduction exceed 1/35 of that amount in respect of any year of service credited to the member.

1989, c. 38, s. 301.

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302. The amount referred to in the first paragraph of section 95 shall be determined as of 1 January 1990 if, before that date, the member becomes entitled to a pension the amount of which is not determined before that date.

1989, c. 38, s. 302.

303. Notwithstanding subparagraph 2 of the first paragraph of section 98, a member is entitled to transfer the amount representing the value of a pension benefit to which he has become entitled before 1 January 1990 only if the plan so provides.

1989, c. 38, s. 303; 2000, c. 41, s. 187.

304. *(Repealed).*

1989, c. 38, s. 304; 1999, c. 40, s. 254; 2000, c. 41, s. 188.

305. Where an insurer has guaranteed, before 2 June 1989, refunds or pension benefits accrued to a member in respect of service credited to him under a pension plan before that date, the transfer of such benefits pursuant to section 98 may, if the member was an active member at that date, be made by subrogating the member in the rights of the pension fund as regards the contract entered into with the insurer.

The value of the guaranteed benefits so transferred shall not exceed the value of the refunds or pension benefits that would result therefrom if the latter value were determined on the basis of actuarial assumptions and methods identical to those which, on the date of the subrogation made in favour of the member, are used to determine the value of unguaranteed pension benefits to which section 60 applies and that are vested on that date.

1989, c. 38, s. 305; 2000, c. 41, s. 189.

305.1. For the purposes of its application before 1 January 2010, section 113.1 reads as if “the second paragraph of section 146.3.1,” were struck from subparagraph 2 of the first paragraph.

2008, c. 21, s. 26.

305.2. The date of the actuarial valuation referred to in section 121 must be later than 14 December 2009.

2008, c. 21, s. 26.

306. *(Repealed).*

1989, c. 38, s. 306; 2006, c. 42, s. 46.

306.1. *(Repealed).*

1998, c. 2, s. 41; 2006, c. 42, s. 46.

306.1.1. *(Repealed).*

2004, c. 20, s. 197; 2006, c. 42, s. 46.

306.2. *(Repealed).*

1998, c. 2, s. 41; 2006, c. 42, s. 46.

306.3. *(Repealed).*

1998, c. 2, s. 41; 2006, c. 42, s. 46.

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306.4. *(Repealed).*

1998, c. 2, s. 41; 2006, c. 42, s. 46.

306.5. *(Repealed).*

1998, c. 2, s. 41; 2006, c. 42, s. 46.

306.6. *(Repealed).*

1998, c. 2, s. 41; 2006, c. 42, s. 46.

306.7. Sections 119, 130, 133, 134 and 138, as they read before 1 January 2001, continue to apply to actuarial valuations dated prior to 15 December 2000.

2000, c. 41, s. 190.

306.7.1. In the case of members or beneficiaries of a pension plan who have given the required consent to the application of the procedures set out in section 8 of the Act respecting the funding of certain pension plans (2005, chapter 25), as long as amortization amounts remain to be paid with respect to the amount or balance for which the amortization procedures are set out in that section, no amendment concerning the benefits of the members or beneficiaries whose consent was required may be made to the plan unless a special amortization payment equal to the value of the additional obligations arising from the amendment and determined on a solvency basis, is paid into the pension fund.

The special amortization payment must be paid as soon as the report on the first actuarial valuation to take the amendment into consideration is sent to the Régie. Any interest accrued since the valuation date is added, calculated at the rate referred to in section 48 of this Act.

The amortization amounts referred to in the first paragraph include those considered to be amortization payments under section 49 of the Act to amend the Supplemental Pension Plans Act, particularly with respect to the funding and administration of pension plans (2006, chapter 42).

2008, c. 21, s. 27.

306.8. Where an agreement or an arbitration award pursuant to the Act respecting the negotiation of agreements concerning the reduction of labour costs in the municipal sector (1998, chapter 2) provides for the appropriation of the surplus assets of a pension plan to the payment of employer contributions, Chapter X.1 can only apply in respect of the pension plan before the expiry of the agreement or award if the municipal body concerned and all certified associations representing members so agree.

2000, c. 41, s. 190.

306.9. Except in the case of a pension plan resulting from the division of a pension plan that was not amended pursuant to section 146.5, the provisions of a pension plan that comes into force after 31 December 2009 pertaining to the employer's right to appropriate all or part of the surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan and those of a pension plan that comes into force after 31 December 2000 pertaining to the employer's right to appropriate all or part of the surplus assets to the payment of employer contributions prevail over any other provision of the plan or of an agreement and are binding on every party having rights or obligations under the plan.

No amendment to a pension plan resulting from the division of a pension plan that was amended under section 146.5 in relation to the employer's right to appropriate all or part of the surplus assets to the payment of the value of the additional obligations arising from any amendment to the plan or to the payment of employer contributions may pertain to the subject of that amendment unless all the requirements set out in the first paragraph of section 146.5 and in section 146.6 are satisfied.

2000, c. 41, s. 190; 2006, c. 42, s. 47.

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306.10. Only refunds and pension benefits that become payable after 31 December 2000 are subject to offsetting pursuant to section 163.1.

2000, c. 41, s. 190.

306.11. Sections 18, 32, 56, 165, 190, Chapter XIII except section 240.2 and paragraphs 1 and 3 of section 240.3, paragraph 12 of section 244, paragraph 6 of section 246 and sections 309 to 311.1, as they read on 31 December 2000, continue to apply

(1) to matters pending before the Régie on 31 December 2000;

(2) to total terminations having occurred before 1 January 2001 and partial terminations affecting members whose active membership ended before that date, whether or not the termination results from the withdrawal of an employer from a multi-employer pension plan, provided that

(a) if the employer decided to terminate the plan, the members were duly advised in writing, as provided by law; and

(b) if the Régie decided to terminate the plan by reason of the employer's failure to collect member contributions or to pay employer contributions or the member contributions collected into the pension fund or to the insurer, or by reason of a decrease in the number of active members, the event that warranted the Régie's decision occurred between 31 December 1999 and 1 January 2001.

Notwithstanding any provision to the contrary, a partial termination can only affect members whose active membership ended before 1 January 2001.

Section 32.1 does not apply to terminations to which this section applies.

2000, c. 41, s. 190.

306.12. Section 230.1.1 applies to any pension plan whose assets are not entirely liquidated on 1 January 2001 insofar as the employer did not transmit a draft agreement before that date to the pension committee concerning the allocation of surplus assets in accordance with section 230.2 as it read before that date.

2000, c. 41, s. 190.

306.13. Section 240.2 only applies to members whose active membership ended after 31 December 2000.

2000, c. 41, s. 190.

306.14. Section 240.3 applies even to terminations having occurred before 1 January 2001 and to terminations pending before the Régie on that date, except partial terminations referred to in section 306.11, in whose respect paragraph 2 of section 240.3, as it read before 1 January 2001, continues to apply.

2000, c. 41, s. 190.

307. Every person or body administering a pension plan shall, within five years from the date the plan becomes subject to this Act or within any extension of that period that may be granted by the Régie, regularize any investment of the assets of the plan made before that date which is not in conformity with this Act.

An additional period of 12 months shall be granted for the adoption of an investment policy which is in conformity with sections 169 and 170.

However, any investment made before 1 January 1990 in the name of the plan may, notwithstanding section 171, remain in the name of the plan.

1989, c. 38, s. 307.

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307.1. Every person or body administering a pension plan shall, within five years from 1 January 2001 or before the expiry of such extension as may be granted by the Régie, regularize any investment of the assets of the plan made before 1 January 2001 that was in conformity with this Act as it read before that date but is not in conformity with this Act as it reads from that date.

Where a pension plan in force on 31 December 2000 authorizes members to distribute all or part of the amounts credited to them among various investments, the investment options offered must, if need be, be brought into conformity with the provisions of section 168 as it reads from 1 January 2001 within one year from that date.

The right to a transfer provided for and the applicable conditions set out respectively in subparagraph *b* of subparagraph 3 of the first paragraph and the second paragraph of section 173 as it read before 1 January 2001 shall continue to apply until 31 December 2001 to deposits to which those provisions are applicable.

1994, c. 24, s. 29; 2000, c. 41, s. 191.

308. Where a pension plan is under trusteeship on 1 January 1990, the curator appointed under section 56 of the Act respecting supplemental pension plans (chapter R-17) shall continue to act as the provisional administrator as if he had been appointed under this Act.

1989, c. 38, s. 308.

308.1. Any pension plan to which the second paragraph of section 288.1 applies and of which division of the assets and liabilities must be authorized by the Régie is deemed, for the purposes of the second paragraph of section 195, to include a provision which, in case of termination, allocates the surplus assets to the members and beneficiaries only.

1992, c. 60, s. 54; 1999, c. 40, s. 254; 2000, c. 41, s. 203.

308.2. Members affected by the partial termination of a pension plan whose settlement is pending before the Régie on 1 January 1993, shall, notwithstanding the repeal of section 213 as it read before that date, retain the rights in the surplus assets that the draft termination report proposes to allocate to them, provided that

(1) where the date of the termination occurs before 14 May 1992, the pension committee has, before that date, sent the statement provided for in section 203 to the affected members or, if it did not do so, provided that the prescribed period for so doing expired before that date;

(2) where the date of the termination occurs before 1 January 1993, the employer has, before that date, agreed in writing to grant such rights to the affected members, even where the statement provided for in section 203 has not been sent to them before that date.

1992, c. 60, s. 54.

308.3. In cases where, before 1 January 1993, the Régie has only approved in part the draft termination report relating to the partial termination of a plan occurring on a date before 1 January 1993, thus postponing its decision regarding the allocation of all or part of the surplus assets, and in cases where the Régie rendered a decision relating to a notice of termination or a decision partially terminating a pension plan, provided its decision approving the draft termination report or the termination report itself was rendered after 31 December 1992, those members affected by the termination whose benefits were paid shall remain members, notwithstanding the second paragraph of section 33, for the sole purpose of the apportionment of any surplus of assets which may be determined in the event of termination of the plan.

However, if the date of the partial termination precedes the date of the total termination of the plan by seven years or more, members whose rights were thus satisfied shall only retain their status as members for the said purpose if they present their claim to the pension committee within the prescribed time.

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Whenever the provisions of the second paragraph are to be applied, the notice required to be published under the second paragraph of section 230.4 must set out the rules established by this section. However, where a case has been referred to arbitration under section 230.7 without publication of the notice, the pension committee shall, upon being informed of the referral to arbitration, cause to be published in a daily newspaper circulated in the region in Québec where the greatest number of members who were active at the date of termination reside, a notice of the application for arbitration setting out the rules established by this section, and informing interested parties that, until the matter is taken under advisement, they may present their claim to the pension committee. A copy of the public notice must be sent without delay to the Régie.

The pension committee is exempted from the obligation to publish the notice if all members and beneficiaries who may have rights under the pension plan or under this Act have been personally advised.

1992, c. 60, s. 54; 2000, c. 41, s. 192.

309. *(Repealed).*

1989, c. 38, s. 309; 2000, c. 41, s. 193.

310. *(Repealed).*

1989, c. 38, s. 310; 2000, c. 41, s. 193.

310.1. For the purposes of the provisions of subdivision 4.1 of Division II of Chapter XIII, persons whose benefits under a pension plan have been paid before 1 January 1990 by means of an annuity contract entered into with an insurer, and persons designated as beneficiaries under the terms of such a contract who are still entitled to benefits thereunder, are deemed to be members or beneficiaries, as the case may be, provided that, in all cases, the interested parties have acted within the prescribed time limits.

In addition, each time the provisions of the said sections are to be applied following the termination of a pension plan which was in force on 1 January 1990, the notice of which publication is required under section 230.4 shall also state the rule established by the first paragraph of this section. However, if the matter was submitted to arbitration under section 230.7 without publication of the notice, the pension committee shall, as soon as it is informed that the matter will be submitted to arbitration, cause to be published in a daily newspaper circulated in the region of Québec in which the greatest number of members who were active at the date of termination reside, a notice mentioning the application for arbitration and the rule established by the first paragraph of this section, and informing the interested parties that they may, until the matter is taken under advisement, assert their rights with the committee. A copy of the notice shall be sent forthwith to the Régie.

The pension committee is exempted from the obligation to publish the notice if all the members and beneficiaries who may be entitled to assert rights under the plan or under this Act have been notified personally.

1992, c. 60, s. 55; 1999, c. 40, s. 254; 2000, c. 41, s. 194.

310.2. An employer that is required to send to the members the notice provided for in the first paragraph of section 230.4 or to publish the notice provided for in the second paragraph of that section must, except where exercising powers delegated by the pension committee, indicate therein that any opposition to the draft agreement on the part of the members and beneficiaries concerned must be filed in writing with the Régie.

Section 230.6 shall apply in such cases having regard to any opposition communicated to the Régie under this section.

1992, c. 60, s. 55; 2000, c. 41, s. 195.

311. *(Repealed).*

1989, c. 38, s. 311; 2000, c. 41, s. 196.

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311.1. The provisions of subdivision 4.1 of Division II of Chapter XIII also apply to the apportionment of the surplus assets of any pension plan in force on 1 January 1993, except where that surplus is the subject of

(1) legal proceedings pending on 14 May 1992;

(2) an apportionment proposed in a draft termination report which grants all the surplus to the members and beneficiaries, if one of the following conditions is met:

— the Régie has, before 14 May 1992, considered the draft report to be in conformity with this Act, and the pension committee has, before that date, sent a statement of benefits to the members and beneficiaries or, where it has neglected to do so, provided that the time limit for doing so expires before that date;

— the draft termination report has been sent to the Régie before 1 January 1993, and the employer has consented in writing to such an apportionment; the apportionment must also be in conformity with the law applicable before the above date;

(3) an apportionment provided for in an agreement made before 1 January 1993, pursuant to subparagraph 2 of the first paragraph of section 43 of the Act respecting supplemental pension plans (chapter R-17), provided, however,

— that the Régie has been informed of the agreement before that date and that it has subsequently judged that the apportionment is fair for all the members affected by the termination and the information pertaining thereto to be given to them is adequate;

— that the members have been informed of the agreement before the expiry of the sixth month following the decision of the Régie on the apportionment provided for therein;

— that less than 30% of the members have, within 60 days after the date on which they were informed of the agreement, informed the Régie, in writing, of their opposition thereto.

Where the conditions prescribed by this paragraph are satisfied, the agreement is binding on the parties and on every member who has rights under plan. The same has always applied to any such agreement when the conditions prescribed in subparagraphs *a* and *b* of paragraph 2 of section 43 of the Act respecting supplemental pension plans have been satisfied;

(4) an order made by the Government under section 43.1 of the Act respecting supplemental pension plans has authorized payment to the employer of all or part of the surplus assets.

Where the surplus assets to be apportioned in accordance with the provisions of subdivision 4.1 of Division II of Chapter XIII result from a terminated pension plan which continues to be governed by the Act respecting supplemental pension plans pursuant to section 286, the Régie may require, as a condition for approval of the report relating to the termination, that it be provided, in the conditions and within the period it fixes, with any information or document in addition to the said report and relating to the apportionment of such surplus assets.

1992, c. 60, s. 56; 2000, c. 41, s. 197.

311.2. *(Repealed).*

1992, c. 60, s. 56; 2000, c. 41, s. 198.

311.3. *(Repealed).*

1992, c. 60, s. 56; 2000, c. 41, s. 198.

311.4. *(Repealed).*

1992, c. 60, s. 56; 1994, c. 24, s. 30; 2000, c. 41, s. 198.

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311.5. Except in cases to which section 266 applies, sections 243.3, 243.6 and 243.7, as they read before 1 January 2001, continue to apply to pension plans whose administrator is not a pension committee whose composition is in accordance with section 147.

2000, c. 41, s. 199.

311.6. The first paragraph of section 23, sections 56, 66, 69 and 71, paragraph 3 of section 86, paragraph 1 of section 98, the first paragraph of section 197 and sections 293 to 296 and 303, as they read before 1 January 2001, continue to apply to the rights and benefits of members whose active membership ended before that date.

Section 66, as it reads subsequent to 31 December 2000, also applies to the rights and benefits referred to in the first paragraph.

2000, c. 41, s. 199.

311.7. The list of possible arbitrators drawn up in accordance with section 243.17 as it read before 1 January 2001 is deemed to have been drawn up by the Minister in accordance with that section as it reads from that date.

2000, c. 41, s. 199.

312. In addition to the transitional provisions contained in this chapter, the Régie may, by regulation, make any other transitional provision to facilitate the administration of this Act; the regulations may, in particular, determine on what conditions and to what extent this Act applies to a pension plan that is also governed by an Act of a legislative body other than the Parliament of Québec and prescribe any other rule applicable to such plan.

The regulations shall be submitted to the Government for approval; they may have retroactive effect to any date prior to the date on which they come into force, but not prior to 15 November 1988.

The Régie may, by regulation and before 1 January 2003, adopt any transitional provision for the carrying out of this Act as it stands on 1 January 2001. Regulations made under this section shall be submitted to the Government for approval. They may have retroactive effect from a date not prior to 1 January 2001.

1989, c. 38, s. 312; 1992, c. 60, s. 57; 2000, c. 41, s. 200.

313. Every amendment required to bring the provisions of any pension plan that is effective on 1 January 1990 into conformity with this Act shall be filed with the Régie for registration, within 12 months after 1 January 1990 or within any extension of that period which may be granted by the Régie.

1989, c. 38, s. 313.

314. Notwithstanding section 313, the amendments required to bring the provisions of a pension plan of which all or part of the members are governed by a collective agreement, an arbitration award in lieu thereof or an order or decree imposing a collective agreement which are in force on 1 January 1990 into conformity with this Act shall be submitted to the Régie for registration within three months after the date of the signing of a new collective agreement, of the rendering of the arbitration award in lieu thereof, of the extension or renewal of the order or decree or of the coming into force of an order or decree replacing an order or decree which has expired.

The Régie may grant an extension of time.

1989, c. 38, s. 314.

315. From such time as the amendments referred to in sections 313 and 314 are registered in accordance with this Act, they have effect

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(1) in the case of section 313, from 1 January 1990;

(2) in the case of section 314,

(a) with respect to employees governed by a collective agreement, an arbitration award in lieu thereof or an order or decree in force on 1 January 1990, from the date of expiry of the agreement or award or from the date of expiry, extension or renewal of the order or decree;

(b) with respect to employees not governed by a collective agreement, an arbitration award or an order or decree referred to in subparagraph *a*, from 1 January 1990.

1989, c. 38, s. 315.

316. The provisions of a collective agreement, of an arbitration award in lieu thereof or of an order or decree imposing a collective agreement and the terms of a pension plan applicable to employees governed by the agreement, award, order or decree, in force on 1 January 1990, which are incompatible with the provisions of this Act shall prevail over the provisions of this Act until the date of expiry of the agreement or award or until the date of expiry, extension or renewal of the order or decree.

The Act respecting supplemental pension plans (chapter R-17) shall continue, for the same period, to apply to the plan, to the extent that the employees concerned are governed by the said collective agreement, award, order or decree.

1989, c. 38, s. 316.

317. Any unfunded actuarial liability resulting

(1) from an amendment to the plan that is an amendment referred to in section 313 or 314 made for the purpose of bringing the plan into conformity with Chapter IV, V or VI, or

(2) from an amendment to the plan made for the purposes of the application of section 44, 45, 60, 69 or 86 to benefits accumulated in respect of service credited under the plan before 1 January 1990,

constitutes an improvement unfunded actuarial liability.

Such an improvement unfunded actuarial liability may be considered to be an initial unfunded actuarial liability.

1989, c. 38, s. 317.

317.1. Any unfunded actuarial liability resulting from an amendment to a pension plan for the purpose of bringing the pension plan into conformity with this Act as it stands on 1 January 2001 may be considered to be an initial unfunded actuarial liability.

The Régie may require that a pension committee submit to it, within a specified time, a report prepared by an actuary and containing the information and attestations the Régie considers necessary to ascertain that the determination of employer and member contributions is in conformity with the pension plan and with this Act as it stands on 1 January 2001.

For the purposes of this Act, the report provided for in the second paragraph is considered to be an actuarial valuation report of a pension plan prepared under section 119.

2000, c. 41, s. 201.

318. Every person or body who or which, on 31 December 1989, administers a pension plan, may, despite the fact that he or it is not a pension committee established as prescribed by section 147, continue to administer the plan either until the expiry of the time prescribed in section 313 or 314 for the filing of

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amendments or until such later date that may be set by the Régie, or, if the plan cannot be amended within that time by reason of its termination, until it ceases to be in force. In such a case, the person or body shall, during his or its administration, be regarded as a pension committee.

1989, c. 38, s. 318; 1992, c. 60, s. 58; 2000, c. 41, s. 203.

318.1. The amendments needed to bring the provisions of a pension plan that is in force on 31 December 2000 into conformity with this Act as it stands on 1 January 2001 must be presented to the Régie for registration within 12 months after 31 December 2000 or within such additional time as the Régie may grant.

Amendments registered under this section have effect from 1 January 2001.

However, as concerns employees governed by a collective agreement, an arbitration award in lieu thereof or an order or decree making a collective agreement compulsory in force on 1 January 2001, the adjustment of pensions under section 60.1 has effect only as of the date of expiry of the collective agreement or arbitration award or as of the date of expiry, extension or renewal of the order or decree.

2000, c. 41, s. 202.

318.2. Any pension plan to which Chapter X applies must be the subject of a complete actuarial valuation on 31 December 2015 in accordance with the provisions in force on 1 January 2016.

For the purposes of the valuation, the amortization payments required, on a solvency basis and a funding basis, for an unfunded actuarial liability determined in a prior actuarial valuation, are eliminated.

2015, c. 29, s. 74.

318.3. Despite paragraphs 1 and 2 of section 138, the amortization period of any technical actuarial deficiency or any stabilization actuarial deficiency that begins on the date of an actuarial valuation prior to 31 December 2016 expires on the date of the end of the fiscal year of a pension plan that ends no later than 15 years after the date of the valuation. The maximum amortization period of such an actuarial deficiency beginning after 30 December 2016 is reduced by one year for every full year of deviation between 31 December 2015 and the date on which the amortization period of the deficiency begins.

The amortization period of any technical actuarial deficiency or any stabilization actuarial deficiency that begins after 30 December 2020 is determined in accordance with section 138.

2015, c. 29, s. 74.

318.4. If the employer contributions that are determined in the actuarial valuation required under section 318.2 or a subsequent actuarial valuation and that are payable for every fiscal year or part of a fiscal year after the valuation date are greater than those that would have been payable from 1 January 2016 to 31 December 2016 under the provisions in force on 31 December 2015, the difference is only payable at a rate of one third per 12-month period as of 1 January 2017.

For the purposes of the first paragraph, the employer current service contributions corresponding to the value of the obligations arising from the pension plan in relation to credited service completed during the fiscal year are to be excluded.

To determine the contributions that would have been payable, any instruction given in relation to the period including the pension plan's fiscal year in progress on 31 December 2015 under the Regulation providing new relief measures for the funding of solvency deficiencies of pension plans in the private sector (chapter R-15.1, r. 4.1) and applied on that date must be taken into account.

If applicable, section 42.1 applies taking into account only the portion of the stabilization amortization payment payable under the first paragraph.

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This section ceases to apply on 31 December 2018.

2015, c. 29, s. 74.

318.5. A pension plan that is exempted, under a regulation made under section 2, from the application of the funding rules set out in this Act is subject to the provisions of this Act that are in force on 1 January 2016 but only to the extent prescribed by the regulation applicable to the plan.

Sections 90.1, 142.5 and 237 apply, however, to a plan referred to in the first paragraph.

Sections 60, 119.1, 143 and 146 apply to pension plans that are subject to the Regulation respecting the funding of pension plans of the municipal and university sectors (chapter R-15.1, r. 2). Those sections do not apply, however, to a pension plan referred to in Division I or I.1 of the Regulation respecting the exemption of certain pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 8).

For the purposes of section 119.1, the actuarial valuation required is the one referred to in subparagraph 2 of section 118, as replaced by section 7 of the Regulation respecting the funding of pension plans of the municipal and university sectors.

If such a regulation ceases to apply to a pension plan, sections 318.2 to 318.4 apply to such a plan, and in applying those sections, the date of 1 January 2016 is replaced by the date following the date on which the regulation ceases to apply and the other dates mentioned in those sections are replaced accordingly.

The provisions of Chapter X, as they read on 31 December 2015, continue to apply to any pension plan administered by Retraite Québec under subdivision 4.0.1 of Division II of Chapter XIII.

2015, c. 29, s. 74; 2015, c. 20, s. 61; 2016, c. 13, s. 69

318.6. The fact that the Regulation respecting supplemental pension plans affected by the arrangement regarding AbitibiBowater Inc. under the Companies' Creditors Arrangement Act (chapter R-15.1, r. 6.1) ceases to apply before 31 December 2020 does not cause Division IV of the Regulation to cease to apply.

2015, c. 29, s. 74.

318.7. The provisions of subdivision 4.0.1 of Division II of Chapter XIII that are in force on 31 December 2015 continue to apply to pensions being paid by the Régie under those provisions at 31 December 2015.

In addition, a pension plan to which Chapter X applies and that meets all the conditions set out in section 230.0.0.1, as it read on 31 December 2015, is subject to the provisions mentioned in the first paragraph, unless it was liquidated before 1 January 2016.

2015, c. 29, s. 74.

318.8. If the termination report regarding a pension plan referred to in the provisions of subdivision 4.0.1 of Division II of Chapter XIII that come in force on 1 January 2016 was sent to the Régie before that date, the rights of the members and beneficiaries are established based on that report.

2015, c. 29, s. 74.

319. In any other Act and in any regulation, decree, order, agreement, contract or other document, unless otherwise required by the context, and taking into account any necessary changes,

(1) a reference to a provision of the Act respecting supplemental pension plans (chapter R-17) is a reference to the corresponding provision of this Act;

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(2) the expression “Act respecting supplemental pension plans” is replaced by “Supplemental Pension Plans Act” and the expression “régime supplémentaire de rentes” is replaced by the expression “régime complémentaire de retraite”.

1989, c. 38, s. 319.

319.1. Sections 14.1 and 228.1 are declaratory.

2008, c. 21, s. 28.

319.2. The time limit set by section 146.16 for sending the Régie the report on the actuarial valuation as at 31 December 2014 of a plan subject to Chapter X.2 runs from 30 April 2015 instead of from 31 December 2014.

The same applies to the time limit for sending the recovery plan and the time limit for filing an application for registration of an amendment to the plan for the purpose of implementing the recovery plan, which time limits are set by sections 146.28 and 146.37, respectively.

2015, c. 7, s. 3.

319.3. The payment made in accordance with section 143 and, if applicable, section 145.1 before 31 December 2014 in respect of a plan subject to Chapter X.2 constitutes the final payment of the benefits accrued to the member or beneficiary concerned.

The employer may however pay an additional amount into the pension fund for the payment of all or part of any amount that is no longer required to be paid under the first paragraph.

A pension plan may also be amended to provide for the payment, in any fiscal year of the plan ending before 1 January 2020, of amounts whose payability is extinguished under the first paragraph. The amount of such a payment, added to the sum of the amounts referred to in section 146.12, must not result in insufficient contributions being made to the plan.

2015, c. 7, s. 3.

319.4. All amounts due, at 31 December 2014, by an employer that is a party to a pension plan subject to Chapter X.2 as contributions receivable, under the applicable legal provisions in force on 30 December 2014, in excess of the contributions provided for in the pension plan that have not been paid at that date are eliminated.

2015, c. 7, s. 3.

319.5. No amount required to be paid by an employer that is a party to a pension plan subject to Chapter X.2 pursuant to a judgment that has become final before 18 February 2015 or in connection with a case pending before a court of justice or an administrative tribunal on that date may, in any way, be recovered by the administrator of the pension plan or by an employer that is a party to the pension plan.

2015, c. 7, s. 3.

319.6. A pension plan subject to Chapter X.2 must be amended to allow for the withdrawal from the plan of any employer that no longer has active members in its employ on 31 December 2014. The date of withdrawal must be 31 December 2014.

The benefits accrued to the members or beneficiaries affected by the withdrawal must, not later than 2 April 2016, be paid in accordance with the first paragraph of section 146.41.

The value of the members’ or beneficiaries’ benefits shall be established as at 31 December 2014.

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The members or beneficiaries referred to in the second paragraph may request that their benefits be maintained in the plan.

The pension committee must inform the members or beneficiaries of the measures set out in this section so as to give them at least three months to exercise their rights. The notice must mention that the benefits of members and beneficiaries who remain with the plan might later be reduced.

This section only applies, with respect to an employer all of whose employees covered by the plan are hired on an ad hoc, fixed term basis, if, on 31 December 2014, at least 12 months have elapsed since the employer ceased to have active members in its employ.

2015, c. 7, s. 3.

319.7. The benefits accrued to members and beneficiaries who, on 31 December 2014, work for none of the employers who are a party to the plan must, not later than 2 April 2016, be paid in accordance with the first paragraph of section 146.41.

For that purpose, the third, fourth and fifth paragraphs of section 319.6 apply.

2015, c. 7, s. 3.

319.8. Despite sections 20 and 21, the pension plan may provide for a cap on the degree of solvency applicable to the payments made under sections 319.6 and 319.7, such as the cap permitted by section 146.20, in the circumstances described in that section, which applies with the necessary modifications.

Section 146.42 applies to such payments.

2015, c. 7, s. 3.

319.9. On the withdrawal of an employer that is a party to a pension plan subject to Chapter X.2 or on the termination of such a plan before 2 April 2020, the following rules apply:

- (1) any reduction after 31 December 2014 of benefits accrued to members or beneficiaries shall be annulled;
- (2) the debt of each employer concerned by the withdrawal or termination shall be established as if Chapter X.2 and section 319.4 did not apply; and
- (3) any such employer debt extinguished under section 319.3 shall become payable once again.

The first paragraph does not apply, however, if the employer's withdrawal from the pension plan or the termination of the pension plan results from the impossibility of adopting a recovery plan, the alienation or closing down of all or part of the enterprise, the insolvency of the employer or a change in union affiliation.

2015, c. 7, s. 3.

319.10. When a negotiated contribution plan ceases to be governed by a regulation giving rise to exclusion from the application of the provisions of Chapter X.2 in accordance with the second paragraph of section 146.10, those provisions apply from the date that follows that on which the regulation ceases to apply. Sections 319.3 to 319.9 apply to such a plan, and in applying those sections, the date of 31 December 2014 is replaced by the date on which those provisions begin to apply and the other dates mentioned in those sections are replaced accordingly.

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However, section 319.9 does not apply to such a plan if the regulation described in the first paragraph included a provision exempting the negotiated contribution plan from the application of the provisions of this Act that relate to employer debts.

2015, c. 7, s. 3.

319.11. For the sole purpose of allocating the assets of a pension plan under the Agreement Respecting Multi-Jurisdictional Pension Plans, which came into force on 1 July 2011, the members' benefits accrued before 1 January 2016 are included in the benefits funded on a solvency basis.

2015, c. 29, s. 75.

320. The appropriations allocated to the administration of the Act respecting supplemental pension plans (chapter R-17) shall be transferred to permit the administration of this Act.

Supplementary appropriations allocated to the administration of this Act for the fiscal year during which this Act comes into force shall be taken out of the Consolidated Revenue Fund to the extent determined by the Government.

1989, c. 38, s. 320.

321. The Minister of Employment and Social Solidarity is responsible for the administration of this Act.

1989, c. 38, s. 321; 1992, c. 44, s. 81; 1994, c. 12, s. 67; 1997, c. 63, s. 128; 2001, c. 44, s. 30.



The Minister of Finance exercises the functions of the Minister of Employment and Social Solidarity provided for in this Act. Order in Council 412-2016 dated 25 May 2016, (2016) 148 G.O. 2 (French), 2923.

322. (Omitted).

1989, c. 38, s. 322.

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SUPPLEMENTAL PENSION PLANS

REPEAL SCHEDULES

In accordance with section 9 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), chapter 38 of the statutes of 1989, in force on 1 March 1990, is repealed, except section 322, effective from the coming into force of chapter R-15.1 of the Revised Statutes.

In accordance with section 9 of the Act respecting the consolidation of the statutes and regulations (chapter R-3), sections 34, 35, 89, 107 to 110, subparagraph 7 of the first paragraph of section 244 and subparagraph 3 of the first paragraph of section 264 of chapter 38 of the statutes of 1989, in force on 1 September 1990, are repealed effective from the coming into force of the updating to 1 September 1990 of chapter R-15.1 of the Revised Statutes.



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chapitre R-15.1

LOI SUR LES RÉGIMES COMPLÉMENTAIRES DE RETRAITE**TABLE DES MATIÈRES**

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 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

CHAPITRE I

DOMAINE D'APPLICATION ET DÉFINITIONS

1. La présente loi s'applique aux régimes de retraite relatifs:

1° à des travailleurs qui, pour leur travail, se présentent à un établissement de leur employeur situé au Québec ou, à défaut, reçoivent leur rémunération de cet établissement pourvu que, dans ce dernier cas, ils ne se présentent à aucun autre établissement de leur employeur;

2° à des travailleurs non visés au paragraphe 1° qui, domiciliés au Québec et travaillant pour un employeur dont l'établissement principal y est situé, exécutent un travail hors du Québec, pourvu que ces régimes ne soient pas régis par une loi émanant d'une autorité législative autre que le Parlement du Québec et accordant droit à une rente différée.

1989, c. 38, a. 1.

2. La présente loi ne s'applique pas:

1° à un régime de retraite auquel l'employeur n'est pas tenu de cotiser. Toutefois, elle s'y applique si l'adhésion à ce régime conditionne l'adhésion à un autre régime de retraite auquel l'employeur est tenu de cotiser ou, au contraire, est conditionnée par l'adhésion à cet autre régime; dans ce cas, ces régimes sont réputés, pour l'application de la présente loi, ne former qu'un seul régime de retraite;

2° à un régime de retraite établi pour des travailleurs qui adhèrent également à un régime régi par la présente loi, si leur employeur cotise pour leur compte aux deux régimes et s'ils ont droit, au titre de l'autre régime, à des prestations au moins égales aux prestations maximales qui peuvent être payées au titre d'un régime de pension agréé défini à l'article 1 de la Loi sur les impôts (chapitre I-3);

3° à un régime d'intéressement ou un régime de participation différée aux bénéficies visé aux titres I et II du livre VII de la partie I de la Loi sur les impôts;

4° à un régime de retraite établi par une loi, par le gouvernement ou par le Bureau de l'Assemblée nationale, sauf si l'un ou l'autre l'assujettit à la présente loi;

5° (*paragraphe abrogé*);

6° à un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1).

Le gouvernement peut, par règlement et aux conditions qu'il fixe, soustraire à l'application de la totalité ou d'une partie de la présente loi tout régime ou toute catégorie de régime de retraite qu'il désigne en raison, notamment, de ses caractéristiques particulières ou de la complexité de la loi eu égard au nombre de participants qu'il comporte. Le gouvernement peut également prescrire les règles particulières qui lui sont applicables.

Un règlement pris en vertu du deuxième alinéa peut, s'il en dispose ainsi, rétroagir à une date antérieure à celle de son entrée en vigueur, mais non antérieure au 31 décembre de la deuxième année qui précède celle où il a été publié à la *Gazette officielle du Québec* en application de l'article 8 de la Loi sur les règlements (chapitre R-18.1). Un tel règlement, s'il est pris relativement à un régime de retraite administré par la Commission de la construction du Québec ou par une personne mandatée par elle peut, s'il en dispose ainsi, rétroagir à une date antérieure à celle de son entrée en vigueur.

1989, c. 38, a. 2; 1991, c. 25, a. 178; 1995, c. 46, a. 30; 1993, c. 45, a. 1; 1999, c. 40, a. 254; 2000, c. 41, a. 1; 2002, c. 52, a. 7; 2009, c. 1, a. 1; 2011, c. 8, a. 1; 2013, c. 26, a. 135; 2015, c. 20, a. 55.

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2.1. À l'exception des articles 6, 64 et 107, du premier alinéa de l'article 110 et de l'article 171.1 qui s'y appliquent compte tenu des adaptations nécessaires, la présente loi ne s'applique pas au régime de retraite qui satisfait aux conditions suivantes:

1° tous les participants sont des personnes rattachées à l'employeur au sens du paragraphe 3 de l'article 8500 du Règlement de l'impôt sur le revenu (Codification des Règlements du Canada (1978), chapitre 945) et l'adhésion est facultative et limitée à de telles personnes;

2° seuls des travailleurs visés à l'article 1 peuvent y adhérer;

3° le participant cesse sa participation active au régime dès qu'il ne se qualifie plus comme personne rattachée à l'employeur.

De plus, pour l'application de l'article 98, un tel régime est réputé ne pas être un régime régi par la présente loi.

Un régime visé au premier alinéa est toutefois assujéti à la présente loi dès qu'il est modifié pour permettre l'adhésion d'autres personnes.

2000, c. 41, a. 2.

3. Pour l'application de la présente loi:

«**actuaire**» s'entend de toute personne membre de l'Institut canadien des actuaires, qui a le titre de «fellow» ou un statut que cet institut reconnaît comme équivalent;

«**comptable**» s'entend de toute personne qui, étant membre de l'ordre professionnel de comptables visé à l'Annexe I du Code des professions (chapitre C-26), est autorisée, en vertu de la loi constituant cet ordre à exercer l'activité professionnelle de nature comptable que requiert l'application d'une disposition de la présente loi.

1989, c. 38, a. 3; 1994, c. 40, a. 457; 2012, c. 11, a. 32.

4. Celui qui bénéficie des services d'un travailleur non salarié et cotise pour son compte à un régime de retraite est réputé, pour l'application de la présente loi, son employeur.

1989, c. 38, a. 4; 1999, c. 40, a. 254.

5. Toute disposition d'un régime de retraite qui est inconciliable avec la présente loi est sans effet.

Cependant, un régime de retraite peut prévoir pour le participant ou bénéficiaire des dispositions plus avantageuses que celles prévues par la présente loi.

1989, c. 38, a. 5; 1999, c. 40, a. 254.

CHAPITRE II

RÉGIME DE RETRAITE

SECTION I

NATURE

§ 1. — Dispositions générales

6. Un régime de retraite est un contrat en vertu duquel le participant bénéficie d'une prestation de retraite dans des conditions et à compter d'un âge donnés, dont le financement est assuré par des cotisations à la charge soit de l'employeur seul, soit de l'employeur et du participant.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

À moins qu'il ne soit garanti, tout régime de retraite doit avoir une caisse de retraite où sont notamment versés les cotisations ainsi que les revenus qui en résultent. Cette caisse constitue un patrimoine fiduciaire affecté principalement au versement des remboursements et prestations auxquels ont droit les participants et bénéficiaires.

1989, c. 38, a. 6.

§ 2. — *Types*

7. Le régime de retraite est à cotisation déterminée s'il détermine à l'avance les cotisations patronales et, le cas échéant, les cotisations salariales, ou la méthode pour les calculer, et si la rente normale est fonction des sommes portées au compte du participant.

Il est à prestations déterminées si la rente normale est soit un montant déterminé, indépendant de la rémunération du participant, soit un montant qui correspond à un pourcentage de cette rémunération.

Il est à cotisation et prestations déterminées s'il détermine à l'avance les cotisations patronales et, le cas échéant, les cotisations salariales, ainsi que la rente normale, ou la méthode pour les calculer.

1989, c. 38, a. 7.

8. Le régime de retraite est contributif si le participant y verse des cotisations salariales.

1989, c. 38, a. 8.

9. Est garanti le régime de retraite dont les remboursements et prestations sont à tout moment garantis par un assureur.

1989, c. 38, a. 9.

10. Seul un assureur autorisé à pratiquer l'assurance sur la vie, au Québec ou dans un autre endroit au Canada où s'applique une entente visée à l'article 249, peut garantir des remboursements ou prestations prévus par un régime de retraite.

1989, c. 38, a. 10.

11. Le régime de retraite interentreprises est celui auquel adhèrent des travailleurs relevant d'employeurs différents.

Toutefois, ce régime n'est pas considéré comme interentreprises si les conditions suivantes sont remplies:

1° les employeurs parties au régime sont soit des sociétés filiales d'une même société mère, soit une société mère et ses filiales;

2° il y est prévu que les filiales parties au régime et la société mère consentent à ce que le régime ne soit pas considéré comme interentreprises.

Les employeurs parties à un régime visé au deuxième alinéa sont solidairement responsables des obligations qui incombent à chacun d'entre eux en vertu du régime ou de la présente loi.

1989, c. 38, a. 11; 2000, c. 41, a. 3.

12. La société mère est la personne morale qui en contrôle une autre, cette dernière étant de ce fait la filiale de la première.

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Une personne morale en contrôle une autre si elle détient, directement ou indirectement, autrement qu'à titre de garantie, des titres lui permettant en tout état de cause d'élire la majorité des administrateurs de cette autre personne morale.

1989, c. 38, a. 12.

SECTION II**ÉTABLISSEMENT ET ENTRÉE EN VIGUEUR**

13. Un régime de retraite entre en vigueur à l'une des dates suivantes, selon la première éventualité:

1° la date à compter de laquelle les services des travailleurs sont, au fur et à mesure qu'ils sont effectués, pris en compte pour la détermination de la rente normale;

2° la date à laquelle débute la perception des cotisations salariales.

1989, c. 38, a. 13.

14. À moins que Retraite Québec n'accorde un délai supplémentaire, celui qui établit un régime de retraite doit le mettre par écrit au plus tard le 90^e jour qui suit celui de son entrée en vigueur.

Le texte du régime doit indiquer:

1° le nom de l'employeur partie au régime;

2° le nombre de membres que doit comporter le comité de retraite chargé d'administrer le régime ainsi que les conditions et délais applicables à leur désignation ou remplacement;

3° les conditions d'adhésion et de retrait;

4° le caractère contributif ou non contributif du régime;

5° le caractère facultatif ou obligatoire de l'adhésion;

6° dans le cas d'un régime interentreprises, les conditions d'adhésion et de retrait d'un employeur;

7° l'âge normal de la retraite;

8° si le régime est garanti, le nom de l'assureur;

9° les cotisations salariales ou patronales, ou la méthode pour les calculer;

9.1° si les participants contribuent au versement de cotisations d'équilibre et, le cas échéant, la méthode pour les calculer;

10° dans le cas d'un régime à prestations déterminées ou d'un régime à cotisation et prestations déterminées, la rente normale ou la méthode pour la calculer;

11° la nature des remboursements et prestations, le cas échéant la méthode pour les calculer, ainsi que les conditions à remplir pour y avoir droit;

12° le cas échéant, les pouvoirs qui habilitent le comité de retraite à effectuer le transfert dans un autre régime de droits accumulés par un participant au titre du régime ou de tout actif du régime, ainsi que les règles applicables à ce transfert;

12.1° le cas échéant, les pouvoirs qui habilitent le comité de retraite à procéder à l'acquittement final de tout ou partie de la prestation d'un participant ou d'un bénéficiaire par l'achat d'une rente auprès d'un

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

assureur dans les conditions prévues par la politique d'achat de rentes du régime, ainsi que les règles applicables à cet acquittement;

13° la date d'entrée en vigueur du régime;

14° l'exercice financier du régime;

15° à quelles conditions et par qui le régime peut être modifié;

16° les conditions et modalités d'attribution d'un excédent d'actif ou, dans le cas d'un régime auquel s'applique le chapitre X, du solde d'un excédent d'actif visé au troisième alinéa de l'article 230.2, en cas de terminaison du régime;

16.1° (*paragraphe remplacé*);

17° dans le cas d'un régime auquel s'applique le chapitre X, les conditions et modalités d'affectation de tout ou partie du solde d'un excédent d'actif visé au troisième alinéa de l'article 146.8, soit à l'acquittement de la valeur des engagements supplémentaires résultant d'une modification du régime, au remboursement de cotisations salariales ou à la remise de sommes à l'employeur, soit selon une combinaison de ces modes d'affectation ainsi que, le cas échéant, la nature des modifications pouvant faire l'objet d'une telle affectation;

18° dans les cas visés à l'article 146.9.2, les conditions et modalités d'affectation de tout ou partie d'un excédent d'actif soit à l'acquittement des cotisations patronales, soit à l'acquittement de la valeur des engagements supplémentaires résultant d'une modification du régime, soit selon une combinaison de ces modes d'affectation ainsi que, le cas échéant, la nature des modifications pouvant faire l'objet d'une telle affectation.

1989, c. 38, a. 14; 1992, c. 60, a. 1; 2000, c. 41, a. 4; 2006, c. 42, a. 1; 2015, c. 20, a. 61; 2015, c. 29, a. 1.

14.1. À moins qu'une disposition de la présente loi ne le permette expressément, aucune disposition d'un régime de retraite à prestations déterminées ou à cotisation et prestations déterminées ne peut avoir pour effet de faire dépendre d'un facteur extrinsèque, de sorte qu'ils en soient limités ou réduits :

1° la reconnaissance de services ou l'accumulation de droits au titre du régime ;

2° le montant ou la valeur de droits accumulés au titre de services antérieurs à la date où est établie la valeur des engagements du régime à l'égard du participant ou du bénéficiaire dont les droits sont en cause.

Sont notamment considérés comme des facteurs extrinsèques :

1° la situation financière de la caisse de retraite ;

2° les cotisations patronales versées relativement aux engagements du régime à l'égard du participant ou du bénéficiaire ;

3° l'exercice d'une discrétion attribuée exclusivement à une personne autre que le participant ou le bénéficiaire ;

4° l'accréditation ou la révocation de l'accréditation d'une association de salariés ;

5° un changement d'ordre technologique ou économique survenu dans l'entreprise de l'employeur partie au régime ou une division, une fusion, une aliénation ou une fermeture de cette entreprise ;

6° le retrait d'un employeur partie au régime ou la terminaison de celui-ci.

2008, c. 21, a. 1.

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15. Fait partie intégrante du régime de retraite tout contrat d'assurance en vertu duquel un assureur garantit des remboursements et prestations prévus par ce régime; cependant, dans le cas d'un régime non garanti, ce contrat n'en fait partie que dans la mesure où le titulaire des remboursements ou prestations garantis continue d'être participant au régime.

1989, c. 38, a. 15.

16. Lorsqu'un régime de retraite entre en vigueur avant son enregistrement auprès de Retraite Québec, l'employeur ou, s'il en est un de formé, le comité de retraite doit, dans les 30 jours, en aviser Retraite Québec par écrit.

Cet avis indique, outre les nom et adresse de l'employeur partie au régime, la date d'entrée en vigueur du régime et, le cas échéant, la date où a débuté la perception des cotisations salariales. L'avis fait aussi état, de façon succincte:

- 1° du type de régime établi;
- 2° de la rente normale ou de la méthode pour la calculer;
- 3° des cotisations salariales ou patronales, ou de la méthode pour les calculer;
- 4° le cas échéant, des nom et adresse de celui à qui ont été délégués des pouvoirs.

1989, c. 38, a. 16; 2015, c. 20, a. 61.

17. *(Abrogé).*

1989, c. 38, a. 17; 2000, c. 41, a. 5.

18. Un régime de retraite dont Retraite Québec radie l'enregistrement en vertu de l'article 32 cesse d'être en vigueur à la date de la radiation.

Un régime de retraite qui n'est pas enregistré, ou dont l'enregistrement est réputé radié en vertu de l'article 32.1, cesse d'être en vigueur dès qu'il est satisfait aux conditions suivantes:

- 1° le régime est terminé et ne comporte aucun actif;
- 2° aucun participant ni bénéficiaire ne conserve de droits au titre du régime ou de la présente loi.

1989, c. 38, a. 18; 2000, c. 41, a. 6; 2015, c. 20, a. 61.

SECTION III

MODIFICATION

19. Aucune modification d'un régime de retraite ne peut entrer en vigueur avant la date de son enregistrement auprès de Retraite Québec, sauf dans les cas suivants:

1° lorsque la modification a pour objet l'adhésion d'un employeur à un régime de retraite, elle entre en vigueur à la date déterminée en application de l'article 13;

1.1° lorsque la modification a pour objet le retrait du régime interentreprises d'un employeur devenu failli, elle entre en vigueur à la date de la faillite;

2° lorsque la modification prévoit avoir effet à compter d'une date donnée qui est antérieure à son enregistrement, elle peut, à condition d'être enregistrée, entrer en vigueur à cette date.

1989, c. 38, a. 19; 2000, c. 41, a. 7; 2015, c. 20, a. 61.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

20. Aucune modification d'un régime de retraite qui supprime des remboursements ou prestations, en limite l'admissibilité ou réduit le montant ou la valeur des droits des participants ou bénéficiaires ne peut prendre effet, lorsqu'elle est établie par convention collective ou sentence arbitrale en tenant lieu ou lorsqu'elle est rendue obligatoire par décret, avant la date de prise d'effet de la convention, de la sentence ou du décret et, dans les autres cas, avant la date d'envoi de l'avis prévu à l'article 26.

Cette limite fixée pour la prise d'effet d'une modification réductrice ne s'applique toutefois pas:

1° dans le cas où la modification est faite pour permettre au régime de demeurer un régime de pension agréé au sens de l'article 1 de la Loi sur les impôts (chapitre I-3);

2° dans le cas où les participants ou bénéficiaires visés y ont consenti et dans celui où l'entrée en vigueur de la modification est fixée à la date de la faillite suivant le paragraphe 1.1° du premier alinéa de l'article 19, pourvu que Retraite Québec ait par ailleurs autorisé la modification.

Si elle concerne la rente normale, la méthode pour la calculer ou toute autre prestation établie sur la base de cette rente ou méthode, une modification réductrice ne peut porter que sur les services effectués après la date où elle a pris effet ou, dans le cas d'une modification aux hypothèses visées au deuxième alinéa de l'article 61, ne peut s'appliquer qu'à une évaluation des droits d'un participant faite en fonction d'une date subséquente à sa prise d'effet. Ces restrictions ne sont toutefois pas applicables dans les cas mentionnés au deuxième alinéa.

1989, c. 38, a. 20; 1991, c. 25, a. 179; 1992, c. 60, a. 2; 2000, c. 41, a. 8; 2015, c. 20, a. 61.

21. Aucune modification d'un régime de retraite ne peut réduire une prestation dont le service a débuté avant la date de prise d'effet de cette modification.

1989, c. 38, a. 21.

21.1. *(Abrogé).*

2000, c. 41, a. 9; 2006, c. 42, a. 2; 2015, c. 29, a. 2.

21.2. *(Abrogé).*

2000, c. 41, a. 9; 2015, c. 29, a. 2.

21.3. *(Abrogé).*

2008, c. 21, a. 2; 2015, c. 29, a. 2.

22. Toute modification d'un régime de retraite ayant pour objet d'en transformer le type ou de substituer un nouvel employeur à l'ancien est subordonnée à l'autorisation de Retraite Québec et aux conditions qu'elle peut fixer.

En outre, si la modification vise à convertir des droits qui résultent de l'application de dispositions accordant aux participants des prestations déterminées au titre des services que leur reconnaît le régime jusqu'à la date de prise d'effet de la modification, en sommes qui, portées à leur compte à titre de cotisations déterminées, sont destinées à la constitution d'une rente d'un montant indéterminé, une telle modification ne pourra être autorisée que si la valeur des droits des participants qui acceptent la conversion est au moins égale à la valeur à laquelle ils auraient eu droit à supposer que le régime se soit terminé à la date où doit prendre effet la modification. Cette dernière valeur est toutefois établie sans qu'il soit tenu compte des droits pouvant résulter de l'application de la sous-section 4.1 de la section II du chapitre XIII.

1989, c. 38, a. 22; 1992, c. 60, a. 3; 2000, c. 41, a. 10; 2015, c. 20, a. 61.

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23. La rémunération reçue ou, selon le cas, les heures de travail effectuées avant une modification mentionnée à l'article 22 doivent être prises en compte pour l'application de l'article 34.

1989, c. 38, a. 23; 2000, c. 41, a. 11.

CHAPITRE III

ENREGISTREMENT D'UN RÉGIME DE RETRAITE ET DE SES MODIFICATIONS

24. Tout régime de retraite doit être enregistré auprès de Retraite Québec, ainsi que chacune de ses modifications.

L'employeur ou, s'il en est un de formé, le comité de retraite présente à Retraite Québec la demande d'enregistrement, accompagnée:

1° d'une copie du régime ou de la modification qu'il certifie conforme et, si le régime est garanti, d'une copie du contrat d'assurance certifiée conforme par l'assureur;

2° dans le cas où la demande vise l'enregistrement du régime, de ses nom et adresse ou, s'il s'agit d'un comité de retraite, des noms et adresses de ses membres;

3° du consentement écrit de l'employeur aux obligations qui lui incombent en vertu du régime ou de la modification, sauf dans les cas suivants:

a) le comité atteste qu'il a obtenu ce consentement de l'employeur et qu'il peut le présenter à Retraite Québec sur demande;

b) la modification est rendue obligatoire par application d'une nouvelle disposition législative ou réglementaire n'accordant aucune latitude à l'employeur;

c) la modification a été apportée en application du chapitre X.1 ou résulte de l'application de l'article 199;

4° (*paragraphe abrogé*);

5° (*paragraphe abrogé*);

6° des autres documents ou renseignements déterminés par règlement;

7° des frais prescrits par règlement.

1989, c. 38, a. 24; 2000, c. 41, a. 12; 2006, c. 42, a. 3; 2015, c. 20, a. 61.

25. À moins que Retraite Québec n'accorde un délai supplémentaire, la demande d'enregistrement d'un régime de retraite doit être présentée au plus tard le quatre-vingt-dixième jour qui suit celui de son entrée en vigueur; celle visant l'enregistrement d'une modification qui a pour objet l'adhésion d'un employeur à un régime de retraite, doit l'être au plus tard à la fin du douzième mois qui suit celui au cours duquel est entrée en vigueur cette modification.

1989, c. 38, a. 25; 2000, c. 41, a. 13; 2015, c. 20, a. 61.

26. Le comité de retraite qui projette de demander l'enregistrement d'une modification doit en informer les participants:

1° soit en fournissant à chacun d'eux un avis écrit qui, énonçant l'objet de la modification projetée et la date de sa prise d'effet, indique que le texte de cette modification peut être examiné tant à son bureau qu'à l'établissement de l'employeur qu'il désigne et situé au plus à 150 km de son lieu de travail ou, si l'employeur n'a pas d'établissement ainsi situé, que ce texte peut être obtenu sans frais, sur demande écrite;

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2° soit en faisant publier cet avis dans un quotidien distribué dans les localités où résident au moins la moitié d'entre eux ou, mais uniquement en ce qui concerne les participants actifs, en le faisant parvenir à l'employeur qui, sur réception, doit l'afficher bien en vue dans son établissement, à un endroit où ils circulent ordinairement. Les modes d'information prévus au présent paragraphe ne peuvent toutefois être utilisés si la modification projetée est relative:

- à la suppression de remboursements ou de prestations, à de nouvelles conditions qui en limitent l'admissibilité ou à la réduction du montant ou de la valeur des droits des participants ou bénéficiaires;
- à la modification d'une disposition du régime relative à l'affectation ou à l'attribution d'un excédent d'actif;
- à la fusion des actifs et des passifs de plusieurs régimes;
- à la scission de l'actif et du passif du régime entre plusieurs régimes.

Copie de cet avis doit aussi être fournie à Retraite Québec.

Lorsque la modification est établie par convention collective ou sentence arbitrale en tenant lieu ou est rendue obligatoire par décret, le présent article ne s'applique pas à l'égard des participants actifs visés par la convention, la sentence ou le décret et représentés par une association accréditée au sens du Code du travail (chapitre C-27).

1989, c. 38, a. 26; 1992, c. 60, a. 4; 2000, c. 41, a. 14; 2006, c. 42, a. 4; 2015, c. 20, a. 61; 2015, c. 29, a. 3.

27. Retraite Québec fait parvenir à celui dont la demande d'enregistrement satisfait aux conditions prescrites par la présente loi, un accusé de réception indiquant la date où elle a été reçue.

Si la demande d'enregistrement est incomplète, elle en avise sans délai le demandeur et lui précise les renseignements manquants à fournir.

1989, c. 38, a. 27; 2015, c. 20, a. 61.

28. Retraite Québec peut, après avoir donné aux intéressés l'occasion de présenter leurs observations, refuser l'enregistrement de tout ou partie d'un régime de retraite ou d'une modification qu'elle estime non conforme à la présente loi. Elle les informe de son refus au moyen d'un avis écrit en précisant les motifs.

1989, c. 38, a. 28; 1997, c. 43, a. 649; 2015, c. 20, a. 61.

29. Lorsque Retraite Québec enregistre un régime de retraite ou une modification, elle en informe celui qui a présenté la demande d'enregistrement. Retraite Québec attribue un numéro à chaque régime qu'elle enregistre.

1989, c. 38, a. 29; 2000, c. 41, a. 15; 2015, c. 20, a. 61.

30. Tout régime de retraite ou toute modification dont la demande d'enregistrement a fait l'objet d'un accusé de réception est réputé enregistré si, dans les 90 jours qui suivent la date indiquée dans cet accusé, celui qui l'a présentée n'a pas reçu de Retraite Québec une demande de renseignements complémentaires, un avis de prolongation de l'examen de la demande, un avis de refus ou un avis d'enregistrement.

1989, c. 38, a. 30; 2000, c. 41, a. 16; 2015, c. 20, a. 61.

31. L'enregistrement d'un régime de retraite ou d'une modification ne fait pas foi de sa conformité avec la présente loi.

1989, c. 38, a. 31.

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32. Retraite Québec peut radier l'enregistrement d'un régime de retraite dans l'un ou l'autre des cas suivants:

1° si, en raison d'une fusion visée au chapitre XII, aucun participant ou bénéficiaire ne conserve de droits au titre du régime ou de la présente loi et si le régime n'a plus d'actif;

2° si le régime cesse d'être régi par la présente loi.

Elle peut aussi, après avoir donné aux intéressés l'occasion de présenter leurs observations, radier l'enregistrement de toute partie du régime ou d'une modification qui n'est pas conforme à la présente loi.

Retraite Québec avise les intéressés de toute radiation d'enregistrement au moyen d'un avis écrit en précisant les motifs.

1989, c. 38, a. 32; 1997, c. 43, a. 650; 2000, c. 41, a. 17; 2015, c. 20, a. 61.

32.1. L'enregistrement d'un régime de retraite terminé est réputé radié 60 jours après la plus tardive des dates suivantes:

1° celle de l'expiration des délais prévus aux articles 210 et 210.1 ou impartis par Retraite Québec pour l'acquittement des droits de l'employeur, des participants et des bénéficiaires au titre du régime ou de la présente loi;

2° celle où il est satisfait aux ordonnances de Retraite Québec concernant ce régime.

2000, c. 41, a. 18; 2015, c. 20, a. 61.

CHAPITRE IV

ADHÉSION

33. Le travailleur admissible à un régime de retraite en devient participant, selon la première éventualité:

1° dès qu'il y cotise ou que son employeur y cotise pour son compte;

2° dès qu'il satisfait aux conditions d'adhésion prévues au régime.

Il demeure participant jusqu'à ce que les droits qu'il acquiert au titre du régime soient acquittés, notamment au moyen d'un transfert dans un autre régime, par le remplacement de sa rente en application de l'article 92 ou par suite de sa terminaison.

Continue d'être participant au régime, le titulaire d'une rente garantie constituée directement auprès d'un assureur, autrement qu'en application de l'article 98 ou de la politique d'achat de rentes du régime établie conformément à la section II.1 du chapitre XI, avec les droits accumulés au titre du régime.

1989, c. 38, a. 33; 1992, c. 60, a. 5; 2000, c. 41, a. 19; 2015, c. 29, a. 4.

34. À moins que soit établi un autre régime auquel ils peuvent adhérer et prévoyant des droits équivalents, ont droit d'adhérer à un régime de retraite, aux mêmes conditions que les participants, les travailleurs qui exécutent un travail similaire ou identique à celui exécuté par les participants appartenant à la catégorie de travailleurs en faveur de laquelle le régime est établi et qui, pendant l'année civile ayant précédé celle au cours de laquelle a été faite la demande d'adhésion, ont satisfait à l'une ou l'autre des conditions suivantes:

1° avoir reçu de l'employeur une rémunération au moins égale à 35% du maximum des gains admissibles établi, pour l'année de référence, conformément à la Loi sur le régime de rentes du Québec (chapitre R-9);

2° avoir été au service de l'employeur pendant au moins 700 heures.

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Pour l'application du premier alinéa, ne constitue pas une condition le caractère facultatif ou obligatoire de l'adhésion.

Si le travailleur a été au service de plusieurs employeurs parties à un régime de retraite interentreprises, le minimum requis est établi en cumulant la rémunération reçue de chaque employeur ou les heures de travail accomplies auprès de chacun d'eux, dans l'un ou l'autre des cas suivants:

1° lorsque les travailleurs admissibles au régime sont régis par la même convention collective ou sentence arbitrale en tenant lieu;

2° lorsque les employeurs sont une société mère et ses filiales ou des filiales d'une même société mère.
1989, c. 38, a. 34; 2000, c. 41, a. 20.

35. Retraite Québec peut ordonner à un comité de retraite d'accepter l'adhésion au régime d'un travailleur qui remplit les conditions fixées par l'article 34:

1° dans le cas où elle estime déraisonnables, en regard notamment de la nature ou des exigences du travail visé, certains éléments qui, servant à définir la catégorie de travailleurs que vise le régime, ont fondé le rejet de la demande d'adhésion de ce travailleur;

2° dans le cas où il y a mésentente sur l'appartenance de ce travailleur à la catégorie de travailleurs que vise le régime.
1989, c. 38, a. 35; 2015, c. 20, a. 61.

36. Pour l'application de la présente loi, tout participant à un régime de retraite est réputé actif:

1° jusqu'à ce qu'il cesse d'y adhérer suivant les conditions de retrait, ou qu'il ne satisfasse plus aux conditions fixées par le régime pour être un travailleur admissible;

2° jusqu'à ce que se termine sa période de travail continu telle que définie à l'article 54;

3° jusqu'à ce qu'il décède.

Le régime peut cependant prévoir que le participant demeure actif pour une période donnée après la fin de sa période de travail continu. Malgré le deuxième alinéa de l'article 5, la période ainsi prévue, augmentée le cas échéant de la période de mise à pied avec droit de rappel visée à l'article 54, ne peut excéder 24 mois consécutifs.

1989, c. 38, a. 36; 1994, c. 24, a. 1; 1999, c. 40, a. 254; 2000, c. 41, a. 21.

CHAPITRE V

COTISATIONS

SECTION I

TYPES DE COTISATIONS

2015, c. 29, a. 5.

37. La cotisation salariale est la quote-part que le participant actif est tenu de verser ou la somme qu'il choisit de verser, avec contrepartie de l'employeur.

La cotisation patronale est la quote-part que l'employeur est tenu de verser.

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La cotisation volontaire est la somme que le participant choisit de verser, sans contrepartie de l'employeur.
1989, c. 38, a. 37.

38. La cotisation d'exercice est la somme que doivent verser l'employeur et, le cas échéant, les participants actifs pour permettre l'acquittement des remboursements et prestations prévus par le régime de retraite au titre de services effectués pendant un exercice financier du régime et reconnus par ce dernier et, dans le cas d'un régime auquel s'applique le chapitre X, pour constituer la provision de stabilisation relative à ces engagements établie selon l'article 125.

La partie de la cotisation d'exercice visant à constituer la provision de stabilisation est dite cotisation d'exercice de stabilisation.
1989, c. 38, a. 38; 2015, c. 29, a. 6.

38.1. Les cotisations d'équilibre sont les suivantes:

1° la cotisation d'équilibre technique, qui vise l'amortissement du déficit actuariel déterminé selon l'article 131;

2° la cotisation d'équilibre de stabilisation, qui vise l'amortissement du déficit actuariel déterminé selon l'article 132;

3° les cotisations d'équilibre de modification, qui visent l'amortissement de tout déficit actuariel déterminé selon l'article 134.
2015, c. 29, a. 7.

38.2. La cotisation spéciale de modification est celle qui, relative aux engagements supplémentaires résultant d'une modification du régime de retraite, doit être acquittée conformément à l'article 139.
2015, c. 29, a. 7.

38.3. La cotisation spéciale d'achat de rentes est celle qui peut être requise lors d'un acquittement de droits effectué selon la politique d'achat de rentes et qui, le cas échéant, doit être calculée et acquittée conformément aux dispositions prévues à l'article 142.4.
2015, c. 29, a. 7.

SECTION II

VERSEMENT DES COTISATIONS

2015, c. 29, a. 8.

39. L'employeur doit, au cours de chaque exercice financier du régime de retraite, verser une cotisation patronale qui, ajoutée aux cotisations salariales, égale au moins:

- 1° dans le cas d'un régime garanti, la cotisation d'exercice telle qu'établie à l'article 40;
- 2° dans le cas d'un régime non garanti, la somme des montants suivants:
 - a) la cotisation d'exercice établie conformément aux articles 128 et 129;
 - b) le total des cotisations d'équilibre déterminées pour l'exercice financier et des cotisations spéciales de modification exigibles au cours de l'exercice.

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Dans le cas d'un régime interentreprises, cette cotisation patronale est versée par l'ensemble des employeurs parties au régime.

1989, c. 38, a. 39; 2006, c. 42, a. 5; 2008, c. 21, a. 30; 2015, c. 29, a. 9.

39.1. Malgré l'article 39, Retraite Québec peut autoriser l'employeur, dans la mesure et pour la période qu'elle fixe, à verser à la caisse de retraite une cotisation moindre que celle autrement requise, si les conditions suivantes sont réunies:

1° le régime de retraite est, à la date de la détermination du montant de cotisation à verser, un régime désigné au sens de l'article 8515 du Règlement de l'impôt sur le revenu (C.R.C., c. 945);

2° ce règlement interdit le versement, à titre de cotisation admissible, de tout ou partie de la cotisation qui devrait être versée par l'employeur en application de l'article 39;

3° tous les participants et bénéficiaires y consentent.

Le consentement visé au paragraphe 3° du premier alinéa n'est pas requis si la réduction de la cotisation est inférieure ou égale au montant que représente le total de la cotisation d'exercice de stabilisation et de la cotisation d'équilibre de stabilisation.

2000, c. 41, a. 22; 2006, c. 42, a. 6; 2015, c. 20, a. 61; 2015, c. 29, a. 10.

40. Dans le cas d'un régime de retraite garanti, la cotisation d'exercice correspond à la prime exigée par l'assureur pour garantir les remboursements et prestations auxquels ont droit les participants au titre de leurs services effectués au cours d'un exercice financier du régime et reconnus par ce dernier.

En outre, si l'assureur garantit des remboursements et prestations au titre des services reconnus relatifs à une période antérieure à l'exercice financier en cours, la prime exigible doit, pour que le régime puisse demeurer garanti, être versée à l'assureur en un seul versement dès que le régime reconnaît ces services ou améliore les droits qui leur sont afférents.

1989, c. 38, a. 40.

41. La cotisation patronale, déduction faite de la part de cette cotisation dont l'employeur est libéré en vertu de l'article 42.1 ou qui se rapporte à une cotisation spéciale de modification, doit être versée en autant de mensualités qu'il y a de mois dans l'exercice financier du régime de retraite et au plus tard le dernier jour du mois qui suit chacun de ces mois.

Ces mensualités doivent être égales. Toutefois, si elles se rapportent à la cotisation d'exercice, les mensualités peuvent représenter un tarif horaire ou un taux de la rémunération ou un pourcentage de la masse salariale versée aux participants actifs; ce taux ou pourcentage doit être uniforme à moins qu'il ne soit établi en fonction d'une variable autorisée par Retraite Québec.

Dans le cas d'un régime de retraite auquel s'applique le chapitre X, lorsque la cotisation patronale n'est pas déterminée en début d'exercice, l'employeur doit, jusqu'à ce qu'un rapport relatif à une évaluation actuarielle du régime soit transmis à Retraite Québec, continuer à verser les mensualités fixées pour l'exercice précédent. Si la cotisation ainsi versée est inférieure à celle qui aurait dû être versée conformément au rapport, la première mensualité due après la date de la transmission du rapport à Retraite Québec doit être augmentée de la différence entre les mensualités ainsi versées et celles qui auraient dû l'être selon le rapport en tenant compte, le cas échéant, de la part de la cotisation patronale dont l'employeur est libéré en vertu de l'article 42.1 et des intérêts visés à l'article 48. La cotisation qui doit être versée selon le rapport peut aussi être ajustée si elle est inférieure à celle qui a été versée.

1989, c. 38, a. 41; 2000, c. 41, a. 23; 2006, c. 42, a. 7; 2008, c. 21, a. 31; 2015, c. 20, a. 61; 2015, c. 29, a. 11.

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42. Lorsque la période d'amortissement d'un déficit actuariel débute au cours d'un exercice financier du régime de retraite, la cotisation d'équilibre déterminée relativement à ce déficit pour cet exercice doit être versée en autant de mensualités qu'il y a de mois dans la portion de l'exercice comprise dans la période d'amortissement.

1989, c. 38, a. 42; 2006, c. 42, a. 8; 2015, c. 29, a. 12.

42.1. Dans les conditions prévues par règlement, un employeur peut, en fournissant au comité de retraite une lettre de crédit établie conformément au règlement, se libérer, en totalité ou en partie, du paiement de la part de la cotisation patronale déterminée pour l'exercice financier courant du régime de retraite qui se rapporte à la cotisation d'équilibre de stabilisation exigible au cours de l'exercice.

Le montant total de telles lettres de crédit ne peut excéder 15% du passif du régime selon l'approche de capitalisation.

2006, c. 42, a. 9; 2008, c. 21, a. 32; 2010, c. 41, a. 1; 2015, c. 29, a. 13.

42.2. Les cotisations patronales d'équilibre technique et d'équilibre de stabilisation, à l'exception de celles acquittées au moyen d'une lettre de crédit, font l'objet d'une comptabilisation particulière. Sont également comptabilisées les cotisations patronales versées en excédent de celles requises.

Les cotisations salariales d'équilibre technique et d'équilibre de stabilisation font aussi l'objet d'une comptabilisation particulière.

Est comptabilisé, relativement à ces cotisations, un intérêt au taux de rendement obtenu sur le placement de l'actif du régime, déduction faite des frais de placement et d'administration.

2015, c. 29, a. 13.

43. Celui qui perçoit des cotisations salariales ou volontaires doit, au plus tard le dernier jour du mois qui suit celui de leur perception, les verser pour le compte du participant à la caisse de retraite ou, dans le cas d'un régime de retraite garanti, à l'assureur.

1989, c. 38, a. 43.

44. Toute cotisation salariale ou volontaire ainsi que, dans le cas d'un régime de retraite à cotisation déterminée, toute cotisation patronale portent intérêt, à compter du premier jour du mois qui suit celui au cours duquel elles doivent être versées à la caisse de retraite ou à l'assureur:

1° dans le cas d'un régime de retraite non garanti autre qu'un régime à cotisation déterminée, au taux de rendement obtenu sur le placement de l'actif du régime, déduction faite des frais de placement et d'administration ou, si le régime le prévoit et dans la mesure où la cotisation est relative à des remboursements ou prestations qui demeurent garantis, au taux obtenu mensuellement sur les dépôts personnels à terme de cinq ans dans les banques à charte et tel que compilé par la Banque du Canada;

2° dans le cas d'un régime de retraite à cotisation déterminée, au taux de rendement obtenu sur le placement soit de tout l'actif du régime soit, si celui-ci le prévoit, d'une partie seulement de cet actif se rapportant à un groupe donné de participants, déduction faite des frais de placement et d'administration;

3° dans le cas d'un régime de retraite garanti, au taux mensuel visé au paragraphe 1° ou, si le régime le prévoit, au taux de rendement obtenu sur le placement de l'actif de l'assureur non compris dans les groupes distincts d'avoirs constitués par ce dernier, déduction faite dans ce dernier cas des frais de placement et d'administration.

Toutefois, si le régime prévoit que des participants peuvent décider des placements à faire avec tout ou partie des cotisations portées à leur compte, ou si des cotisations volontaires font l'objet d'un placement distinct dans un régime non garanti, doivent être exclus de l'actif du régime, pour l'application des

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paragraphes 1° et 2° du premier alinéa, les placements faits avec ces cotisations, celles-ci portant alors intérêt au taux de rendement obtenu sur ces placements.

Les dispositions du présent article applicables aux cotisations versées au titre d'un régime de retraite à cotisation déterminée s'appliquent également aux cotisations versées en vertu de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles de ce régime.

1989, c. 38, a. 44; 2000, c. 41, a. 24.

45. Par dérogation au paragraphe 2° du premier alinéa de l'article 44, les cotisations patronales versées au titre d'un régime de retraite à cotisation déterminée peuvent, si le régime le prévoit, porter intérêt au taux de rendement obtenu sur le placement de cotisations versées par les participants au titre de ce régime ou d'un autre régime de retraite régi ou non par la présente loi, pour autant que ce placement soit décidé par les participants.

1989, c. 38, a. 45.

45.1. Lorsque l'intérêt dû sur les sommes portées au compte d'un participant est calculé sur la base du rendement obtenu sur l'actif placé et que le placement s'est soldé par une perte, il peut y avoir réduction de ces sommes dans la proportion que représente le montant de la perte sur celui de cet actif.

1992, c. 60, a. 6.

46. À moins qu'elles ne soient déjà prévues au régime, la méthode de calcul des taux de rendement ainsi que la méthode d'application du taux d'intérêt mensuel sont, pour l'application des articles 44 et 45, déterminées par l'actuaire ou le comptable choisi par le comité de retraite; dans le cas d'un régime garanti, ces méthodes sont déterminées par l'assureur.

Il en va de même, aux fins de l'application de l'article 45.1, pour la détermination de la méthode de calcul de la perte subie par l'actif ainsi que de la réduction consécutive de la valeur des cotisations.

1989, c. 38, a. 46; 1992, c. 60, a. 7.

47. Lorsque le participant ou bénéficiaire a acquis droit à une prestation au titre du régime de retraite,

- les cotisations volontaires,
- les cotisations salariales ou patronales versées au titre d'un régime à cotisation déterminée ou en vertu de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles de ce régime,
- les cotisations salariales qui excèdent le plafond fixé par l'article 60,

continuent, sous réserve des dispositions de l'article 45.1, de porter intérêt au taux visé à l'article 44 ou 45 jusqu'à ce que, selon le cas, elles fassent l'objet d'un remplacement de rente en application de l'article 92, d'un transfert prévu à l'article 98 ou d'un remboursement, ou jusqu'à ce qu'une rente additionnelle prévue à l'article 83 soit constituée avec ces cotisations.

1989, c. 38, a. 47; 1992, c. 60, a. 8; 2000, c. 41, a. 25.

48. À moins que le régime de retraite ou, dans le cas d'un régime garanti, le contrat d'assurance ne fixe un taux d'intérêt supérieur, les cotisations qui ne sont pas versées à la caisse de retraite ou à l'assureur portent intérêt, à compter du dernier jour du mois qui suit celui pour lequel elle devait être versée ou, selon le cas, du dernier jour du mois qui suit celui au cours duquel elle a été perçue, au taux visé à l'article 44 ou 45 ou, dans le cas de la cotisation patronale versée au titre d'un régime à prestations déterminées, au taux de rendement de la caisse de retraite.

1989, c. 38, a. 48; 2000, c. 41, a. 26.

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49. Jusqu'à leur versement à la caisse de retraite ou à l'assureur, les cotisations et les intérêts accumulés sont réputés détenus en fiducie par l'employeur, que ce dernier les ait ou non gardés séparément de ses biens.

1989, c. 38, a. 49.

50. L'employeur doit, lors de leur versement, informer le comité de retraite ou, dans le cas d'un régime de retraite garanti, l'assureur du motif de toute variation importante des cotisations à verser à la caisse de retraite ou à l'assureur.

1989, c. 38, a. 50.

51. Le comité de retraite ou, dans le cas d'un régime de retraite garanti, l'assureur doit, dans les 60 jours qui suivent son échéance, aviser Retraite Québec de toute cotisation non versée.

1989, c. 38, a. 51; 2000, c. 41, a. 27; 2015, c. 20, a. 61.

52. Sauf s'ils ont agi avec prudence, diligence et compétence, comme l'auraient fait en pareilles circonstances des personnes raisonnables ou s'ils n'ont pu, dans ces mêmes circonstances, avoir connaissance du défaut, les administrateurs d'une personne morale partie à un régime de retraite à titre d'employeur sont solidairement responsables des cotisations échues et non versées au cours de leur mandat, avec les intérêts, jusqu'à concurrence de six mois de cotisation.

Dans le cas d'un régime de retraite interentreprises non considéré comme tel par application de l'article 11, cette responsabilité n'incombe aux administrateurs d'une filiale que si la société mère fait défaut de verser les cotisations visées. Si ceux-ci font également défaut de verser des cotisations dont ils sont responsables aux termes du présent alinéa, les administrateurs de la société mère en deviennent à leur tour responsables.

Le plafond de six mois prévu au premier alinéa ne s'applique pas lorsque l'employeur gère la caisse de retraite.

1989, c. 38, a. 52.

53. La responsabilité prévue à l'article 52 n'est engagée que dans l'un ou l'autre des cas suivants:

1° la personne morale a été poursuivie dans les deux ans qui ont suivi l'échéance de la cotisation non versée et l'exécution n'a pu satisfaire au montant accordé par jugement;

2° la personne morale, dans les deux ans qui ont suivi l'échéance de la cotisation non versée, a fait l'objet d'une ordonnance de mise en liquidation ou est devenue faillie au sens de la Loi sur la faillite et l'insolvabilité (Lois révisées du Canada (1985), chapitre B-3) et la réclamation déposée n'a pu être satisfaite.

1989, c. 38, a. 53.

CHAPITRE VI

REMBOURSEMENT ET PRESTATIONS

SECTION I

DISPOSITIONS GÉNÉRALES

54. La période de travail continu d'un travailleur est celle durant laquelle il exécute un travail pour son employeur, sans égard aux périodes d'interruption temporaire ni aux périodes d'invalidité pendant lesquelles le participant continue d'accumuler des droits. La mise à pied avec droit de rappel d'un travailleur ne peut, aux fins du présent alinéa et malgré le deuxième alinéa de l'article 5, être considérée comme une période d'interruption temporaire au delà de 24 mois consécutifs, à moins que le régime ne le permette et que le travailleur n'y consente.

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Le changement d'employeurs, pourvu que Retraite Québec ait autorisé le transfert d'engagements dans les cas visés à l'article 22 ou au chapitre XII, n'a pas pour effet d'interrompre la période de travail continu pour l'application du régime de retraite.

Dans le cas d'un régime de retraite interentreprises, même non considéré comme tel par application de l'article 11, le fait pour le travailleur de changer d'employeur n'a pas non plus pour effet d'interrompre la période de travail continu si l'ancien employeur et le nouveau sont parties au régime.

1989, c. 38, a. 54; 1994, c. 24, a. 2; 2015, c. 20, a. 61.

55. Les services reconnus à un participant sont les services qui, aux termes d'un régime de retraite, sont comptés pour l'acquisition du droit à des prestations ou pour leur calcul.

1989, c. 38, a. 55.

56. *(Abrogé).*

1989, c. 38, a. 56; 2000, c. 41, a. 28.

57. À moins d'être approuvées par Retraite Québec,

— les cotisations patronales versées au titre d'un régime à cotisation déterminée ou en vertu de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles de ce régime.

— la méthode de calcul de ces cotisations patronales,

— la méthode de calcul de la rente normale payable au titre d'un régime à prestations déterminées ou à cotisation et prestations déterminées,

ne peuvent varier, pour les participants appartenant à une même catégorie de travailleurs et pour une même période de services reconnus, en fonction du nombre d'années de travail ou de services reconnus.

1989, c. 38, a. 57; 2015, c. 20, a. 61.

58. Toute rente servie en vertu d'un régime de retraite doit être viagère et ne peut être payée sous une autre forme du vivant du participant ou, dans le cas d'une rente au conjoint, du vivant du conjoint sauf :

1° la rente temporaire prévue à l'article 91.1 et celle qui en est dérivée ;

2° la rente prévue à l'article 67.2 ;

3° la prestation de raccordement qui correspond à la fraction d'une rente dont le régime prévoit le service au participant ou bénéficiaire jusqu'à une date qui n'est ni antérieure à celle où le participant devient admissible à une rente anticipée payable en vertu de la Loi sur le régime de rentes du Québec (chapitre R-9), du Régime de pensions du Canada (Lois révisées du Canada (1985), chapitre C-8), de la Loi sur la sécurité de la vieillesse (Lois révisées du Canada (1985), chapitre O-9) ou d'un programme relatif à la sécurité du revenu déterminé par règlement, ni postérieure à celle où il devient admissible à une autre prestation de retraite payable en vertu d'une telle loi ou d'un tel programme.

Un régime auquel s'applique le chapitre X peut toutefois prévoir que le service d'une rente peut être suspendu pour une période donnée à la demande du participant lorsqu'il recommence à travailler pour l'employeur partie au régime ou, s'il s'agit d'un régime interentreprises même non considéré comme tel par application de l'article 11, pour l'un des employeurs partie à ce régime, sous réserve des conditions suivantes :

1° si la suspension débute avant le premier jour du mois qui suit celui au cours duquel le participant atteint l'âge de 65 ans ou, dans le cas d'un participant qui atteint cet âge le premier jour d'un mois, si elle débute avant ce jour, le participant accumule, pour le travail effectué durant la période de suspension qui précède ce jour, de nouveaux droits selon les modalités et conditions prévues au régime pour les travailleurs

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de sa catégorie, jusqu'à concurrence seulement de la période maximale de services que peut lui reconnaître ce régime pour le calcul de la rente normale;

2° si la suspension vise une rente de retraite réduite en raison du début de son service avant l'âge normal de la retraite, cette réduction doit être calculée de nouveau à la fin de la suspension de la rente;

3° si la suspension continue ou débute après le jour visé au paragraphe 1°, la rente dont le service a été suspendu doit être revalorisée en tenant compte, le cas échéant, du nouveau calcul de la réduction en application du paragraphe 2° et des nouveaux droits accumulés visés au paragraphe 1°. Cette revalorisation s'effectue de la même manière que celle qui, visée au deuxième alinéa de l'article 79, est prévue par le régime pour le montant de la rente non versé durant une période d'ajournement.

En outre, la rente additionnelle qui résulte des cotisations versées pendant la suspension de la rente doit être établie suivant les règles prévues à l'article 78 pour le calcul de la valeur minimale de la rente résultant des cotisations versées durant une période d'ajournement.

Le participant qui a droit à une rente de retraite, autre que la rente normale, dont le service est suspendu en application du deuxième alinéa peut, après le jour visé au paragraphe 1° de cet alinéa, demander le service de la rente selon les modalités prévues à l'article 77, qui s'applique compte tenu des adaptations nécessaires.

La suspension de la rente prend fin dès que se termine la période de travail continu du participant ou au moment prévu au paragraphe 2° de l'article 80.

1989, c. 38, a. 58; 1994, c. 24, a. 3; 1997, c. 19, a. 5; 2000, c. 41, a. 29; 2008, c. 21, a. 3.

59. Les montants périodiques payables au titre d'une rente autre que celle prévue à l'article 67.2 doivent être égaux, à moins:

0.1° que cette rente ne soit ajustée en application du deuxième alinéa de l'article 58 ou du deuxième ou troisième alinéa de l'article 67.4 ;

1° que cette rente ne soit remplacée:

a) par une rente temporaire prévue à l'article 91.1 ou une rente qui en est dérivée, auxquels cas doivent seuls être égaux les montants périodiques qui se rapportent à la partie de la rente qui n'est pas remplacée;

b) par une rente visée à l'article 92;

2° que chaque montant à verser ne soit uniformément augmenté en raison de l'utilisation, pour la détermination de cette rente, d'un indice ou taux prévu au régime, en raison du nouvel établissement de la rente conformément à l'article 89.1 ou en raison de l'option autorisée par le paragraphe 2° du premier alinéa de l'article 93 ou qu'il ne soit uniformément modifié en raison du nouvel établissement de la rente conformément au cinquième alinéa de l'article 87, en raison des options autorisées par l'article 91.1 ou par les paragraphes 3°, 4° et 6° du premier alinéa de l'article 93 ou en raison du partage des droits du participant avec son conjoint effectué conformément au chapitre VIII;

3° que cette rente ne soit remplacée par un paiement en un seul versement ou par une série de paiements faits en application des paragraphes 4° ou 6° du premier alinéa de l'article 93;

4° que cette rente ne soit majorée pour tenir compte de la cessation de la rente d'invalidité payable en vertu de la Loi sur le régime de rentes du Québec (chapitre R-9) lorsque le participant atteint l'âge de 65 ans;

5° que les montants à verser au titre d'une prestation de raccordement visée au premier alinéa de l'article 58 ne soient réduits selon le régime à une date qui se situe entre les dates limites prévues à cet alinéa.

1989, c. 38, a. 59; 1997, c. 19, a. 6; 2000, c. 41, a. 30; 2008, c. 21, a. 4.

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60. Les cotisations salariales visées à l'article 38 versées par un participant, avec les intérêts accumulés, établies lorsque survient la première des éventualités suivantes, ne peuvent servir à acquitter plus de 50% de la valeur:

1° de toute prestation à laquelle il acquiert droit et des droits qui en sont dérivés;

1.1° dans le cas où une prestation est versée en application de la sous-section 0.1 de la section III du chapitre VI, de toute prestation à laquelle le participant aurait acquis droit, et des droits qui en seraient dérivés, s'il avait pris sa retraite à la date où il a demandé le versement de cette prestation ;

2° si le participant est décédé sans avoir acquis droit à une rente, de toute prestation à laquelle un bénéficiaire acquiert droit en application du paragraphe 2° du premier alinéa de l'article 86.

En outre, si le participant contribue au versement de cotisations d'équilibre, les cotisations salariales versées par celui-ci, avec les intérêts accumulés et réduites du montant des cotisations excédentaires calculées selon le premier alinéa, ne peuvent servir à acquitter plus que la valeur mentionnée à cet alinéa.

Le présent article ne s'applique pas:

1° aux prestations acquises au titre d'un régime de retraite à cotisation déterminée;

2° aux prestations acquises au titre de dispositions qui, dans un régime de retraite à prestations déterminées, sont identiques à celles d'un régime à cotisation déterminée;

3° aux prestations qui résultent de droits ou d'actifs ayant fait l'objet d'un transfert, même non visé au chapitre VII;

4° à la rente additionnelle visée au troisième alinéa de l'article 58, au deuxième alinéa de l'article 67.4 ou à l'article 78 ou 83;

5° à la partie de toute prestation acquise au titre de services qui, bien que se rapportant à une période de travail au cours de laquelle aucune cotisation patronale ne fut versée pour le compte du participant, sont néanmoins reconnus en raison de l'exercice par le participant d'une option que lui offre le régime à cette fin, pour autant qu'il soit prévu que les engagements nés de cette option, tels qu'estimés à la date où elle est exercée, sont entièrement à la charge du participant; dans un tel cas, la valeur de ces engagements, établie suivant les hypothèses visées à l'article 61, doit être égale, à cette date, à la somme versée par le participant;

6° à une prestation qui, visée au paragraphe 1° du premier alinéa, a été constituée à partir de sommes à rembourser, ou est résultée de la conversion d'une prestation non viagère;

7° (*paragraphe abrogé*);

8° à une rente prévue à l'article 67.2.

1989, c. 38, a. 60; 1992, c. 60, a. 9; 1994, c. 24, a. 4; 2000, c. 41, a. 31; 2008, c. 21, a. 5; 2015, c. 29, a. 14.

60.1. (*Abrogé*).

2000, c. 41, a. 32; 2015, c. 29, a. 15.

61. La valeur des prestations auxquelles s'applique l'article 60 doit être déterminée à la date d'acquisition du droit à ces prestations, suivant les hypothèses actuarielles déterminées par règlement.

*Loi sur les régimes complémentaires de retraite, R.L.R.Q. c R-15.1***RÉGIMES COMPLÉMENTAIRES DE RETRAITE**

Cette valeur peut toutefois, sur autorisation de Retraite Québec et aux conditions qu'elle fixe, être déterminée suivant les hypothèses actuarielles déterminées par le régime, pourvu qu'elle soit toujours au moins égale à celle qui résulterait de l'application du premier alinéa.

1989, c. 38, a. 61; 1999, c. 40, a. 254; 2000, c. 41, a. 33; 2015, c. 20, a. 61; 2015, c. 29, a. 16.

62. Toute prestation déterminée sur la base de la rente normale doit, si cette rente est établie d'après l'évolution de la rémunération du participant au cours de son emploi, tenir compte de cette évolution jusqu'à la fin de sa période de travail continu, sauf:

1° lorsque le régime de retraite prévoit que cette rente cesse de tenir compte de l'évolution de la rémunération du participant avant la fin de sa période de travail continu, pourvu que ce ne soit pas avant la date où ce dernier cesse d'être participant actif;

2° lorsque le régime de retraite est modifié pour prévoir qu'à l'égard des services reconnus au participant à compter de la date de prise d'effet de la modification, cette rente n'est plus établie d'après l'évolution de sa rémunération.

1989, c. 38, a. 62.

63. Dans le cas d'un régime de retraite garanti, ou d'un régime de retraite non garanti aux termes duquel des remboursements ou prestations sont garantis par un assureur, la garantie doit, pour les services effectués au cours d'un exercice financier du régime et reconnus par ce dernier, être accordée au fur et à mesure que l'assureur reçoit des cotisations de l'employeur ou du comité de retraite.

Quant aux services reconnus au titre d'une période antérieure à l'exercice financier en cours, la garantie doit être accordée dès réception du montant total de la prime exigée par l'assureur.

1989, c. 38, a. 63.

63.1. Lorsqu'un régime de retraite n'est plus en mesure de demeurer un régime de pension agréé défini à l'article 1 de la Loi sur les impôts (chapitre I-3), soit parce que la valeur des droits d'un participant ou d'un bénéficiaire au titre de dispositions à prestations déterminées excède la somme qui peut être transférée directement dans un autre régime, soit parce que le montant annuel des cotisations versées à la caisse de retraite au titre de dispositions à cotisation déterminée excède les limites imposées, le comité de retraite doit rembourser au participant ou bénéficiaire concerné la partie excédentaire de ses droits.

1992, c. 60, a. 10; 2000, c. 41, a. 34.

64. La désignation de bénéficiaires et sa révocation sont régies par les articles 2445 à 2459 du Code civil, compte tenu des adaptations nécessaires.

1989, c. 38, a. 64; 1999, c. 40, a. 254; 2000, c. 41, a. 35.

65. À l'exception des articles 63, 63.1, 64, 67, 83, 84, 86 et 93, le présent chapitre ne s'applique pas aux cotisations volontaires.

1989, c. 38, a. 65; 2000, c. 41, a. 36.

SECTION II**REMBOURSEMENT**

66. Le participant qui cesse d'être actif a droit au remboursement de la valeur de ses droits si elle est inférieure à 20% du maximum des gains admissibles établi conformément à la Loi sur le régime de rentes du Québec (chapitre R-9) pour l'année au cours de laquelle il a cessé sa participation active. Le participant peut, avant qu'une rente ne lui soit servie en vertu du régime, exercer ce droit dans les 90 jours qui suivent la date

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où il a reçu le relevé visé à l'article 113 et, par la suite, à tous les cinq ans à compter de la date où il a cessé d'être actif, dans les 90 jours qui suivent la date d'expiration de chaque cinquième année.

Lorsque les conditions prévues au premier alinéa sont remplies, le comité de retraite peut également procéder à l'acquittement des droits du participant en lui remboursant la somme représentant la valeur de sa rente. Au préalable, le comité doit demander par écrit au participant de lui faire connaître ses instructions quant au mode de remboursement; à défaut d'avoir reçu une réponse dans les 30 jours de l'envoi de cet avis, le comité peut procéder au remboursement. L'avis envoyé au participant doit faire état de cette éventualité.

1989, c. 38, a. 66; 2000, c. 41, a. 37.

66.1. Le participant qui a cessé d'être actif et dont la période de travail continu a pris fin a droit au remboursement de la valeur de ses droits s'il a cessé de résider au Canada depuis au moins deux ans.

2000, c. 41, a. 38.

67. Sauf si ces cotisations ont servi à constituer une rente ou, sous réserve de l'article 102, s'il s'agit de sommes qui proviennent d'un transfert, même non visé à l'article 98, le participant qui cesse d'être actif a droit de retirer la valeur des cotisations volontaires portées à son compte, avec les intérêts accumulés.

Ce droit de retrait peut être exercé dans les 90 jours qui suivent la date où le participant a reçu le relevé visé à l'article 113 et, par la suite, à tous les cinq ans à compter de la date où le participant a cessé d'être actif, dans les 90 jours qui suivent la date d'expiration de chaque cinquième année.

1989, c. 38, a. 67; 2000, c. 41, a. 39.

67.1. Malgré le deuxième alinéa de l'article 5, le régime ne peut prévoir aucun remboursement de droits contrairement aux dispositions de la présente loi.

Le présent article n'a toutefois pas pour effet d'empêcher un régime de prévoir un délai plus avantageux pour l'exercice du droit au remboursement.

2000, c. 41, a. 40.

SECTION III

PRESTATIONS

§ 0.1. — Prestations de retraite progressive

2008, c. 21, a. 6.

67.2. Un régime de retraite auquel s'applique le chapitre X ou qui est visé au paragraphe 1° de l'article 116 peut prévoir qu'une rente est servie, sur demande, au participant qui exécute un travail pour un employeur partie au régime et qui remplit les conditions suivantes :

1° il conclut une entente à cet effet avec son employeur ;

2° il est âgé d'au moins 60 ans ou, s'il est âgé de moins de 60 ans, il est âgé d'au moins 55 ans et aurait droit, si sa période de travail continu prenait fin à la date où la rente commence à lui être servie, à une rente anticipée ne faisant l'objet d'aucune réduction attribuable au début de son service avant l'âge normal de la retraite ;

3° il est âgé de moins de 65 ans.

2008, c. 21, a. 6.

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67.3. Les modalités de la rente servie en application de l'article 67.2 sont fixées dans l'entente visée par cet article. Toutefois, le montant annuel de cette rente ne peut excéder :

1° dans le cas où le participant reçoit une rente de retraite au titre du régime ou a droit à une rente de retraite dont le service est suspendu au moment où il demande le service de la rente, 60% du montant annuel de la rente à laquelle il a droit à cette date, compte non tenu d'une prestation visée à l'article 83 ou à l'article 104 ;

2° dans le cas où le participant non visé au paragraphe 1° ne reçoit aucune rente de retraite au titre du régime de retraite à la date où il demande le service de cette rente, 60% du montant annuel de toute rente à laquelle il aurait eu droit s'il avait pris sa retraite à cette date, compte non tenu d'une prestation visée à l'article 83 ou à l'article 104, du droit du conjoint à la rente visée à l'article 87 ni des options prévues par le régime.

En cas de conflit, les modalités de l'entente prévalent sur celles du régime.

Ni l'entente ni, malgré le deuxième alinéa de l'article 5, le régime de retraite ne peuvent prévoir de dispositions permettant le versement de la rente prévue à l'article 67.2 lorsque le participant est âgé de 65 ans ou plus. De plus, un participant ne peut recevoir, pour une même période, cette rente et une autre prestation payable au titre du régime, à l'exception d'une prestation visée à l'article 67.5, 83 ou 104.

Le service de toute prestation, autre qu'une prestation visée à l'article 67.5, 83 ou 104, que le participant reçoit au moment où il demande le service de la rente prévue à l'article 67.2 est suspendu pendant la période où le participant reçoit cette dernière rente. Le régime peut par ailleurs prévoir que le service d'une prestation visée à l'article 67.5, 83 ou 104 est suspendu sur demande du participant qui reçoit la rente prévue à l'article 67.2.

2008, c. 21, a. 6.

67.4. À moins que cela n'avantage le participant, la rémunération versée pendant la période débutant avec le service d'une prestation visée à la présente sous-section et cessant à la date à laquelle débute ou recommence le service d'une rente de retraite ou celle où il atteint l'âge de 65 ans, selon le premier de ces événements, ne peut être prise en considération pour le calcul des prestations relatives aux services reconnus qui ne se rapportent pas à cette période.

En outre, les ajustements suivants s'appliquent :

1° dans le cas visé au paragraphe 1° du premier alinéa de l'article 67.3, le participant a droit, si des cotisations sont versées durant cette période, à une rente additionnelle établie suivant les règles prévues à l'article 78 pour le calcul de la valeur minimale de la rente résultant des cotisations versées durant une période d'ajournement. De plus, si la rente de retraite de ce participant était réduite en raison du début de son service avant l'âge normal de la retraite, cette réduction doit être calculée de nouveau à la fin de la suspension de service prévue par l'article 67.3 ;

2° dans le cas visé au paragraphe 2° du premier alinéa de l'article 67.3, le participant a droit, si des cotisations ont été versées pendant la même période, à une rente qui ne peut être inférieure à celle qui résulterait de l'application des règles prévues à l'article 78.

Les ajustements prévus au deuxième alinéa s'appliquent également à la prestation visée à l'article 83 ou 104 dont le service a été suspendu en application du quatrième alinéa de l'article 67.3.

2008, c. 21, a. 6.

67.5. Un régime de retraite qui, sans être un régime à cotisation déterminée, comporte des dispositions identiques à celles d'un tel régime, de même qu'un régime visé au paragraphe 2° ou 3° de l'article 116 peut prévoir qu'une prestation autre qu'une rente est versée, sur demande, au participant âgé d'au moins 55 ans

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mais de moins de 65 ans qui exécute un travail pour un employeur partie au régime et avec lequel il conclut une entente à cet effet.

Les modalités de la prestation sont fixées dans l'entente, sous réserve que le montant annuel de la prestation ne peut excéder 60% du plafond du revenu viager que le participant pourrait recevoir au titre d'une rente de remplacement constituée en application de l'article 92. Ce montant est établi au début de l'année au cours de laquelle débute le versement de la prestation en fonction des sommes portées au compte du participant à cette date et de son âge à la fin de l'année précédente. Il doit être établi de nouveau au début de chaque année. Ni l'entente ni, malgré le deuxième alinéa de l'article 5, le régime de retraite ne peuvent prévoir de dispositions plus avantageuses que celles prévues au présent article.

En cas de conflit, les modalités de l'entente prévalent sur celles du régime.

La valeur des droits du participant, établie à la date du versement de la prestation, est réduite du montant de la prestation versée.

2008, c. 21, a. 6.

§ 1. — *Rente différée*

68. La rente différée est la rente de retraite dont le service est différé à l'âge normal de la retraite.

Elle doit comporter les mêmes caractéristiques que la rente normale, à l'exception:

1° de celles relatives à la rente ajournée prévues aux articles 76 à 80;

2° du complément de rente prévu par le régime de retraite pour le versement d'une rente normale minimale qui peut, avec l'autorisation de Retraite Québec, ne pas être compté pour la détermination de la rente différée.

1989, c. 38, a. 68; 2015, c. 20, a. 61.

69. Tout participant qui cesse d'être actif a droit à une rente différée au moins égale à la rente normale.

1989, c. 38, a. 69; 2000, c. 41, a. 41.

§ 1.1. — *Prestation anticipée*

1997, c. 19, a. 7.

69.1. Le participant actif dont le temps de travail est réduit en application d'une entente conclue avec son employeur et dont l'âge est inférieur de 10 ans ou moins à l'âge normal de la retraite ou qui a atteint ou dépassé cet âge a droit, sur demande, à chaque année couverte par l'entente, au paiement en un seul versement d'une prestation égale au moindre des montants suivants:

1° 70% de la réduction de sa rémunération entraînée par la réduction de son temps de travail durant l'année;

2° 40% du maximum des gains admissibles pour l'année concernée établi en application de la Loi sur le régime de rentes du Québec (chapitre R-9);

3° la valeur de ses droits au titre du régime établie en supposant qu'il cesse d'être actif à la date où il demande le paiement de la prestation.

Malgré le deuxième alinéa de l'article 5, le régime ne peut prévoir de dispositions plus avantageuses que celles prévues au premier alinéa. De plus, un participant actif ne peut recevoir, au cours d'une même année, la

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prestation prévue au présent article et celle prévue à l'article 67.5 ou une rente payable en vertu de l'article 77 ou en remplacement de celle-ci.

La valeur de la réduction de la rente du participant consécutive au paiement de la prestation prévue au présent article ne peut être supérieure au montant de la prestation. De plus, à moins que cela n'avantage le participant, la rémunération versée pendant la période où il a droit à cette prestation ne peut être prise en considération pour le calcul des prestations relatives aux services reconnus qui ne se rapportent pas à cette période.

L'employeur doit, dans les 60 jours de la date où il devient partie à une entente visée au premier alinéa, informer le comité de retraite du nom de tout participant visé par cet alinéa.

1997, c. 19, a. 7; 2000, c. 41, a. 42; 2008, c. 21, a. 7.

§ 2. — *Rente anticipée*

70. La rente anticipée est la rente de retraite dont le service débute avant l'âge normal de la retraite.

1989, c. 38, a. 70.

71. Tout participant dont la période de travail continu s'est terminée dans les 10 ans qui précèdent la date où il atteindra l'âge normal de la retraite a droit à une rente anticipée.

Cependant, le participant qui a droit à une rente différée peut, qu'il ait ou non terminé sa période de travail continu, anticiper le service de cette rente s'il en fait la demande dans les 10 ans qui précèdent la date où il atteindra l'âge normal de la retraite fixé par le régime lui accordant droit à cette rente.

1989, c. 38, a. 71; 1992, c. 60, a. 11; 2000, c. 41, a. 43.

72. La valeur de la rente anticipée doit être au moins égale à la valeur de la rente normale, actualisée à la date où débute le service de la rente anticipée.

1989, c. 38, a. 72.

§ 3. — *Rente normale*

73. La rente normale est la rente de retraite dont le service débute à l'âge normal de la retraite.

L'âge normal de la retraite ne peut excéder le premier jour du mois qui suit celui au cours duquel le participant atteint l'âge de 65 ans.

1989, c. 38, a. 73.

74. Sauf lorsque l'article 76 prescrit l'ajournement de cette rente, tout participant actif, à l'exception de celui qui a reçu une rente de retraite au titre du régime de retraite, a droit à la rente normale dès qu'il atteint l'âge normal de la retraite.

1989, c. 38, a. 74; 2008, c. 21, a. 8.

§ 4. — *Rente ajournée*

75. La rente ajournée est la rente de retraite dont le service débute après l'âge normal de la retraite.

1989, c. 38, a. 75.

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76. La rente normale d'un participant doit être ajournée lorsque, après l'âge normal de la retraite, il demeure au travail auprès de l'employeur pour lequel il travaillait à cet âge.

1989, c. 38, a. 76.

77. Le participant a droit, sur demande, au service de tout ou partie de sa rente normale pendant la période d'ajournement, mais seulement dans la mesure nécessaire pour compenser toute réduction de rémunération à caractère permanent survenue au cours de cette période.

Toutefois, sauf stipulations contraires, le participant peut, après entente avec l'employeur, recevoir tout ou partie de sa rente sans égard à la limite prévue par le premier alinéa.

Le participant ne peut exercer ce droit plus d'une fois par période de 12 mois, sauf entente avec le comité de retraite.

1989, c. 38, a. 77.

78. Si des cotisations sont versées durant la période d'ajournement, la rente additionnelle qui en résulte doit être au moins égale en valeur à la rente que constitueraient, à la fin de la période d'ajournement, les cotisations salariales versées au cours de cette période, avec les intérêts accumulés. Elle doit également satisfaire aux exigences de l'article 84.

1989, c. 38, a. 78; 2000, c. 41, a. 44.

79. S'il y a ajournement de tout ou partie de la rente normale, le montant de la rente non versé durant la période d'ajournement doit être revalorisé à la fin de l'ajournement.

Le régime de retraite doit prévoir comment s'effectue cette revalorisation.

1989, c. 38, a. 79.

80. L'ajournement de la rente normale prend fin:

1° dès que se termine la période de travail continu du participant auprès de l'employeur pour lequel il travaillait à l'âge normal de la retraite;

2° dès que le régime de retraite n'est plus en mesure, en raison de cet ajournement, de demeurer un régime de pension agréé défini à l'article 1 de la Loi sur les impôts (chapitre I-3).

1989, c. 38, a. 80; 1991, c. 25, a. 180.

81. Lorsqu'il y a ajournement de la rente normale en vertu de la présente loi ou lorsque le régime de retraite permet au participant qui a droit à une rente devenue payable de la remplacer en tout ou en partie, s'il décide de l'ajourner après l'âge normal de la retraite, par une rente revalorisée, la revalorisation doit être telle que la rente payable à la fin de l'ajournement soit actuariellement équivalente à celle dont le service aurait débuté à l'âge normal de la retraite, n'eût été de son ajournement.

Cette équivalence actuarielle doit être effectuée sur la base des hypothèses visées à l'article 61 qui, à la date où le participant a atteint l'âge normal de la retraite, ont été utilisées pour déterminer la valeur des prestations auxquelles s'applique l'article 60 et dont le droit a été acquis à cette date.

1989, c. 38, a. 81; 2000, c. 41, a. 45.

§ 5. — *Rente d'invalidité*

82. La valeur de la rente qu'accorde le régime de retraite au participant devenu invalide et qui, de ce fait, a dû cesser de travailler pour l'employeur partie au régime ou d'être participant actif, doit être au moins égale à

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la valeur des droits qu'aurait acquis ce participant sans invalidité, actualisée à la date où débute le service de cette rente.

1989, c. 38, a. 82.

82.1. Malgré l'article 58, le régime peut prévoir que le service de la rente d'invalidité est interrompu lorsque le participant cesse d'être invalide au sens du régime.

La valeur des droits accumulés par le participant au titre des services reconnus par le régime avant le début du service de la rente d'invalidité ne peut, au moment où le service de cette rente est interrompu, être inférieure au montant m de la formule suivante:

$$a \times \frac{b}{c} = m$$

« a » représente la valeur des droits accumulés par le participant à la date du début du service de la rente d'invalidité, établie sans tenir compte du droit à cette rente;

« b » représente la valeur d'une rente de 1 \$ versée annuellement à compter de la date de l'interruption de la rente d'invalidité et, par la suite, à chaque date anniversaire de cette interruption;

« c » représente la valeur d'une rente de 1 \$ versée annuellement à compter de la date du début du service de la rente d'invalidité et, par la suite, à chaque date anniversaire du début de ce service.

Ces valeurs sont établies à la date de l'interruption du service de la rente d'invalidité suivant les hypothèses visées à l'article 61 et qui, à cette date, étaient utilisées pour la détermination de la valeur des prestations auxquelles s'applique l'article 60.

1994, c. 24, a. 5; 2000, c. 41, a. 46.

§ 6. — Rente additionnelle

83. Sauf dans le cas d'un régime à cotisation déterminée, tout participant dont les cotisations salariales, avec les intérêts accumulés, excèdent le plafond fixé par l'article 60 ou au compte duquel sont portées des cotisations volontaires a droit, à compter de la date à laquelle une rente autre que celle prévue à l'article 67.2 commence à lui être servie au titre du régime de retraite, à la constitution d'une rente additionnelle avec cet excédent ou ces cotisations et les intérêts accumulés.

Le régime peut toutefois permettre au participant de choisir entre la rente additionnelle constituée avec ses cotisations volontaires et toute autre prestation d'égale valeur que détermine le régime.

1989, c. 38, a. 83; 2008, c. 21, a. 9.

84. La rente additionnelle doit être déterminée suivant les hypothèses visées à l'article 61 et qui, à la date de sa détermination, sont utilisées pour déterminer la valeur d'autres prestations auxquelles s'applique l'article 60 et dont le droit s'acquiert à cette date.

Cette rente additionnelle doit en outre comporter les mêmes caractéristiques que la rente normale, à l'exception du complément de rente prévu par le régime de retraite pour le versement d'une rente normale minimale.

1989, c. 38, a. 84; 2000, c. 41, a. 47.

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§ 7. — Prestations après décès

85. Pour l'application de la présente sous-section, le conjoint est la personne qui, au jour considéré en vertu du deuxième alinéa:

1° est liée par un mariage ou une union civile à un participant;

2° vit maritalement avec un participant non marié ni uni civilement, qu'elle soit de sexe différent ou de même sexe, depuis au moins trois ans ou, dans les cas suivants, depuis au moins un an:

— un enfant au moins est né ou à naître de leur union;

— ils ont conjointement adopté au moins un enfant durant leur période de vie maritale;

— l'un d'eux a adopté au moins un enfant de l'autre durant cette période.

La qualité de conjoint s'établit soit au jour où une rente de retraite ou d'invalidité, une rente la remplaçant ou une prestation de raccordement commence à être servie au participant, soit au jour qui précède son décès, suivant celle de ces options que retient le régime de retraite ou, à défaut, suivant la première de ces éventualités. Toutefois, dans le cas où le participant décède sans qu'une telle rente ou prestation ne lui ait été servie, la qualité de conjoint s'établit au jour qui précède le décès.

Pour l'application du paragraphe 2° du premier alinéa, la naissance ou l'adoption d'un enfant avant la période de vie maritale en cours au jour où s'établit la qualité de conjoint peut permettre de qualifier une personne comme conjoint.

Malgré le paragraphe 1° du premier alinéa, la personne qui est judiciairement séparée de corps du participant au jour où s'établit la qualité de conjoint n'a droit à aucune prestation en vertu de la présente sous-section, à moins qu'elle ne soit l'ayant cause du participant ou que celui-ci n'ait transmis l'avis prévu à l'article 89.

1989, c. 38, a. 85; 1999, c. 14, a. 26; 2000, c. 41, a. 48; 2002, c. 6, a. 194; 2008, c. 21, a. 10.

86. Lorsqu'un participant décède sans qu'une rente de retraite ou d'invalidité, une rente la remplaçant ou une prestation de raccordement ne lui ait été servie, son conjoint ou, à défaut, ses ayants cause ont droit à une prestation, payable en un seul versement, dont la valeur doit être au moins égale:

1° à la valeur de toute rente de retraite ou d'invalidité à laquelle le participant avait droit avant son décès;

2° si le participant n'avait pas droit à une rente de retraite ou d'invalidité avant son décès, à la valeur de la rente différée à laquelle il aurait eu droit s'il avait cessé d'être actif le jour du décès pour une raison autre que ce décès.

La valeur de la prestation prévue au premier alinéa est établie sans tenir compte des hypothèses de survie ou de mortalité pour la période qui précède le début du service de la rente. De plus, doivent être ajoutés, le cas échéant, à la valeur de cette prestation:

1° les cotisations volontaires portées au compte du participant et les cotisations salariales qui excèdent le plafond fixé par l'article 60, avec les intérêts accumulés, ainsi que les sommes qui ont déjà fait l'objet d'un transfert, même non visé à l'article 98, avec les intérêts accumulés, ou le montant que représente la valeur de la rente constituée avec ces sommes sans tenir compte du décès du participant ;

2° des intérêts calculés, entre la date du décès et la date du versement de la prestation, au taux utilisé pour la détermination de cette valeur.

*Loi sur les régimes complémentaires de retraite, R.L.R.Q. c R-15.1***RÉGIMES COMPLÉMENTAIRES DE RETRAITE**

Le présent article ne s'applique pas si le conjoint survivant du participant a droit, à compter du décès, à une rente dont la valeur est au moins égale à celle de la prestation prévue à cet article.

1989, c. 38, a. 86; 1997, c. 19, a. 8; 1999, c. 40, a. 254; 2000, c. 41, a. 49; 2008, c. 21, a. 11; 2015, c. 29, a. 17.

87. Le conjoint d'un participant a droit à une rente à compter du décès de ce dernier si le participant recevait, avant son décès, l'une des rentes suivantes:

1° une rente de retraite ou d'invalidité ou une rente la remplaçant;

2° une rente dont le montant est modifié pour tenir compte d'un montant équivalant aux prestations déterminées en vertu de la Loi sur la sécurité de la vieillesse (L.R.C.1985, c. O-9), de la Loi sur le régime de rentes du Québec (chapitre R-9) ou d'un régime équivalent au sens du paragraphe *u* de l'article 1 de cette dernière loi;

3° (*paragraphe abrogé*);

4° une prestation de raccordement visée au premier alinéa de l'article 58.

Le conjoint a également droit à une rente à compter du décès du participant si ce dernier avait droit, avant son décès, à une rente visée au premier alinéa dont le service était suspendu en application du deuxième alinéa de l'article 58 ou de l'article 67.3.

Le montant de la rente au conjoint doit être au moins égal à 60% du montant de la rente du participant incluant :

1° lorsque le participant décède durant la période au cours de laquelle le service de sa rente était suspendu en application de l'article 58 ou de l'article 67.3, le produit de l'ajustement de la rente requis par l'article 58 ou l'article 67.4 à la fin de la période de suspension ;

2° le cas échéant, pendant la durée du remplacement, le montant de la rente temporaire et, jusqu'à la date où, s'il avait survécu, le participant aurait cessé de la recevoir, le montant de la prestation de raccordement.

Le montant calculé conformément au troisième alinéa est augmenté d'un montant au moins égal à 60% de celui de la rente prévue à l'article 83 ou 104 que le participant recevait avant son décès ou dont le service était alors suspendu en application de l'article 58 ou de l'article 67.3, ajusté, si le participant décède durant la période de suspension, de la manière prévue par l'article 58 ou l'article 67.4, compte tenu des adaptations nécessaires.

La somme de la rente prévue pour le conjoint et de la rente du participant réduite en conséquence doit, à la date où débute le service de cette dernière, être au moins actuariellement équivalente à la rente que le participant aurait reçue n'eût été du droit accordé au conjoint par le présent article. De plus, dans le cas où une rente prévue à l'article 83 ou 104 a commencé à être servie au participant avant la date à laquelle une personne a acquis la qualité de conjoint de ce participant, cette rente doit être établie de nouveau à cette date de manière à tenir compte du droit du conjoint à la rente prévue par le présent article.

1989, c. 38, a. 87; 1997, c. 19, a. 9; 2000, c. 41, a. 50; 2008, c. 21, a. 12.

88. Lorsque le participant dont la rente a été ajournée décède durant la période d'ajournement, son conjoint a droit à une rente dont la valeur doit être au moins égale à la plus élevée des valeurs suivantes:

1° à moins d'avoir renoncé à cette rente, la valeur de la rente qu'il aurait pu recevoir en application de l'article 87 si le service de la rente ajournée avait débuté le jour qui a précédé le décès du participant;

2° la valeur de la prestation après décès qu'il aurait pu recevoir en application de l'article 86.

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Si la rente n'a été ajournée qu'en partie, en outre de la rente à laquelle il a droit en application de l'article 87 au titre de la partie de rente que recevait le participant, le conjoint a droit à une rente dont la valeur doit être au moins égale à la plus élevée des valeurs visées au premier alinéa, réduite en la multipliant par la fraction que représente la partie de la rente ajournée sur la rente totale.

À défaut de conjoint, les ayants cause ont droit à la prestation visée à l'article 86, réduite de la manière prévue au deuxième alinéa du présent article en cas d'ajournement partiel de la rente.

1989, c. 38, a. 88; 1994, c. 24, a. 6; 1999, c. 40, a. 254.

88.1. Le conjoint d'un participant peut renoncer aux droits que lui accorde la présente sous-section en transmettant au comité de retraite une déclaration contenant les renseignements prescrits par règlement. Le conjoint peut également révoquer cette renonciation pourvu que le comité en soit informé par écrit avant le décès du participant ou, dans le cas de la rente visée au deuxième alinéa de l'article 87, avant le début du service de la rente du participant.

La renonciation prévue au présent article n'entraîne pas renonciation aux droits qui peuvent échoir au conjoint à titre d'ayant cause du participant. De plus, malgré une telle renonciation, le régime de retraite est, pour l'application de l'article 415 du Code civil, réputé régi par une loi qui accorde au conjoint survivant le droit à des prestations de décès.

2000, c. 41, a. 51.

89. Le droit aux prestations qu'accorde la présente sous-section au conjoint du participant s'éteint, selon le cas, par la séparation de corps, le divorce, l'annulation du mariage, la dissolution ou l'annulation de l'union civile ou la cessation de la vie maritale, sauf lorsque le participant a avisé par écrit le comité de retraite de verser la rente à ce conjoint malgré le divorce, l'annulation du mariage, la séparation de corps, la dissolution ou l'annulation de l'union civile ou la cessation de la vie maritale.

1989, c. 38, a. 89; 1999, c. 40, a. 254; 2000, c. 41, a. 52; 2002, c. 6, a. 195.

89.1. Lorsque la rente d'un participant a été établie de manière à tenir compte du droit de son conjoint à la rente visée à l'article 87 et que ce conjoint n'a plus droit à cette rente en vertu de l'article 89, le participant a droit, sur demande au comité de retraite, d'obtenir que sa rente soit établie de nouveau à la date de prise d'effet du jugement de séparation de corps, de divorce ou d'annulation de mariage, à la date de dissolution ou d'annulation de l'union civile ou à la date de cessation de vie maritale. Le montant et les caractéristiques de la rente ainsi établie sont ceux de la rente qui serait payable au participant à la date du nouvel établissement s'il n'avait pas eu de conjoint à la date où a débuté le service de sa rente.

À moins qu'il n'ait reçu l'avis prévu à l'article 89, le comité de retraite doit aussi procéder au nouvel établissement de la rente du participant lorsque le partage des droits accumulés par le participant au titre du régime intervient, en application de l'article 107 ou 110, après le début du service au participant d'une rente établie de manière à tenir compte du droit accordé au conjoint par l'article 87.

Le seul établissement d'une rente en vertu du présent article ne peut avoir pour effet de réduire le montant de la rente servie au participant.

2000, c. 41, a. 52; 2002, c. 6, a. 196.

90. Le service d'une rente au conjoint ne cesse pas du fait que ce dernier se marie, s'unit civilement ou vit maritalement avec une autre personne de sexe différent ou de même sexe.

1989, c. 38, a. 90; 1999, c. 14, a. 27; 2002, c. 6, a. 197.

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SECTION III.1**PRESTATIONS VARIABLES**

2015, c. 29, a. 18.

90.1. Un régime de retraite qui comporte des dispositions à cotisation déterminée peut permettre à un participant qui a cessé d'être actif ou, au décès d'un tel participant, à son conjoint de choisir de recevoir des prestations variables sur les fonds qu'il détient au titre des dispositions à cotisation déterminée, aux conditions et dans les délais prévus par règlement.

2015, c. 29, a. 18.

SECTION IV**OPTIONS****91.** *(Abrogé).*

1989, c. 38, a. 91; 1991, c. 25, a. 181; 2000, c. 41, a. 53.

91.1. Le participant ou conjoint qui a acquis droit à une rente au titre du régime de retraite a droit, dans les conditions prévues par règlement, de la remplacer en tout ou en partie, avant que n'en commence le service, par une rente temporaire dont il fixe le montant avant qu'elle soit servie et qui satisfait aux conditions suivantes:

1° le montant annuel de la rente ne peut excéder 40% du maximum des gains admissibles établi en application de la Loi sur le régime de rentes du Québec (chapitre R-9) pour l'année au cours de laquelle commence son service, ce plafond étant réduit, le cas échéant, du montant annuel de toute autre prestation temporaire à laquelle il a droit au titre du régime;

2° le service de la rente ne peut débuter plus de 10 ans avant que le participant ou conjoint atteigne l'âge normal de la retraite et doit prendre fin au plus tard le dernier jour du mois qui suit celui au cours duquel il atteint l'âge de 65 ans.

Malgré le paragraphe 2° du premier alinéa, le régime de retraite peut permettre au participant ou conjoint dont l'âge est inférieur de plus de 10 ans à l'âge normal de la retraite et qui a acquis droit à une rente de choisir, avant qu'elle soit servie, de la remplacer par une rente dont le montant est modifié pour tenir compte d'un montant équivalant aux prestations déterminées en vertu de la Loi sur la sécurité de la vieillesse, de la Loi sur le régime de rentes du Québec ou d'un régime équivalent au sens du paragraphe *u* de l'article 1 de cette dernière loi. En pareil cas, le montant annuel de la rente de remplacement augmenté, le cas échéant, du montant annuel de toute autre prestation temporaire à laquelle il a droit au titre du régime, ne peut excéder le moindre des montants suivants:

1° 40% du maximum des gains admissibles établi en application de la Loi sur le régime de rentes du Québec pour l'année au cours de laquelle commence son service;

2° le montant de la prestation temporaire auquel il aurait droit si la totalité de sa rente viagère était convertie en une rente temporaire dont le service prendrait fin le dernier jour du mois qui suit celui au cours duquel il atteint 65 ans.

À compter du moment où il atteint un âge inférieur à 10 ans de l'âge normal de la retraite, le participant ou conjoint qui reçoit une rente visée au deuxième alinéa a le droit de la remplacer par une rente temporaire qui satisfait aux conditions énoncées au premier alinéa.

Malgré le deuxième alinéa de l'article 5, le régime ne peut prévoir de dispositions plus avantageuses que celles prévues au présent article.

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La valeur de la rente temporaire doit être au moins égale à la valeur, actualisée au moment du remplacement, de la rente ou de la partie de rente qu'elle remplace.

1997, c. 19, a. 10; 2000, c. 41, a. 54.

92. Le participant ou conjoint qui a acquis droit à une rente au titre d'un régime de retraite a droit, dans les conditions prévues par règlement, de la remplacer par une rente viagère ou temporaire, constituée par contrat, dont le montant peut varier annuellement. La rente peut également, dans les cas prévus par règlement, être remplacée par un paiement en un seul versement.

1989, c. 38, a. 92; 1997, c. 19, a. 11.

92.1. À moins que le paiement de sa rente ne soit garanti pour une période plus longue, le participant qui a acquis droit à une rente au titre d'un régime de retraite a droit, avant qu'elle soit servie, de la remplacer par une rente dont le paiement est garanti pendant 10 ans.

2000, c. 41, a. 55.

93. Le régime de retraite peut permettre au participant ou conjoint qui a acquis droit à une rente de choisir, avant qu'elle soit servie, de la remplacer en tout ou en partie:

1° (*paragraphe abrogé*);

2° par une rente dont le montant est augmenté périodiquement en fonction d'un indice ou taux prévu au régime;

3° par une rente dont le montant est modifié en raison de dispositions relatives au paiement de prestations payables après le décès du participant ou de son conjoint, ou en raison de modifications à ces dispositions. Cependant le montant de la rente au conjoint qui résulte de cette option ne peut, sauf s'il y consent avant la date où débute le service de la rente du participant, être inférieur à 60% du montant de cette rente;

4° par un paiement ou une série de paiements en cas d'invalidité physique ou mentale réduisant l'espérance de vie;

5° (*paragraphe abrogé*);

6° par d'autres prestations déterminées par règlement.

La valeur de remplacement doit être au moins égale à la valeur de la rente remplacée, actualisée au moment du remplacement.

Le régime ne peut permettre d'autres choix que ceux visés au premier alinéa.

1989, c. 38, a. 93; 1997, c. 19, a. 12; 2000, c. 41, a. 56.

93.1. Malgré les articles 91.1 à 93, le participant qui a acquis droit à la rente prévue par l'article 67.2 ne peut la remplacer.

2008, c. 21, a. 13.

SECTION V
COORDINATION

94. Lorsque le régime de retraite prévoit que, pour la détermination de la rente normale, tout ou partie de la prestation payable en vertu du régime général établi par la Loi sur le régime de rentes du Québec (chapitre

Loi sur les régimes complémentaires de retraite, R.L.R.Q. c R-15.1

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R-9) ou le Régime de pensions du Canada (Lois révisées du Canada (1985), chapitre C-8) sert à réduire les droits du participant, la réduction ne peut être supérieure au montant m de la formule suivante:

$$r \times \frac{a}{35} = m$$

« r » représente tout ou partie de la prestation payable en vertu du régime général;

« a » représente le nombre d'années de services reconnus par le régime.

La fraction $a/35$ ne peut être supérieure à 1.

Aucune autre réduction que celle effectuée en fonction de la prestation de retraite payable en vertu de ce régime général ne peut être faite pour la détermination de la rente normale.

1989, c. 38, a. 94; 2000, c. 41, a. 57.

95. Le montant de la prestation payable en vertu du régime général et dont le régime de retraite prévoit la déduction doit être établi, le cas échéant sur la base d'une estimation, dès que le participant acquiert droit à une rente en vertu du régime et sans tenir compte d'aucune réduction de cette prestation consécutive à un partage de droits entre conjoints.

Si le régime tient compte, pour la détermination de la rente différée, de la rémunération du participant après qu'il a acquis droit à cette rente, ce montant doit être établi à une date qui n'excède pas celle de la dernière rémunération comptée.

En outre, ce montant doit, lorsqu'il fait l'objet d'une estimation, être fondé sur des données compatibles avec celles utilisées pour la détermination des prestations payées en vertu du régime général à la date de cette estimation.

1989, c. 38, a. 95; 2000, c. 41, a. 58.

96. Aucun droit résultant d'une modification à un régime général visé à l'article 94 ne peut être pris en compte pour la détermination d'une prestation s'il s'ensuit une réduction des droits du participant, sauf:

1° lorsque le participant le demande, pourvu que la prestation ainsi réduite soit au moins d'égale valeur;

2° lorsque le régime de retraite est modifié pour tenir compte du nouveau droit prévu par le régime général, pourvu que seules les prestations relatives aux services reconnus après cette modification soient ainsi réduites;

3° lorsque la prestation visée n'est pas déterminée sur la base de la rente normale ou lorsque sa valeur excède celle de la rente différée, pourvu que le régime soit modifié pour prévoir la réduction de cette prestation ou de cet excédent et que seules les prestations dont le service débute après cette modification soient ainsi réduites.

1989, c. 38, a. 96; 2000, c. 41, a. 59.

97. La rente normale déterminée en tenant compte de la prestation payable au titre d'un régime général visé à l'article 94 ne peut être réduite à nouveau pour tenir compte d'une modification du régime général ou d'une hausse de cette prestation.

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Il en va de même pour toute autre prestation déterminée en tenant compte de la prestation payable au titre d'un régime de sécurité sociale établi en vertu de la loi.

1989, c. 38, a. 97.

CHAPITRE VII
TRANSFERT DE DROITS ET D'ACTIFS

98. Tout participant a droit, dans les conditions et délais prévus au présent chapitre, de transférer dans le régime de retraite qu'il indique:

1° les cotisations volontaires portées à son compte, avec les intérêts accumulés;

2° le montant que représente la valeur de toute prestation, même garantie par un assureur, à laquelle le participant a droit et dont le service n'est pas commencé. Cette valeur doit être au moins égale:

a) lorsque le transfert est demandé dans le délai prévu au paragraphe 1° du deuxième alinéa de l'article 99, à la valeur de la prestation du participant déterminée en application de l'article 61;

b) lorsque le transfert est demandé dans tout autre délai, à la valeur de la prestation du participant déterminée en tenant compte des droits qui en sont dérivés et suivant les hypothèses visées à l'article 61 et qui, à la date de la demande de transfert, sont utilisées pour déterminer la valeur d'autres prestations auxquelles s'applique l'article 60 et dont le droit s'acquiert à cette date;

3° les cotisations salariales qui excèdent le plafond fixé par l'article 60, avec les intérêts accumulés;

4° les sommes qui ont déjà fait l'objet d'un transfert, même non visé par le présent chapitre, avec les intérêts accumulés, ou le montant que représente la valeur de la rente constituée avec ces sommes; cette valeur doit être déterminée suivant les hypothèses visées à l'article 61 et qui, à la date d'acquisition du droit à cette rente si le transfert est demandé dans le délai prévu au paragraphe 1° du deuxième alinéa de l'article 99 et à la date de la demande de transfert dans les autres cas, sont utilisées pour déterminer la valeur d'autres prestations auxquelles s'applique l'article 60 et dont le droit s'acquiert à cette date.

Doivent être ajoutés aux valeurs visées aux sous-paragraphes *a* et *b* du paragraphe 2° et au paragraphe 4° du premier alinéa des intérêts calculés, jusqu'à la date du transfert, au taux utilisé pour la détermination de la valeur de la prestation à laquelle a droit le participant.

Pour l'application du présent article, l'expression «régime de retraite» comprend, outre les régimes régis par la présente loi, tout régime ou contrat de rente déterminé par règlement.

1989, c. 38, a. 98; 2000, c. 41, a. 60.

99. Le droit au transfert prévu à l'article 98 peut être exercé par le participant dont l'âge est inférieur d'au moins 10 ans à l'âge normal de la retraite fixé par le régime. Un régime peut toutefois interdire au participant qui aurait droit, s'il cessait sa période de travail continu, à une rente anticipée dont le montant serait au moins égal à celui de la rente normale, de transférer ses droits dans un autre régime.

Par ailleurs, ce droit s'exerce dans l'un ou l'autre des délais suivants:

1° dans les 90 jours suivant la réception du relevé visé à l'article 113;

2° par la suite et au plus tard à la date prévue au paragraphe 3°, tous les cinq ans à compter de la date où le participant a cessé d'être actif, dans les 90 jours qui suivent la date d'expiration de chaque cinquième année;

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3° dans les 90 jours suivant la date où le participant, qui a cessé d'être actif, atteint un âge inférieur de 10 ans à l'âge normal de la retraite.

La restriction concernant l'âge du participant et l'interdiction visées au premier alinéa, de même que le délai maximal fixé au paragraphe 3° du deuxième alinéa ne s'appliquent pas au transfert de sommes qui proviennent d'un régime à cotisation déterminée ni au transfert des cotisations versées en vertu de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles d'un régime à cotisation déterminée. Le participant dont l'âge est inférieur de moins de 10 ans à l'âge normal de la retraite ou qui a atteint ou dépassé cet âge a droit, en tout temps, de transférer ces sommes, pour autant que le service de la rente n'ait pas débuté.

Le comité de retraite a 60 jours à compter de la réception d'une demande de transfert pour y donner suite.

1989, c. 38, a. 99; 2000, c. 41, a. 61.

100. *(Abrogé).*

1989, c. 38, a. 100; 2000, c. 41, a. 62.

101. Les conditions fixées par les articles 143 à 146 pour l'acquittement des droits des participants ou bénéficiaires s'appliquent à l'acquittement des sommes qui font l'objet d'un transfert.

1989, c. 38, a. 101; 2006, c. 42, a. 10.

102. À moins que le régime de retraite ne prévoie qu'elle doit servir à la constitution d'une rente, le participant qui cesse d'être actif a droit au remboursement de toute somme qui, ayant fait l'objet d'un transfert même non visé au présent chapitre, aurait pu être remboursée au participant en vertu du régime de retraite d'où elle provient.

1989, c. 38, a. 102; 1997, c. 19, a. 13; 2000, c. 41, a. 63.

103. À moins que le régime de retraite ne fixe un taux d'intérêt supérieur et sous réserve des dispositions de l'article 45.1, toute somme qui a fait l'objet d'un transfert, même non visé par le présent chapitre, porte intérêt, à compter de la date du transfert et jusqu'à ce qu'une rente soit constituée avec cette somme ou qu'elle soit remboursée en vertu de l'article 102, au taux visé à l'article 44 ou 45 s'il s'agit d'un transfert dans un régime régi par la présente loi.

1989, c. 38, a. 103; 1992, c. 60, a. 12; 2000, c. 41, a. 64.

104. À compter de la date à laquelle une rente, autre que celle prévue par l'article 67.2, commence à lui être servie, le participant a droit à la rente constituée avec les sommes qui, ayant fait l'objet d'un transfert même non visé par le présent chapitre, ne lui ont pas été remboursées en application de l'article 102.

1989, c. 38, a. 104; 2000, c. 41, a. 65; 2008, c. 21, a. 14.

105. Le montant de la rente versée en vertu d'un régime de retraite régi par la présente loi et constituée avec des sommes qui ont fait l'objet d'un transfert, même non visé par le présent chapitre, doit être déterminé suivant les hypothèses visées à l'article 61 et qui, à la date de sa détermination, sont utilisées pour déterminer la valeur d'autres prestations auxquelles s'applique l'article 60 et dont le droit s'acquiert à cette date.

Cette rente doit en outre comporter les mêmes caractéristiques que la rente normale, à l'exception du complément de rente prévu par le régime pour le versement d'une rente normale minimale.

Le présent article ne s'applique pas dans le cas d'une rente constituée avec des sommes qui ont fait l'objet d'un transfert visé à l'article 106.

1989, c. 38, a. 105; 2000, c. 41, a. 66.

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106. Lorsque le transfert est intervenu à la demande d'un participant qui s'est prévalu d'une entente-cadre prévoyant les conditions de transfert entre régimes de retraite de droits ou d'actifs relatifs à un groupe donné de participants, les droits attribués au participant suite au transfert doivent être au moins égaux à ceux qui — établis suivant les hypothèses visées à l'article 61 et qui, à la date du transfert, sont utilisées pour déterminer la valeur d'autres prestations auxquelles s'applique l'article 60 et dont le droit s'acquiert à cette date — auraient résulté du transfert dans un régime non régi par la présente loi des actifs afférents aux droits que le participant avait accumulés avant ce transfert.

1989, c. 38, a. 106; 2000, c. 41, a. 67.

CHAPITRE VIII**CESSION DE DROITS ENTRE CONJOINTS**

107. En cas de séparation de corps, de divorce, de nullité du mariage ou en cas de dissolution autrement que par décès ou de nullité de l'union civile, les droits accumulés par le participant au titre d'un régime sont, sur demande faite par écrit au comité de retraite, partagés avec son conjoint dans la mesure prévue au Code civil ou par le jugement du tribunal ou une déclaration commune notariée de dissolution d'une union civile.

Pareillement, lorsque le tribunal ou la déclaration notariée attribue au conjoint d'un participant, en paiement d'une prestation compensatoire, des droits que ce dernier a accumulés au titre d'un régime de retraite, ces droits sont, sur demande faite par écrit au comité de retraite, cédés au conjoint dans la mesure prévue par le jugement du tribunal ou par la déclaration notariée.

1989, c. 38, a. 107; 2002, c. 6, a. 198.

108. Dès l'introduction d'une demande en séparation de corps, en divorce, en annulation de mariage, en dissolution ou en annulation d'union civile ou en paiement d'une prestation compensatoire, le participant et son conjoint ont droit, sur demande faite par écrit au comité de retraite, d'obtenir un relevé faisant état des droits accumulés par le participant au titre du régime et de leur valeur en date de l'introduction de l'instance; ce relevé contient en outre les autres renseignements déterminés par règlement. Ces droits et leur valeur sont établis suivant les règles que fixent les règlements.

Le conjoint peut dès lors consulter le texte du régime ainsi que les documents visés à l'article 114, aux conditions qui y sont prévues.

Le participant et son conjoint ont également droit d'obtenir un relevé à l'occasion d'une médiation effectuée préalablement à des procédures en matière familiale ou au cours d'une démarche commune de dissolution de leur union civile devant notaire, sur demande faite par écrit au comité de retraite. Ce relevé fait état des renseignements déterminés par règlement.

1989, c. 38, a. 108; 2000, c. 41, a. 68; 2002, c. 6, a. 199.

109. Sauf dans les cas prévus par règlement, les droits attribués au conjoint à la suite du partage des droits du participant ou pour le paiement d'une prestation compensatoire ne peuvent servir qu'à la constitution d'une rente viagère et ce, qu'ils aient été ou non transférés dans un régime de retraite visé à l'article 98.

Toutefois, les droits attribués au conjoint à la suite d'une saisie pour dette alimentaire conformément aux articles 694 et suivants du Code de procédure civile (chapitre C-25.01) doivent être acquittés par un paiement en un seul versement, selon les modalités prévues par règlement.

1989, c. 38, a. 109; 2000, c. 41, a. 69; N.I. 2016-01-01 (NCPC).

110. Lorsqu'il y a cessation de la vie maritale entre un conjoint qui se trouve dans les conditions fixées au paragraphe 2° du premier alinéa de l'article 85 et le participant, ceux-ci peuvent, dans l'année qui suit, convenir par écrit de partager entre eux les droits qu'a accumulés le participant au titre du régime de retraite;

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une telle convention ne peut toutefois avoir pour effet d'attribuer au conjoint plus de 50% de la valeur de ces droits.

À cette fin, le participant et le conjoint ont droit d'obtenir, sur demande faite par écrit au comité de retraite, le relevé prévu à l'article 108, établi à la date où a cessé leur vie maritale.

Une convention conclue en vertu du premier alinéa peut aussi viser les sommes qui ont fait l'objet d'un transfert dans un régime de retraite visé à l'article 98.

L'article 109 s'applique aux droits attribués au conjoint en vertu d'une convention visée ci-dessus. En outre, les articles 694 et suivants du Code de procédure civile (chapitre C-25.01) s'appliquent, compte tenu des adaptations nécessaires, à l'exécution du partage de droits convenu entre conjoints en application du présent article.

1989, c. 38, a. 110; 2000, c. 41, a. 70; N.I. 2016-01-01 (NCPC).

110.1. Les frais de production du relevé visé à l'article 108 ainsi que ceux engagés pour l'exécution de la cession de droits entre conjoints ne peuvent leur être réclamés qu'à concurrence du plafond fixé par le ministre, après consultation de Retraite Québec, et publié à la *Gazette officielle du Québec*. Ce plafond peut varier suivant le type de régime.

Les frais réclamés aux conjoints sont divisés à parts égales entre eux, sauf s'ils décident d'une autre répartition. Le paiement des frais qui incombe à chacun des conjoints peut être opéré par le comité de retraite en réduisant la valeur des droits de ce conjoint, à moins que ce dernier ne choisisse de les payer autrement.

1994, c. 24, a. 7; 2015, c. 20, a. 61.

CHAPITRE IX

INFORMATION DES PARTICIPANTS

111. Le comité de retraite doit fournir à chaque participant ou travailleur admissible un sommaire écrit du régime de retraite décrivant notamment chacun des sujets énoncés au deuxième alinéa de l'article 14, accompagné d'une brève description des droits et obligations du participant au titre du régime et de la présente loi et d'un énoncé des principaux avantages que procure la participation au régime de retraite.

Ces documents sont fournis dans les 90 jours qui suivent, selon le cas:

- 1° la date où le travailleur est devenu admissible au régime ou participant;
- 2° la date d'enregistrement du régime.

L'employeur transmet par écrit au comité de retraite l'information relative aux travailleurs admissibles qui est nécessaire pour l'application du présent article.

1989, c. 38, a. 111; 2000, c. 41, a. 71.

111.1. Un document fourni à un participant, un bénéficiaire ou un travailleur admissible à un régime de retraite et relatif aux prestations payables en vertu de ce régime ou à la façon de les calculer doit, si le régime prévoit la réduction de la rente servie au participant pour tenir compte, directement ou non, des prestations payables en vertu d'un régime général visé à l'article 94, faire état de cette réduction et de la méthode pour la calculer.

2000, c. 41, a. 72.

112. Le comité de retraite doit transmettre à chaque participant et bénéficiaire, dans les neuf mois de la fin de chaque exercice financier, un document contenant un exposé sommaire des dispositions du régime qui ont

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été modifiées au cours du dernier exercice ainsi qu'une brève description des droits et obligations qui en découlent. Il doit, en outre, transmettre à cette occasion un relevé annuel qui contient les renseignements déterminés par règlement concernant notamment:

1° les droits qu'il a accumulés durant le dernier exercice et depuis son adhésion au régime jusqu'à la fin de cet exercice;

2° la situation financière du régime.

Le comité de retraite n'est pas tenu de faire parvenir un relevé annuel au participant à qui il a fait parvenir le relevé prévu à l'article 113, lorsque ce dernier établit les droits du participant à une date plus récente.

1989, c. 38, a. 112; 2000, c. 41, a. 73; 2008, c. 21, a. 15.

112.1. Le comité de retraite doit, dans les 60 jours du paiement de la prestation visée à l'article 69.1, fournir au participant un relevé contenant les renseignements déterminés par règlement et portant notamment sur l'effet de ce paiement sur le montant annuel de la rente normale résultant des services qui lui sont reconnus.

1997, c. 19, a. 13.

113. Le comité de retraite doit, dans les 60 jours de la date où il est informé qu'un participant a cessé d'être actif, lui fournir ou fournir à toute autre personne qui a droit à un remboursement ou à une prestation un relevé contenant les renseignements déterminés par règlement et établissant, en date de l'événement qui y donne ouverture, le montant de ce remboursement ou la nature et la valeur de cette prestation, ainsi que la nature et les conditions d'acquisition des autres droits prévus par le régime de retraite.

Il doit, en outre, dans les 60 jours d'une demande écrite à cet effet et sans frais, lui fournir ce relevé mis à jour suivant les données les plus récentes disponibles; cette mise à jour ne comporte une nouvelle détermination de la valeur des droits du participant que dans le cas où ce dernier peut exercer le droit au transfert prévu à l'article 98.

Il doit enfin, dans les 30 jours d'une demande écrite à cet effet et sans frais, leur fournir les données qui ont servi à établir ce relevé ou sa mise à jour, notamment celles utilisées pour le calcul de leurs droits.

1989, c. 38, a. 113; 2000, c. 41, a. 74.

113.1. S'il est avisé de la formation d'une association représentant aux fins du régime de retraite des participants actifs non représentés par une association accréditée, des participants non actifs ou des bénéficiaires du régime, le comité de retraite doit joindre un avis indiquant les informations qu'il possède concernant les nom et adresse de l'association, l'objet qu'elle poursuit et les modalités pour y être admis aux documents suivants qu'il transmet aux personnes que cette association a pour mission de représenter :

1° le relevé annuel transmis en application de l'article 112 ;

2° l'avis transmis aux participants et bénéficiaires en application du deuxième alinéa de l'article 146.4, du troisième alinéa de l'article 196 ou du premier alinéa de l'article 230.4.

L'exemption prévue au deuxième alinéa de l'article 112 ne dispense pas le comité de son obligation de transmettre au participant l'avis prévu par le premier alinéa.

2008, c. 21, a. 16; N.I. 2016-05-15.

113.2. Dans le cas où une association visée à l'article 113.1 demande au comité de retraite qu'il lui transmette les noms et adresses des personnes qu'elle a pour mission de représenter, le comité doit informer de cette demande chacune des personnes visées en joignant un avis à ce sujet au premier document parmi les suivants qu'il transmet à cette personne après réception de la demande :

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- 1° le relevé annuel transmis en application de l'article 112 ;
- 2° le relevé fourni en application du premier alinéa de l'article 113.

Cet avis doit être accompagné d'une note expliquant à la personne visée qu'elle peut, dans les 30 jours de la date de réception de l'avis, faire connaître au comité son consentement à la communication des renseignements en question à l'association concernée.

Le comité doit communiquer à l'association les noms et adresses des personnes qui ont consenti à la communication :

1° dans les 30 jours suivant l'expiration du délai prévu au deuxième alinéa, en ce qui concerne les personnes ayant manifesté leur consentement après réception de l'avis joint au relevé annuel transmis en application de l'article 112 ;

2° au plus tard 30 jours après la fin de l'exercice financier du régime au cours duquel elles ont manifesté leur consentement, en ce qui concerne celles qui ont manifesté leur consentement après réception de l'avis joint au relevé fourni en application du premier alinéa de l'article 113.

Le comité n'est pas tenu de donner suite plus d'une fois à une demande faite en vertu du premier alinéa par une même association. S'il le fait, il peut en exiger des frais.

2008, c. 21, a. 16.

114. Le comité de retraite doit, dans les 30 jours d'une demande écrite à cet effet et sans frais, permettre au travailleur admissible ainsi qu'au participant ou bénéficiaire de consulter, pendant les heures habituelles de travail, le texte du régime de retraite ou tout autre document déterminé par règlement. Il doit, dans les mêmes conditions, permettre au participant ou bénéficiaire de consulter une disposition du régime telle qu'en vigueur à toute date comprise dans la période pendant laquelle le travailleur visé est participant.

Cette consultation a lieu soit au bureau du comité de retraite, soit à l'établissement de l'employeur que désigne le comité, selon l'endroit le plus rapproché de la résidence du demandeur.

L'envoi au demandeur, sans frais et dans le délai de 30 jours, d'une copie du document faisant l'objet de la demande de consultation dispense le comité de retraite d'en permettre la consultation.

1989, c. 38, a. 114; 2000, c. 41, a. 75.

115. Le comité de retraite n'est pas tenu de satisfaire sans frais à la demande de documents faite par une même personne plus d'une fois par période de 12 mois.

Il en va de même à l'égard des demandes de consultation de documents.

1989, c. 38, a. 115.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

CHAPITRE X

FINANCEMENT

2006, c. 42, a. 11.

SECTION I

DISPOSITIONS GÉNÉRALES

2006, c. 42, a. 11.

116. Le présent chapitre ne s'applique pas:

1° à un régime de retraite garanti à l'égard duquel l'assureur s'est engagé à assumer tous les frais et droits relatifs à la terminaison du régime;

2° à un régime non garanti où les droits de tous les participants et bénéficiaires ne résultent, à tout moment, que de sommes portées à leur compte;

3° à un régime non garanti où les droits des participants et bénéficiaires ne sont constitués que de prestations et remboursements garantis à tout moment par un assureur et de droits décrits au paragraphe 2°.

1989, c. 38, a. 116; 2000, c. 41, a. 76; 2006, c. 42, a. 11.

117. Pour l'application du présent chapitre, le régime de retraite à cotisation et prestations déterminées doit être considéré comme un régime à prestations déterminées.

1989, c. 38, a. 117; 2006, c. 42, a. 11.

118. Tout régime de retraite doit faire l'objet d'une évaluation actuarielle:

1° à la date de son entrée en vigueur;

2° au plus tard à la date de la fin du dernier exercice financier du régime se situant dans les trois ans qui suivent la date de la dernière évaluation actuarielle complète du régime;

3° à la date de l'entente avec l'assureur aux fins d'un acquittement de droits effectué conformément à la politique d'achat de rentes du régime;

4° en cas de modification ayant une incidence sur le financement du régime, à la date déterminée conformément à l'article 121

5° à la date de la fin de l'exercice financier du régime qui précède un exercice financier au cours duquel un excédent d'actif est affecté à l'acquittement de cotisations patronales en application de l'article 146.8;

6° lorsque Retraite Québec le requiert, à la date qu'elle fixe.

Si une évaluation actuarielle visée au paragraphe 2° du premier alinéa détermine que le degré de capitalisation du régime est inférieur à 90%, le régime doit faire l'objet d'une évaluation actuarielle au plus tard à la date de fin de l'exercice financier suivant et à la date de fin de chacun des exercices financiers subséquents, jusqu'à ce que le degré de capitalisation atteigne au moins 90%.

Une évaluation actuarielle prévue au premier ou au deuxième alinéa doit être complète. Toutefois, celles visées aux paragraphes 3°, 4° et 5° du premier alinéa peuvent être partielles, mais seulement si, dans le cas d'une évaluation visée au paragraphe 4° ou 5°, la date de l'évaluation correspond à celle de la fin d'un

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exercice financier du régime et qu'aucune évaluation actuarielle complète n'est requise par la présente loi ou par Retraite Québec à cette date.

1989, c. 38, a. 118; 2006, c. 42, a. 11; 2015, c. 20, a. 61; 2015, c. 29, a. 19.

119. Le comité de retraite doit transmettre à Retraite Québec un rapport relatif à toute évaluation actuarielle visée à l'article 118:

0.1° au plus tard à l'expiration du délai prévu à l'article 25 pour présenter la demande d'enregistrement du régime si le rapport est relatif à une évaluation prévue au paragraphe 1° du premier alinéa de l'article 118;

1° dans les neuf mois de la date de l'évaluation si le rapport est relatif à une évaluation actuarielle prévue au paragraphe 2°, 4° ou 5° du premier alinéa ou au deuxième alinéa de cet article;

1.1° dans les quatre mois de la date de l'évaluation si le rapport est relatif à une évaluation prévue au paragraphe 3° du premier alinéa de cet article;

2° dans le délai d'au moins 60 jours fixé par Retraite Québec si le rapport est relatif à une évaluation actuarielle prévue au paragraphe 6° du premier alinéa de cet article.

Un rapport relatif à une évaluation actuarielle qui n'est pas visée à l'article 118 doit être transmis à Retraite Québec dans les neuf mois de la date de l'évaluation.

Tout rapport relatif à une évaluation actuarielle doit, lors de sa transmission à Retraite Québec, être accompagné d'un sommaire établi sur le formulaire fourni par Retraite Québec et des attestations et documents prévus dans le formulaire.

1989, c. 38, a. 119; 2000, c. 41, a. 77; 2006, c. 42, a. 11; 2009, c. 1, a. 4; 2015, c. 20, a. 61; 2015, c. 29, a. 20.

119.1. Si, à la date de la fin d'un exercice financier du régime de retraite, aucune évaluation actuarielle n'est requise par le paragraphe 2° du premier alinéa de l'article 118, le comité de retraite doit transmettre à Retraite Québec, au plus tard quatre mois après cette date, un avis l'informant de la situation financière du régime à cette date.

Les informations que doit inclure cet avis et les attestations et documents qui doivent l'accompagner sont prévus par règlement.

Toute certification requise aux fins de cet avis doit être faite conformément au premier alinéa de l'article 122, qui s'applique compte tenu des adaptations nécessaires.

2015, c. 29, a. 21; 2015, c. 20, a. 61.

120. Le financement d'un régime de retraite doit être basé sur un rapport relatif à une évaluation actuarielle du régime qui a été préparé à la demande du comité de retraite et transmis à Retraite Québec. À moins qu'il ne concerne une évaluation partielle faite dans les conditions prévues au troisième alinéa de l'article 118, ce rapport doit rendre compte d'une évaluation actuarielle complète du régime.

Sauf dans le cas prévu à l'article 121, une fois qu'il a été transmis à Retraite Québec, un rapport relatif à une évaluation actuarielle ne peut être modifié ou remplacé qu'à la demande de Retraite Québec ou avec son autorisation, aux conditions qu'elle fixe. En cas de modification ou de remplacement d'un rapport, doivent notamment être établis de nouveau tout déficit actuariel déterminé par l'évaluation et toute certification actuarielle requise aux fins de celle-ci.

1989, c. 38, a. 120; 2006, c. 42, a. 11; 2015, c. 20, a. 61; N.I. 2016-04-01.

121. Une modification d'un régime de retraite ayant une incidence sur le financement de celui-ci doit être considérée pour la première fois au plus tard à celle des dates suivantes qui est la plus tardive:

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1° la date de la fin du dernier exercice financier du régime dont la date n'est pas postérieure à celle où la modification intervient;

2° la date de la fin du dernier exercice financier du régime dont la date n'est pas postérieure à celle où la modification prend effet.

Si le rapport relatif à une évaluation actuarielle a été transmis à Retraite Québec sans qu'il soit tenu compte d'une modification qui devait être considérée aux termes du premier alinéa, le rapport doit être modifié ou remplacé.

Toutefois, une modification ayant pour effet de réduire les engagements du régime doit être considérée pour la première fois à la date où elle prend effet.

1989, c. 38, a. 121; 2006, c. 42, a. 11; 2015, c. 20, a. 61; 2015, c. 29, a. 22.

122. Toute certification requise aux fins d'une évaluation actuarielle partielle doit être faite en fonction de la situation financière probable du régime à la date de l'évaluation, en tenant compte, notamment, du taux de rendement réel de la caisse de retraite, de l'évolution des taux d'intérêt selon l'approche de solvabilité et des cotisations qui y ont été effectivement versées depuis la dernière évaluation actuarielle complète du régime.

En tant qu'elle concerne les modifications apportées à un régime de retraite, une évaluation actuarielle partielle du régime se limite à déterminer soit la valeur des engagements supplémentaires résultant de toute modification considérée pour la première fois lors de l'évaluation, soit, selon l'approche de capitalisation, la variation de la cotisation d'exercice qui découle de telle modification. La détermination de cette valeur ou de cette variation doit se baser sur les mêmes hypothèses et méthodes que celles utilisées pour la plus récente évaluation actuarielle complète du régime, à moins que celles-ci ne soient pas appropriées compte tenu de la nature de la modification.

Toutefois, lorsque la modification du régime a pour effet d'augmenter les rentes dont le service a débuté et que les engagements supplémentaires qui en résultent sont, à la date de la préparation du rapport relatif à l'évaluation actuarielle, garantis par un assureur, ces engagements peuvent être évalués en prenant pour acquis qu'ils correspondent à la prime payée à cet assureur, actualisée à la date de l'évaluation selon le taux de rendement de la caisse de retraite.

1989, c. 38, a. 122; 2006, c. 42, a. 11.

122.1. Pour l'application du présent chapitre, l'actif d'un régime de retraite et son passif sont tous deux réduits d'un montant représentant la somme des valeurs suivantes:

1° celle des cotisations volontaires versées à la caisse de retraite, avec les intérêts accumulés;

2° celle des cotisations versées à la caisse de retraite en vertu de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles d'un régime à cotisation déterminée, avec les intérêts accumulés;

3° celle des sommes reçues par le régime par suite d'un transfert même non visé au chapitre VII, avec les intérêts accumulés.

Toutefois, la valeur visée au paragraphe 2° ne doit pas être soustraite dans le cas d'un régime à prestation plancher.

2015, c. 29, a. 23.

122.2. Pour l'application du présent chapitre, les lettres de crédit fournies par l'employeur en vertu de l'article 42.1 ne sont prises en compte dans l'actif du régime qu'à concurrence de 15% du passif du régime.

2015, c. 29, a. 23.

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SECTION II

CAPITALISATION

2006, c. 42, a. 11; 2015, c. 29, a. 24.

§ 1. — *Détermination de la capitalisation*

2015, c. 29, a. 24.

123. Pour la détermination de la capitalisation d'un régime de retraite à la date d'une évaluation actuarielle, le passif du régime doit être égal à la valeur des engagements nés du régime compte tenu des services reconnus aux participants.

Est capitalisé le régime de retraite dont l'actif est, à la date de l'évaluation actuarielle, au moins égal au passif.

1989, c. 38, a. 123; 2006, c. 42, a. 11; 2008, c. 21, a. 33; 2015, c. 29, a. 24.

124. À seule fin d'établir le degré de capitalisation d'un régime de retraite à la date d'une évaluation actuarielle:

1° l'actif du régime doit être augmenté de la cotisation spéciale de modification prévue à l'article 139;

2° le passif du régime doit être augmenté de la valeur des engagements supplémentaires résultant de toute modification du régime considérée pour la première fois à la date de l'évaluation, calculée en faisant l'hypothèse que la date de prise d'effet de la modification est celle de l'évaluation.

Le degré de capitalisation d'un régime de retraite à la date d'une évaluation actuarielle correspond au pourcentage que représente l'actif du régime par rapport à son passif.

1989, c. 38, a. 124; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

125. Tout régime de retraite doit prévoir la constitution d'une provision de stabilisation dont le niveau visé est déterminé selon les modalités prévues par règlement, notamment selon une grille qui doit s'appliquer en fonction, entre autres critères, de la cible de la politique de placement du régime en vigueur à la date de chaque évaluation actuarielle requise en vertu de l'article 118.

1989, c. 38, a. 125; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

126. La méthode de capitalisation utilisée dans une évaluation actuarielle doit être conforme aux principes actuariels généralement reconnus et présumer l'existence perpétuelle du régime de retraite.

Les hypothèses et méthodes actuarielles utilisées pour déterminer la capitalisation du régime doivent être appropriées, notamment au type de régime en cause, à ses engagements et à la situation de la caisse de retraite.

1989, c. 38, a. 126; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

127. La méthode de lissage de la valeur marchande de l'actif du régime ne peut niveler les fluctuations à court terme de cette valeur sur une période supérieure à cinq ans.

1989, c. 38, a. 127; 1994, c. 24, a. 8; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

128. La cotisation d'exercice doit être au moins égale au total de:

1° la valeur des engagements nés du régime de retraite et relatifs aux services reconnus effectués au cours de l'exercice ou de la partie d'exercice visés au paragraphe 1° de l'article 140;

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2° la valeur de la provision de stabilisation relative à ces engagements, selon le niveau établi conformément à l'article 125.

Cette cotisation peut toutefois être moindre si elle résulte d'une méthode qui, à tout moment, maintient le régime capitalisé au degré de capitalisation requis en tenant compte du niveau visé de la provision de stabilisation du régime moins cinq points de pourcentage.

1989, c. 38, a. 128; 2006, c. 42, a. 11; 2015, c. 29, a. 24; 2016, c. 13, a. 68

129. La valeur des engagements visés aux articles 123, 124 et 128 et dont le régime de retraite prévoit l'augmentation suivant notamment l'évolution de la rémunération des participants doit comprendre le montant estimé de ces engagements lorsqu'ils deviendront payables, en présumant que se réaliseront les éventualités déterminées au moyen d'hypothèses actuarielles relatives, entre autres, à la survie, à la morbidité, à la mortalité, à l'attrition ou à l'admissibilité aux prestations.

Cette valeur doit en outre être déterminée en tenant compte de toute augmentation des prestations que le régime prévoit après le début de leur service.

1989, c. 38, a. 129; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

§ 2. — Déficits actuariels de capitalisation

2015, c. 29, a. 24.

130. Les déficits actuariels de capitalisation sont de trois types: le déficit actuariel technique, le déficit actuariel de stabilisation et le déficit actuariel de modification.

1989, c. 38, a. 130; 2000, c. 41, a. 78; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

131. Le déficit actuariel technique correspond, à la date d'une évaluation actuarielle, au montant par lequel le passif du régime excède son actif additionné de la valeur des cotisations d'équilibre qui restent à verser pour amortir tout déficit actuariel de modification déterminé lors d'une évaluation actuarielle antérieure.

1989, c. 38, a. 131; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

132. Le déficit actuariel de stabilisation correspond, à la date d'une évaluation actuarielle, au montant par lequel le passif du régime, réduit du déficit actuariel technique établi selon l'article 131 et additionné de la valeur du niveau visé de la provision de stabilisation moins cinq points de pourcentage, excède l'actif du régime additionné de la valeur des cotisations d'équilibre qui restent à verser pour amortir tout déficit actuariel de modification déterminé lors d'une évaluation actuarielle antérieure.

1989, c. 38, a. 132; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

133. La valeur des cotisations d'équilibre de modification visées aux articles 131 et 132 est établie en utilisant un taux d'intérêt identique à celui utilisé pour établir le passif du régime.

1989, c. 38, a. 133; 2000, c. 41, a. 79; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

134. Un déficit actuariel de modification correspond, à la date d'une évaluation actuarielle, à la valeur des engagements supplémentaires résultant de toute modification du régime, à l'exception d'une modification visée à l'article 139, considérée pour la première fois lors de l'évaluation, additionnée de la valeur du niveau visé de la provision de stabilisation relatif à ces engagements et réduite, le cas échéant, du montant représentant la part de la valeur de ces engagements qui est acquittée par affectation de l'excédent d'actif du régime.

1989, c. 38, a. 134; 1994, c. 24, a. 9; 2000, c. 41, a. 80; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

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134.1. *(Remplacé).*

2006, c. 42, a. 11; 2015, c. 29, a. 24.

135. Les cotisations d'équilibre qui, le cas échéant, restent à verser relativement à tout déficit actuariel de modification déterminé lors d'une évaluation actuarielle antérieure ne peuvent être éliminées que si, à la date de l'évaluation actuarielle, l'actif du régime de retraite est au moins égal à son passif, additionné de la valeur du niveau visé de la provision de stabilisation diminué de cinq points de pourcentage.

1989, c. 38, a. 135; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

135.1. *(Remplacé).*

1998, c. 2, a. 40; 2006, c. 42, a. 11.

135.2. *(Remplacé).*

1998, c. 2, a. 40; 2006, c. 42, a. 11.

135.3. *(Remplacé).*

1998, c. 2, a. 40; 2006, c. 42, a. 11.

135.4. *(Remplacé).*

1998, c. 2, a. 40; 2006, c. 42, a. 11.

135.5. *(Remplacé).*

1998, c. 2, a. 40; 2006, c. 42, a. 11.

§ 3. — *Amortissement des déficits actuariels de capitalisation*

2015, c. 29, a. 24.

136. Tout déficit actuariel de capitalisation doit être amorti en l'étalant en autant de mensualités qu'il y a de mois complets dans la période d'amortissement.

1989, c. 38, a. 136; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

137. Les mensualités relatives à une cotisation d'équilibre à verser pour tout exercice financier du régime de retraite, et pour toute partie d'un tel exercice, compris dans la période d'amortissement doivent être établies à la date de détermination du déficit actuariel sous la forme d'une somme fixe. Toutefois, si les participants contribuent au versement de cotisations d'équilibre, ces mensualités peuvent représenter un tarif horaire ou un taux de la rémunération ou un pourcentage de la masse salariale versée aux participants actifs; ce taux ou pourcentage doit être uniforme à moins qu'il ne soit établi en fonction d'une variable autorisée par Retraite Québec.

1989, c. 38, a. 137; 2006, c. 42, a. 11; 2015, c. 29, a. 24; 2015, c. 20, a. 61.

138. La période d'amortissement d'un déficit actuariel débute à la date de l'évaluation actuarielle qui détermine le déficit. Elle expire à la fin d'un exercice financier du régime de retraite qui se termine:

1° au plus tard 10 ans après la date de l'évaluation, en tant qu'elle concerne un déficit actuariel technique;

2° au plus tard 10 ans après la date de l'évaluation, en tant qu'elle concerne un déficit actuariel de stabilisation;

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3° au plus tard cinq ans après la date de l'évaluation, en tant qu'elle concerne un déficit actuariel de modification.

1989, c. 38, a. 138; 2000, c. 41, a. 81; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

§ 4. — *Cotisation spéciale de modification*

2015, c. 29, a. 24.

139. Dans le cas où l'évaluation actuarielle qui détermine la valeur des engagements supplémentaires résultant d'une modification du régime de retraite montre que le degré de capitalisation du régime, établi en faisant abstraction de la modification, est inférieur à 90%, il doit être versé à la caisse de retraite une cotisation spéciale de modification dont le montant est égal à la valeur de ces engagements supplémentaires, à la date de l'évaluation, additionnée de la valeur du niveau visé de la provision de stabilisation qui est relatif à ces engagements.

La cotisation spéciale de modification est payable en entier dès le jour qui suit la date de l'évaluation.

1989, c. 38, a. 139; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

§ 5. — *Dispositions diverses*

2015, c. 29, a. 24.

140. En outre des autres éléments exigés par règlement, toute évaluation actuarielle doit établir:

1° la cotisation d'exercice, exprimée en numéraire ou en taux ou pourcentage de la rémunération des participants actifs, pour l'exercice financier du régime de retraite, ou la partie de cet exercice, qui suit immédiatement la date de cette évaluation et pour chacun des exercices financiers suivants jusqu'à la date de la prochaine évaluation actuarielle dont le régime doit faire l'objet selon le paragraphe 2° du premier alinéa de l'article 118;

2° le montant total de la cotisation d'exercice et le montant de la partie de celle-ci qui est visée au paragraphe 2° du premier alinéa de l'article 128;

3° l'actif du régime et son passif;

4° le montant de chacun des déficits et celui de la cotisation d'équilibre qui y est relative;

5° les sommes comptabilisées en vertu de l'article 42.2.

1989, c. 38, a. 140; 1994, c. 24, a. 10; 2000, c. 41, a. 82; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

SECTION III

SOLVABILITÉ

2015, c. 29, a. 24.

141. Pour la détermination de la solvabilité d'un régime de retraite à la date d'une évaluation actuarielle, l'actif doit être établi selon la valeur de liquidation, ou son estimation, et être réduit du montant estimé des frais d'administration que la caisse de retraite devrait assumer en supposant que le régime se termine à la date de l'évaluation.

Quant au passif, il doit être égal à la valeur des engagements nés du régime en supposant qu'il se termine à la date de l'évaluation.

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Est solvable le régime de retraite dont l'actif est au moins égal à son passif.

1989, c. 38, a. 141; 2006, c. 42, a. 50; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

142. À seule fin d'établir le degré de solvabilité d'un régime de retraite à la date d'une évaluation actuarielle:

1° l'actif du régime doit être augmenté de la cotisation spéciale de modification prévue à l'article 139;

2° le passif du régime doit être augmenté de la valeur des engagements supplémentaires résultant de toute modification du régime considérée pour la première fois à la date de l'évaluation, calculée en faisant l'hypothèse que la date de prise d'effet de la modification est celle de l'évaluation.

Le degré de solvabilité d'un régime de retraite à la date d'une évaluation actuarielle correspond au pourcentage que l'actif du régime représente par rapport à son passif.

1989, c. 38, a. 142; 1997, c. 19, a. 15; 2006, c. 42, a. 50; 2008, c. 21, a. 17; 2006, c. 42, a. 11; 2015, c. 29, a. 24.

142.1. Dans le cas où le régime prévoit expressément que le montant de la rente d'un participant doit être établi en tenant compte de l'évolution de la rémunération du participant après la terminaison, la valeur de cette rente doit être établie en supposant que le régime se termine dans des circonstances telles que les droits du participant au titre de cette rente doivent être estimés à leur valeur maximale. Dans le cas où le régime prévoit d'autres engagements dont la valeur dépend des circonstances dans lesquelles il se termine, ils doivent être compris dans le passif dans la mesure prévue au scénario retenu à cette fin par l'actuaire responsable de l'évaluation.

Si le passif établi conformément au paragraphe 2° du premier alinéa de l'article 142 et au premier alinéa du présent article est inférieur à la valeur des engagements nés du régime en supposant qu'il se termine à la date de l'évaluation dans des circonstances telles que les droits des participants doivent être estimés à leur valeur maximale, le rapport relatif à l'évaluation actuarielle doit également indiquer cette dernière valeur.

2015, c. 29, a. 24.

142.2. Le passif d'un régime de retraite dont un assureur garantit des remboursements ou prestations doit, pour la détermination de la solvabilité du régime, comprendre la valeur qui correspond à ces droits, et son actif doit inclure un montant égal à cette valeur.

2015, c. 29, a. 24.

142.3. Les valeurs visées au paragraphe 2° du premier alinéa de l'article 142 et à l'article 142.1 sont déterminées en appliquant les articles 211 et 212 et le paragraphe 1° du deuxième alinéa de l'article 212.1, compte tenu des adaptations nécessaires. Dans le cas des rentes dont le service a débuté, pour autant qu'à la date de l'évaluation elles ne soient pas garanties par un assureur, ces valeurs doivent être déterminées selon l'estimation de la prime qu'aurait exigée un assureur pour garantir ces rentes à la date de l'évaluation.

2015, c. 29, a. 24.

SECTION III.1

FINANCEMENT LIÉ À LA POLITIQUE D'ACHAT DE RENTES

2015, c. 29, a. 24.

142.4. Un acquittement de droits selon la politique d'achat de rentes d'un régime de retraite doit satisfaire aux exigences de financement prévues par règlement.

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À défaut, une cotisation spéciale d'achat de rentes, calculée selon les modalités déterminées par règlement, doit être versée selon les modalités prévues à ce règlement.

2015, c. 29, a. 24.

SECTION IV

POLITIQUE DE FINANCEMENT

2015, c. 29, a. 24.

142.5. Celui qui a le pouvoir de modifier le régime doit établir une politique écrite de financement qui satisfait aux exigences prévues par règlement et la réviser régulièrement. Il doit, sans délai, la transmettre au comité de retraite.

2015, c. 29, a. 24.

SECTION V

CONDITIONS D'ACQUITTEMENT DES DROITS

2006, c. 42, a. 11.

143. Doit être acquittée intégralement la valeur des droits qu'un participant ou un bénéficiaire acquiert au titre d'un régime de retraite et qui correspond:

- 1° aux cotisations volontaires portées au compte du participant, avec les intérêts accumulés;
- 2° aux cotisations salariales ou patronales versées à l'égard du participant en vertu de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles d'un régime à cotisation déterminée, avec les intérêts accumulés;
- 3° aux montants portés au compte du participant par suite d'un transfert, même non visé au chapitre VII, avec les intérêts accumulés.

La prestation prévue à l'article 67.5, celle prévue à l'article 69.1 et les montants périodiques payables au titre d'une rente doivent également être acquittés intégralement.

Quant à tout autre droit, la valeur ne peut en être acquittée à même la caisse de retraite qu'en proportion, à concurrence de 100%, du degré de solvabilité du régime établi lors de la dernière évaluation actuarielle dont le rapport a été transmis à Retraite Québec ou, s'il est plus récent, dans l'avis visé à l'article 119.1 transmis à Retraite Québec. Un régime de retraite peut toutefois prévoir que le plafond de 100% ne s'applique pas ou l'établir à un degré supérieur à 100%.

1989, c. 38, a. 143; 2006, c. 42, a. 11; 2008, c. 21, a. 33; 2015, c. 20, a. 61; 2015, c. 29, a. 25.

144. L'actuaire chargé de préparer le rapport relatif à une évaluation actuarielle du régime de retraite doit établir dans ce rapport si l'acquittement des droits transférables aux termes d'une entente visée à l'article 106 peut avoir pour effet de diminuer le degré de solvabilité du régime ou, lorsque ce degré est supérieur à 100%, de l'abaisser au-dessous de ce niveau.

Dans l'affirmative, il ne peut y avoir aucun acquittement de ces droits si ce n'est dans la proportion que fixe l'actuaire pour éviter cet effet.

1989, c. 38, a. 144; 2006, c. 42, a. 11.

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145. La valeur des droits qui, par application de l'article 143 ou 144, ne peut être acquittée peut l'être jusqu'à concurrence de 5% du maximum des gains admissibles établi en vertu de la Loi sur le régime de rentes du Québec (chapitre R-9) pour l'année au cours de laquelle doit s'effectuer l'acquittement; toutefois, la somme des montants ainsi acquittés depuis la dernière évaluation actuarielle du régime de retraite ne peut être supérieure à 5% de l'actif établi lors de cette évaluation pour en vérifier la solvabilité.

1989, c. 38, a. 145; 2000, c. 41, a. 83; 2006, c. 42, a. 11.

145.1. Malgré les plafonds fixés par les articles 143 à 145, la valeur des droits acquittés doit être au moins égale à la somme des cotisations versées par le participant et des montants portés à son compte par suite d'un transfert, même non visé au chapitre VII, avec les intérêts accumulés.

2006, c. 42, a. 11.

146. Le solde de la valeur des droits qui, aux termes des articles 143 à 145.1, ne peut être acquittée doit être capitalisé et payé dans les cinq ans de l'acquittement initial ou au plus tard à l'âge normal de la retraite si le participant atteint cet âge avant l'expiration de ces cinq ans, dans les cas suivants:

1° le participant ou le bénéficiaire n'a pas la possibilité de demander que ses droits soient maintenus dans le régime de retraite;

2° le régime prévoit l'acquittement de la valeur des droits des participants et bénéficiaires selon une proportion supérieure au degré de solvabilité du régime.

1989, c. 38, a. 146; 2006, c. 42, a. 11; 2015, c. 29, a. 26.

CHAPITRE X.1**AFFECTATION DE L'EXCÉDENT D'ACTIF**

2006, c. 42, a. 12.

SECTION I**DISPOSITIONS DU RÉGIME**

2015, c. 29, a. 27.

146.1. Un excédent d'actif d'un régime de retraite ne peut, en cours d'existence du régime, être affecté au remboursement ou à l'acquittement de cotisations ou à l'acquittement de la valeur des engagements supplémentaires résultant d'une modification du régime que conformément aux dispositions du présent chapitre et selon les dispositions du régime visées au paragraphe 17° ou 18° du deuxième alinéa de l'article 14.

2000, c. 41, a. 84; 2006, c. 42, a. 13; 2015, c. 29, a. 27.

146.2. Toutes les dispositions relatives à l'affectation de l'excédent d'actif en cours d'existence du régime de retraite doivent être intégrées dans une section particulière du régime, facilement identifiable.

Il en est de même de toute disposition relative à l'attribution de l'excédent d'actif en cas de terminaison du régime.

2000, c. 41, a. 84; 2006, c. 42, a. 13; 2015, c. 29, a. 27.

146.3. Les participants et bénéficiaires doivent être informés et consultés avant qu'intervienne toute modification d'une disposition du régime visée à l'article 146.2.

2000, c. 41, a. 84; 2006, c. 42, a. 13; 2015, c. 29, a. 27.

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146.3.1. *(Remplacé).*

2006, c. 42, a. 13; 2008, c. 21, a. 34; 2015, c. 29, a. 27.

146.3.2. *(Remplacé).*

2006, c. 42, a. 13; 2015, c. 29, a. 27.

146.3.3. *(Remplacé).*

2006, c. 42, a. 13; 2008, c. 21, a. 34; 2015, c. 29, a. 27.

146.3.4. *(Remplacé).*

2006, c. 42, a. 13; 2015, c. 29, a. 27.

146.3.5. *(Remplacé).*

2006, c. 42, a. 13; 2015, c. 29, a. 27.

146.3.6. *(Remplacé).*

2006, c. 42, a. 13; 2015, c. 29, a. 27.

146.4. Aux fins de cette consultation, le comité de retraite transmet à chacun des participants et des bénéficiaires du régime un avis écrit qui, en plus de contenir les renseignements prévus au paragraphe 1° du premier alinéa de l'article 26, indique:

- 1° les dispositions du régime relatives à l'attribution ou à l'affectation de l'excédent d'actif qui sont en vigueur à la date de l'avis;
- 2° le texte des dispositions du régime résultant de la modification;
- 3° tout autre renseignement déterminé par règlement.

L'avis doit également informer les participants et les bénéficiaires qu'ils peuvent, dans les 60 jours de sa date d'envoi ou, le cas échéant, de la date de publication de l'avis prévu au troisième alinéa, selon la plus tardive, faire connaître par écrit au comité de retraite leur opposition à la modification projetée des dispositions du régime.

À moins que tous les participants et les bénéficiaires du régime n'aient été personnellement avisés, le comité de retraite doit, en outre, faire publier dans un quotidien distribué dans la région où résident, au Québec, le plus grand nombre de participants actifs au régime un avis faisant état de la modification envisagée. Cet avis informe également toute personne qui, sans avoir reçu un avis personnel, croit être de celles qui doivent être consultées qu'elle peut, dans les 60 jours de cette publication, faire valoir sa qualité auprès du comité de retraite et, dans la mesure où elle a établi sa qualité, recevoir une copie de l'avis prévu au deuxième alinéa et, le cas échéant, manifester par écrit au comité son opposition à la modification projetée.

L'avis donné en vertu du présent article est assimilé à l'avis prévu à l'article 26.

2000, c. 41, a. 84; 2006, c. 42, a. 15; 2015, c. 29, a. 27.

146.5. À l'expiration des délais d'opposition, le comité de retraite procède au décompte des avis d'opposition exprimés.

Si 30% ou plus des participants et bénéficiaires s'opposent à la modification projetée, celle-ci est réputée rejetée et ne peut intervenir.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

Le comité de retraite informe immédiatement des résultats l'employeur concerné et chacun des participants et des bénéficiaires du régime ainsi que celui qui a le pouvoir de modifier le régime.

2000, c. 41, a. 84; 2005, c. 5, a. 1; 2006, c. 42, a. 16; 2015, c. 29, a. 27.

SECTION II**RÉGIMES AUXQUELS S'APPLIQUE LE CHAPITRE X**

2006, c. 42, a. 14; 2015, c. 29, a. 27.

146.6. L'affectation, en application de la présente section, de l'excédent d'actif d'un régime de retraite auquel s'applique le chapitre X, établi en excluant la portion de l'actif et celle du passif visées à l'article 122.1, n'est permise que si, selon l'évaluation actuarielle du régime, les conditions suivantes sont réunies:

1° selon l'approche de capitalisation, l'actif du régime de retraite est au moins égal à son passif, additionné de la valeur du niveau visé de la provision de stabilisation majoré de cinq points de pourcentage;

2° selon l'approche de solvabilité, l'actif du régime est égal à au moins 105% de son passif.

2000, c. 41, a. 84; 2006, c. 42, a. 17; 2015, c. 29, a. 27.

146.7. Le montant maximum d'excédent d'actif qui peut être utilisé est égal au moindre des montants suivants, établis à la date de l'évaluation actuarielle:

1° celui par lequel l'excédent d'actif déterminé selon l'approche de capitalisation excède le minimum fixé selon le paragraphe 1° de l'article 146.6;

2° celui par lequel l'excédent d'actif déterminé selon l'approche de solvabilité excède le minimum fixé selon le paragraphe 2° de cet article.

S'il s'agit d'une évaluation actuarielle partielle, ce montant est égal au moindre des montants indiqués dans une certification de l'actuaire attestant que, si une évaluation actuarielle complète était effectuée à la date de l'évaluation, elle permettrait l'établissement, conformément au premier alinéa, de montants au moins égaux aux montants indiqués.

2000, c. 41, a. 84; 2006, c. 42, a. 18; 2015, c. 29, a. 27.

146.8. Le montant d'excédent d'actif pouvant être utilisé au cours d'un exercice financier doit d'abord être affecté à l'acquittement des cotisations patronales et salariales d'exercice, jusqu'à concurrence du moindre du montant des cotisations patronales ou salariales comptabilisées respectivement selon le premier ou le deuxième alinéa de l'article 42.2 ou du montant des cotisations patronales ou salariales d'exercice.

Si le montant d'excédent d'actif pouvant être utilisé est inférieur au montant total des cotisations patronales et salariales comptabilisées selon l'article 42.2, l'affectation visée au premier alinéa doit être effectuée en proportion des cotisations comptabilisées respectivement selon le premier et le deuxième alinéa de cet article.

S'il subsiste un solde d'excédent d'actif, celui-ci peut, jusqu'à concurrence de 20% par exercice financier du régime, être affecté, selon ce que prévoit le régime, à l'acquittement de la valeur des engagements supplémentaires résultant d'une modification du régime, à l'acquittement de cotisations salariales ou à la remise de sommes à l'employeur.

Toute somme affectée à l'acquittement des cotisations patronales d'exercice, affectée à l'acquittement de la valeur des engagements supplémentaires résultant d'une modification ou remise à l'employeur doit être

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

déduite des sommes comptabilisées selon l'article 42.2. Il en est de même de toute somme affectée à l'acquittement de cotisations salariales d'exercice.

2000, c. 41, a. 84; 2015, c. 29, a. 27.

146.9. Le régime de retraite peut prévoir que l'affectation de l'excédent d'actif à l'acquittement de cotisations d'exercice peut, malgré les plafonds prévus au premier alinéa de l'article 146.8, s'appliquer au-delà du montant des cotisations comptabilisées en vertu de l'article 42.2.

2000, c. 41, a. 84; 2006, c. 42, a. 19; 2015, c. 29, a. 27.

146.9.1. L'affectation de l'excédent d'actif à l'acquittement des cotisations patronales et, le cas échéant, des cotisations salariales cesse à la date de la fin de tout exercice financier pour lequel une évaluation actuarielle ou un avis visé à l'article 119.1 montre que les conditions prévues à l'article 146.6 ne sont plus réunies.

2015, c. 29, a. 27.

SECTION III
AUTRES RÉGIMES

2015, c. 29, a. 27.

146.9.2. Les dispositions de la présente section visent les régimes de retraite auxquels les dispositions du chapitre X ne s'appliquent pas.

Elles visent également la portion de l'actif et celle du passif d'un régime de retraite auquel s'applique le chapitre X qui sont soustraites selon l'article 122.1.

2015, c. 29, a. 27.

146.9.3. L'excédent d'actif d'un régime peut être affecté à l'acquittement de la valeur des engagements supplémentaires résultant d'une modification du régime pourvu que le montant affecté à cette fin se limite à la part de l'actif qui excède la valeur des engagements nés du régime, déterminée en faisant abstraction des engagements supplémentaires résultant de la modification et en supposant que le régime se termine.

2015, c. 29, a. 27.

146.9.4. La partie de l'actif du régime qui excède la valeur des engagements nés du régime, en supposant qu'il se termine, peut être affectée à l'acquittement de cotisations patronales.

L'affectation de l'excédent d'actif d'un régime de retraite à l'acquittement des cotisations patronales cesse dès que la condition prévue au premier alinéa cesse d'être respectée.

2015, c. 29, a. 27.

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CHAPITRE X.2DISPOSITIONS PARTICULIÈRES RELATIVES À CERTAINS RÉGIMES DE RETRAITE
INTERENTREPRISES

2015, c. 7, a. 1.
SECTION I

CHAMP D'APPLICATION

2015, c. 7, a. 1.

146.10. Le présent chapitre s'applique à un régime de retraite interentreprises à cotisation et prestations déterminées, en vigueur le 18 février 2015, qui ne peut être modifié de façon unilatérale par aucun employeur qui y est partie. Un tel régime est dit «régime à cotisations négociées».

Les régimes interentreprises visés par un règlement pris en vertu du deuxième alinéa de l'article 2, autre que le Règlement prévoyant de nouvelles mesures d'allègement relatives au financement de déficits actuariels de solvabilité des régimes de retraite du secteur privé (chapitre R-15.1, r. 4.1), sont toutefois exclus de l'application du présent chapitre. Est par contre visé le régime de retraite auquel s'applique la section III.3 du Règlement sur la soustraction de certains régimes de retraite à l'application de dispositions de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1, r. 8).

2015, c. 7, a. 1.
SECTION II

COTISATIONS ET PRESTATIONS

2015, c. 7, a. 1.

146.11. Malgré le premier alinéa de l'article 39, l'employeur n'est tenu de verser, au cours de chaque exercice financier du régime, que la cotisation patronale stipulée au régime.

Malgré le troisième alinéa de l'article 41, aucun ajustement de la cotisation de l'employeur ne peut être effectué, à moins qu'il n'ait été négocié avec celui-ci.

2015, c. 7, a. 1.

146.12. Le total de la cotisation patronale et des cotisations salariales qui doivent être versées au cours de chaque exercice financier du régime doit être au moins égal à la somme des montants suivants:

- 1° la cotisation d'exercice établie conformément aux articles 128 et 129;
- 2° le montant estimé des frais d'administration que la caisse de retraite doit assumer au cours de l'exercice financier;
- 3° le total des cotisations d'équilibre déterminées pour l'exercice financier et des cotisations spéciales de modification exigibles au cours de l'exercice.

2015, c. 7, a. 1; 2015, c. 29, a. 28.

146.13. Un employeur ne peut utiliser l'excédent d'actif du régime pour acquitter sa cotisation, sauf si les règles fiscales l'y obligent. Il ne peut, non plus, malgré l'article 42.1, se libérer du paiement de sa cotisation au moyen d'une lettre de crédit.

2015, c. 7, a. 1.

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146.14. *(Abrogé).*

2015, c. 7, a. 1; 2015, c. 29, a. 29.

146.15. Les dispositions de l'article 60 ne s'appliquent pas à un régime à cotisations négociées.

2015, c. 7, a. 1; 2015, c. 29, a. 30.

SECTION III

RÈGLES DE FINANCEMENT

2015, c. 7, a. 1.

§ 1. — *Dispositions spécifiques*

2015, c. 7, a. 1.

146.16. Malgré le paragraphe 2° du premier alinéa de l'article 118 et le paragraphe 1° du premier alinéa de l'article 119, un régime à cotisations négociées doit faire l'objet d'une évaluation actuarielle à la date de la fin de chaque exercice financier et le rapport relatif à celle-ci doit être transmis à Retraite Québec dans les six mois de la date de l'évaluation.

2015, c. 7, a. 1; 2015, c. 20, a. 61; 2015, c. 29, a. 31.

146.17. Toute modification d'un régime à cotisations négociées ayant une incidence sur les engagements de celui-ci doit être considérée pour la première fois selon les règles prévues à l'article 121.

2015, c. 7, a. 1.

146.18. Les dispositions de l'article 125, relatives à la constitution d'une provision de stabilisation, ne s'appliquent pas à un régime à cotisations négociées.

2015, c. 7, a. 1; 2015, c. 29, a. 32.

146.18.1. L'article 134 s'applique à toute modification du régime considérée pour la première fois, sans application de l'exception qui y est prévue.

L'article 139 s'applique selon l'approche de solvabilité.

2015, c. 29, a. 33.

146.19. Malgré l'article 138, la période maximale d'amortissement de tout déficit actuariel est de 12 ans.

2015, c. 7, a. 1; 2015, c. 29, a. 33.

§ 2. — *Conditions d'acquittement des droits*

2015, c. 7, a. 1.

146.20. La valeur des droits d'un participant ou d'un bénéficiaire visés au troisième alinéa de l'article 143 doit être acquittée en proportion du degré de solvabilité du régime établi lors de la dernière évaluation actuarielle dont le rapport a été transmis à Retraite Québec et qui précède la date de la demande de transfert.

Les dispositions des articles 145 et 146 ne s'appliquent pas à un régime à cotisations négociées. Un employeur peut toutefois, avant la date d'acquittement, verser une somme additionnelle à la caisse de retraite pour l'acquittement, en tout ou en partie, de la valeur des droits qui ne peut être acquittée aux termes du premier alinéa.

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Malgré les articles 20 et 21, un régime de retraite peut être modifié pour prévoir que, dans les cas où le degré de solvabilité du régime est supérieur à 100%, la valeur des droits est acquittée dans une proportion inférieure au degré de solvabilité du régime, mais au moins égale à 100%. Une telle modification ne peut intervenir que dans les conditions prévues à l'article 146.35, qui s'applique en y faisant les adaptations nécessaires.

2015, c. 7, a. 1; 2015, c. 20, a. 61.

146.21. Un acquittement effectué conformément à l'article 146.20 constitue un acquittement final des droits du participant ou du bénéficiaire.

2015, c. 7, a. 1.

146.22. Aux fins d'une cession des droits d'un participant ou d'une saisie de ces droits pour dette alimentaire, la valeur des droits du participant est établie en tenant compte du degré de solvabilité du régime établi lors de la dernière évaluation actuarielle dont le rapport a été transmis à Retraite Québec et qui précède la date de leur évaluation.

2015, c. 7, a. 1; 2015, c. 20, a. 61.

SECTION IV

RESTRUCTURATION

2015, c. 7, a. 1.

§ 1. — *Plan de redressement*

2015, c. 7, a. 1.

146.23. Lorsque le rapport relatif à une évaluation actuarielle d'un régime à cotisations négociées indique que les cotisations qui y sont prévues sont insuffisantes, un plan de redressement doit être préparé par celui qui a le pouvoir de modifier le régime.

2015, c. 7, a. 1.

146.24. Le plan de redressement indique les mesures requises pour assurer un financement du régime conforme à la loi.

Ces mesures peuvent consister notamment en une augmentation de la cotisation patronale, en une augmentation des cotisations salariales ou l'établissement de telles cotisations, si le régime est non contributif, ou en une modification réductrice portant sur les services effectués avant ou après la date de prise d'effet de la modification.

2015, c. 7, a. 1.

146.25. Aucune mesure prévue par un plan de redressement ne peut avoir pour effet de réduire, selon l'approche de capitalisation, la valeur des prestations en service dans une proportion supérieure à celle applicable à la valeur des droits des participants actifs.

2015, c. 7, a. 1.

146.26. Les mesures du plan de redressement ne doivent pas avoir pour effet de réduire le passif en deçà de la valeur de l'actif à la fois selon l'approche de solvabilité et selon l'approche de capitalisation.

2015, c. 7, a. 1.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

146.27. Le plan de redressement doit être accompagné d'une certification d'un actuaire que l'application des mesures prévues par ce plan, à la date de l'évaluation actuarielle dont le rapport a constaté l'insuffisance des cotisations, aurait pour effet de rendre suffisantes ces cotisations.

2015, c. 7, a. 1.

146.28. Le plan de redressement doit être transmis à Retraite Québec par le comité de retraite dans les 18 mois suivant la date de l'évaluation.

2015, c. 7, a. 1; 2015, c. 20, a. 61.

§ 2. — *Modification réductrice*

2015, c. 7, a. 1.

146.29. Une modification réductrice peut, sans les consentements prévus à l'article 20, prendre effet avant la date fixée par le premier alinéa de cet article ou porter sur des services effectués avant sa date de prise d'effet, si elle est prévue par un plan de redressement.

2015, c. 7, a. 1.

146.30. La date de prise d'effet d'une modification réductrice prévue par un plan de redressement ne peut être antérieure à la date suivant celle de l'évaluation actuarielle dont le rapport a constaté l'insuffisance des cotisations.

2015, c. 7, a. 1.

146.31. Malgré l'article 21, une modification prévue par un plan de redressement peut réduire une prestation dont le service a débuté avant la date de prise d'effet de la modification.

2015, c. 7, a. 1.

146.32. Aucune modification réductrice ne peut avoir d'effet sur des sommes déjà acquittées ou des prestations déjà versées à la date de son enregistrement.

2015, c. 7, a. 1.

§ 3. — *Adoption du plan de redressement*

2015, c. 7, a. 1.

146.33. Le plan de redressement est adopté si, à l'issue du processus de consultation prévu au présent article, moins de 30% des participants et bénéficiaires s'y opposent.

Le comité de retraite transmet à chacun des participants et bénéficiaires un avis écrit l'informant de l'objet des modifications prévues par le plan de redressement, de leur date de prise d'effet et des conséquences prévues aux articles 146.39 et 146.40 en cas de défaut d'adopter un plan de redressement. L'avis doit également informer les participants et bénéficiaires qu'ils peuvent, dans les 60 jours de sa date d'envoi ou, le cas échéant, de la publication de l'avis prévu au troisième alinéa, selon la plus tardive, faire connaître au comité de retraite leur opposition au plan de redressement.

À moins que tous les participants et bénéficiaires du régime n'aient été personnellement avisés, le comité de retraite doit faire publier un avis contenant les renseignements prévus au deuxième alinéa. Les règles prévues au troisième alinéa de l'article 146.4 s'appliquent avec les adaptations nécessaires.

2015, c. 7, a. 1; N.I. 2016-05-15.

146.34. La consultation prévue à l'article 146.33 n'est pas requise dans les situations suivantes:

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

1° le texte du régime ou un document accessoire enregistré auprès d'un organisme analogue à Retraite Québec comporte, le 18 février 2015, une disposition permettant la réduction des droits et des prestations des participants et bénéficiaires;

2° le régime a été modifié conformément à l'article 146.35, après le 2 avril 2015, pour permettre la réduction des droits et des prestations des participants et bénéficiaires dans le cadre d'un plan de redressement.

2015, c. 7, a. 1; 2015, c. 20, a. 61.

146.35. La modification du régime visée au paragraphe 2° de l'article 146.34 ne peut intervenir que si, à l'issue du processus de consultation prévu au présent article, moins de 30% des participants et bénéficiaires s'y opposent.

Le comité de retraite transmet à chacun des participants et bénéficiaires du régime de retraite un avis écrit, distinct de celui visé à l'article 146.33, qui indique, en plus des renseignements prévus au paragraphe 1° du premier alinéa de l'article 26, le processus de consultation requis en l'absence d'une disposition du régime permettant la réduction des droits et prestations en cas d'insuffisance des cotisations. L'avis doit également informer les participants et bénéficiaires qu'ils peuvent, dans les 60 jours de sa date d'envoi ou, le cas échéant, de la publication de l'avis prévu au troisième alinéa, selon la plus tardive, faire connaître au comité de retraite leur opposition à la modification projetée.

À moins que tous les participants et bénéficiaires du régime n'aient été personnellement avisés, le comité de retraite doit faire publier un avis contenant les renseignements prévus au deuxième alinéa. Les règles prévues au troisième alinéa de l'article 146.4 s'appliquent avec les adaptations nécessaires.

2015, c. 7, a. 1; 2015, c. 29, a. 34.

146.36. L'avis donné en vertu de l'article 146.33 ou 146.35 est assimilé à l'avis prévu à l'article 26.

Les dispositions de l'article 113.1 s'appliquent à un tel avis.

2015, c. 7, a. 1.

146.37. La demande d'enregistrement des modifications prévues par le plan de redressement doit être présentée à Retraite Québec dans les 24 mois suivant la date de l'évaluation actuarielle dont le rapport a constaté une insuffisance des cotisations.

L'enregistrement de ces modifications n'est pas soumis à l'autorisation de Retraite Québec prévue au paragraphe 2° du deuxième alinéa de l'article 20.

2015, c. 7, a. 1; 2015, c. 20, a. 61.

§ 4. — *Défaut de production*

2015, c. 7, a. 1.

146.38. En cas de défaut de production du plan de redressement ou d'un document qui doit l'accompagner, sont versés à Retraite Québec pour chaque mois complet de retard des droits égaux à ceux qui auraient été exigibles en cas de défaut de production du rapport ayant constaté l'insuffisance des cotisations.

2015, c. 7, a. 1; 2015, c. 20, a. 61.

146.39. En cas de défaut de production de la demande d'enregistrement de toute modification au régime visant à donner suite à un plan de redressement ou d'un document qui doit l'accompagner, les droits des participants actifs cessent de s'accumuler à la date du défaut.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

Une telle cessation d'accumulation de droits ne constitue pas une cessation de participation active.

Le texte du régime doit être modifié pour indiquer la période pendant laquelle il n'y a pas accumulation de droits par application du premier alinéa.

Le rétablissement de ces droits constitue une modification du régime.

2015, c. 7, a. 1.

146.40. Si aucun plan de redressement ou aucune modification visant à augmenter les cotisations ou à réduire les droits ou les prestations des participants et bénéficiaires conformément à un tel plan n'est présenté à Retraite Québec dans les 60 mois qui suivent la date de l'évaluation actuarielle dont le rapport a constaté une insuffisance des cotisations, celui qui a le pouvoir de modifier le régime doit le terminer.

La date de terminaison est celle de l'expiration de ce délai de 60 mois.

2015, c. 7, a. 1; 2015, c. 20, a. 61.

SECTION V
LIQUIDATION DES DROITS DES PARTICIPANTS ET BÉNÉFICIAIRES

2015, c. 7, a. 1.

146.41. Les droits des participants et bénéficiaires visés par le retrait d'un employeur partie à un régime à cotisations négociées sont acquittés selon les articles 236 et 237, lesquels s'appliquent compte tenu des adaptations nécessaires.

L'avis visé à l'article 200 ne doit pas inclure l'information visée au paragraphe 2° de cet article. Il doit toutefois mentionner, le cas échéant, le plafonnement visé au troisième alinéa.

Malgré les articles 20 et 21, un plafonnement du degré de solvabilité applicable à l'acquittement de la valeur des droits, tel celui permis par l'article 146.20, peut être prévu par le régime de retraite aux conditions prévues à cet article, qui s'applique en y faisant les adaptations nécessaires.

2015, c. 7, a. 1; 2015, c. 29, a. 35.

146.42. Les articles 240.2 et 308.3 ne s'appliquent pas à un régime à cotisations négociées.

Toutefois, les participants et bénéficiaires dont les droits ont été acquittés selon le troisième alinéa de l'article 146.20 sont considérés, en cas de retrait de leur employeur ou de terminaison du régime de retraite dans les trois ans suivant la date de l'acquittement de leurs droits, comme des participants à seule fin de la répartition d'un excédent d'actif en ce qui concerne la valeur de leurs droits qui équivaut à la différence entre le degré de solvabilité du régime à la date du retrait ou de la terminaison et celui appliqué lors de l'acquittement de leurs droits.

Il en est de même en cas de terminaison du régime dans les trois ans suivant la date d'un acquittement effectué selon le troisième alinéa de l'article 146.41.

2015, c. 7, a. 1.

146.43. Les participants et bénéficiaires seuls ont droit à l'excédent d'actif déterminé lors d'un retrait d'employeur ou de la terminaison du régime et celui-ci est réparti entre eux au prorata de la valeur de leurs droits.

2015, c. 7, a. 1.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

146.44. Les dispositions de la sous-section 4 de la section II du chapitre XIII, relatives à la dette de l'employeur en cas de retrait d'un employeur ou de terminaison du régime, ne s'appliquent pas à un régime à cotisations négociées, sauf en ce qui concerne les cotisations prévues par le régime non versées à la date du retrait ou de la terminaison.

Un employeur peut toutefois, avant la date d'acquittement, verser une somme additionnelle à la caisse de retraite pour combler, en tout ou en partie, le manque d'actif nécessaire à l'acquittement des droits des participants ou bénéficiaires visés par le retrait d'un employeur ou la terminaison du régime.

Les sommes versées par un employeur selon le deuxième alinéa doivent être affectées à l'acquittement des droits des participants et bénéficiaires dont les droits se rapportent à cet employeur.

2015, c. 7, a. 1.

146.45. (*Abrogé*).

2015, c. 7, a. 1; 2015, c. 29, a. 36.

CHAPITRE XI

ADMINISTRATION D'UN RÉGIME

SECTION I

ADMINISTRATION

147. Tout régime de retraite doit, à compter de son enregistrement, être administré par un comité de retraite composé au moins d'un membre qui, désigné dans les conditions et délais prévus au régime, n'est ni partie au régime ni un tiers à qui l'article 176 interdit de consentir un prêt, et des membres suivants:

1° un membre désigné par les participants actifs lors de l'assemblée tenue en application de l'article 166 ou, à défaut de telle désignation, un participant désigné dans les conditions et délais prévus au régime;

2° un membre désigné par les participants non actifs et les bénéficiaires lors de cette assemblée ou, à défaut de telle désignation, un participant ou un bénéficiaire désigné dans les conditions et délais susmentionnés.

1989, c. 38, a. 147; 2000, c. 41, a. 85.

147.1. Le groupe formé des participants actifs et celui formé des participants non actifs et des bénéficiaires peuvent, lors de l'assemblée tenue en application de l'article 166, désigner chacun un membre additionnel qui se joint aux membres visés à l'article 147.

Un membre additionnel visé au premier alinéa jouit des mêmes droits que les autres membres du comité à l'exception du droit de vote. L'article 156 ne s'applique pas à son égard.

2000, c. 41, a. 86.

148. La durée du mandat d'un membre du comité de retraite ne peut excéder trois ans.

Le membre dont le mandat est expiré demeure en fonction jusqu'à ce qu'il soit désigné de nouveau ou remplacé.

1989, c. 38, a. 148.

149. Jusqu'à ce qu'il soit enregistré, tout régime de retraite en vigueur pour lequel il n'a pas été pourvu à la formation d'un comité de retraite est administré par l'employeur.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

Pour l'exercice de cette fonction, l'employeur possède les pouvoirs, assume les obligations et encourt la responsabilité d'un comité de retraite.

1989, c. 38, a. 149.

150. Sauf dans le cas d'un régime de retraite garanti, le comité de retraite agit à titre de fiduciaire.

1989, c. 38, a. 150.

150.1. Le comité de retraite peut, en tout temps, présenter à celui qui a le pouvoir de modifier le régime de retraite ses recommandations quant aux modifications qui pourraient être apportées au régime.

2000, c. 41, a. 87.

151. Le comité de retraite doit agir avec prudence, diligence et compétence, comme le ferait en pareilles circonstances une personne raisonnable; il doit aussi agir avec honnêteté et loyauté dans le meilleur intérêt des participants ou bénéficiaires.

Les membres du comité de retraite qui ont ou devraient avoir, compte tenu de leur profession ou de leur entreprise, des connaissances ou aptitudes utiles en l'occurrence, sont tenus de les mettre en oeuvre dans l'administration du régime de retraite.

1989, c. 38, a. 151.

151.1. Le comité de retraite est présumé agir avec prudence s'il agit de bonne foi en se fondant sur l'avis d'un expert.

2006, c. 42, a. 20.

151.2. Le comité de retraite établit un règlement intérieur qui régit son fonctionnement et sa gouvernance. Il veille à son respect et le révisé régulièrement.

Le règlement intérieur fixe notamment:

- 1° les fonctions et obligations respectives des membres du comité;
- 2° les règles de déontologie qui régissent ces personnes;
- 3° les règles à suivre pour désigner le président, le vice-président et le secrétaire;
- 4° la procédure applicable lors des réunions et la fréquence de celles-ci;
- 5° les mesures à prendre pour former les membres du comité;
- 6° les mesures à prendre pour quantifier et gérer les risques;
- 7° les contrôles internes;
- 8° les livres et registres à tenir;
- 9° les règles à suivre pour choisir, rémunérer, surveiller et évaluer les délégués, les représentants et les prestataires de services;
- 10° les normes concernant les services que rend le comité, entre autres celles relatives aux communications avec les participants et les bénéficiaires.

*Loi sur les régimes complémentaires de retraite, R.L.R.Q. c R-15.1***RÉGIMES COMPLÉMENTAIRES DE RETRAITE**

En cas de divergence entre le texte du régime de retraite et le règlement intérieur en ce qui concerne le fonctionnement et la gouvernance du comité, le règlement intérieur prévaut. Toutefois, quant aux sujets suivants, le règlement intérieur ne prévaut que si le texte du régime le prévoit expressément:

1° les règles à suivre pour désigner le président, le vice-président et le secrétaire du comité de retraite ainsi que les fonctions et obligations respectives de ceux-ci;

2° le quorum et l'attribution d'un droit de vote prépondérant lors des réunions du comité;

3° la proportion des membres du comité qui doivent participer à une décision pour qu'elle soit valide.

2006, c. 42, a. 20; 2015, c. 29, a. 37.

151.3. Le secrétaire du comité de retraite, ou toute autre personne que le comité désigne, donne aux membres du comité les documents et renseignements utiles pour administrer le régime de retraite.

Les membres du comité ont accès à tout renseignement concernant le régime et peuvent obtenir copie de tout document. Toutefois, ils ne peuvent consulter des renseignements personnels que si l'exercice de leurs fonctions le requiert.

2006, c. 42, a. 20.

152. Sous réserve des restrictions ou interdictions que peut prévoir le régime de retraite, le comité de retraite peut déléguer tout ou partie de ses pouvoirs, exception faite de ceux qui lui sont conférés par les articles 243.3 et 243.7, ou se faire représenter par un tiers pour un acte déterminé.

Celui à qui le comité de retraite a délégué des pouvoirs peut, dans la mesure où il y est autorisé par l'acte de délégation, les déléguer lui-même en tout ou en partie.

1989, c. 38, a. 152; 2000, c. 41, a. 88.

153. Celui qui exerce des pouvoirs délégués assume les mêmes obligations et la même responsabilité que celles qu'aurait eu à assumer le comité de retraite ou chacun de ses membres si le comité avait exercé lui-même ces pouvoirs. Il en est de même du prestataire de services et du représentant qui exercent un pouvoir discrétionnaire du comité de retraite.

1989, c. 38, a. 153; 2006, c. 42, a. 21.

154. Le comité de retraite répond de celui à qui il a délégué des pouvoirs, entre autres, lorsqu'il n'était pas autorisé à le faire; s'il l'était, il ne répond alors que du soin avec lequel il a choisi ce délégué et lui a donné ses instructions.

Le prestataire de services et le représentant qui exercent un pouvoir discrétionnaire du comité de retraite sont assimilés au délégué.

1989, c. 38, a. 154; 1994, c. 24, a. 11; 2006, c. 42, a. 22.

154.1. Le comité de retraite choisit et engage les délégués, les représentants et les prestataires de services.

2006, c. 42, a. 23.

154.2. Le délégué, le représentant ou le prestataire de services remet au comité de retraite les rapports relatifs à sa mission.

S'il constate dans le cours normal de sa mission une situation dont les incidences financières peuvent nuire aux intérêts de la caisse de retraite et qui exige d'être corrigée, il la rapporte par écrit au comité.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

Si le comité ne corrige pas la situation sans retard, le délégataire, le représentant ou le prestataire de services envoie une copie de son rapport à Retraite Québec.

La personne qui, de bonne foi, informe le comité ou Retraite Québec comme le prévoit le deuxième ou le troisième alinéa n'engage pas sa responsabilité.

2006, c. 42, a. 23; 2015, c. 20, a. 61.

154.3. Le délégataire, le représentant ou le prestataire de services fournit au comité de retraite les documents et renseignements que les autorités gouvernementales lui communiquent et qui mettent en cause la conformité du régime de retraite ou de son administration avec la loi.

2006, c. 42, a. 23.

154.4. Le délégataire, le représentant ou le prestataire de services ne peut exclure ou limiter sa responsabilité. Toute clause visant ce but est nulle.

Toute clause visant ce but et stipulée dans un contrat terminé ou en cours le 13 décembre 2006 est nulle si elle est abusive.

Le caractère abusif d'une telle clause s'apprécie, compte tenu des adaptations nécessaires, suivant les règles du Code civil relatives aux clauses abusives d'un contrat de consommation ou d'adhésion.

2006, c. 42, a. 23.

155. Sauf en cas de renouvellement de mandat ou en cas de désignation d'un nouveau membre en vertu de l'article 167, le comité de retraite doit, dans les 30 jours suivant l'entrée en fonction d'un membre ayant droit de vote, réexaminer les délégations de pouvoirs afin de déterminer celles qui doivent être maintenues ou révoquées.

La révocation d'une délégation comporte, le cas échéant, celle de la sous-délégation faite par le délégataire.

1989, c. 38, a. 155; 2000, c. 41, a. 89.

156. Chaque membre du comité de retraite est présumé avoir approuvé toute décision prise par les autres membres. Il en est solidairement responsable avec eux, à moins qu'il ne manifeste immédiatement sa dissidence.

Il est aussi présumé avoir approuvé toute décision prise en son absence, à moins qu'il ne transmette par écrit sa dissidence aux autres membres dans un délai raisonnable après en avoir pris connaissance.

1989, c. 38, a. 156; 1999, c. 40, a. 254.

Non en vigueur

156.1. Le comité de retraite doit, dans les cas prévus par règlement et selon les montants et les conditions qui y sont prescrits, fournir une garantie qui prémunit la caisse de retraite contre les pertes pouvant résulter d'un vol ou d'un détournement ainsi qu'une garantie qui couvre la responsabilité, à l'exception de celle découlant du défaut d'agir avec honnêteté et loyauté, que peut encourir en raison de ses fonctions un membre du comité de retraite ou celui à qui ce comité a délégué un pouvoir ou confié un mandat.

1993, c. 45, a. 2.

157. (*Abrogé*).

1989, c. 38, a. 157; 1994, c. 24, a. 12; 2000, c. 41, a. 90.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

158. Un membre d'un comité de retraite ne peut exercer ses pouvoirs dans son propre intérêt ni dans celui d'un tiers; il ne peut non plus se placer dans une situation de conflit entre son intérêt personnel et les devoirs de ses fonctions.

S'il est lui-même participant ou bénéficiaire, il doit exercer ses pouvoirs dans l'intérêt commun, en considérant son intérêt au même titre que celui des autres participants ou bénéficiaires.

1989, c. 38, a. 158.

159. Tout membre d'un comité de retraite doit, sans délai, notifier par écrit à ce comité l'intérêt qu'il a dans une entreprise et qui est susceptible de mettre en conflit son intérêt personnel et les devoirs de ses fonctions, ainsi que les droits, autres que ceux résultant du régime, qu'il peut avoir dans la caisse de retraite ou faire valoir contre celle-ci, en spécifiant le cas échéant leur nature et leur valeur.

Le comité de retraite tient à son bureau un registre sur lequel doivent être indiqués les intérêts ou droits qui lui sont notifiés en application du premier alinéa. Tout intéressé peut, sans frais, consulter ce registre pendant les heures habituelles de travail; en outre la limite prévue à l'article 115 ne s'applique pas à cette consultation.

1989, c. 38, a. 159.

160. Sauf stipulations contraires, l'exercice financier du régime de retraite se termine le 31 décembre de chaque année; il ne peut, sans l'autorisation de Retraite Québec, excéder 12 mois ni être inférieur à cette période.

1989, c. 38, a. 160; 2015, c. 20, a. 61.

161. Le comité de retraite doit, dans les six mois de la fin de chaque exercice financier du régime de retraite ou, dans le cas du premier exercice financier du régime, dans le délai supplémentaire que peut accorder Retraite Québec, transmettre à celle-ci une déclaration annuelle établie sur le formulaire qu'elle fournit ainsi que les attestations et documents prévus dans le formulaire.

Il doit, dans le même délai, faire préparer un rapport financier contenant l'état de l'actif du régime ainsi que l'état des revenus et dépenses pour le dernier exercice terminé. Ce rapport doit être vérifié par un comptable, sauf dans les cas prévus par règlement.

1989, c. 38, a. 161; 1994, c. 24, a. 13; 2000, c. 41, a. 91; 2006, c. 42, a. 24; 2008, c. 21, a. 18; 2015, c. 20, s. 61.

161.1. *(Abrogé).*

1994, c. 24, a. 14; 2000, c. 41, a. 92; 2006, c. 42, a. 25.

161.2. *(Abrogé).*

1994, c. 24, a. 14; 2000, c. 41, a. 93.

162. Sauf stipulations contraires, les membres du comité de retraite n'ont droit à aucune rémunération et les dépenses d'administration sont à la charge de la caisse de retraite. Les dépenses pour former les membres du comité constituent des dépenses d'administration.

1989, c. 38, a. 162; 2006, c. 42, a. 26.

162.1. Le comité de retraite indemnise ses membres du préjudice subi dans l'exercice de leurs fonctions si aucune faute ne leur est imputable.

Si une faute leur est imputable, autre qu'une faute intentionnelle ou lourde, et qu'ils bénéficient d'une assurance responsabilité, le comité peut les indemniser jusqu'à concurrence de la franchise de l'assurance.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

Pour prendre sa décision, le comité tient compte des incidences financières sur l'actif du régime de retraite et des autres circonstances.

2006, c. 42, a. 27.

163. Les remboursements ou les paiements de prestation qu'effectue le comité de retraite sont libératoires lorsqu'il est fondé à croire, sur la base des renseignements dont il dispose, que les personnes à qui ils sont faits sont celles qui y ont droit, et que ces remboursements ou paiements sont par ailleurs faits conformément à la loi et au régime.

Cette libération ne vaut toutefois qu'à l'égard des sommes effectivement versées, ou de leur valeur.

1989, c. 38, a. 163.

163.1. Le comité de retraite peut opérer compensation entre une dette encourue par un participant ou bénéficiaire envers la caisse de retraite dans le cadre de l'administration courante du régime et une prestation ou un remboursement dus à ce participant ou bénéficiaire jusqu'à concurrence du plus élevé des montants suivants:

- 1° 25% de la prestation ou du remboursement payable;
- 2° 1/12 de la somme recouvrable sans excéder 50% de la prestation ou du remboursement payable.

La compensation peut toutefois s'opérer jusqu'à 100% de la prestation ou du remboursement payable si le débiteur y consent par écrit.

Le comité peut en outre opérer compensation d'une dette d'un participant décédé sur le montant total de la prestation de décès payable à ses ayants cause.

2000, c. 41, a. 94.

164. Lorsque plusieurs personnes revendiquent un même droit au titre du régime de retraite, le comité de retraite peut se libérer en déposant la somme due auprès du Bureau général de dépôts pour le Québec ou auprès d'une société de fiducie, laquelle est en ce cas tenue aux obligations prescrites par l'article 216 du Code de procédure civile (chapitre C-25.01) qui s'applique compte tenu des adaptations nécessaires.

1989, c. 38, a. 164; N.I. 2016-01-01 (NCPC).

165. Le comité de retraite doit communiquer à Retraite Québec le nom et la dernière adresse connue de tout participant ou bénéficiaire qui, étant introuvable, a droit à un remboursement, au service d'une prestation ou à d'autres sommes qui lui reviennent par suite du retrait d'un employeur partie à un régime interentreprises ou de la terminaison d'un régime de retraite.

Si Retraite Québec parvient, avec les informations dont elle dispose, à retrouver ce participant ou bénéficiaire, elle l'avise de communiquer avec le comité de retraite, à l'adresse qu'elle indique.

1989, c. 38, a. 165; 2000, c. 41, a. 95; 2015, c. 20, a. 61.

165.1. Le comité de retraite doit aviser Retraite Québec par écrit de toute scission ou fusion effective ou projetée du régime, dès qu'il en est informé.

1992, c. 60, a. 13; 2000, c. 41, a. 96; 2015, c. 20, a. 61.

166. Le comité de retraite doit, dans les six mois de la fin de chaque exercice financier du régime ou dans tout délai supplémentaire que peut accorder Retraite Québec, convoquer par avis écrit chacun des participants et des bénéficiaires ainsi que l'employeur à une assemblée en vue de:

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1° permettre aux participants, aux bénéficiaires et à l'employeur de prendre connaissance des modifications apportées au régime, des indications portées au registre tenu en application de l'article 159 et de la situation financière du régime;

2° permettre au groupe des participants actifs et, indépendamment, au groupe des participants non actifs et des bénéficiaires de décider s'il désigne ou non un membre du comité de retraite visé à l'article 147 ou 147.1 et, dans l'affirmative, de procéder à sa désignation soit suivant le mode que peut proposer le comité soit, s'il n'en est aucun de proposé ou si le groupe refuse celui proposé, suivant le mode qui, décidé par le groupe, permet de procéder à cette désignation à l'assemblée même;

3° (*paragraphe abrogé*);

Toute décision relative à une matière mentionnée au paragraphe 2° du premier alinéa est prise, pour chaque groupe, à la majorité des voix exprimées par ses membres.

Doivent en outre être portés à l'ordre du jour de cette assemblée les sujets déterminés par règlement.

Le comité de retraite rend également compte de son administration à cette assemblée.

1989, c. 38, a. 166; 1994, c. 24, a. 15; 2000, c. 41, a. 97; 2005, c. 5, a. 2; 2015, c. 20, a. 61; 2015, c. 29, a. 38.

166.1. (*Abrogé*).

2005, c. 5, a. 3; 2015, c. 29, a. 39.

167. Si un membre du comité de retraite désigné en application de l'article 166 et ayant droit de vote est absent ou empêché d'agir, ou en cas de vacance de son poste, les autres membres du comité doivent désigner un nouveau membre pour remplir le mandat jusqu'à la prochaine assemblée tenue en application de ce même article.

Le comité peut aussi agir de même lorsqu'il y a retard à remplacer tout autre membre ayant droit de vote qui doit être désigné dans les conditions et délais prévus au régime.

1989, c. 38, a. 167; 1999, c. 40, a. 254; 2000, c. 41, a. 98.

SECTION II

PLACEMENTS

168. Seuls le comité de retraite, celui à qui a été délégué ce pouvoir ou, si le régime le prévoit, les participants peuvent décider des placements à faire avec l'actif du régime. Si le régime autorise les participants à répartir entre divers placements tout ou partie des sommes portées à leur compte, il doit offrir au moins trois choix de placement qui, en plus d'être diversifiés et de présenter des degrés de risque et des rendements espérés différents, permettent la création de portefeuilles généralement adaptés aux besoins des participants.

Outre que les placements doivent être faits conformément aux dispositions de la loi, ceux décidés par le comité de retraite ou le délégataire doivent également l'être en conformité avec la politique de placement.

1989, c. 38, a. 168; 2000, c. 41, a. 99.

169. Le comité de retraite doit se doter d'une politique écrite de placement, élaborée en tenant compte notamment du type de régime de retraite en cause, de ses caractéristiques et de ses engagements financiers ainsi que de la politique de financement du régime.

1989, c. 38, a. 169; 2015, c. 29, a. 40.

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170. À moins que Retraite Québec n'en autorise la simplification, aux conditions qu'elle fixe, la politique de placement doit faire état:

- 1° du rendement espéré;
- 2° du degré de risque attaché au portefeuille, eu égard notamment à la fluctuation des cours;
- 3° des besoins de liquidités;
- 4° de la proportion de l'actif qui peut être placée respectivement dans des titres d'emprunt et dans des titres de participation;
- 5° des catégories et sous-catégories de placements autorisées;
- 6° des mesures qui, assurant la diversification du portefeuille, tendent à en réduire globalement le degré de risque;
- 7° des règles et de la périodicité applicables tant à l'évaluation du portefeuille qu'au contrôle de sa gestion, ainsi que de celles applicables à la révision de la politique de placement.

Sauf s'il en est déjà fait état au régime de retraite, cette politique doit en outre prévoir:

- 1° les règles relatives à la solvabilité d'un emprunteur, ainsi que celles relatives aux garanties exigibles pour consentir des prêts sur l'actif, notamment des prêts de titres ou des prêts hypothécaires;
- 2° les règles applicables à l'exercice du droit de vote que comportent les titres faisant partie de l'actif;
- 3° la méthode d'évaluation des placements qui ne font pas l'objet d'un marché organisé;
- 4° les règles applicables à l'utilisation des contrats à terme, des options, des bons ou droits de souscription ou d'autres instruments financiers;
- 5° les règles applicables aux emprunts que peut faire le comité de retraite.

En cas de divergence entre le règlement intérieur et la politique de placement en ce qui concerne les sujets mentionnés au présent article, la politique de placement prévaut.

1989, c. 38, a. 170; 2006, c. 42, a. 28; 2015, c. 20, a. 61.

171. Tout dépôt ou placement fait à même l'actif du régime de retraite doit l'être au nom de la caisse de retraite, ou porté à son compte.

De plus, l'actif du régime ne peut servir à garantir d'autres obligations que celles du régime.

1989, c. 38, a. 171; 2000, c. 41, a. 100.

171.1. À moins que les circonstances n'indiquent qu'il est raisonnable d'agir autrement, le comité de retraite doit tendre à composer un portefeuille diversifié de façon à minimiser les risques de pertes importantes.

2000, c. 41, a. 101.

172. L'actif d'un régime de retraite ne peut, directement ou indirectement, être placé pour une proportion supérieure à 10% de sa valeur comptable dans des titres contrôlés par l'employeur.

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Aux fins du premier alinéa, la lettre de crédit fournie par un employeur en vertu de l'article 42.1 est considérée comme un titre dans lequel est placé l'actif du régime et dont la valeur comptable est égale à son montant.

Pour l'application du présent article, un titre est contrôlé par l'employeur, notamment, s'il est émis par celui-ci ou s'il est émis par une société ou une personne morale dont l'employeur détient plus de 50% des droits de vote.

1989, c. 38, a. 172; 2000, c. 41, a. 102; 2006, c. 42, a. 29.

173. *(Abrogé).*

1989, c. 38, a. 173; 1994, c. 24, a. 16; 2000, c. 41, a. 103.

174. Sauf s'il s'agit de titres négociés sur un marché organisé, l'actif du régime de retraite ne peut être placé dans des titres émis par une personne morale à qui il ne peut être consenti un prêt sur cet actif en application des articles 176 et 177.

1989, c. 38, a. 174.

175. L'actif du régime de retraite ne peut, directement ou indirectement, être placé dans des actions comportant plus de 30% des droits de vote rattachés aux actions d'une personne morale.

Cette limite ne s'applique pas aux actions émises par une personne morale visée aux paragraphes *c.1*, *c.2* ou *c.3* de l'article 998 de la Loi sur les impôts (chapitre I-3).

1989, c. 38, a. 175.

176. Il ne peut être consenti sur l'actif du régime de retraite aucun prêt:

1° à un membre d'un comité de retraite, à un délégué ni, lorsque ce membre ou ce délégué est une personne morale ou un groupement dépourvu de la personnalité juridique, à ses administrateurs, dirigeants ou employés;

2° à une association de travailleurs qui représente des participants, ni à ses administrateurs, dirigeants ou employés;

3° au conjoint ou à l'enfant d'une personne visée au paragraphe 1° ou 2°;

4° lorsque l'employeur est une personne morale et administre tout ou partie du régime:

a) à un actionnaire, associé ou membre qui détient directement ou indirectement plus de 10% du capital social de cette personne morale, ni à son conjoint ou enfant;

b) à un actionnaire, associé ou membre, ni à son conjoint ou enfant si, ensemble, ils détiennent directement ou indirectement plus de 10% du capital social de cette personne morale;

5° lorsque l'employeur administre tout ou partie du régime, à toute personne morale dont il détient directement ou indirectement plus de 10% du capital social;

6° à une personne morale, autre que l'employeur, dont une personne visée au paragraphe 1°, 2°, 3° ou 4° détient plus de 10% du capital social;

7° à une personne morale, autre que l'employeur, dont plus de 50% du capital social est détenu par un groupe formé exclusivement de personnes visées au paragraphe 1°, 2° ou 4°, de l'employeur lorsqu'il administre tout ou partie du régime, ou de leur conjoint ou enfant;

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8° à une personne morale, autre que l'employeur, contrôlée par une personne visée au paragraphe 1°, 2°, 3° ou 4°, par l'employeur lorsqu'il administre tout ou partie du régime, ou par un groupe formé exclusivement de ces personnes.

1989, c. 38, a. 176.

177. Par dérogation à l'article 176, il peut être consenti un prêt garanti de la manière prescrite par règlement:

1° au participant, à son conjoint ou enfant;

2° à l'employeur;

3° à une société mère ou filiale pourvu que l'une de ces sociétés soit l'employeur et que le total des prêts qui leur sont consentis n'excède pas 10% de la valeur comptable de l'actif du régime de retraite.

1989, c. 38, a. 177.

178. Pour l'application des articles 176 et 177, sont des conjoints soit les personnes liées par un mariage ou une union civile, soit les personnes, de sexe différent ou de même sexe, vivant maritalement depuis au moins trois ans ou, dans les cas suivants, depuis au moins un an:

— un enfant au moins est né ou à naître de leur union;

— elles ont conjointement adopté au moins un enfant durant leur période de vie maritale;

— l'une d'elles a adopté au moins un enfant de l'autre durant cette période.

Pour l'application de ces mêmes articles, toute personne physique ou morale est réputée détenir les actions que détient directement ou indirectement, une personne morale dont elle a le contrôle. A le contrôle d'une personne morale celui qui détient, directement ou indirectement, autrement qu'à titre de garantie, des titres lui permettant en tout état de cause d'élire la majorité des administrateurs de cette personne morale.

1989, c. 38, a. 178; 1999, c. 14, a. 28; 2002, c. 6, a. 200.

179. S'il survient un événement imprévu ou incontrôlable qui a pour effet de rendre le placement de l'actif du régime de retraite non conforme à la loi, le comité de retraite doit, dans un délai raisonnable après en avoir pris connaissance, prendre toute mesure nécessaire pour régulariser la situation.

1989, c. 38, a. 179.

180. Celui qui effectue un placement non conforme à la loi est, par ce seul fait et sans autre preuve de faute, responsable des pertes qui en résultent.

Les membres du comité de retraite qui ont approuvé un tel placement sont, par ce seul fait et sans autre preuve de faute, solidairement responsables des pertes qui en résultent.

Ces personnes n'encourent toutefois aucune responsabilité aux termes du présent article si elles ont agi de bonne foi en se fondant sur l'avis d'un expert.

1989, c. 38, a. 180; 2006, c. 42, a. 30.

181. Tout placement fait en violation de la loi peut être annulé par voie de justice, à la demande de Retraite Québec ou d'un intéressé.

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Le tribunal peut alors ordonner à toute personne dont la responsabilité est engagée aux termes de l'article 180, de verser à la caisse de retraite un montant équivalant aux pertes qui en sont résultées ou aux sommes ainsi placées.

1989, c. 38, a. 181; 2015, c. 20, a. 61.

182. Ne peuvent recevoir des honoraires, commissions ou autres avantages pour une transaction relative au placement de l'actif du régime de retraite:

1° les membres d'un comité de retraite, un délégué, leurs conjoints ou enfants;

2° l'employeur, le cas échéant ceux de ses employés chargés de l'administration de tout ou partie du régime ni, s'il est une personne morale, ses administrateurs ou dirigeants;

3° les personnes ou groupements visés à l'article 176.

Toutefois, le premier alinéa ne s'applique pas à une personne ou à un groupement qui y est visé si de tels avantages lui sont habituellement accordés dans l'exercice de ses fonctions et s'ils correspondent à ce qui est normalement consenti pour une telle transaction.

1989, c. 38, a. 182.

SECTION II.1**POLITIQUE D'ACHAT DE RENTES**

2015, c. 29, a. 41.

182.1. Lorsqu'un régime de retraite est doté d'une politique d'achat de rentes répondant aux exigences prévues par règlement, l'acquittement de tout ou partie d'une prestation effectué conformément à cette politique constitue, à la date prévue par l'entente conclue à cette fin pour le premier versement par l'assureur, un acquittement final des droits des participants et des bénéficiaires visés par cette entente.

Seules peuvent être visées par la politique d'achat de rentes les rentes dont le service est en cours ou a été demandé à la date de l'entente avec l'assureur.

2015, c. 29, a. 41.

182.2. Les participants et bénéficiaires dont les droits ont été acquittés conformément à l'article 182.1 conservent pendant trois ans, pour l'application des dispositions relatives à l'attribution d'un excédent d'actif en cas de terminaison du régime, leur qualité de participant ou de bénéficiaire du régime. Ils conservent également leur qualité, pendant la même période, en cas de faillite ou d'insolvabilité de l'employeur entraînant, par suite du retrait de l'employeur ou de la terminaison du régime, la réduction des droits des participants et des bénéficiaires.

Chaque fois que les dispositions du premier alinéa devront recevoir application, l'avis dont l'article 207.4 exige la publication devra aussi faire état des règles établies au présent article.

2015, c. 29, a. 41.

SECTION III**ADMINISTRATION PROVISOIRE**

183. Retraite Québec peut, pour la période qu'elle fixe, assumer l'administration provisoire de tout ou partie d'un régime de retraite, ou la confier à celui qu'elle désigne:

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1° lorsqu'elle-même, ou l'enquêteur qu'elle a désigné, enquête sur la conformité du régime avec la loi ou sur son administration;

2° lorsqu'elle estime que le régime ou son administration n'est pas conforme à la présente loi;

3° lorsqu'elle estime qu'il y a malversation, abus de confiance ou autre inconduite du comité de retraite, d'un membre de ce comité, d'un délégué ou, lorsque ce membre ou délégué est une personne morale ou un groupement dépourvu de la personnalité juridique, d'un de ses administrateurs;

4° lorsqu'elle constate que le comité de retraite ou celui à qui a été délégué des pouvoirs omet de se conformer à une ordonnance qu'elle a rendue.

1989, c. 38, a. 183; 2000, c. 41, a. 104; 2015, c. 20, a. 61.

184. Retraite Québec doit, avant de décider l'administration provisoire, donner au comité de retraite et, le cas échéant, à celui dont la gestion ou la conduite est en cause l'occasion de présenter leurs observations. Toutefois, dans les cas d'urgence, elle peut en décider sans leur avoir donné une telle occasion, à condition de le faire dans les 15 jours de la décision.

1989, c. 38, a. 184; 1997, c. 43, a. 651; 2015, c. 20, a. 61.

185. Retraite Québec transmet sa décision au comité de retraite, le cas échéant à celui dont la gestion ou la conduite est en cause ainsi qu'à l'employeur. Elle doit aussi, lorsque sa décision vise l'administration provisoire de tout le régime, la transmettre aux participants et à toute association accréditée qui représente des participants.

1989, c. 38, a. 185; 2000, c. 41, a. 106; 2015, c. 20, a. 61.

186. L'administrateur provisoire exerce, dans la mesure prévue par la décision de Retraite Québec, les pouvoirs du comité de retraite; ce comité, ou celui à qui ont été délégués ces pouvoirs, devient, dans la même mesure, inhabile à les exercer.

L'administrateur provisoire est tenu aux mêmes obligations et encourt la même responsabilité que le comité de retraite.

1989, c. 38, a. 186; 2015, c. 20, a. 61.

187. Après avoir décidé l'administration provisoire pour un motif prévu au paragraphe 2° ou 3° du premier alinéa de l'article 183 et après avoir donné à celui dont la gestion ou la conduite est en cause l'occasion de présenter ses observations, Retraite Québec peut le déchoir de ses fonctions et le rendre inhabile à exercer de telles fonctions pendant cinq ans. Dans ce cas, Retraite Québec peut, aux conditions et selon les modalités qu'elle détermine, pourvoir à son remplacement.

L'article 185 s'applique à toute décision de Retraite Québec prise en vertu du présent article.

1989, c. 38, a. 187; 1997, c. 43, a. 652; 2015, c. 20, s. 61.

188. Retraite Québec, lorsqu'elle assume l'administration provisoire de tout ou partie du régime de retraite, ou l'administrateur provisoire qu'elle a désigné, peut modifier le régime pour le rendre conforme à la loi ou pour protéger les droits des participants ou bénéficiaires.

Retraite Québec doit auparavant donner à l'employeur, aux participants et à toute association accréditée qui représente des participants, l'occasion de présenter leurs observations. Elle procède à l'enregistrement de toute modification ainsi effectuée.

Quant à l'administrateur provisoire désigné, il doit, avant de modifier le régime, transmettre l'avis prévu à l'article 26 au comité de retraite, à l'employeur, aux participants et à toute association accréditée qui

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représente des participants. Dans ce cas, Retraite Québec peut, outre pour les motifs prévus à l'article 28, refuser l'enregistrement de la modification demandée si, à son avis, elle n'est pas dans l'intérêt des participants ou bénéficiaires.

1989, c. 38, a. 188; 1997, c. 43, a. 653; 2000, c. 41, a. 108; 2015, c. 20, a. 61.

189. Toute modification d'un régime de retraite, qu'elle soit effectuée par Retraite Québec ou par l'administrateur provisoire désigné, prend effet à la date de son enregistrement et lie l'employeur ainsi que les participants.

1989, c. 38, a. 189; 2015, c. 20, a. 61.

190. Retraite Québec, lorsqu'elle assume l'administration provisoire de tout ou partie du régime de retraite ou, avec son approbation, l'administrateur provisoire désigné peut terminer le régime ou, dans le cas où plusieurs employeurs sont parties à un régime, le modifier afin qu'il soit procédé au retrait d'un employeur en conformité avec le chapitre XIII, qui s'applique compte tenu des adaptations nécessaires.

Avis de la date de la terminaison ou de celle de l'entrée en vigueur de la modification et des participants qu'elle vise doit être donné au comité de retraite, à l'employeur, aux participants visés et à toute association accréditée qui représente des participants.

1989, c. 38, a. 190; 2000, c. 41, a. 109; 2015, c. 20, s. 61.

191. Retraite Québec détermine la rémunération et, le cas échéant, les allocations et indemnités à verser à l'administrateur provisoire désigné.

Elle a aussi droit au remboursement des frais qu'elle engage pour l'administration provisoire ou pour mettre un membre de son personnel à la disposition de l'administrateur provisoire désigné.

1989, c. 38, a. 191; 2015, c. 20, a. 61.

192. L'administrateur provisoire désigné est tenu, sur demande de Retraite Québec, de faire inventaire.

En outre, il doit, aux conditions et selon les modalités fixées par Retraite Québec, souscrire à une assurance couvrant sa responsabilité ou fournir toute autre sûreté garantissant son administration.

1989, c. 38, a. 192; 2015, c. 20, a. 61.

193. Sans préjudice du droit d'en réclamer le remboursement en justice, ou à moins que Retraite Québec ne choisisse de les prendre à sa charge, les dépenses relatives à l'administration provisoire sont supportées par la caisse de retraite.

1989, c. 38, a. 193; 2015, c. 20, a. 61.

CHAPITRE XII**SCISSION ET FUSION**

194. Est subordonnée à l'autorisation de Retraite Québec et aux conditions qu'elle peut fixer toute scission de l'actif et du passif d'un régime de retraite entre plusieurs régimes, ou toute fusion dans un même régime de retraite de la totalité ou d'une partie des actifs et des passifs de plusieurs régimes, notamment lorsque l'employeur vend, cède ou aliène autrement son entreprise.

1989, c. 38, a. 194; 2015, c. 20, a. 61.

195. Retraite Québec ne peut autoriser la scission de l'actif et du passif d'un régime de retraite que si la valeur de l'actif à transférer est égale à la somme des valeurs marchandes suivantes:

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1° celle de l'actif qui, en supposant que le régime se termine à la date où la scission doit prendre effet, devrait, en application des articles 220 à 225, être attribué au groupe de droits composé de ceux des participants et bénéficiaires visés;

2° celle de la part additionnelle qui serait attribuée à ce groupe de droits si l'excédent restant après répartition de l'actif était lui-même réparti entre les groupes de droits formés selon la sous-section 3 de la section II du chapitre XIII, de telle façon que l'actif du régime soit réparti entre ces groupes au prorata de la valeur des engagements nés du régime et d'où résultent les droits compris dans chacun de ces groupes.

La valeur des engagements visés au paragraphe 2° du premier alinéa doit être évaluée de la façon prévue à la section II du chapitre X et être réduite de celle des engagements nés du régime auxquels se rapporte toute portion d'un déficit actuariel de capitalisation qui reste à payer à la date de la scission.

Toute cotisation qu'un employeur partie à un régime de retraite interentreprises a, à la date de la scission, omis de verser à la caisse de retraite ou, selon le cas, à l'assureur, doit être déduite de la part d'actif qui est attribuée au groupe de droits se rapportant à cet employeur en application du premier alinéa. De plus, la somme visée au premier alinéa doit être ajustée pour tenir compte du rendement obtenu sur le placement de l'actif du régime, calculé suivant l'évolution de sa valeur marchande depuis la date de la prise d'effet de la scission jusqu'à celle du transfert, ainsi que des cotisations et des prestations versées durant cette même période quant aux participants ou bénéficiaires visés.

Retraite Québec ne peut par ailleurs autoriser une telle scission que si le régime dans lequel sera transférée une partie de l'actif à scinder comporte des dispositions qui, relativement à l'attribution d'un excédent d'actif en cas de terminaison et à son affectation en cours d'existence du régime, sont identiques, quant à leurs effets, à celles du régime d'où provient cet actif. Afin de vérifier s'il y a identité d'effets ainsi que l'exige le présent alinéa, il n'est tenu compte que des dispositions en vigueur lors de la demande d'autorisation.

En outre lorsque, dans l'hypothèse prévue au premier alinéa, la valeur de l'actif attribué est insuffisante pour acquitter intégralement les droits des participants ou bénéficiaires visés, et qu'un nouvel employeur devra assumer, après la scission, les engagements afférents à ces droits, l'autorisation de Retraite Québec pourra être subordonnée à l'obligation pour l'employeur alors tenu à ces engagements de verser à la caisse de retraite, pour faire partie de l'actif à transférer, la somme que représente le manque d'actif nécessaire à l'acquittement intégral de ces droits.

1989, c. 38, a. 195; 1992, c. 60, a. 14; 2000, c. 41, a. 110; 2006, c. 42, a. 31; 2015, c. 20, a. 61; 2015, c. 29, a. 42.

195.0.1. En cas de scission d'un régime de retraite, les sommes comptabilisées selon l'article 42.2 sont réparties entre les régimes issus de la scission en proportion de leurs passifs respectifs.

2015, c. 29, a. 43.

195.1. Par ailleurs, en ce qui concerne un régime de retraite régi à la fois par la présente loi et par une loi émanant d'une autorité législative autre que le Parlement du Québec, Retraite Québec peut, si elle l'estime nécessaire pour protéger les droits des participants et des bénéficiaires du régime assujettis à la présente loi, ordonner que l'actif et le passif du régime soient scindés, à la date et dans les délais et les conditions qu'elle fixe, de sorte que l'actif se rapportant à ces participants et bénéficiaires soit transféré dans un autre régime de retraite.

L'ordonnance s'adresse à celui qui a le pouvoir de modifier le régime visé, à celui qui l'administre et à celui qui a le pouvoir d'établir un régime de retraite relatif aux participants et aux bénéficiaires visés au premier alinéa. Les droits de ceux-ci sont établis à la date de la scission et selon les dispositions du régime qui sont enregistrées et en vigueur à cette date.

2010, c. 41, a. 2; 2015, c. 20, a. 61.

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196. Retraite Québec ne peut autoriser la fusion de tout ou partie des actifs et des passifs de plusieurs régimes que si le degré de solvabilité du régime absorbant, après la fusion, satisfait à l'une des conditions suivantes:

1° il est d'au moins 85% ou, dans le cas d'une fusion de régimes auxquels est partie le même employeur, d'au moins 100%;

2° il n'est pas inférieur de plus de cinq points de pourcentage au degré de solvabilité, avant la fusion, tant du régime absorbant que du régime absorbé.

Retraite Québec ne peut non plus autoriser la fusion que si chacun d'eux comporte des dispositions qui, relativement à l'attribution de l'excédent d'actif déterminé lors de sa terminaison, sont identiques quant à leurs effets ou que les effets des dispositions pertinentes du régime absorbant sont, pour les participants et bénéficiaires, plus avantageuses que ceux des dispositions pertinentes du régime absorbé. En outre, Retraite Québec ne peut autoriser la fusion que si chacun des régimes comporte des dispositions qui, relativement à l'affectation de l'excédent d'actif en cours d'existence du régime, sont identiques quant à leurs effets. Pour vérifier les effets des dispositions visées, il n'est tenu compte que des dispositions en vigueur lors de la demande d'autorisation.

Dans les autres cas, la fusion pourra encore être autorisée si tous les participants et les bénéficiaires du régime absorbé, qui sont visés par la fusion, sont informés par le comité de retraite au moyen d'un avis écrit et si moins de 30% d'entre eux se sont opposés à la fusion. Les dispositions des articles 146.4 et 146.5 s'appliquent, compte tenu des adaptations nécessaires, quant à la procédure à suivre pour informer et consulter ces participants et bénéficiaires.

En outre, dans le cas où la fusion vise tous les participants et bénéficiaires des régimes concernés, l'autorisation ne sera accordée que s'il y a fusion de la totalité de l'actif de chacun de ces régimes. Dans le cas contraire, l'autorisation devra être subordonnée à ce que l'actif du régime à fusionner dont seulement une partie des participants ou bénéficiaires sont visés, soit déterminé, pour ce qui se rapporte à leurs droits, conformément aux dispositions de l'article 195 qui s'appliquent compte tenu des adaptations nécessaires.

Si la fusion est autorisée, seules les dispositions du régime absorbant sont, pour ce qui a trait au droit de l'employeur d'affecter l'excédent d'actif du régime à l'acquittement de la valeur des engagements supplémentaires résultant de toute modification du régime ou à l'acquittement des cotisations patronales et à l'attribution d'excédent d'actif en cas de terminaison, applicables aux participants et aux bénéficiaires du régime absorbé qui sont visés par la fusion.

1989, c. 38, a. 196; 1992, c. 60, a. 15; 2000, c. 41, a. 111; 2006, c. 42, a. 32; 2015, c. 20, a. 61; 2015, c. 29, a. 44.

197. Doivent être prises en compte, pour l'application de l'article 34, la rémunération reçue ou, selon le cas, les heures de travail effectuées avant la date d'une scission ou d'une fusion.

1989, c. 38, a. 197; 2000, c. 41, a. 112.

CHAPITRE XIII**LIQUIDATION DES DROITS DES PARTICIPANTS ET DES BÉNÉFICIAIRES****SECTION I****CAS DE LIQUIDATION****§ 1. — Retrait d'un employeur partie à un régime interentreprises**

198. Le retrait d'un employeur partie à un régime interentreprises est conditionnel à la modification du régime en ce sens. Cette modification est subordonnée à l'autorisation de Retraite Québec.

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La date du retrait de l'employeur est celle de la prise d'effet de la modification qui y donne lieu. Si cette modification fait suite à la faillite de l'employeur, elle prend effet à la date de la faillite. Si elle résulte du fait que l'employeur ne compte plus de participants actifs à son service, elle prend effet au plus tard à la date de fin de l'exercice financier au cours duquel le dernier participant a cessé d'accumuler des droits.

Sont visés par le retrait:

- 1° les participants actifs au service de l'employeur à la date de son retrait;
- 2° les participants non actifs, à cette date, dont la participation active a pris fin alors qu'ils étaient au service de cet employeur;
- 3° les bénéficiaires, à cette date, dont la prestation est dérivée de celle d'un participant dont la participation active a pris fin alors qu'il était au service de cet employeur.

1989, c. 38, a. 198; 2000, c. 41, a. 114; 2015, c. 20, s. 61; 2015, c. 29, a. 45.

199. Lorsqu'un employeur partie à un régime interentreprises fait faillite ou devient insolvable au sens de la Loi sur la faillite et l'insolvabilité (Lois révisées du Canada (1985), chapitre B-3), le régime doit être modifié afin qu'il soit procédé au retrait de cet employeur du régime ou, le cas échéant, à la substitution d'un nouvel employeur. À défaut par celui à qui le régime en confie le pouvoir de procéder à une telle modification dans les 30 jours de la date à laquelle le comité de retraite est informé de l'insolvabilité ou de la faillite, le comité doit le faire lui-même.

1989, c. 38, a. 199; 1997, c. 43, a. 654; 2000, c. 41, a. 114.

199.1. Lorsqu'un employeur partie à un régime interentreprises ne compte plus de participants actifs à son service, le régime doit être modifié afin qu'il soit procédé au retrait de cet employeur du régime. À défaut par celui à qui le régime en confie le pouvoir de procéder à une telle modification dans les 30 jours de la date à laquelle le comité de retraite est informé du fait que l'employeur ne compte plus de participants actifs à son service, le comité doit le faire lui-même.

Dans le cas d'un employeur dont tous les travailleurs visés par le régime sont engagés de façon ponctuelle et pour une durée déterminée, la modification du régime n'est requise que si l'employeur ne compte plus de participants actifs à son service depuis 12 mois.

2015, c. 29, a. 46.

200. Le comité de retraite qui projette de demander l'enregistrement d'une modification visant le retrait d'un employeur partie à un régime interentreprises doit, en plus d'en aviser les participants ainsi que le prévoit l'article 26, transmettre à chacun des participants et des bénéficiaires visés par le retrait un avis les informant:

- 1° du degré de solvabilité du régime établi lors de la plus récente évaluation actuarielle de celui-ci ou, s'il est plus récent, dans l'avis visé à l'article 119.1 transmis à Retraite Québec;
- 2° de l'effet de l'acquittement des droits d'un participant ou d'un bénéficiaire, notamment en ce qui concerne l'application des dispositions du régime visées au paragraphe 16° du deuxième alinéa de l'article 14 ainsi que, le cas échéant, des dispositions et de l'article 240.2;
- 3° que les droits des participants non actifs et des bénéficiaires qui sont visés par le retrait et pour lesquels une rente est servie à la date du retrait seront acquittés au moyen d'une rente servie par un assureur, selon les conditions prévues par règlement, choisi par le comité de retraite;
- 4° que les droits des participants et des bénéficiaires visés par le retrait, autres que ceux auxquels s'applique le paragraphe 3°, seront acquittés au moyen d'un transfert visé à l'article 98, lequel s'applique

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compte tenu des adaptations nécessaires, ou, le cas échéant, par le paiement en un seul versement ou le transfert dans un régime enregistré d'épargne-retraite de la partie de leurs droits qui peut leur être remboursée.

1989, c. 38, a. 200; 1992, c. 60, a. 17; 2000, c. 41, a. 114; 2015, c. 29, a. 47; 2015, c. 20, a. 61.

201. Le comité de retraite qui demande l'enregistrement d'une modification visant le retrait d'un employeur partie à un régime interentreprises doit joindre à sa demande, outre ce que prévoit l'article 24, les renseignements suivants:

1° le nom de l'employeur visé et la date d'entrée en vigueur de la modification;

2° les noms des participants et des bénéficiaires visés, chacun devant être identifié comme étant, à la date visée au paragraphe 1°, un participant actif, un participant non actif pour lequel aucune rente n'est servie, un participant non actif pour lequel une rente est servie ou un bénéficiaire;

3° une copie de l'avis prévu à l'article 200 accompagnée d'une déclaration du comité de retraite attestant qu'il a transmis un tel avis à chacun des participants et des bénéficiaires visés.

1989, c. 38, a. 201; 2000, c. 41, a. 114.

202. Dans les 60 jours qui suivent la présentation de la demande d'enregistrement à Retraite Québec, le comité de retraite doit exiger de l'employeur visé le paiement de toute cotisation que celui-ci a omis de verser à la caisse de retraite ou, selon le cas, à l'assureur.

Il doit en outre, dans le même délai ou dans le délai supplémentaire que Retraite Québec peut accorder, transmettre à celle-ci un rapport établissant les droits de chacun des participants et bénéficiaires visés ainsi que leur valeur et contenant les renseignements déterminés par règlement. Ce rapport est préparé par un actuaire; il peut aussi l'être par le comité de retraite dans le cas d'un régime visé au paragraphe 2° de l'article 116. L'évaluation des droits des participants et bénéficiaires doit être effectuée à la date de la prise d'effet de la modification visant le retrait de l'employeur visé ou, avec l'autorisation de Retraite Québec et aux conditions qu'elle fixe, à celle de la prochaine évaluation actuarielle complète du régime.

Est dispensé de transmettre le rapport prévu au deuxième alinéa le comité qui, dans le délai prévu à cet alinéa, transmet à Retraite Québec un avis certifiant que l'employeur a entièrement payé les cotisations qu'il devait et, lorsque le chapitre X s'applique au régime de retraite, une déclaration d'un actuaire certifiant qu'à son avis le régime est solvable à la date de la prise d'effet de la modification.

1989, c. 38, a. 202; 1992, c. 60, a. 18; 2000, c. 41, a. 114; 2015, c. 20, a. 61.

203. Retraite Québec ne peut autoriser la modification d'un régime de retraite interentreprises en vue du retrait d'un employeur partie à ce régime que s'il est satisfait aux conditions suivantes:

1° le rapport ou l'avis et la déclaration, selon le cas, qui lui sont transmis en application de l'article 202 sont conformes à la présente loi;

2° le comité de retraite atteste que les cotisations visées au premier alinéa de l'article 202 ont été versées à la caisse de retraite ou à l'assureur ou qu'elles ne pourront vraisemblablement être recouvrées malgré ses demandes en ce sens, en raison de la faillite ou de l'insolvabilité de l'employeur.

1989, c. 38, a. 203; 1992, c. 60, a. 19; 1997, c. 43, a. 655; 2000, c. 41, a. 114; 2015, c. 20, a. 61.

§ 2. — *Terminaison d'un régime de retraite*

204. À moins d'en être empêché par convention, ou à moins qu'il ne s'agisse d'un régime de retraite qui, rendu obligatoire par décret, ne comporte pas de disposition l'y autorisant, l'employeur — ou, dans le cas d'un régime interentreprises, même non considéré comme tel en vertu de l'article 11, l'ensemble des employeurs qui y sont parties — peut terminer le régime auquel il est partie au moyen d'un avis écrit de

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terminaison transmis aux participants et bénéficiaires visés, à chaque association accréditée qui représente des participants, au comité de retraite et, le cas échéant, à l'assureur.

Cet avis indique la date de la terminaison ainsi que les participants et bénéficiaires visés. La date de la terminaison ne peut en aucun cas être postérieure au jour qui précède celui où les droits du dernier participant ou bénéficiaire que compte le régime sont acquittés. De plus, à moins que chacun des participants dont la participation active prend fin à l'occasion de la terminaison ou par la suite n'y consente par écrit, cette date ne peut être antérieure ni à celle de la cessation de la perception des cotisations salariales ni à celle qui précède de 30 jours la transmission de l'avis de terminaison aux participants actifs.

1989, c. 38, a. 204; 1992, c. 60, a. 20; 2000, c. 41, a. 114.

205. Retraite Québec peut terminer un régime de retraite:

1° lorsque, sans avoir transmis un avis de terminaison, l'employeur — ou, s'il s'agit d'un régime interentreprises, même non considéré comme tel en vertu de l'article 11, chacun des employeurs qui y est partie — fait défaut de percevoir des cotisations salariales ou de verser à la caisse de retraite ou à l'assureur les cotisations patronales ou les cotisations salariales qu'il perçoit;

2° lorsque le comité de retraite, celui à qui a été délégué des pouvoirs ou toute partie au régime omet de se conformer à une ordonnance que Retraite Québec a rendue en application de la présente loi;

3° lorsque le régime ne compte plus de participant actif.

Retraite Québec doit, avant de terminer le régime, donner au comité de retraite un délai d'au moins 10 jours pour présenter ses observations.

1989, c. 38, a. 205; 1992, c. 60, a. 21; 1997, c. 43, a. 656; 2000, c. 41, a. 114; 2015, c. 20, a. 61.

205.1. *(Remplacé).*

1992, c. 60, a. 22; 2000, c. 41, a. 114.

206. Toute décision de Retraite Québec terminant un régime de retraite indique la date de la terminaison et les participants et bénéficiaires visés.

Retraite Québec communique sa décision au comité de retraite qui la transmet sans délai à chacun des participants et bénéficiaires visés, à chaque association accréditée qui représente des participants, à l'employeur et, le cas échéant, à l'assureur.

1989, c. 38, a. 206; 1992, c. 60, a. 23; 2000, c. 41, a. 114; 2015, c. 20, a. 61.

207. Sont visés par la terminaison d'un régime de retraite, outre les participants et les bénéficiaires dont les droits n'ont pas été acquittés avant la date de la terminaison, les participants visés au deuxième alinéa de l'article 211.

1989, c. 38, a. 207; 1992, c. 60, a. 24; 2000, c. 41, a. 114.

207.1. Dans les 15 jours qui suivent la réception d'un avis de terminaison ou d'une décision de Retraite Québec terminant le régime de retraite, le comité de retraite doit transmettre à Retraite Québec, à l'employeur et à chaque association accréditée qui représente des participants, une déclaration de terminaison qui contient les renseignements prescrits par règlement, accompagnée des attestations et des documents ainsi prescrits.

1992, c. 60, a. 25; 2000, c. 41, a. 114; 2015, c. 20, a. 61.

207.2. Dans les 90 jours qui suivent la réception d'un avis de terminaison ou d'une décision terminant le régime de retraite, le comité de retraite doit transmettre à Retraite Québec un rapport de terminaison établissant entre autres les droits de chacun des participants ou bénéficiaires visés ainsi que leur valeur et

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contenant les renseignements déterminés par règlement. Ce rapport est préparé par un actuaire; il peut aussi l'être par le comité de retraite dans le cas d'un régime visé au paragraphe 2° de l'article 116. Retraite Québec envoie sans délai au comité de retraite un accusé de réception indiquant la date à laquelle elle a reçu le rapport.

Le comité de retraite doit également fournir un exemplaire du rapport à l'employeur et à chaque association accréditée qui représente des participants en les informant qu'ils peuvent, avant l'expiration du délai prévu au premier alinéa, lui présenter par écrit leurs observations. Le comité doit transmettre le rapport dans un délai tel que l'employeur et chaque association accréditée disposent d'au moins 10 jours pour lui présenter leurs observations.

L'exemplaire fourni à l'employeur doit, le cas échéant, être accompagné d'un avis, dont copie doit aussi être transmise à Retraite Québec, qui indique que toute somme due par l'employeur selon le rapport doit être versée à la caisse de retraite ou à l'assureur, selon le cas.

2000, c. 41, a. 114; 2015, c. 20, a. 61; 2015, c. 29, a. 48.

207.3. Le comité de retraite doit transmettre à chaque participant ou bénéficiaire visé une copie de la déclaration de terminaison ainsi qu'un relevé de ses droits et de leur valeur accompagnés des informations suivantes:

1° les modes d'acquittement de ses droits, notamment le régime de retraite dans lequel le participant ou bénéficiaire pourrait, le cas échéant, les transférer ainsi que les options qu'il peut exercer;

2° les modalités fixées pour le choix du mode d'acquittement de ses droits, y compris, le cas échéant, celles relatives au droit à une part de l'excédent d'actif;

3° que le rapport de terminaison ainsi que les données utilisées pour l'établissement de ses droits ou de leur valeur peuvent être consultés, sans frais, soit au bureau du comité de retraite soit à l'établissement de l'employeur que désigne le comité, selon l'endroit le plus rapproché de la résidence du demandeur;

4° qu'avant l'expiration du délai prévu au premier alinéa de l'article 207.2, le participant ou bénéficiaire doit indiquer ses choix et exercer ses options parmi ceux visés aux paragraphes 1° et 2° et qu'il peut en outre présenter par écrit ses observations au comité de retraite;

5° tout autre renseignement déterminé par règlement.

Le comité doit transmettre les relevés dans un délai tel que les participants et bénéficiaires disposent d'au moins 10 jours pour indiquer leurs choix, exercer leurs options et, le cas échéant, lui présenter leurs observations conformément au paragraphe 4° du premier alinéa.

2000, c. 41, a. 114.

207.4. À moins que tous les participants et les bénéficiaires susceptibles de faire valoir des droits au titre du régime ou de la présente loi aient été personnellement avisés, le comité de retraite doit en outre faire publier dans un quotidien distribué dans la région où résident, au Québec, le plus grand nombre de participants actifs à la date de la terminaison, un avis invitant toute personne qui, sans avoir reçu le relevé prévu à l'article 207.3, croit avoir des droits au titre du régime ou de la présente loi à les faire valoir auprès du comité avant l'expiration du délai prévu au premier alinéa de l'article 207.2.

Le comité doit s'assurer que la publication soit faite dans un délai tel que les intéressés disposent d'au moins 10 jours pour faire valoir leurs droits conformément au premier alinéa. Dans le cas d'un régime interentreprises, même non considéré comme tel par application de l'article 11, la publication doit être faite pour chaque employeur partie au régime dans la région où résident, au Québec, le plus grand nombre de participants à son service à la date de la terminaison.

2000, c. 41, a. 114.

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207.5. *(Abrogé).*

2000, c. 41, a. 114; 2015, c. 29, a. 49.

207.6. Un régime de retraite ne peut être modifié après la date de sa terminaison, sauf pour permettre l'augmentation de prestations qui peut résulter de l'attribution d'un excédent d'actif.

Le présent article n'a pas pour effet d'empêcher Retraite Québec de procéder, après cette date, à l'enregistrement d'une modification du régime intervenue avant cette même date.

2000, c. 41, a. 114; 2015, c. 20, a. 61; 2015, c. 29, a. 50.

SECTION II**PROCESSUS DE LIQUIDATION**§ 1. — *Interprétation et application*

208. Dans la présente section, l'expression «date de la terminaison», lorsqu'elle est utilisée à l'égard d'un régime de retraite interentreprises qui fait l'objet d'une modification visant le retrait d'un employeur, s'entend de la date à laquelle est effectuée l'évaluation des droits des participants et des bénéficiaires visés par cette modification.

1989, c. 38, a. 208; 1992, c. 60, a. 26; 2000, c. 41, a. 116.

209. Les articles 216 et 218 ne s'appliquent pas à l'acquittement des droits des participants ou bénéficiaires visés par le retrait d'un employeur partie à un régime interentreprises ou par la terminaison d'un régime de retraite lorsque la valeur de l'actif du régime est au moins égale à celle de son passif, toutes deux étant, à la date de la terminaison, établies conformément au présent chapitre. Dans ce cas, si l'actif du régime ne permet pas l'acquittement intégral des droits des participants ou bénéficiaires visés, l'acquittement se fait au prorata de la valeur des droits de chacun.

1989, c. 38, a. 209; 2000, c. 41, a. 116.

§ 2. — *Établissement et collocation des droits*

209.1. Le comité de retraite doit, dans les 30 jours qui suivent l'autorisation par Retraite Québec d'une modification visant le retrait d'un employeur partie à un régime de retraite interentreprises, procéder, conformément à ce que prévoit, le cas échéant, le rapport visé au deuxième alinéa de l'article 202, à l'acquittement des droits des participants et bénéficiaires visés qui en ont fait la demande.

2000, c. 41, a. 117; 2015, c. 20, a. 61.

210. À moins que Retraite Québec ne lui accorde un délai additionnel, le comité de retraite doit, au moins 30 mais pas plus de 60 jours après la date à laquelle Retraite Québec a reçu le rapport de terminaison, procéder à l'acquittement des droits des participants et des bénéficiaires visés conformément à ce rapport et à la présente loi.

Le comité ne peut par ailleurs procéder à cet acquittement si, dans les 30 jours qui suivent la réception du rapport de terminaison, Retraite Québec lui ordonne de surseoir à l'acquittement pendant la période additionnelle qu'elle détermine ou si elle ordonne en vertu de l'article 240.4 la correction, dans le délai qu'elle fixe, d'une irrégularité qu'elle constate dans le rapport. Dans ce dernier cas, le comité de retraite doit présenter à Retraite Québec, qui en accuse réception, un rapport de terminaison révisé. Dans ces cas, le comité procède à l'acquittement dans les 30 jours qui suivent l'expiration de la période de sursis ou de l'expiration d'un délai de 30 jours à compter de la date à laquelle Retraite Québec a reçu le rapport révisé.

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Malgré le premier alinéa, l'acquittement des droits d'un participant ou bénéficiaire conformément au rapport de terminaison peut être reporté à la date de l'acquittement des droits dans l'excédent d'actif lorsque le participant le demande ou que, compte tenu du mode d'acquittement choisi par ce participant ou bénéficiaire, la Loi sur les impôts (chapitre I-3) prescrit le paiement en un seul versement de la totalité des droits de celui-ci au titre du régime. De plus, Retraite Québec peut, lorsqu'elle autorise l'étalement du versement d'une somme due par l'employeur conformément à l'article 229, fixer les modalités suivant lesquelles l'acquittement des droits des participants et des bénéficiaires peut être complété en tenant compte de cet étalement.

Le comité de retraite peut cependant, en tout temps si le régime est solvable et avec l'autorisation de Retraite Québec dans le cas contraire, verser en tout ou en partie, aux conditions qu'elle fixe, une rente, autre que celle prévue par l'article 67.2, dont le service est en cours ou suspendu à la date de terminaison du régime ou dont le premier versement devient exigible après cette date. S'il advient que les prestations ainsi versées excèdent les droits qu'attribue le rapport terminal au prestataire pour la période couverte par ces prestations, ce dernier doit rembourser l'excédent; à défaut, l'excédent peut être déduit des droits qui restent à lui acquitter.

1989, c. 38, a. 210; 1992, c. 60, a. 27; 2000, c. 41, a. 118; 2008, c. 21, a. 19; 2015, c. 20, a. 61.

210.1. La part de l'excédent d'actif à laquelle a droit un participant ou un bénéficiaire peut lui être payée en un seul versement ou, dans la mesure permise par la Loi sur les impôts (chapitre I-3), être acquittée au moyen d'un transfert visé à l'article 98, lequel s'applique compte tenu des adaptations nécessaires, ou servir à la constitution d'une rente ou d'une autre prestation, suivant l'option qu'il communique au comité de retraite.

2000, c. 41, a. 119; 2015, c. 29, a. 51.

211. Le participant visé par la terminaison d'un régime de retraite, qui était encore actif à la date de cette terminaison, a droit, au titre des services que lui reconnaît le régime jusqu'à la date de terminaison, à la valeur de la rente normale, inclusion faite des avantages accessoires à toute rente à laquelle il aurait eu droit s'il avait pris sa retraite le jour précédant cette date.

Lorsque la terminaison du régime est occasionnée par la division, la fusion, l'aliénation ou la fermeture d'une entreprise ou d'une partie d'une entreprise, le même droit est reconnu au participant dont la participation active a cessé au cours de la période comprise entre la date où les participants ont été informés de l'événement en question et celle de la terminaison.

Le montant de cette rente doit, dans le cas où le régime en prévoit le calcul suivant l'évolution de la rémunération du participant, être établi en tenant compte de cette évolution jusqu'à la date de la terminaison, à moins que le régime ne prévoit expressément en tenir compte après cette date.

1989, c. 38, a. 211; 1994, c. 24, a. 17; 2000, c. 41, a. 120.

212. Les droits des participants et bénéficiaires visés par le retrait d'un employeur partie à un régime interentreprises ou par la terminaison d'un régime de retraite doivent être évalués à l'une ou l'autre des dates qui suivent, en utilisant les hypothèses visées à l'article 61 et qui, à cette date, étaient utilisées pour la détermination de la valeur des prestations auxquelles s'applique l'article 60 et dont le droit était acquis à cette date:

1° à la date où le participant a cessé d'être actif, si les droits à évaluer sont ceux des participants ou des bénéficiaires suivants:

a) le participant qui a cessé d'être actif avant le retrait ou la terminaison et qui, à la date de la terminaison, avait déjà opté pour l'acquittement de ses droits dans le délai prévu au paragraphe 1° du deuxième alinéa de l'article 99 ou était encore dans le délai pour exercer une telle option, ainsi que les bénéficiaires dont les droits résultent des services reconnus à un tel participant;

b) le participant visé au deuxième alinéa de l'article 211;

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2° à la date de la terminaison, si les droits à évaluer sont ceux de tout autre participant ou bénéficiaire visé par le retrait ou la terminaison.

Les droits des participants et des bénéficiaires visés au paragraphe 1° portent intérêt, de la date à laquelle ils sont évalués jusqu'à la date de la terminaison, au taux utilisé aux fins de cette évaluation.

Le premier alinéa ne s'applique pas à la rente qui doit être garantie par un assureur en application de l'article 237 ni à une rente visée au paragraphe 3° de l'article 200.

1989, c. 38, a. 212; 1994, c. 24, a. 18; 2000, c. 41, a. 121.

212.1. À la date de la terminaison, l'actif d'un régime de retraite terminé doit être établi selon la valeur de liquidation ou son estimation, et être réduit du montant estimé des frais que la caisse de retraite doit assumer à l'occasion de la terminaison.

À la même date, le passif d'un tel régime comprend, outre la valeur des droits visés par l'article 212, celle de la rente qui doit être garantie par un assureur en vertu de l'article 237, cette valeur étant déterminée:

1° dans les cas où la rente a été garantie avant la date de la terminaison, en utilisant les hypothèses visées à l'article 61 qui étaient utilisées à cette date;

2° dans les cas où la rente a été garantie après la date de la terminaison mais avant celle de la préparation du rapport de terminaison, en actualisant à la date de la terminaison la prime payée à l'assureur, selon un taux correspondant au taux estimé du rendement de la caisse de retraite depuis la date de la terminaison jusqu'à la date où la rente a été garantie;

3° dans les autres cas, en actualisant à la date de la terminaison et selon un taux correspondant au taux estimé du rendement de la caisse de retraite depuis cette date jusqu'à celle de la préparation du rapport de terminaison, la prime qui aurait été payée à un assureur à la date de la préparation du rapport, augmentée d'une marge destinée à tenir compte de la variation possible du coût d'achat de la rente entre cette dernière date et la date probable de l'achat.

Dans les cas visés aux paragraphes 2° et 3° du deuxième alinéa, le passif comprend également la valeur des montants de rente versés à un participant par la caisse de retraite entre la date de la terminaison et celle où le service de la rente est effectué par un assureur, cette valeur étant déterminée selon le taux visé au paragraphe pertinent.

2000, c. 41, a. 122.

213. *(Remplacé).*

1989, c. 38, a. 213; 1992, c. 60, a. 28; 1994, c. 24, a. 18.

214. *(Abrogé).*

1989, c. 38, a. 214; 2000, c. 41, a. 123.

215. *(Abrogé).*

1989, c. 38, a. 215; 2000, c. 41, a. 123.

216. Les droits résultant d'engagements nés d'une modification du régime de retraite relative à des services se rapportant à une période antérieure à la date de sa prise d'effet, doivent, pour leur acquittement, être réduits ainsi qu'il suit:

1° de 100%, si la période comprise entre la date de prise d'effet de cette modification et la date de la terminaison est de moins d'un an;

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- 2° de 80%, si cette période est d'un an ou plus mais de moins de deux ans;
- 3° de 60%, si cette période est de deux ans ou plus mais de moins de trois ans;
- 4° de 40%, si cette période est de trois ans ou plus mais de moins de quatre ans;
- 5° de 20%, si cette période est de quatre ans ou plus mais de moins de cinq ans.

1989, c. 38, a. 216; 1992, c. 60, a. 29; 2000, c. 41, a. 124.

217. Sauf s'il s'agit d'une part d'un excédent d'actif, toute somme due à un participant ou bénéficiaire et qui, aux termes du régime de retraite et de la présente loi, doit être acquittée par suite du retrait d'un employeur partie à un régime interentreprises ou par suite de la terminaison d'un régime porte intérêt, entre la date de terminaison et celle de son acquittement, au taux utilisé pour la détermination de la valeur de ses droits. Ce taux doit être celui dont il est fait mention à l'article 44 ou 45 et qui est applicable aux cotisations versées au titre du régime dans le cas où la somme due l'est au titre:

- 1° d'un régime à cotisation déterminée;
- 2° de dispositions du régime relatives aux cotisations volontaires;
- 3° de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles d'un régime à cotisation déterminée;
- 4° de cotisations salariales qui excèdent le plafond fixé par l'article 60;
- 5° de sommes reçues par le régime à la suite d'un transfert même non visé au chapitre VII.

1989, c. 38, a. 217; 1992, c. 60, a. 30; 2000, c. 41, a. 125; 2006, c. 42, a. 33.

218. Les droits des participants ou bénéficiaires visés par le retrait d'un employeur partie à un régime interentreprises ou par la terminaison d'un régime de retraite sont acquittés dans l'ordre suivant:

- 1° ceux qui correspondent aux valeurs suivantes, acquittées concurremment:
 - a) la valeur des cotisations volontaires versées à la caisse de retraite ou, selon le cas, à l'assureur;
 - b) la valeur des cotisations salariales ou patronales versées en application de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles d'un régime à cotisation déterminée;
 - c) la valeur des sommes reçues par le régime à la suite d'un transfert même non visé au chapitre VII;
- 2° la valeur des autres droits, à l'exclusion de ceux visés au paragraphe 4°, accumulés au titre du régime et réduits en application de l'article 216;
- 3° la valeur de toute réduction de droits effectuée en application de l'article 216;
- 4° la valeur des prestations qui sont dues aux participants au titre des dispositions du régime leur attribuant une indemnité pour le cas où cessera leur période de travail continu en raison de changements d'ordre technologique ou économique survenus dans l'entreprise de l'employeur partie au régime, ou en raison d'une division, d'une fusion, d'une aliénation ou d'une fermeture de cette entreprise.

Si l'actif est insuffisant pour l'acquittement intégral des droits qui sont colloqués au même rang, l'acquittement se fait au prorata de la valeur des droits concernés.

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Les droits visés aux premier et deuxième alinéas sont ceux accumulés à la date de la terminaison. Leur valeur s'établit à cette date et est augmentée des intérêts calculés conformément à l'article 217.

1989, c. 38, a. 218; 1992, c. 60, a. 31; 2000, c. 41, a. 126; 2006, c. 42, a. 34.

§ 3. — *Répartition de l'actif*

219. (Abrogé).

1989, c. 38, a. 219; 1992, c. 60, a. 32.

220. L'actif d'un régime de retraite interentreprises doit, lors du retrait d'un employeur qui y est partie ou lors de la terminaison du régime, être réparti entre les groupes de droits formés en application de la présente sous-section, suivant la valeur des droits compris dans chacun de ces groupes et l'ordre d'acquiescement établi par la présente loi.

L'actif du régime est, en vue de cette répartition, augmenté du montant que représente la somme des cotisations que tout employeur partie au régime a, en date de la terminaison, omis de verser à la caisse de retraite ou à l'assureur, selon le cas.

1989, c. 38, a. 220; 2000, c. 41, a. 127.

221. Les droits des participants ou bénéficiaires qui ne sont pas visés par le retrait d'un employeur partie à un régime interentreprises doivent être établis à la date de la terminaison conformément aux articles 211 à 216.

1989, c. 38, a. 221; 2000, c. 41, a. 128.

222. Lors du retrait d'un employeur partie à un régime interentreprises, les droits accumulés au titre de ce régime par les participants ou bénéficiaires sont répartis en deux groupes, dont l'un est composé des droits de ceux visés par ce retrait.

En cas de retraits simultanés de plusieurs employeurs parties à un même régime de retraite interentreprises, le groupe composé des droits des participants ou bénéficiaires visés par ces retraits est lui-même réparti conformément à l'article 223.

1989, c. 38, a. 222; 2000, c. 41, a. 129.

223. En cas de terminaison d'un régime de retraite interentreprises, les droits accumulés au titre de ce régime par les participants ou bénéficiaires doivent être répartis en autant de groupes qu'il y a d'employeurs, chaque groupe étant composé des droits accumulés par les participants au titre de leur travail auprès de l'employeur auquel ce groupe se rapporte.

1989, c. 38, a. 223; 2000, c. 41, a. 203.

224. Lorsqu'un participant a travaillé pour plusieurs employeurs parties à un régime de retraite interentreprises, les droits qu'il a accumulés au titre de ce régime doivent, lors du retrait d'un employeur partie au régime ou lors de la terminaison de celui-ci, être comptabilisés dans le groupe de droits se rapportant au dernier employeur pour lequel il a travaillé alors qu'il était participant actif.

Toutefois, le premier alinéa ne s'applique pas si le régime prévoit qu'en pareil cas, tout droit accumulé par ce participant au titre de son travail auprès d'un employeur est comptabilisé dans le groupe de droits se rapportant à cet employeur.

1989, c. 38, a. 224; 2000, c. 41, a. 130.

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225. Lors du retrait d'un employeur partie à un régime de retraite interentreprises ou lors de la terminaison d'un tel régime, forme un groupe de droits distinct le reliquat des droits des participants ou bénéficiaires visés par le retrait antérieur d'un employeur.

1989, c. 38, a. 225; 2000, c. 41, a. 131.

226. (*Abrogé*).

1989, c. 38, a. 226; 1994, c. 24, a. 19; 2000, c. 41, a. 131; 2015, c. 29, a. 52.

227. Toute cotisation qu'un employeur partie à un régime de retraite interentreprises a, en date de la terminaison du régime, omis de verser à la caisse de retraite ou, selon le cas, à l'assureur, doit être déduite de la part d'actif qui est allouée au groupe de droits se rapportant à cet employeur.

1989, c. 38, a. 227; 2000, c. 41, a. 132.

§ 4. — *Dette de l'employeur*

228. Constitue une dette de l'employeur le manque d'actif nécessaire à l'acquittement des droits des participants ou bénéficiaires visés par le retrait d'un employeur partie à un régime interentreprises ou par la terminaison d'un régime de retraite. Ce manque d'actif doit être établi à la date de la terminaison.

Si l'employeur a, à la date de la terminaison, omis de verser des cotisations à la caisse de retraite ou, selon le cas, à l'assureur, cette dette est l'excédent du manque d'actif sur ces cotisations.

Dans le cas d'un régime interentreprises, le présent article s'applique à chaque employeur partie au régime et auquel se rapporte un groupe de droits formé en application de la sous-section 3 et composé des droits de participants ou bénéficiaires visé par le retrait ou la terminaison.

1989, c. 38, a. 228; 1992, c. 60, a. 33; 2000, c. 41, a. 133.

228.1. Aucune disposition d'un régime de retraite à prestations déterminées ou à cotisation et prestations déterminées ne peut avoir pour effet de limiter ou réduire les obligations d'un employeur à l'égard du régime en raison de son retrait du régime ou de la terminaison de celui-ci.

2008, c. 21, a. 20.

229. Toute somme due par un employeur aux termes de l'article 228 doit, dès sa détermination, être versée à la caisse de retraite ou, selon le cas, à l'assureur. Retraite Québec peut toutefois, aux conditions qu'elle fixe, permettre à l'employeur d'étaler sur une période d'au plus cinq ans le versement de cette somme.

Toute somme non versée à la caisse de retraite ou à l'assureur porte intérêt, à compter de la date du défaut, au taux déterminé en application de l'article 61 et qui s'appliquait à la date de la terminaison.

1989, c. 38, a. 229; 2000, c. 41, a. 134; 2015, c. 20, a. 61.

230. Toute somme versée par un employeur en vertu de la présente sous-section, y compris une somme recouvrée après la date de la terminaison, notamment au titre de cotisations échues mais non versées à cette date, est utilisée pour l'acquittement des droits des participants ou bénéficiaires selon l'ordre de priorité établi par la présente loi.

1989, c. 38, a. 230; 2000, c. 41, a. 135.

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 § 4.0.1. — *Options d'acquittement en cas d'insuffisance de l'actif*

2009, c. 1, a. 2.

230.0.0.1. La présente sous-section vise un régime de retraite auquel s'applique le chapitre X, si les conditions suivantes sont réunies:

1° le régime fait l'objet d'une modification visant le retrait d'un employeur qui y est partie ou est terminé;

1.1° l'employeur partie au régime est en faillite ou est sous l'effet d'une ordonnance ou d'un jugement en vertu de la Loi sur les arrangements avec les créanciers des compagnies (L.R.C. 1985, c. C-36), de la partie III de la Loi sur la faillite et l'insolvabilité (L.R.C. 1985, c. B-3) ou de la Loi sur les liquidations et les restructurations (L.R.C. 1985, c. W-11);

2° la date du retrait de l'employeur ou de la terminaison du régime est postérieure au 30 décembre 2008, de même que la date de la faillite de l'employeur ou celle de l'ordonnance ou du jugement visé au paragraphe 1.1°;

2.1° (*paragraphe abrogé*);

3° à la date du retrait de l'employeur ou de la terminaison du régime, l'actif est insuffisant pour acquitter intégralement les droits des participants et bénéficiaires visés par le retrait ou la terminaison;

4° le manque d'actif nécessaire à l'acquittement des droits ne pourra vraisemblablement être recouvré.

2009, c. 1, a. 2; 2010, c. 41, a. 3; 2011, c. 32, a. 1; 2015, c. 29, a. 53.

230.0.0.2. (*Abrogé*).

2009, c. 1, a. 2; 2015, c. 29, a. 54.

230.0.0.3. Un participant ou un bénéficiaire visé par le retrait d'un employeur ou par la terminaison d'un régime de retraite, à qui une rente est servie à la date du retrait ou de la terminaison et dont les droits sont réduits en raison de l'insuffisance de l'actif, peut demander que sa rente soit garantie par un assureur ou opter pour une rente servie sur l'actif administré par Retraite Québec en vertu de l'article 230.0.0.4.

2009, c. 1, a. 2; 2015, c. 20, a. 61; 2015, c. 29, a. 55.

230.0.0.4. Retraite Québec exerce les pouvoirs du comité de retraite à l'égard des participants et des bénéficiaires d'un régime de retraite qui ont choisi le mode d'acquittement prévu à l'article 230.0.0.3 et sur l'actif de ce régime qui correspond à la partie des droits de ces participants et bénéficiaires qui peut être acquittée conformément à l'article 218. Le comité de retraite, ou celui à qui ont été délégués ou attribués ces pouvoirs, devient, dans cette mesure, inhabile à les exercer.

L'administration de Retraite Québec peut s'exercer globalement à l'égard de l'ensemble de ces régimes ou d'une partie de ceux-ci. Les régimes administrés globalement sont alors réputés, à cette fin, constituer un seul régime.

Dans l'exercice de ces pouvoirs, Retraite Québec assume les obligations et encourt la responsabilité d'un comité de retraite.

2009, c. 1, a. 2; 2015, c. 20, a. 61; 2015, c. 29, a. 56.

230.0.0.5. Malgré toute autre disposition, en ce qui concerne l'actif d'un régime de retraite administré par Retraite Québec, seuls sont considérés comme participants au régime ceux visés à l'article 230.0.0.4.

2009, c. 1, a. 2; 2015, c. 20, a. 61.

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230.0.0.6. À moins que Retraite Québec ne choisisse de les prendre à sa charge, les dépenses relatives à l'administration du régime par Retraite Québec sont supportées par la partie de la caisse de retraite qu'elle administre.

2009, c. 1, a. 2; 2015, c. 20, a. 61.

230.0.0.7. Retraite Québec peut, conformément aux conditions et modalités prescrites par règlement du gouvernement, modifier le régime de retraite pour améliorer les droits des participants et des bénéficiaires visés à l'article 230.0.0.4.

2009, c. 1, a. 2; 2015, c. 20, a. 61.

230.0.0.8. L'article 243 ne s'applique pas à une décision prise par Retraite Québec à titre de fiduciaire ou dans l'exercice des pouvoirs que lui attribue la présente sous-section.

2009, c. 1, a. 2; 2015, c. 20, a. 61.

230.0.0.9. Retraite Québec doit, au plus tard à la fin du dixième exercice financier du régime de retraite qui suit l'exercice au cours duquel elle a commencé à exercer à l'égard des participants et des bénéficiaires du régime visés à l'article 230.0.0.4 les pouvoirs du comité de retraite, faire garantir par un assureur les rentes qu'elle sert à ceux-ci.

Les deuxième, troisième et quatrième alinéas de l'article 237 s'appliquent alors, compte tenu des adaptations nécessaires.

2009, c. 1, a. 2; 2011, c. 32, a. 2; 2015, c. 20, a. 61; 2015, c. 29, a. 57.

230.0.0.10. Si l'actif du régime administré par Retraite Québec est insuffisant pour verser les rentes au fur et à mesure, pour obtenir qu'elles soient garanties par un assureur ou pour payer les dépenses relatives à l'administration, Retraite Québec peut réduire les rentes des participants et bénéficiaires.

2009, c. 1, a. 2; 2015, c. 20, a. 61; 2015, c. 29, a. 58.

230.0.0.11. Le gouvernement peut prendre tout règlement nécessaire à l'application de la présente sous-section. Il peut notamment:

1° fixer les règles applicables à l'évaluation des droits des participants et des bénéficiaires et à la répartition de l'actif et du passif d'un régime de retraite aux fins de déterminer la partie de la caisse de retraite du régime qui doit être administrée par Retraite Québec;

2° prescrire les conditions et les modalités permettant l'amélioration des droits des participants et des bénéficiaires visés à l'article 230.0.0.4;

3° prescrire les conditions et les modalités de réduction des rentes servies par Retraite Québec.

2009, c. 1, a. 2; 2015, c. 20, a. 61; 2015, c. 29, a. 59.

230.0.0.12. (Abrogé).

2010, c. 41, a. 4; 2015, c. 29, a. 60.

§ 4.1. — Répartition de l'excédent d'actif en cas de terminaison

230.0.1. (Article renuméroté).

2000, c. 41, a. 136; 2015, c. 29, a. 61.



Voir article 230.1.

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230.1. L'excédent d'actif d'un régime terminé est égal à l'excédent de la valeur de l'actif du régime sur celle de son passif, celles-ci étant établies conformément à l'article 212.1.

Dans le cas d'un régime de retraite interentreprises, même non considéré comme tel par application de l'article 11, et d'un régime qui a déjà fait l'objet d'une modification visant le retrait d'un employeur qui y était partie, l'excédent d'actif doit être déterminé à l'égard de chaque employeur de la manière prévue à la sous-section 3.

1992, c. 60, a. 34; 2000, c. 41, a. 137; 2015, c. 29, a. 62; 2000, c. 41, a. 136; 2015, c. 29, a. 61.

230.1.1. *(Remplacé).*

2000, c. 41, a. 138; 2015, c. 29, a. 62.

230.2. Tout excédent d'actif que peut comporter un régime de retraite terminé est d'abord attribué concurremment à l'employeur et aux participants et bénéficiaires ayant des droits en vertu de dispositions à prestations déterminées, jusqu'à concurrence du montant des cotisations comptabilisées respectivement selon les premier et deuxième alinéas de l'article 42.2.

Si l'excédent d'actif est d'un montant inférieur au montant total des cotisations patronales et salariales comptabilisées selon l'article 42.2, il doit être attribué en proportion des cotisations comptabilisées respectivement selon le premier et le deuxième alinéa de cet article.

L'attribution du solde de l'excédent d'actif, le cas échéant, doit être conforme aux conditions et modalités prévues par le régime.

La part attribuée aux participants et aux bénéficiaires est répartie entre eux au prorata de la valeur de leurs droits ou selon une autre méthode prévue par le régime.

1992, c. 60, a. 34; 2000, c. 41, a. 139; 2015, c. 29, a. 62.

230.3. *(Remplacé).*

1992, c. 60, a. 34; 2000, c. 41, a. 140; 2015, c. 29, a. 62.

230.4. *(Remplacé).*

1992, c. 60, a. 34; 2000, c. 41, a. 141; 2015, c. 29, a. 62.

230.5. *(Abrogé).*

1992, c. 60, a. 34; 2000, c. 41, a. 142.

230.6. *(Remplacé).*

1992, c. 60, a. 34; 2015, c. 29, a. 62.

230.7. *(Remplacé).*

1992, c. 60, a. 34; 1994, c. 24, a. 20; 2000, c. 41, a. 143; 2006, c. 42, a. 35; 2015, c. 29, a. 62.

230.8. *(Remplacé).*

1992, c. 60, a. 34; 2015, c. 29, a. 62.

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§ 5. — *Dispositions diverses***231.** (Abrogé).

1989, c. 38, a. 231; 2000, c. 41, a. 144.

232. (Abrogé).

1989, c. 38, a. 232; 2000, c. 41, a. 144.

233. (Abrogé).

1989, c. 38, a. 233; 2000, c. 41, a. 144.

234. (Abrogé).

1989, c. 38, a. 234; 2000, c. 41, a. 144.

235. (Abrogé).

1989, c. 38, a. 235; 2000, c. 41, a. 144.

236. Les droits, à l'exclusion d'une rente visée à l'article 237, qu'un participant visé par la terminaison d'un régime de retraite a accumulés au titre du régime doivent être acquittés au moyen d'un transfert visé à l'article 98, lequel s'applique compte tenu des adaptations nécessaires. Si toutefois un participant dont la rente n'était pas en service à la date de la terminaison décède avant que le transfert soit effectué, ses droits, mis à part ceux relatifs à l'excédent d'actif, le cas échéant, doivent plutôt être acquittés au moyen d'une prestation payable en un seul versement à son conjoint ou, à défaut, à ses ayants cause.

Pour l'application du présent article, le conjoint du participant est la personne qui satisfait aux conditions prévues à l'article 85.

1989, c. 38, a. 236; 2000, c. 41, a. 145.

237. À l'exception de la rente prévue par l'article 67.2 et des prestations variables prévues à l'article 90.1, doit être garantie par un assureur, selon les conditions prévues par règlement, la rente acquise au titre d'un régime de retraite par tout participant ou bénéficiaire visé par la terminaison du régime et dont le service est en cours ou suspendu à la date de la terminaison.

Cette rente doit, sous réserve des exceptions prévues par règlement, demeurer viagère et ne peut être versée sous une forme autre que celle autorisée par la présente loi.

Dans le cas où, en raison de sa nature, la rente à laquelle le participant a acquis droit n'est pas disponible sur le marché, le comité de retraite peut, dans le but de la faire garantir par un assureur, remplacer les caractéristiques de cette rente qui ont pour effet de la rendre non disponible sur le marché par des caractéristiques similaires qui n'emportent pas un tel effet.

La rente ainsi modifiée doit, à la date où débute son service, être d'une valeur égale à celle de la rente acquise par le participant; toutefois, si cette égalité de valeur ne peut être réalisée en raison des limites fixées par la Loi sur les impôts (chapitre I-3), il doit être payé au participant, en un seul versement, une somme représentant la différence entre la valeur de la rente à laquelle le participant a acquis droit et celle de la rente modifiée. Ces valeurs sont établies suivant les hypothèses visées à l'article 61.

1989, c. 38, a. 237; 2000, c. 41, a. 146; 2006, c. 42, a. 36; 2008, c. 21, a. 21; 2015, c. 29, a. 63.

238. Toute somme qui doit revenir au participant ou bénéficiaire visé par la terminaison du régime de retraite est, à défaut d'être réclamée dans les trois ans suivant l'expiration du délai prévu au premier alinéa de l'article 207.2, remise au ministre du Revenu; cette remise peut toutefois être faite avant l'expiration de ce

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délai si les seuls droits qui restent à liquider reviennent à des participants ou bénéficiaires introuvables. La remise doit être accompagnée d'un état décrivant la somme due et indiquant, le cas échéant, les nom et dernière adresse connue du participant ou du bénéficiaire.

La Loi sur les biens non réclamés (chapitre B-5.1) s'applique à la somme ainsi remise au ministre du Revenu.

1989, c. 38, a. 238; 1997, c. 80, a. 76; 2000, c. 41, a. 147; 2005, c. 44, a. 54; 2011, c. 10, a. 98.

238.1. Sous réserve des dispositions de l'article 238, le défaut de faire valoir des droits dans les délais prescrits par la présente loi prive leur titulaire du droit d'en réclamer l'acquittement sur l'actif du régime de retraite, à moins que ce dernier ne démontre, avant le début de l'acquittement des droits des participants ou bénéficiaires visés, qu'il a été dans l'impossibilité d'agir plus tôt ou qu'il n'a pas reçu l'information à laquelle il avait droit en vertu de cette loi pour une cause étrangère à son fait.

1992, c. 60, a. 35.

239. L'actif d'un régime de retraite non garanti dont certains remboursements ou prestations sont garantis par un assureur doit, lorsque ce régime se termine ou, s'il s'agit d'un régime interentreprises, lors du retrait d'un employeur qui y est partie, comprendre, aux fins de la liquidation des droits des participants ou bénéficiaires visés par le retrait ou la terminaison, la valeur des droits garantis par cet assureur.

1989, c. 38, a. 239; 2000, c. 41, a. 148.

240. Si, dans le cas visé à l'article 239, le montant des droits garantis qu'ont accumulés les participants ou bénéficiaires visés par le retrait ou la terminaison du régime de retraite et que l'assureur aurait à assumer en l'absence de ce retrait ou de cette terminaison, excède le montant de ces droits tel qu'établi en application du présent chapitre, cet assureur est tenu, sur demande du comité de retraite, de réduire en conséquence ses engagements envers ces participants et bénéficiaires et de garantir jusqu'à concurrence de la valeur de cet excédent les droits non garantis des participants et bénéficiaires.

L'application du présent article ne peut avoir pour effet de réduire le degré de solvabilité du régime.

1989, c. 38, a. 240; 2000, c. 41, a. 149.

240.1. *(Abrogé).*

1992, c. 60, a. 36; 1994, c. 24, a. 21; 2000, c. 41, a. 150.

240.2. Les participants ayant cessé leur participation active dans les trois ans précédant la date de la terminaison du régime et dont les droits ont été acquittés avant cette date demeurent, malgré les dispositions du second alinéa de l'article 33, des participants à seules fins de la répartition d'un excédent d'actif devant intervenir en application de la présente loi.

Chaque fois que les dispositions du premier alinéa devront recevoir application, l'avis dont l'article 207.4 exige la publication devra aussi faire état des règles établies au présent article.

1992, c. 60, a. 36; 1994, c. 24, a. 22; 2000, c. 41, a. 151; 2015, c. 29, a. 64.

240.3. Lorsqu'elle le juge dans l'intérêt des participants et des bénéficiaires, Retraite Québec peut, selon les conditions qu'elle fixe, soustraire un régime terminé ou faisant l'objet d'une modification visant le retrait d'un employeur à l'application de toute disposition du présent chapitre.

1992, c. 60, a. 36; 1994, c. 24, a. 23; 2000, c. 41, a. 152; 2015, c. 20, a. 61; 2015, c. 29, a. 65.

240.4. Lorsque le contenu, la transmission ou la publication d'un document prévu par le présent chapitre n'est pas conforme aux prescriptions de la présente loi ou de ses règlements, Retraite Québec peut ordonner que soit prise, dans les délais et conditions qu'elle fixe, toute mesure régulatrice qu'elle indique.

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L'ordonnance interrompt tout délai imparti par le présent chapitre pour donner suite au document jusqu'à la date fixée par Retraite Québec ou, à défaut, jusqu'à ce que celle-ci atteste à celui que vise l'ordonnance qu'il a été satisfait à celle-ci.

2000, c. 41, a. 153; 2015, c. 20, a. 61; 2015, c. 29, a. 66.

CHAPITRE XIV**RECOURS DEVANT LE TRIBUNAL ADMINISTRATIF DU QUÉBEC**

1997, c. 43, a. 657; 2006, c. 42, a. 37.

241. *(Abrogé).*

1989, c. 38, a. 241; 1997, c. 43, a. 658; 2006, c. 42, a. 38.

242. *(Abrogé).*

1989, c. 38, a. 242; 1997, c. 43, a. 659; 2006, c. 42, a. 38.

243. Une personne intéressée peut contester une décision ou une ordonnance de Retraite Québec devant le Tribunal administratif du Québec dans les 30 jours de sa notification.

1989, c. 38, a. 243; 1997, c. 43, a. 660; 2006, c. 42, a. 39; 2015, c. 20, a. 61.

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(Abrogé, 2015, c. 29, a. 67).

1992, c. 60, a. 37; 2015, c. 29, a. 67.

243.1. *(Abrogé).*

1992, c. 60, a. 37; 2015, c. 29, a. 67.

243.2. *(Abrogé).*

1992, c. 60, a. 37; 2000, c. 41, a. 203; 2015, c. 29, a. 67.

243.3. *(Abrogé).*

1992, c. 60, a. 37; 2000, c. 41, a. 154; 2015, c. 29, a. 67.

243.4. *(Abrogé).*

1992, c. 60, a. 37; 2015, c. 29, a. 67.

243.5. *(Abrogé).*

1992, c. 60, a. 37; 2015, c. 29, a. 67.

243.6. *(Abrogé).*

1992, c. 60, a. 37; 2000, c. 41, a. 155.

243.7. *(Abrogé).*

1992, c. 60, a. 37; 1994, c. 12, a. 67; 1997, c. 63, a. 128; 2000, c. 41, a. 156; 2015, c. 29, a. 67.

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243.8. *(Abrogé).*

1992, c. 60, a. 37; 2000, c. 41, a. 157; 2015, c. 29, a. 67.

243.9. *(Abrogé).*

1992, c. 60, a. 37; 2015, c. 29, a. 67.

243.10. *(Abrogé).*

1992, c. 60, a. 37; 2015, c. 29, a. 67.

243.11. *(Abrogé).*

1992, c. 60, a. 37; 2015, c. 29, a. 67.

243.12. *(Abrogé).*

1992, c. 60, a. 37; 2015, c. 29, a. 67.

243.13. *(Abrogé).*

1992, c. 60, a. 37; 2015, c. 29, a. 67.

243.14. *(Abrogé).*

1992, c. 60, a. 37; 2000, c. 41, a. 158; 2015, c. 29, a. 67.

243.15. *(Abrogé).*

1992, c. 60, a. 37; 2000, c. 41, a. 159; 2015, c. 29, a. 67.

243.16. *(Abrogé).*

1992, c. 60, a. 37; 2000, c. 41, a. 160; 2015, c. 29, a. 67.

243.17. *(Abrogé).*

1992, c. 60, a. 37; 2000, c. 41, a. 161; 2015, c. 29, a. 67.

243.18. *(Abrogé).*

1992, c. 60, a. 37; 2015, c. 29, a. 67.

243.19. *(Abrogé).*

1992, c. 60, a. 37; 2015, c. 29, a. 67.

CHAPITRE XV**RÈGLEMENTS DE RETRAITE QUÉBEC****244.** Retraite Québec peut, par règlement:

1° déterminer la forme et le contenu de tout document ou attestation prévu par la présente loi ou les règlements;

2° déterminer les documents ou renseignements qui doivent accompagner la demande d'enregistrement d'un régime de retraite ou d'une modification;

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2.1° préciser les conditions dans lesquelles un employeur peut fournir une lettre de crédit au comité de retraite ainsi que la forme, le montant, les modalités et les conditions d'une telle lettre;

3° déterminer quels programmes relatifs à la sécurité du revenu sont visés à l'article 58;

3.0.1° (*paragraphe abrogé*);

3.1° déterminer les règles applicables à l'établissement des droits du participant à qui une prestation a été payée en vertu de l'article 69.1;

3.1.1° déterminer, pour l'application de l'article 90.1, les conditions et délais pour le versement des prestations variables;

3.2° déterminer, pour l'application de l'article 91.1, dans quelles conditions une rente peut être remplacée par une rente temporaire;

4° déterminer, pour l'application de l'article 92, les conditions de remplacement d'une rente, les conditions et modalités du contrat constitutif de la rente de remplacement ainsi que les méthodes, hypothèses, règles ou facteurs applicables au calcul du montant maximum annuel de cette rente;

5° déterminer les prestations qui, par application du paragraphe 6° de l'article 93, peuvent remplacer une rente à laquelle a acquis droit le participant ou son conjoint, ainsi que les conditions de ce remplacement;

6° déterminer, pour l'application de l'article 98, les régimes ou contrats de rente non régis par la présente loi qui sont compris dans l'expression «régime de retraite» et les normes qui s'appliquent à ces régimes ou contrats, ou leur rendre applicable tout ou partie de la présente loi ou des règlements;

7° déterminer, pour l'application de l'article 108, 109 ou 110, les règles applicables à l'établissement des droits du participant et de leur valeur avant et après le partage de ces droits, la saisie pour dette alimentaire ou le paiement d'une prestation compensatoire, ainsi qu'à l'acquittement des droits attribués au conjoint, notamment celles qui se rapportent au transfert des sommes auxquelles a droit le conjoint, aux intérêts à verser sur ces sommes, ainsi que les renseignements à fournir à ce dernier dans les délais fixés et les obligations qui incombent à celui qui assume la gestion des sommes ainsi transférées;

8° déterminer tout document qui peut être consulté en vertu de l'article 114;

8.0.1° déterminer les informations que doit inclure l'avis prévu à l'article 119.1 ainsi que les attestations et documents qui doivent l'accompagner;

8.0.2° déterminer les modalités permettant d'établir le niveau visé de la provision de stabilisation requise par l'article 125, ainsi que les critères en fonction desquels la grille établie, le cas échéant, doit s'appliquer;

8.0.3° pour l'application de l'article 142.4, déterminer les exigences financières auxquelles doit satisfaire un acquittement de droits selon la politique d'achat de rentes ainsi que les modalités de calcul et de versement de la cotisation spéciale d'achat de rentes;

8.0.4° prévoir les exigences relatives à la politique de financement requise par l'article 142.5;

Non en vigueur

8.1° déterminer les cas où un comité de retraite doit fournir les garanties prévues à l'article 156.1 et prescrire les montants et les conditions de ces garanties;

8.2° interdire que l'actif d'un régime de retraite soit grevé d'une hypothèque immobilière ou déterminer dans quelle proportion maximale de sa valeur comptable l'actif d'un régime peut être grevé d'une telle hypothèque;

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8.3° (*paragraphe abrogé*);

8.4° prévoir les cas où la vérification comptable du rapport financier visé à l'article 161 n'est pas obligatoire;

8.5° déterminer les sujets qui, outre ceux prévus au premier alinéa de l'article 166, doivent être portés à l'ordre du jour de l'assemblée annuelle;

9° limiter ou prohiber le placement de l'actif d'un régime de retraite dans certaines formes de placement;

10° déterminer les garanties que doivent fournir ceux à qui il peut être consenti un prêt aux termes de l'article 177;

10.1° prévoir les exigences relatives à la politique d'achat de rentes visée à l'article 182.1;

11° déterminer les méthodes, hypothèses, règles ou facteurs qui s'appliquent ou qui sont prohibés pour le calcul de toute cotisation ou prestation, de tout remboursement, taux d'intérêt ou taux de rendement et, le cas échéant, de leur valeur actuarielle;

12° déterminer les méthodes, hypothèses, règles ou facteurs qui s'appliquent ou qui sont prohibés pour le calcul de l'actif et du passif d'un régime, pour leur répartition entre des groupes de droits notamment lors du retrait d'un employeur partie à un régime interentreprises ou lors de la terminaison d'un tel régime, pour l'évaluation des droits des participants et bénéficiaires notamment aux fins du chapitre XIII, pour toute transformation du type de régime, pour la scission de l'actif et du passif d'un régime entre plusieurs régimes ainsi que pour la fusion des actifs et des passifs de plusieurs régimes;

12.0.1° déterminer à quelles conditions doit satisfaire une rente garantie par un assureur en application du paragraphe 3° de l'article 200 ou de l'article 237;

12.1° (*paragraphe abrogé*);

13° déterminer la procédure relative à toute matière de sa compétence, les délais applicables et les documents requis;

14° prescrire les droits exigibles pour le financement des frais engagés par Retraite Québec pour l'application de la présente loi et des règlements et pour toute formalité prévue par cette loi ou ces règlements, y compris les droits qui peuvent être imposés comme pénalité en cas de retard à accomplir une telle formalité ou en cas d'omission de transmettre dans le délai imparti un renseignement ou un document prévu par la présente loi ou exigé par Retraite Québec;

15° déterminer, parmi les dispositions d'un règlement pris en vertu du présent article, celles dont la contravention est punissable aux termes du chapitre XVII.

Un règlement pris en vertu du paragraphe 4° et relatif aux facteurs applicables au calcul du montant maximum annuel d'une rente de remplacement n'est pas soumis à l'obligation de publication ni au délai d'entrée en vigueur prévus aux articles 8 et 17 de la Loi sur les règlements (chapitre R-18.1) lorsque Retraite Québec estime que l'urgence de la situation impose qu'il en soit exempté.

Un règlement pris en vertu du paragraphe 8.2° ou 9° peut prévoir dans quels cas et à quelles catégories de régimes il s'applique. Il peut aussi prévoir les conditions de son application à des emprunts et à des placements existant à la date de son entrée en vigueur.

Dans la mesure où il vise l'application, avec ou sans modification, d'une norme de pratique établie par l'Institut canadien des actuaires, un règlement pris en vertu du présent article n'est pas soumis à l'obligation de publication ni au délai d'entrée en vigueur prévus aux articles 8 et 17 de la Loi sur les règlements (chapitre R-18.1) et peut, s'il en dispose ainsi, rétroagir à une date antérieure à celle de son entrée en vigueur, mais non

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antérieure à celle de l'approbation de la norme par le Conseil des normes actuarielles de l'Institut canadien des actuaires.

Les règlements pris par Retraite Québec sont soumis au gouvernement pour approbation.

1989, c. 38, a. 244; 1992, c. 60, a. 38; 1993, c. 45, a. 3; 1994, c. 24, a. 24; 1997, c. 19, a. 16; 1997, c. 43, a. 661; 2000, c. 41, a. 162; 2006, c. 42, a. 40; 2008, c. 21, a. 22; 2009, c. 1, a. 3; 2008, c. 21, a. 35; 2015, c. 20, a. 61; 2015, c. 29, a. 68.

CHAPITRE XVI

FONCTIONS ET POUVOIRS DE RETRAITE QUÉBEC

245. Outre les autres fonctions que lui attribue la présente loi, Retraite Québec s'assure que l'administration et le fonctionnement des régimes de retraite sont conformes à cette loi.

1989, c. 38, a. 245; 2011, c. 36, a. 25; 2015, c. 20, a. 61.

246. Pour l'exercice des fonctions que lui attribue la présente loi, Retraite Québec peut, en outre des autres pouvoirs que lui accorde cette loi, la Loi sur Retraite Québec (chapitre R-26.3) et la Loi sur le régime de rentes du Québec (chapitre R-9):

1° (*paragraphe abrogé*);

2° donner, à titre d'information, des instructions générales ou particulières relativement à l'application de la présente loi;

3° faire l'inspection de tout régime de retraite;

4° préparer ou faire préparer, aux frais de celui qui est tenu de le fournir, tout document prévu par la présente loi ou qu'elle exige et qui n'est pas fourni conformément à cette loi ou aux exigences de Retraite Québec;

5° dans le cas d'un régime de retraite auquel ne s'applique pas le chapitre X, exiger du comité de retraite ou de l'assureur, aux conditions et dans les délais qu'elle fixe, tout document ou renseignement qu'elle estime nécessaire pour vérifier la capitalisation ou la solvabilité du régime;

6° exiger du comité de retraite ou de l'assureur, aux conditions et dans les délais qu'elle fixe, tout document ou renseignement qu'elle estime nécessaire pour vérifier si un régime de retraite, une évaluation actuarielle ou un document prévu par la présente loi ou qu'elle exige est conforme à cette loi ou aux exigences de Retraite Québec;

6.1° exiger, aux conditions et dans les délais qu'elle fixe, du comité de retraite ou de toute partie à un contrat visé à l'article 92 ou à un régime ou contrat de rente dans lequel des sommes peuvent être transférées en application de l'article 98, tout document ou renseignement qu'elle estime nécessaire pour s'assurer de l'exécution des obligations que la présente loi impose à l'égard de ces contrats ou régimes;

7° (*paragraphe abrogé*).

1989, c. 38, a. 246; 1992, c. 60, a. 39; 1997, c. 19, a. 17; 2000, c. 41, a. 163; 2002, c. 52, a. 8; 2015, c. 20, a. 56; 2015, c. 20, a. 61.

247. Un inspecteur nommé par Retraite Québec peut, pour faire l'inspection d'un régime de retraite, pénétrer, à toute heure raisonnable, dans un lieu où le comité de retraite, celui à qui a été délégué des pouvoirs ou toute partie au régime détient un document relatif au régime, l'examiner et en prendre un extrait ou une copie.

Celui qui a la garde, la possession ou le contrôle de ce document doit, sur demande, en donner communication à l'inspecteur et lui en faciliter l'examen.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

Sur demande, un inspecteur doit s'identifier et exhiber un certificat délivré par Retraite Québec attestant sa qualité.

1989, c. 38, a. 247; 2015, c. 20, a. 61.

247.1. Retraite Québec peut, aux conditions qu'elle fixe, autoriser une dérogation aux limites établies par un règlement pris en vertu du paragraphe 8.2° ou, en ce qui concerne les placements immobiliers, du paragraphe 9° du premier alinéa de l'article 244.

1994, c. 24, a. 25; 2015, c. 20, a. 61.

248. Retraite Québec peut rendre une ordonnance prescrivant au comité de retraite, à celui à qui a été délégué des pouvoirs ou à toute partie au régime de retraite de prendre, dans les délais et conditions fixés, toute mesure régulatrice qu'elle indique lorsqu'elle est d'avis que:

- 1° sa conduite est contraire à de saines pratiques financières;
- 2° ne sont pas conformes aux principes actuariels ou comptables généralement reconnus les hypothèses, méthodes ou scénarios utilisés:
 - pour l'évaluation actuarielle du régime;
 - pour la fixation du taux d'intérêt applicable aux cotisations;
 - pour l'élaboration d'un rapport ou de tout autre document qu'elle exige;
- 3° ces hypothèses, méthodes ou scénarios ne sont pas appropriés, notamment au type de régime en cause, à ses engagements, à la situation financière de la caisse de retraite ou à la politique de placement de l'actif;
- 4° (*paragraphe abrogé*);
- 5° le régime ou son administration n'est pas conforme à la présente loi, notamment en raison du fait que la liquidation du régime ne s'effectue pas en conformité avec les dispositions du chapitre XIII;
- 6° le contenu d'un document prévu par la présente loi ou exigé par Retraite Québec n'est pas conforme aux exigences de cette loi ou à celles de Retraite Québec.

Retraite Québec peut aussi, lorsqu'elle l'estime nécessaire dans l'intérêt des participants et des bénéficiaires, ordonner à une personne qui a en sa possession, sous sa garde ou sous son contrôle des fonds, titres ou autres biens qui font partie de l'actif d'un régime de retraite, de ne s'en départir qu'avec son autorisation et aux conditions qu'elle fixe.

1989, c. 38, a. 248; 2000, c. 41, a. 164; 2006, c. 42, a. 41; 2015, c. 20, a. 61; 2015, c. 29, a. 69.

249. Le ministre ou Retraite Québec peut, conformément à la loi, conclure des ententes avec tout gouvernement, l'un de ses ministères, une organisation internationale ou un organisme de ce gouvernement ou de cette organisation, pour l'application de la présente loi ou d'une autre loi applicable, en tout ou en partie, aux régimes de retraite.

Ces ententes peuvent notamment prévoir:

- 1° pour le cas où un régime de retraite est régi à la fois par la présente loi et une loi émanant d'une autorité législative autre que le Parlement du Québec, à quelles conditions et dans quelle mesure chacune de ces lois s'applique à ce régime pour ce qui concerne les travailleurs visés à l'article 1 et parties à ce régime, ainsi que toute autre règle applicable à ce régime;

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2° à quelles conditions et dans quelle mesure la présente loi s'applique aux droits ou aux actifs qui ont fait l'objet d'un transfert entre un régime de retraite régi par la présente loi et un régime de retraite régi par une loi émanant d'une autorité législative autre que le Parlement du Québec;

3° la délégation de pouvoirs que la présente loi confère à Retraite Québec ou qu'une loi émanant d'une autorité législative autre que le Parlement du Québec confère à un organisme analogue.

Toute entente portant sur une matière visée au deuxième alinéa doit être déposée à l'Assemblée nationale dans les 15 jours qui suivent la date de sa conclusion si l'Assemblée est en session ou, si elle ne siège pas, dans les 15 jours de l'ouverture de la session suivante ou de la reprise de ses travaux. L'entente acquiert force de loi dès son dépôt à l'Assemblée nationale.

Pour l'application d'une telle entente, Retraite Québec peut agir comme mandataire du ministère ou de l'organisme avec lequel est conclue l'entente.

1989, c. 38, a. 249; 2000, c. 41, a. 165; 2015, c. 7, a. 2; 2015, c. 20, a. 61.

250. (Abrogé).

1989, c. 38, a. 250; 1992, c. 60, a. 40; 2000, c. 41, a. 166; 2006, c. 42, a. 42; 2015, c. 20, a. 57.

251. (Abrogé).

1989, c. 38, a. 251; 2009, c. 41, a. 8; 2015, c. 20, a. 57.

252. Toute décision, ordonnance ou avis de Retraite Québec qui doit être notifié aux participants ou bénéficiaires peut l'être:

1° soit en le faisant parvenir à l'employeur qui doit, dès réception, l'afficher bien en vue dans son établissement où travaillent, au Québec, le plus grand nombre de participants visés, à un endroit où ils circulent ordinairement;

2° soit en le faisant publier dans un quotidien distribué dans la localité où est situé cet établissement;

3° soit en le faisant parvenir aux membres du comité de retraite qui sont des participants ou des personnes désignées par les participants ou bénéficiaires et à chaque association accréditée qui représente des participants.

Retraite Québec peut, lorsqu'elle choisit l'un des modes de transmission prévus aux paragraphes 1° et 2°, substituer au texte intégral de la décision ou de l'ordonnance un sommaire de celle-ci.

1989, c. 38, a. 252; 2000, c. 41, a. 167; 2015, c. 20, a. 61.

253. Retraite Québec publie périodiquement dans son site Internet un bulletin contenant des informations sur ses activités et les instructions générales qu'elle donne en application du paragraphe 2° de l'article 246.

1989, c. 38, a. 253; 2006, c. 42, a. 43; 2015, c. 20, a. 61.

254. Lorsqu'aux fins de rendre une décision, il se soulève une difficulté relative à l'interprétation de la présente loi ou d'un régime de retraite, Retraite Québec peut, si elle estime que l'intérêt des parties au régime commande une solution prompte de cette difficulté, surseoir à sa décision et soumettre cette difficulté au tribunal.

L'article 142 du Code de procédure civile (chapitre C-25.01) s'applique, compte tenu des adaptations nécessaires.

1989, c. 38, a. 254; 1997, c. 43, a. 662; 2015, c. 20, a. 61; N.I. 2016-01-01 (NCPC).

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255. Retraite Québec peut demander à un juge de la Cour supérieure de prononcer une injonction dans toute matière visée par la présente loi.

La demande d'injonction constitue une instance par elle-même.

La procédure prévue au Code de procédure civile (chapitre C-25.01) s'applique, sauf que Retraite Québec ne peut être tenue de fournir un cautionnement.

1989, c. 38, a. 255; 2015, c. 20, a. 61; N.I. 2016-01-01 (NCPC).

256. Retraite Québec peut, d'office et sans avis, intervenir dans toute instance civile ou arbitrale touchant la présente loi pour participer à l'instruction.

1989, c. 38, a. 256; 1992, c. 60, a. 41; 2015, c. 20, a. 61; N.I. 2016-01-01 (NCPC).

256.1. Retraite Québec peut intervenir devant le Tribunal administratif du Québec dans toute instance touchant la présente loi et à tout moment jusqu'à la fin de l'enquête et de l'audition.

Lorsqu'elle désire intervenir, elle transmet un avis à cet effet à chacune des parties et au Tribunal; elle est alors considérée partie à l'instance.

2000, c. 41, a. 168; 2015, c. 20, a. 61.

CHAPITRE XVII

DISPOSITIONS PÉNALES

257. Est passible d'une amende de 500 \$ à 25 000 \$ celui qui:

1° contrevient à une disposition du premier alinéa de l'article 14 ou 16, des articles 17, 25, 26, 39, 41, 42, 43, 51, 58, 119, 119.1, 142.5, 158, 159, 161, 166, 168, 169, 171.1 à 176, 179, 210, du paragraphe 1° du premier alinéa de l'article 252 ou de l'article 307;

1.1° permet l'attribution de tout ou partie d'un excédent d'actif déterminé lors de la terminaison d'un régime de retraite autrement que dans les conditions prescrites par les dispositions de la sous-section 4.1 de la section II du chapitre XIII;

2° contrevient à une disposition réglementaire prise en vertu du paragraphe 9° de l'article 244 lorsque, par application du paragraphe 15° dudit article, cette contravention est passible d'une peine;

3° contrevient à une ordonnance de Retraite Québec rendue en application de l'article 35, 240.4 ou 248;

4° fait une fausse déclaration, entrave ou tente d'entraver dans l'exercice de ses fonctions Retraite Québec, un membre de son personnel, un administrateur provisoire, celui à qui elle a délégué un pouvoir ou un inspecteur qu'elle a nommé;

5° fait une fausse déclaration dans le but d'obtenir:

a) une rente temporaire prévue à l'article 91.1;

b) une rente temporaire ou viagère ou un paiement en un seul versement prévu à l'article 92;

c) une rente temporaire ou viagère ou un paiement en un seul versement payable par un régime ou contrat de rente déterminé par règlement en application du troisième alinéa de l'article 98.

1989, c. 38, a. 257; 1992, c. 60, a. 42; 1997, c. 19, a. 18; 2000, c. 41, a. 169; 2006, c. 42, a. 44; 2015, c. 20, a. 61; 2015, c. 29, a. 70.

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258. Est passible d'une amende d'au plus 2 000 \$ celui qui:

1° contrevient à une disposition des articles 111 à 114, 143 à 145, 165.1, 182, 200, 202, 207.1 à 207.4, 209.1, du deuxième alinéa de l'article 310.1 ou des articles 313 ou 314;

2° contrevient à une disposition réglementaire, autre que celle visée au paragraphe 2° de l'article 257, lorsque, par application du paragraphe 15° de l'article 244, cette contravention est passible d'une peine.

1989, c. 38, a. 258; 1992, c. 60, a. 43; 2000, c. 41, a. 170; 2006, c. 42, a. 45; 2015, c. 29, a. 71.

259. Lorsque les infractions visées aux articles 257 et 258 sont commises par une personne morale, l'amende est portée au triple.

1989, c. 38, a. 259.

260. Celui qui, par des encouragements, des conseils ou des ordres, en amène un autre à commettre une infraction visée à l'article 257 ou 258 est coupable de cette infraction ainsi que de toute autre infraction que l'autre commet en conséquence de ces encouragements, conseils ou ordres, s'il savait ou aurait dû savoir que ceux-ci auraient comme conséquence probable la commission de l'infraction.

1989, c. 38, a. 260.

261. Celui qui, par son acte ou son omission, en aide un autre à commettre une infraction visée à l'article 257 ou 258 est coupable de cette infraction comme s'il l'avait commise lui-même, s'il savait ou aurait dû savoir que son acte ou son omission aurait comme conséquence probable d'aider à la commission de l'infraction.

1989, c. 38, a. 261.

262. En cas de récidive, l'amende prévue pour une première infraction est portée au double.

1989, c. 38, a. 262.

263. Dans la détermination des amendes, le tribunal tient compte, le cas échéant, du préjudice en cause et des avantages tirés de l'infraction.

1989, c. 38, a. 263.

CHAPITRE XVIII**DISPOSITIONS DIVERSES ET TRANSITOIRES**

264. Sauf dispositions contraires de la loi, est incessible et insaisissable:

1° toute cotisation versée ou qui doit être versée à la caisse de retraite ou à l'assureur, ainsi que les intérêts accumulés;

2° toute somme remboursée ou toute prestation versée en vertu d'un régime de retraite ou de la présente loi;

3° toute somme attribuée au conjoint du participant à la suite d'un partage ou d'une autre cession de droits visés au chapitre VIII, avec les intérêts accumulés, ainsi que les prestations constituées avec ces sommes.

Sauf dans la mesure où elles proviennent de cotisations volontaires ou représentent une part d'excédent d'actif attribuée après la terminaison d'un régime de retraite, l'incessibilité et l'insaisissabilité valent également à l'égard des sommes susmentionnées qui ont fait l'objet d'un transfert dans un régime de retraite

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visé à l'article 98, avec les intérêts accumulés, de tout remboursement de ces sommes et de toute prestation en résultant, ainsi qu'à l'égard de la rente ou du paiement ayant remplacé une rente en application de l'article 92.

1989, c. 38, a. 264; 1992, c. 60, a. 44; 1997, c. 19, a. 19; 2000, c. 41, a. 171.

265. *(Abrogé).*

1989, c. 38, a. 265; 1992, c. 57, a. 690.

266. Est assimilé à un comité de retraite toute personne physique ou morale, tout organisme ou tout groupement dépourvu de la personnalité juridique qui est habilité en vertu d'une autre loi à administrer un régime de retraite régi par la présente loi.

1989, c. 38, a. 266.

LOI SUR LA CAISSE DE DÉPÔT ET PLACEMENT DU QUÉBEC

267. *(Modification intégrée au c. C-2, a. 21).*

1989, c. 38, a. 267.

LOI SUR LES CITÉS ET VILLES

268. *(Modification intégrée au c. C-19, a. 464).*

1989, c. 38, a. 268.

269. *(Modification intégrée au c. C-19, a. 465).*

1989, c. 38, a. 269.

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270. *(Modification intégrée au c. C-27.1, a. 704).*

1989, c. 38, a. 270.

271. *(Modification intégrée au c. C-27.1, a. 706).*

1989, c. 38, a. 271.

272. *(Modification intégrée au c. C-27.1, a. 707).*

1989, c. 38, a. 272.

273. *(Modification intégrée au c. C-27.1, a. 710).*

1989, c. 38, a. 273.

LOI SUR LES NORMES DU TRAVAIL

274. *(Modification intégrée au c. N-1.1, a. 49).*

1989, c. 38, a. 274.

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LOI SUR LE RÉGIME DE RENTES DU QUÉBEC

275. *(Modification intégrée au c. R-9, a. 28).*

1989, c. 38, a. 275.

LOI SUR LE RÉGIME DE RETRAITE DES EMPLOYÉS DU GOUVERNEMENT ET DES ORGANISMES PUBLICS

276. *(Modification intégrée au c. R-10, a. 108).*

1989, c. 38, a. 276.

LOI SUR LES SYNDICATS PROFESSIONNELS

277. *(Modification intégrée au c. S-40, a. 9).*

1989, c. 38, a. 277.

278. *(Modification intégrée au c. S-40, a. 14).*

1989, c. 38, a. 278.

279. *(Modification intégrée au c. S-40, a. 17).*

1989, c. 38, a. 279.

280. *(Modification intégrée au c. S-40, a. 21).*

1989, c. 38, a. 280.

281. *(Modification intégrée au c. S-40, a. 25).*

1989, c. 38, a. 281.

282. Toute disposition d'une autre loi prescrivant l'approbation préalable de la Régie pour l'entrée en vigueur d'un régime, d'une modification ou d'une entente relative au transfert de droits, d'engagements ou d'actifs, est abrogée en ce qui concerne cette prescription.

1989, c. 38, a. 282.

283. La présente loi remplace la Loi sur les régimes supplémentaires de rentes (chapitre R-17).

1989, c. 38, a. 283; 1992, c. 60, a. 45; 2000, c. 41, a. 172.

284. Les enregistrements de régimes qui ont été effectués et les certificats d'enregistrement qui ont été délivrés en vertu de la Loi sur les régimes supplémentaires de rentes (chapitre R-17) demeurent valides.

Il en est de même des autres décisions rendues en vertu de cette loi.

1989, c. 38, a. 284.

285. Les ententes conclues en vertu de l'article 74 de la Loi sur les régimes supplémentaires de rentes (chapitre R-17) demeurent en vigueur.

Elles peuvent toutefois être modifiées, remplacées ou abrogées conformément à la présente loi.

1989, c. 38, a. 285.

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286. Sous réserve de l'article 311.1, la Loi sur les régimes supplémentaires de rentes (chapitre R-17) continue de s'appliquer aux questions pendantes le 31 décembre 1989 devant la Régie, à l'exception de celles qui se rapportent à l'approbation de modifications du régime de retraite réduisant les droits des participants ou bénéficiaires, ou relatives

- à la transformation du type de régime,
- à la substitution de l'employeur partie au régime,
- à la scission de l'actif et du passif du régime entre plusieurs régimes,
- à la fusion des actifs et des passifs de plusieurs régimes,

auxquelles s'appliquent les articles 20 à 23 et le chapitre XII.

Toute demande en révision faite après le 31 décembre 1989 et relative à une décision de la Régie rendue avant cette date est décidée suivant la Loi sur les régimes supplémentaires de rentes.

Le présent article ne peut avoir pour effet d'invalider ce qui aurait déjà été valablement fait.

1989, c. 38, a. 286; 1992, c. 60, a. 46; 1997, c. 43, a. 663.

286.1. Exclusion faite de celles qui, déjà visées à l'article 286, demeurent régies par la Loi sur les régimes supplémentaires de rentes (chapitre R-17), et réserve faite des dispositions des articles 308.2 et 311.1, les demandes en révision qui sont pendantes devant la Régie le 1^{er} janvier 1993 ou qui, ayant été introduites après cette date, se rapportent à des décisions rendues avant la même date, sont décidées suivant les dispositions de la présente loi, dans leur version antérieure à la date susdite.

De même, les demandes en révision qui sont pendantes devant la Régie et les contestations qui sont pendantes devant le Tribunal administratif du Québec le 31 décembre 2000 ou qui, ayant été introduites après cette date, se rapportent à des décisions rendues avant cette même date, sont décidées selon les dispositions de la présente loi dans leur version antérieure à cette date.

1992, c. 60, a. 47; 2000, c. 41, a. 173.

287. Toute poursuite pour infraction à la Loi sur les régimes supplémentaires de rentes (chapitre R-17) est intentée ou continuée suivant cette loi.

1989, c. 38, a. 287.

288. Sauf dispositions contraires du présent chapitre, la présente loi s'applique même aux services reconnus au titre d'un régime de retraite avant le 1^{er} janvier 1990.

1989, c. 38, a. 288.

288.0.1. Les décrets pris par le gouvernement en vertu de l'article 2 tel qu'il se lisait avant le 5 décembre 2000 sont réputés être des règlements.

2000, c. 41, a. 174.

288.0.2. L'article 2.1 ne s'applique à un régime de retraite enregistré avant le 5 décembre 2000 que si les conditions suivantes sont satisfaites:

- 1° le comité de retraite présente à la Régie une demande écrite à cet effet;
- 2° le régime est modifié afin de satisfaire, le cas échéant, aux conditions prévues au premier alinéa de l'article 2.1;

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3° tous les participants et bénéficiaires du régime à la date de la demande visée au paragraphe 1° ont été avisés, au moyen d'un avis écrit, que leur régime ne sera plus assujéti à la présente loi et y consentent;

4° tous les droits exigibles, fixés par règlement, relatifs à la dernière année financière complète du régime ont été versés à la Régie;

5° la Régie a radié l'enregistrement du régime après s'être assurée que toutes les conditions énoncées au présent article ont été remplies.

L'article 2.1 ne s'applique à un régime de retraite qui, enregistré après le 4 décembre 2000, ne satisfait pas aux conditions prévues à cet article à la date de son enregistrement, que s'il est satisfait aux conditions énoncées au premier alinéa du présent article après que les droits des participants qui résultent d'un transfert dans ce régime aient été transférés dans un autre régime de retraite conformément à l'article 98.

2000, c. 41, a. 174.

288.1. Les dispositions de tout régime de retraite à prestations déterminées, qui sont en vigueur le 31 décembre 2015 et qui sont relatives à l'attribution ou à l'affectation d'un excédent d'actif, s'appliquent, à compter du 1^{er} janvier 2016, au solde de l'excédent d'actif visé aux paragraphes 16° et 17° du deuxième alinéa de l'article 14.

1992, c. 60, a. 48; 2000, c. 41, a. 203; 2015, c. 29, a. 72.

288.1.1. (*Remplacé*).

2008, c. 21, a. 23; 2015, c. 29, a. 72.

288.2. Les lettres de crédit fournies conformément à l'article 42.1 antérieurement au 1^{er} janvier 2016 sont, à compter de cette date, considérées fournies en application de cet article tel qu'applicable à compter de cette date.

1992, c. 60, a. 48; 1997, c. 43, a. 664; 2000, c. 41, a. 175; 2015, c. 29, a. 72.

288.3. Si des cotisations versées avant le 1^{er} janvier 2016 ont fait l'objet, conformément au régime, d'une comptabilisation particulière en vue d'une éventuelle affectation ou attribution d'un excédent d'actif, ces cotisations sont comptabilisées selon l'article 42.2 à compter de cette date. L'évaluation actuarielle du régime au 31 décembre 2015 doit faire état de cette comptabilisation.

2008, c. 21, a. 24; 2015, c. 29, a. 72.

288.4. Les conditions prévues à l'article 20 ne s'appliquent pas à une modification du texte d'un régime de retraite qui intervient avant le 1^{er} janvier 2017 pour supprimer la prestation additionnelle visée à l'article 60.1 ou la prestation ou portion de prestation équivalente offerte par le régime en remplacement de celle-ci.

2015, c. 29, a. 72.

289. Sous réserve des dispositions de l'article 45.1, les cotisations salariales ou volontaires versées par un participant à la caisse de retraite ou à l'assureur, selon le cas, avant le 1^{er} janvier 1990, avec les intérêts accumulés le cas échéant, portent intérêt à compter de cette date au taux visé à l'article 44 ou 45.

1989, c. 38, a. 289; 1992, c. 60, a. 49; 2000, c. 41, a. 176.

289.0.1. Lorsque, avant le 1^{er} janvier 2001, un régime de retraite non garanti autre qu'un régime à cotisation déterminée prévoyait créditer sur les cotisations salariales ou volontaires le taux d'intérêt obtenu mensuellement sur les dépôts personnels à terme de cinq ans dans les banques à charte et tel que compilé par la Banque du Canada, ces cotisations, avec les intérêts accumulés, portent intérêt, à compter de cette date et malgré l'article 20, au taux de rendement obtenu sur le placement de l'actif du régime, déduction faite des frais de placement et d'administration.

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Le premier alinéa s'applique aux cotisations qu'il vise dans la mesure où celles-ci se rapportent à des prestations ou remboursement qui ne sont pas garantis.

2000, c. 41, a. 177.

289.1. L'article 59, dans sa version antérieure au 5 juin 1997, continue de s'appliquer à une rente à laquelle le participant ou conjoint a droit à cette même date et dont le montant est modifié pour tenir compte d'un montant équivalant aux prestations déterminées en vertu de la Loi sur la sécurité de la vieillesse (Lois révisées du Canada (1985), chapitre O-9), de la Loi sur le régime de rentes du Québec (chapitre R-9) ou d'un régime équivalent au sens du paragraphe *u* de l'article 1 de cette dernière loi.

1997, c. 19, a. 20.

289.2. Le paragraphe 4° de l'article 59 ne s'applique pas au participant dont le service de la rente a débuté avant le 1^{er} janvier 2001.

2000, c. 41, a. 178.

290. Sauf stipulations contraires, l'article 60 ne s'applique pas à une prestation acquise par le participant ou bénéficiaire au titre des services reconnus par le régime qui se rapportent à une période de travail antérieure au 1^{er} janvier 1990, cette exclusion ne préjudiciant en rien à l'application de l'article 61 à cette prestation.

1989, c. 38, a. 290; 1992, c. 60, a. 50.

290.1. (*Abrogé*).

2000, c. 41, a. 179; 2015, c. 29, a. 73.

291. La valeur de la prestation à laquelle ne s'applique pas l'article 60 et qui est acquise par le participant ou bénéficiaire au titre des services reconnus par le régime avant le 1^{er} janvier 1990, doit être au moins égale aux cotisations salariales versées au régime par le participant avant cette date, avec les intérêts accumulés jusqu'à la date à laquelle cette valeur est déterminée, calculés au taux prévu par le régime pour la période précédant le 1^{er} janvier 1990 et, sous réserve des dispositions de l'article 45.1, au taux visé à l'article 44 pour la période subséquente.

La valeur de cette prestation doit être déterminée à la date à laquelle le participant ou bénéficiaire y acquiert droit, selon les hypothèses visées à l'article 61 et qui s'appliquent pour la détermination de la valeur d'autres prestations dont le droit s'acquiert à cette date au titre de services reconnus après le 31 décembre 1989.

1989, c. 38, a. 291; 1992, c. 60, a. 51; 2000, c. 41, a. 180.

291.1. L'article 61, dans sa version antérieure au 1^{er} janvier 2001, continue de s'appliquer aux évaluations des droits de participants ou bénéficiaires faites en fonction d'une date antérieure.

2000, c. 41, a. 181.

292. Les articles 2445 à 2459 du Code civil s'appliquent, compte tenu des adaptations nécessaires, à la révocation de la désignation de celui qui, le 31 décembre 1989, est le bénéficiaire désigné par le participant.

Toutefois, le participant peut, lorsque ce bénéficiaire est son conjoint et que sa désignation a été faite sans stipulation de révocabilité ou d'irrévocabilité, rendre celle-ci révocable par un écrit à cet effet transmis au comité de retraite ou à l'assureur, selon le cas, avant le 1^{er} janvier 1992. Si le participant décède avant cette date sans avoir transmis cet écrit, la désignation de son conjoint est réputée révocable.

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Le comité de retraite ou l'assureur doit, dans les 12 mois qui suivent le 31 décembre 1989, transmettre à chaque participant auquel s'applique le deuxième alinéa une copie du présent article.

1989, c. 38, a. 292; 1999, c. 40, a. 254; 2000, c. 41, a. 182.

292.1. En ce qui concerne un régime de retraite auquel une municipalité est partie, les dispositions de la sous-section 0.1 de la section III du chapitre VI n'ont pas d'effet à l'égard des participants au service de la municipalité à moins que le conseil de celle-ci n'adopte une résolution prévoyant expressément que ces dispositions s'appliquent à leur égard.

2008, c. 21, a. 25.

293. *(Abrogé).*

1989, c. 38, a. 293; 2000, c. 41, a. 183.

294. *(Abrogé).*

1989, c. 38, a. 294; 1994, c. 24, a. 26; 2000, c. 41, a. 183.

295. *(Abrogé).*

1989, c. 38, a. 295; 1992, c. 60, a. 52; 2000, c. 41, a. 183.

296. *(Abrogé).*

1989, c. 38, a. 296; 2000, c. 41, a. 183.

297. La revalorisation d'une rente ajournée avant le 1^{er} avril 1982 ou entre le 1^{er} avril 1982 et le 1^{er} janvier 1990 doit être telle que la rente payable à la fin de l'ajournement soit actuariellement équivalente, dans le premier cas, à celle dont le service aurait débuté le 1^{er} avril 1982 n'eût été de l'ajournement et, dans le second cas, à celle dont le service aurait débuté à l'âge normal de la retraite n'eût été de l'ajournement.

Cette revalorisation ne doit pas créer que des surplus dans la caisse de retraite du régime; elle ne doit pas non plus y créer que des déficits.

1989, c. 38, a. 297.

298. Les dispositions de la sous-section 7 de la section III du chapitre VI relatives aux droits du conjoint survivant prévalent, lorsque le décès du participant survient après le 31 décembre 1989, sur toute disposition inconciliable qui, avant cette date, a accordé droit à des prestations de décès.

1989, c. 38, a. 298.

299. Les services reconnus par le régime de retraite au participant avant le 1^{er} janvier 1990 ne sont pas pris en compte pour l'application de l'article 86, à moins que le régime ne soit modifié après cette date pour augmenter les droits accumulés au titre de services reconnus avant cette date, auquel cas l'article 86 s'applique à la prestation qui résulte de cette augmentation.

De plus, les ayants cause d'un participant décédé entre le 31 décembre 1989 et le 1^{er} janvier 2001 ont droit à une prestation, payable en un seul versement, au moins égale aux cotisations salariales et volontaires qu'il a versées avant le 31 décembre 1989, avec les intérêts accumulés jusqu'à la date du versement de la prestation, calculés au taux prévu par le régime pour la période précédant le 1^{er} janvier 1990 et, sous réserve des dispositions de l'article 45.1, au taux visé à l'article 44 pour la période subséquente.

Pour les décès survenus après le 31 décembre 2000, la prestation prévue au deuxième alinéa est versée en priorité au conjoint du participant et, à défaut, à ses ayants cause. Le conjoint peut toutefois renoncer à cette prestation, auquel cas l'article 88.1 s'applique, compte tenu des adaptations nécessaires. De plus, le présent

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alinéa ne s'applique pas si le conjoint survivant du participant a droit, à compter du décès, à une rente dont la valeur est au moins égale à celle de la prestation prévue au deuxième alinéa.

Pour l'application du présent article, le conjoint du participant est la personne qui satisfait aux conditions prévues à l'article 85.

1989, c. 38, a. 299; 1992, c. 60, a. 53; 1999, c. 40, a. 254; 2000, c. 41, a. 184.

299.1. Toute prestation payable en vertu de l'article 86 pour un décès survenu avant le 1^{er} janvier 2001 porte intérêt, à compter de cette date et jusqu'à son versement, au taux utilisé pour en déterminer la valeur.

2000, c. 41, a. 185.

300. L'article 87 ne s'applique pas au conjoint d'un participant lorsque celui-ci a commencé à recevoir avant le 1^{er} janvier 1990 une rente dont le montant est modifié pour tenir compte d'un montant équivalant aux prestations déterminées en vertu de la Loi sur la sécurité de la vieillesse (Lois révisées du Canada (1985), chapitre O-9), de la Loi sur le régime de rentes du Québec (chapitre R-9) ou d'un régime équivalent au sens du paragraphe *u* de l'article 1 de cette dernière loi ou une rente prévue par la section III du chapitre VI ou par le paragraphe 2^o ou 3^o de l'article 93.

1989, c. 38, a. 300; 1997, c. 19, a. 21.

300.1. Si le participant décède durant la période d'ajournement de tout ou partie de sa rente, le deuxième alinéa de l'article 299 ne s'applique pas; cependant, la valeur de la prestation qui y est prévue doit être ajoutée, pour la détermination des droits du conjoint, à la valeur établie en vertu du paragraphe 2^o du premier alinéa de l'article 88 ou, à défaut de conjoint, à celle de la prestation visée au troisième alinéa du même article.

1994, c. 24, a. 27.

300.2. L'article 89, dans sa version antérieure au 1^{er} janvier 2001, continue de s'appliquer aux exceptions qui y sont prévues lorsque le jugement du tribunal a pris effet ou, selon le cas, lorsque la cessation de la vie maritale est survenue après le 31 août 1990 mais avant le 1^{er} janvier 2001.

2000, c. 41, a. 186.

300.3. Le dernier alinéa de l'article 85 s'applique à la personne séparée de corps d'un participant dont le décès ou le début du service de la rente, selon le cas, est postérieur au 31 décembre 2000, quelle que soit la date à laquelle le jugement de séparation de corps a été rendu ou a pris effet.

2000, c. 41, a. 186.

300.4. L'article 89.1 ne s'applique qu'aux divorces, annulations de mariage, séparations de corps, dissolutions ou annulations d'union civile et cessations de vie maritale ayant pris effet après le 31 décembre 2000. Toutefois, qu'il y ait eu ou non partage des droits, une demande prévue à cet article peut être présentée par un participant dont le divorce, l'annulation du mariage, la séparation de corps ou la cessation de la vie maritale a pris effet avant cette date; la rente du participant s'établit alors à la date de la demande et non à la date de prise d'effet du jugement ou de la cessation de vie maritale.

2000, c. 41, a. 186; 2002, c. 6, a. 201.

301. Malgré l'article 94, un montant équivalant aux prestations déterminées en vertu de la Loi sur la sécurité de la vieillesse (Lois révisées du Canada (1985), chapitre O-9) peut servir, lors de la détermination de la rente normale, à réduire les droits du participant accumulés au titre des services reconnus par le régime avant le 1^{er} janvier 1990 dans la mesure prévue par le régime avant cette date.

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Toutefois, cette réduction ne peut, pour une année de services reconnus au participant, excéder 1/35 de ce montant.

1989, c. 38, a. 301.

302. Le montant visé au premier alinéa de l'article 95 doit être établi en date du 1^{er} janvier 1990 si le participant a, avant cette date, acquis droit à une rente dont le montant n'a pas été déterminé avant cette date.

1989, c. 38, a. 302.

303. Malgré le paragraphe 2° du premier alinéa de l'article 98, le participant n'a droit au transfert du montant que représente la valeur d'une prestation à laquelle il a acquis droit avant le 1^{er} janvier 1990 que si le régime le prévoit.

1989, c. 38, a. 303; 2000, c. 41, a. 187.

304. *(Abrogé).*

1989, c. 38, a. 304; 1999, c. 40, a. 254; 2000, c. 41, a. 188.

305. Lorsqu'un assureur a garanti avant le 2 juin 1989 des remboursements ou prestations acquis par un participant au titre des services qu'un régime de retraite lui a reconnus avant cette date, le transfert de ces droits en application de l'article 98 peut, si le participant était actif à cette date, être réalisé en subrogeant le participant dans les droits que détient la caisse de retraite au titre du contrat conclu avec l'assureur.

La valeur des droits garantis ainsi transférés ne peut excéder celle des remboursements ou prestations qui en résulteraient si cette dernière valeur était déterminée sur la base d'hypothèses et de méthodes actuarielles identiques à celles qui, à la date de la subrogation faite au profit du participant, sont utilisées pour déterminer la valeur de prestations non garanties auxquelles s'applique l'article 60 et dont le droit s'acquiert à cette date.

1989, c. 38, a. 305; 2000, c. 41, a. 189.

305.1. Aux fins de son application avant le 1^{er} janvier 2010, l'article 113.1 se lit en supprimant, dans le paragraphe 2° du premier alinéa, les mots « du deuxième alinéa de l'article 146.3.1, ».

2008, c. 21, a. 26.

305.2. La date d'une évaluation actuarielle visée à l'article 121 doit être postérieure au 14 décembre 2009.

2008, c. 21, a. 26.

306. *(Abrogé).*

1989, c. 38, a. 306; 2006, c. 42, a. 46.

306.1. *(Abrogé).*

1998, c. 2, a. 41; 2006, c. 42, a. 46.

306.1.1. *(Abrogé).*

2004, c. 20, a. 197; 2006, c. 42, a. 46.

306.2. *(Abrogé).*

1998, c. 2, a. 41; 2006, c. 42, a. 46.

306.3. *(Abrogé).*

1998, c. 2, a. 41; 2006, c. 42, a. 46.

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306.4. *(Abrogé).*

1998, c. 2, a. 41; 2006, c. 42, a. 46.

306.5. *(Abrogé).*

1998, c. 2, a. 41; 2006, c. 42, a. 46.

306.6. *(Abrogé).*

1998, c. 2, a. 41; 2006, c. 42, a. 46.

306.7. Les dispositions des articles 119, 130, 133, 134 et 138 dans leur version antérieure au 1^{er} janvier 2001 continuent de s'appliquer aux évaluations actuarielles dont la date est antérieure au 15 décembre 2000.

2000, c. 41, a. 190.

306.7.1. Dans le cas où des participants ou des bénéficiaires d'un régime de retraite ont donné le consentement requis pour l'application des modalités prévues à l'article 8 de la Loi concernant le financement de certains régimes de retraite (2005, chapitre 25), tant que des montants d'amortissement restent à verser relativement à la somme ou au solde dont les modalités d'amortissement sont prévues à cet article, aucune modification concernant les droits des participants ou des bénéficiaires dont le consentement était requis ne peut être apportée au régime à moins qu'il ne soit versé à la caisse de retraite une cotisation d'équilibre spéciale égale à la valeur des engagements supplémentaires résultant de la modification, déterminée selon l'approche de solvabilité.

La cotisation d'équilibre spéciale doit être versée dès qu'est transmis à la Régie le rapport relatif à l'évaluation actuarielle prenant la modification en considération pour la première fois. S'y ajoutent les intérêts courus, s'il y a lieu, depuis la date de l'évaluation, calculés au taux visé à l'article 48 de la présente loi.

Les montants d'amortissement visés au premier alinéa incluent ceux assimilés à des cotisations d'équilibre par l'effet de l'article 49 de la Loi modifiant la Loi sur les régimes complémentaires de retraite, notamment en matière de financement et d'administration (2006, chapitre 42).

2008, c. 21, a. 27.

306.8. Lorsque l'affectation de l'excédent d'actif d'un régime de retraite à l'acquittement de cotisations patronales a fait l'objet d'une entente ou d'une sentence arbitrale en vertu de la Loi concernant la négociation d'ententes relatives à la réduction des coûts de main-d'oeuvre dans le secteur municipal (1998, chapitre 2), le chapitre X.1 ne peut s'appliquer, à l'égard de ce régime, avant l'expiration de cette entente ou sentence que si l'organisme municipal intéressé et toutes les associations accréditées qui représentent des participants en conviennent.

2000, c. 41, a. 190.

306.9. À moins qu'il ne s'agisse d'un régime de retraite issu de la scission d'un régime qui n'a pas été modifié en application de l'article 146.5, les dispositions d'un régime entré en vigueur après le 31 décembre 2009 relatives au droit de l'employeur d'affecter tout ou partie de l'excédent d'actif à l'acquittement de la valeur des engagements supplémentaires résultant de toute modification du régime et celles d'un régime entré en vigueur après le 31 décembre 2000 relatives au droit de l'employeur d'affecter tout ou partie de l'excédent d'actif à l'acquittement de ses cotisations prévalent sur toute disposition du régime ou d'une convention et lient quiconque a des droits ou obligations en vertu du régime.

Aucune modification d'un régime de retraite issu de la scission d'un régime qui a été modifié en application de l'article 146.5 relativement au droit de l'employeur d'affecter tout ou partie de l'excédent d'actif à l'acquittement de la valeur des engagements supplémentaires résultant de toute modification du régime ou à l'acquittement des cotisations patronales ne peut porter sur la question qui a fait l'objet d'une

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telle modification sans que toutes les exigences prévues au premier alinéa de l'article 146.5 et à l'article 146.6 ne soient satisfaites.

2000, c. 41, a. 190; 2006, c. 42, a. 47.

306.10. Seuls les remboursements et prestations qui deviennent payables après le 31 décembre 2000 peuvent servir à la compensation prévue à l'article 163.1.

2000, c. 41, a. 190.

306.11. Les articles 18, 32, 56, 165, 190, le chapitre XIII à l'exception de l'article 240.2 et des paragraphes 1^o et 3^o de l'article 240.3, le paragraphe 12^o de l'article 244, le paragraphe 6^o de l'article 246 et les articles 309 à 311.1, tels qu'ils se lisaient le 31 décembre 2000, continuent de s'appliquer:

1^o aux questions pendantes devant la Régie le 31 décembre 2000;

2^o aux terminaisons totales dont la date est antérieure au 1^{er} janvier 2001 et aux terminaisons partielles visant des participants dont la participation active a pris fin avant cette date, que ces terminaisons résultent ou non du retrait d'un employeur partie à un régime interentreprises, pour autant que:

a) dans le cas où la terminaison a été décidée par l'employeur, les participants en aient dûment été avisés par écrit, conformément à la loi;

b) dans le cas où la Régie a décidé de terminer le régime en raison du défaut de l'employeur de percevoir des cotisations salariales ou de verser à la caisse de retraite ou à l'assureur ses cotisations patronales ou les cotisations salariales qu'il percevait, ou en raison d'une diminution du nombre de participants actifs, l'événement fondant la décision de la Régie se situe entre le 31 décembre 1999 et le 1^{er} janvier 2001.

Malgré toute disposition contraire, une terminaison partielle ne peut viser que des participants dont la participation active a pris fin avant le 1^{er} janvier 2001.

L'article 32.1 ne s'applique pas aux terminaisons de régimes visées au présent article.

2000, c. 41, a. 190.

306.12. L'article 230.1.1 s'applique à tout régime de retraite dont l'actif n'est pas entièrement liquidé le 1^{er} janvier 2001, dans la mesure où l'employeur n'a pas, avant cette date, transmis au comité de retraite un projet d'entente sur l'attribution de l'excédent d'actif conformément à l'article 230.2 tel qu'il se lisait avant cette date.

2000, c. 41, a. 190.

306.13. L'article 240.2 ne s'applique qu'aux participants ayant cessé leur participation active après le 31 décembre 2000.

2000, c. 41, a. 190.

306.14. L'article 240.3 s'applique même aux terminaisons dont la date est antérieure au 1^{er} janvier 2001 et aux terminaisons pendantes devant la Régie à cette date, sauf s'il s'agit d'une terminaison partielle visée à l'article 306.11 auquel cas le paragraphe 2^o de l'article 240.3 dans sa version antérieure au 1^{er} janvier 2001 continue de s'y appliquer.

2000, c. 41, a. 190.

307. Celui qui administre un régime de retraite dont l'actif a, avant la date à laquelle le régime est devenu régi par la présente loi, fait l'objet d'un placement non conforme à cette loi doit, dans les cinq ans qui suivent cette date ou dans tout délai supplémentaire que peut accorder la Régie, régulariser ce placement.

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Il bénéficie en outre d'un délai de 12 mois à compter de cette date pour se doter d'une politique de placement conforme aux dispositions des articles 169 et 170.

Cependant, un placement fait avant le 1^{er} janvier 1990 au nom du régime peut, malgré l'article 171, demeurer à ce nom.

1989, c. 38, a. 307.

307.1. Celui qui administre un régime de retraite dont l'actif a, avant le 1^{er} janvier 2001, fait l'objet d'un placement qui, bien que conforme à la présente loi telle qu'elle se lisait avant cette date, n'est toutefois pas conforme à cette loi dans sa version applicable à compter du 1^{er} janvier 2001 doit, dans les cinq ans qui suivent cette date ou dans tout délai supplémentaire que peut accorder la Régie, régulariser ce placement.

Dans le cas d'un régime de retraite qui, en vigueur le 31 décembre 2000, autorise à cette date les participants à répartir entre divers placements tout ou partie des sommes portées à leur compte, les choix de placement offerts doivent, le cas échéant, être rendus conformes aux dispositions de l'article 168 dans sa version applicable à compter du 1^{er} janvier 2001 dans l'année qui suit cette date.

Le droit de transfert et les modalités de son exercice prévus au sous-paragraphe *b* du paragraphe 3^o du premier alinéa et au deuxième alinéa de l'article 173 dans sa version antérieure au 1^{er} janvier 2001 continueront de s'appliquer aux dépôts qu'ils visent jusqu'au 31 décembre 2001.

1994, c. 24, a. 29; 2000, c. 41, a. 191.

308. Dans le cas où un régime de retraite est sous tutelle le 1^{er} janvier 1990, le curateur désigné en vertu de l'article 56 de la Loi sur les régimes supplémentaires de rentes (chapitre R-17) continue d'agir à titre d'administrateur provisoire, comme s'il avait été désigné en vertu de la présente loi.

1989, c. 38, a. 308.

308.1. Tout régime de retraite visé au second alinéa de l'article 288.1 et dont la scission de l'actif et du passif doit faire l'objet d'une autorisation de la Régie est réputé, pour l'application du deuxième alinéa de l'article 195, comporter une disposition qui attribue l'excédent d'actif en cas de terminaison aux seuls participants et bénéficiaires.

1992, c. 60, a. 54; 1999, c. 40, a. 254; 2000, c. 41, a. 203.

308.2. Les participants visés par la terminaison partielle d'un régime de retraite dont le règlement est en cours devant la Régie le 1^{er} janvier 1993, conservent, malgré l'abrogation de l'article 213 dans sa version antérieure à cette date, les droits dans l'excédent d'actif que le projet de rapport terminal relatif à cette terminaison a prévu leur accorder, pour autant que:

1^o dans le cas où la date de terminaison se situe avant le 14 mai 1992, le comité de retraite ait avant cette date transmis aux participants visés le relevé prévu à l'article 203 ou, s'il a négligé de le faire, que le délai prévu pour ce faire ait expiré avant cette même date;

2^o dans le cas où la date de terminaison se situe avant le 1^{er} janvier 1993, l'employeur ait avant cette date consenti par écrit à accorder ces droits aux participants visés, lors même que le relevé prévu à l'article 203 ne leur a pas été transmis avant cette même date.

1992, c. 60, a. 54.

308.3. Dans le cas où, avant le 1^{er} janvier 1993, la Régie n'a approuvé qu'en partie le projet de rapport terminal se rapportant à la terminaison partielle d'un régime dont la date se situe avant le 1^{er} janvier 1993, sursoyant ainsi à sa décision sur l'attribution de tout ou partie de l'excédent d'actif, ainsi que dans le cas où la Régie a rendu une décision portant sur l'avis de terminaison ou terminant partiellement un régime, pourvu que sa décision approuvant le projet de rapport terminal ou le rapport lui-même ait été rendue après le 31

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décembre 1992, tous ceux qui, parmi les participants visés par cette terminaison, ont vu leurs droits acquittés demeureront, malgré le second alinéa de l'article 33, des participants à seules fins de la répartition de tout excédent d'actif qui pourrait être déterminé lors d'une éventuelle terminaison du régime.

Toutefois, si la date de cette terminaison partielle est antérieure d'au moins sept ans à celle de la terminaison du régime, les participants dont les droits ont ainsi été acquittés ne conservent leur qualité de participant à ces fins que s'ils font valoir leurs droits auprès du comité de retraite dans les délais prescrits.

En outre, chaque fois que les dispositions du deuxième alinéa devront recevoir application, l'avis dont le second alinéa de l'article 230.4 exige la publication devra aussi faire état des règles établies par le présent article. Cependant, si on a recouru à l'arbitrage prévu à l'article 230.7 sans qu'ait été publié cet avis, le comité de retraite devra, aussitôt après avoir été informé du recours, faire publier dans un quotidien distribué dans la région où résident au Québec le plus grand nombre de participants qui étaient actifs à la date de terminaison du régime, un avis faisant état de la demande d'arbitrage, des règles établies par le présent article et informant les intéressés qu'ils peuvent, jusqu'à ce que l'affaire soit prise en délibéré, faire valoir en conséquence leurs droits auprès du comité. Copie de cet avis public devra sans délai être transmise à la Régie.

Le comité de retraite est toutefois exempté de cette obligation de publier si tous les participants et les bénéficiaires susceptibles de faire valoir des droits au titre du régime ou de la présente loi ont été personnellement avisés.

1992, c. 60, a. 54; 2000, c. 41, a. 192.

309. (Abrogé).

1989, c. 38, a. 309; 2000, c. 41, a. 193.

310. (Abrogé).

1989, c. 38, a. 310; 2000, c. 41, a. 193.

310.1. Pour l'application des dispositions de la sous-section 4.1 de la section II du chapitre XIII, sont réputés participants ou bénéficiaires, selon le cas, ceux dont les droits au titre d'un régime de retraite ont été acquittés, avant le 1^{er} janvier 1990, par le biais d'un contrat constitutif de rente conclu avec un assureur, et ceux qui, désignés comme bénéficiaires aux termes d'un tel contrat, conservent encore des droits en vertu de ce contrat, pourvu que, dans tous les cas, les intéressés aient agi dans les délais prescrits.

En outre, chaque fois que les dispositions des articles susmentionnés devront recevoir application par suite de la terminaison d'un régime de retraite qui était en vigueur le 1^{er} janvier 1990, l'avis dont le second alinéa de l'article 230.4 exige la publication devra aussi faire état de la règle établie par le premier alinéa du présent article. Cependant, si on a recouru à l'arbitrage prévu à l'article 230.7 sans qu'ait été publié cet avis, le comité de retraite devra, aussitôt après avoir été informé du recours, faire publier dans un quotidien distribué dans la région où résident, au Québec, le plus grand nombre de participants qui étaient actifs à la date de terminaison du régime un avis faisant état de la demande d'arbitrage, de la règle établie par le premier alinéa du présent article et informant les intéressés qu'ils peuvent, jusqu'à ce que l'affaire soit prise en délibéré, faire valoir en conséquence leurs droits auprès du comité. Copie de cet avis public devra sans délai être transmise à la Régie.

Le comité de retraite est toutefois exempté de cette obligation de publier si tous les participants et les bénéficiaires susceptibles de faire valoir des droits au titre du régime ou de la présente loi ont été personnellement avisés.

1992, c. 60, a. 55; 1999, c. 40, a. 254; 2000, c. 41, a. 194.

310.2. Sauf s'il agit dans l'exercice des pouvoirs que le comité de retraite lui a délégués, l'employeur qui est tenu de transmettre aux participants l'avis prévu au premier alinéa de l'article 230.4 ou qui doit faire publier l'avis prévu au deuxième alinéa du même article doit y indiquer que c'est à la Régie que les

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participants et les bénéficiaires concernés doivent, le cas échéant, faire connaître par écrit leur opposition au projet d'entente.

L'article 230.6 s'applique dans ces cas compte tenu des oppositions communiquées à la Régie en vertu du présent article.

1992, c. 60, a. 55; 2000, c. 41, a. 195.

311. (Abrogé).

1989, c. 38, a. 311; 2000, c. 41, a. 196.

311.1. Les dispositions de la sous-section 4.1 de la section II du chapitre XIII s'appliquent même à la répartition de l'excédent d'actif de tout régime de retraite en vigueur le 1^{er} janvier 1993, sauf si cet excédent fait l'objet:

1° d'une procédure judiciaire qui est en cours le 14 mai 1992;

2° d'une répartition prévue dans un projet de rapport terminal accordant la totalité de cet excédent aux participants et aux bénéficiaires, pour autant que se rencontre l'une ou l'autre des éventualités suivantes:

— la Régie a, avant le 14 mai 1992, jugé ce projet de rapport conforme à la présente loi et le comité de retraite a aussi, avant cette date, transmis aux participants et aux bénéficiaires visés le relevé de leurs droits ou, s'il a négligé de le faire, le délai prescrit pour ce faire a expiré avant la date susdite;

— le projet de rapport terminal a été transmis à la Régie avant le 1^{er} janvier 1993 et l'employeur a consenti par écrit à une telle répartition, laquelle doit par ailleurs être conforme à la loi applicable avant la date susmentionnée;

3° d'une répartition prévue dans une convention intervenue, avant le 1^{er} janvier 1993, en application du paragraphe 2° du premier alinéa de l'article 43 de la Loi sur les régimes supplémentaires de rentes (chapitre R-17), pourvu cependant:

— que la Régie ait été informée de cette convention avant cette date et qu'elle ait par la suite estimé la répartition juste pour tous les participants visés par la terminaison, et l'information à leur être donnée sur ce sujet adéquate;

— que ces participants aient été informés de la convention avant l'expiration du sixième mois qui suit la décision de la Régie portant sur la répartition qui y est prévue;

— que moins de 30% de ces participants aient, dans les 60 jours de la date à laquelle ils en ont été informés, notifié par écrit à la Régie leur opposition à la convention.

Dans le cas où il est satisfait aux conditions prescrites par le présent paragraphe, la convention lie, outre les parties, tout participant qui a des droits au titre du régime. Il en a toujours été de même pour toute telle convention, dès lors qu'ont été satisfaites les conditions prévues aux sous-paragraphes *a* et *b* du paragraphe 2° de l'article 43 de la Loi sur les régimes supplémentaires de rentes;

4° d'un décret qui, pris par le gouvernement en application de l'article 43.1 de la Loi sur les régimes supplémentaires de rentes, a autorisé le versement à l'employeur de tout ou partie de l'excédent d'actif.

Lorsque l'excédent d'actif à répartir suivant les dispositions de la sous-section 4.1 de la section II du chapitre XIII provient d'un régime de retraite terminé qui continue d'être régi par la Loi sur les régimes supplémentaires de rentes en application de l'article 286, la Régie peut exiger, comme condition d'approbation du rapport relatif à cette terminaison, que lui soit fourni, dans les conditions et délais qu'elle

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fixe, tout renseignement ou document complémentaire audit rapport et relatif à la répartition de cet excédent d'actif.

1992, c. 60, a. 56; 2000, c. 41, a. 197.

311.2. *(Abrogé).*

1992, c. 60, a. 56; 2000, c. 41, a. 198.

311.3. *(Abrogé).*

1992, c. 60, a. 56; 2000, c. 41, a. 198.

311.4. *(Abrogé).*

1992, c. 60, a. 56; 1994, c. 24, a. 30; 2000, c. 41, a. 198.

311.5. À moins qu'il ne s'agisse d'un cas visé à l'article 266, les dispositions des articles 243.3, 243.6 et 243.7 dans leur version antérieure au 1^{er} janvier 2001, continuent de s'appliquer aux régimes pour lesquels l'administrateur n'est pas un comité de retraite constitué ainsi que le prescrit l'article 147.

2000, c. 41, a. 199.

311.6. Le premier alinéa de l'article 23, les articles 56, 66, 69 et 71, le paragraphe 3^o de l'article 86, le paragraphe 1^o de l'article 98, le premier alinéa de l'article 197, les articles 293 à 296 et 303, tels qu'ils existaient dans leur version antérieure au 1^{er} janvier 2001, continuent de s'appliquer aux droits des participants qui ont cessé d'être actifs avant cette date.

L'article 66 dans sa version postérieure au 31 décembre 2000 s'applique également aux droits visés par le premier alinéa.

2000, c. 41, a. 199.

311.7. La liste des personnes qui peuvent être désignées comme arbitre, laquelle a été dressée conformément à l'article 243.17, tel qu'il se lisait avant le 1^{er} janvier 2001, est réputée avoir été dressée par le ministre conformément à cet article tel qu'il se lit à compter de cette date.

2000, c. 41, a. 199.

312. En outre des dispositions transitoires prévues par le présent chapitre, la Régie peut, par règlement, prendre toutes autres dispositions transitoires pour assurer l'application de la présente loi; ces règlements peuvent notamment prévoir à quelles conditions et dans quelle mesure la présente loi s'applique à un régime de retraite qui est aussi régi par une loi émanant d'une autorité législative autre que le Parlement du Québec, ainsi que toute autre règle applicable à ce régime.

Ces règlements sont soumis au gouvernement pour approbation; ils peuvent rétroagir à une date antérieure à celle de leur entrée en vigueur mais non antérieure au 15 novembre 1988.

La Régie peut, avant le 1^{er} janvier 2003, prendre par règlement toutes dispositions transitoires pour assurer l'application de la présente loi telle que modifiée le 1^{er} janvier 2001. Ces règlements sont soumis au gouvernement pour approbation. Ils peuvent rétroagir à une date non antérieure à cette date.

1989, c. 38, a. 312; 1992, c. 60, a. 57; 2000, c. 41, a. 200.

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313. Les modifications nécessaires pour rendre conformes à la présente loi les dispositions de tout régime de retraite en vigueur le 1^{er} janvier 1990 doivent être présentées à la Régie pour enregistrement dans les 12 mois qui suivent cette date ou dans le délai supplémentaire qu'elle peut accorder.

1989, c. 38, a. 313.

314. Malgré l'article 313, si un régime de retraite concerne, en tout ou en partie, des travailleurs régis, selon le cas, par une convention collective, par une sentence arbitrale en tenant lieu ou par un décret rendant obligatoire une convention collective qui sont en vigueur le 1^{er} janvier 1990, les modifications nécessaires pour rendre les dispositions du régime conformes à celles de la présente loi doivent être présentées à la Régie pour enregistrement dans les trois mois qui suivent la date, selon le cas, de la signature d'une nouvelle convention collective, du prononcé d'une sentence arbitrale qui en tient lieu, de la prolongation ou du renouvellement de ce décret ou de l'entrée en vigueur d'un décret qui remplace ce décret expiré.

La Régie peut accorder un délai supplémentaire.

1989, c. 38, a. 314.

315. Dès qu'elles ont été enregistrées conformément à la présente loi, les modifications visées aux articles 313 et 314 ont effet:

1° dans le cas de l'article 313, depuis le 1^{er} janvier 1990;

2° dans le cas de l'article 314:

a) à l'égard des travailleurs régis, selon le cas, par une convention collective, par une sentence arbitrale ou par un décret en vigueur le 1^{er} janvier 1990, depuis la date d'expiration de cette convention ou de cette sentence ou depuis la date d'expiration, de prolongation ou de renouvellement de ce décret;

b) à l'égard des travailleurs qui ne sont pas régis par la convention collective, la sentence arbitrale ou le décret visés au sous-paragraphe a, depuis le 1^{er} janvier 1990.

1989, c. 38, a. 315.

316. Les dispositions d'une convention collective, d'une sentence arbitrale en tenant lieu ou d'un décret rendant obligatoire une convention collective, de même que celles d'un régime de retraite relatifs à des travailleurs régis par cette convention ou sentence ou par ce décret, qui, en vigueur le 1^{er} janvier 1990, sont incompatibles avec celles de la présente loi prévalent sur celles-ci jusqu'à la date d'expiration de la convention ou sentence, ou jusqu'à la date d'expiration, de prolongation ou de renouvellement du décret.

La Loi sur les régimes supplémentaires de rentes (chapitre R-17) continue de s'appliquer à ce régime, pour la même période, dans la mesure où il concerne des travailleurs régis par cette convention ou sentence ou par ce décret.

1989, c. 38, a. 316.

317. Constitue un déficit actuariel de modification tout déficit actuariel résultant:

1° d'une modification du régime qui, visée à l'article 313 ou 314, a pour objet de rendre celui-ci conforme au chapitre IV, V ou VI;

2° d'une modification du régime qui a pour objet d'appliquer l'article 44, 45, 60, 69 ou 86 à des droits accumulés au titre des services reconnus par le régime avant le 1^{er} janvier 1990.

Ce déficit actuariel de modification peut être considéré comme un déficit actuariel initial.

1989, c. 38, a. 317.

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317.1. Tout déficit actuariel résultant d'une modification au régime qui a pour objet de le rendre conforme à la présente loi telle que modifiée le 1^{er} janvier 2001 peut être considéré comme un déficit actuariel initial.

La Régie peut exiger qu'un comité de retraite lui fournisse, dans le délai qu'elle fixe, un rapport préparé par un actuaire et comportant les informations et les attestations qu'elle estime nécessaires pour s'assurer que la détermination des cotisations patronales et salariales est conforme au régime de retraite et à la présente loi telle que modifiée le 1^{er} janvier 2001.

Pour l'application de la présente loi, le rapport prévu au deuxième alinéa est assimilé à un rapport relatif à l'évaluation actuarielle d'un régime de retraite visé à l'article 119.

2000, c. 41, a. 201.

318. Celui qui, le 31 décembre 1989, administre un régime de retraite peut, malgré le fait qu'il ne soit pas un comité de retraite constitué ainsi que le prescrit l'article 147, continuer d'administrer le régime soit jusqu'à la date d'expiration du délai prévu à l'article 313 ou 314 pour la présentation de modifications ou jusqu'à toute date postérieure que peut fixer la Régie, soit, si le régime ne peut plus être modifié dans ces délais en raison du fait qu'il s'est terminé, jusqu'à ce qu'il cesse d'être en vigueur. Il est en ce cas, pour la durée de son administration, assimilé à un comité de retraite.

1989, c. 38, a. 318; 1992, c. 60, a. 58; 2000, c. 41, a. 203.

318.1. Les modifications nécessaires pour rendre conformes à la présente loi, telle que modifiée le 1^{er} janvier 2001, les dispositions de tout régime de retraite en vigueur le 31 décembre 2000 doivent être présentées à la Régie pour enregistrement dans les 12 mois qui suivent cette dernière date ou dans le délai supplémentaire qu'elle peut accorder.

Dès qu'elles sont enregistrées, ces modifications ont effet depuis le 1^{er} janvier 2001.

Toutefois, à l'égard des travailleurs régis, selon le cas, par une convention collective, par une sentence arbitrale en tenant lieu ou par un décret rendant obligatoire une convention collective qui sont en vigueur le 1^{er} janvier 2001, l'indexation de la rente prévue à l'article 60.1 n'a effet qu'à compter de la date d'expiration de cette convention ou de cette sentence ou qu'à compter de la date d'expiration, de prolongation ou de renouvellement de ce décret.

2000, c. 41, a. 202.

318.2. Tout régime de retraite auquel s'applique le chapitre X doit faire l'objet d'une évaluation actuarielle complète au 31 décembre 2015 conformément aux dispositions en vigueur le 1^{er} janvier 2016.

Aux fins de cette évaluation, les cotisations d'équilibre requises, selon l'approche de solvabilité et l'approche de capitalisation, relativement à un déficit actuariel déterminé lors d'une évaluation actuarielle antérieure, sont éliminées.

2015, c. 29, a. 74.

318.3. Malgré les paragraphes 1^o et 2^o de l'article 138, la période d'amortissement de tout déficit actuariel technique ou de stabilisation qui débute à la date d'une évaluation actuarielle antérieure au 31 décembre 2016 expire à la date de la fin d'un exercice financier du régime de retraite qui se termine au plus tard 15 ans après la date de l'évaluation. La période maximale d'amortissement d'un tel déficit actuariel qui débute après le 30 décembre 2016 est réduite d'une année pour chaque année complète d'écart entre le 31 décembre 2015 et la date du début de la période d'amortissement du déficit.

Loi sur les régimes complémentaires de retraite, R.L.R.Q. c R-15.1

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La période d'amortissement de tout déficit actuariel technique ou de stabilisation qui débute après le 30 décembre 2020 est déterminée conformément à l'article 138.

2015, c. 29, a. 74.

318.4. Si les cotisations patronales déterminées selon l'évaluation actuarielle visée à l'article 318.2 ou une évaluation actuarielle subséquente et qui sont exigibles pour chaque exercice financier ou partie d'exercice financier postérieur à la date de l'évaluation sont supérieures à celles qui auraient été exigibles pour la période du 1^{er} janvier 2016 au 31 décembre 2016 en application des dispositions en vigueur le 31 décembre 2015, la différence n'est exigible qu'à raison de un tiers par période de 12 mois à compter du 1^{er} janvier 2017.

Pour l'application du premier alinéa, doivent être exclues les cotisations patronales d'exercice correspondant à la valeur des engagements nés du régime de retraite qui sont relatifs aux services reconnus effectués au cours de l'exercice.

Pour déterminer les cotisations qui auraient été exigibles, il doit être tenu compte de toute instruction donnée relativement à la période incluant l'exercice financier du régime en cours le 31 décembre 2015 en vertu du Règlement prévoyant de nouvelles mesures d'allègement relatives au financement de déficits actuariels de solvabilité des régimes de retraite du secteur privé (chapitre R-15.1, r. 4.1) et appliquée à cette date.

Le cas échéant, l'article 42.1 s'applique en tenant uniquement compte de la portion de la cotisation d'équilibre de stabilisation qui est exigible selon le premier alinéa.

Les dispositions du présent article cessent de s'appliquer le 31 décembre 2018.

2015, c. 29, a. 74.

318.5. Un régime de retraite soustrait à l'application de règles de financement prévues par la présente loi selon un règlement pris en vertu de l'article 2 n'est assujéti aux dispositions de la présente loi en vigueur à compter du 1^{er} janvier 2016 que dans la mesure prévue par le règlement qui lui est applicable.

Les dispositions des articles 90.1, 142.5 et 237 s'appliquent toutefois aux régimes visés au premier alinéa.

Les dispositions des articles 60, 119.1, 143 et 146 s'appliquent aux régimes de retraite visés par le Règlement concernant le financement des régimes de retraite des secteurs municipal et universitaire (chapitre R-15.1, r. 2). Ces dispositions ne s'appliquent toutefois pas aux régimes de retraite visés aux sections I et I.1 du Règlement sur la soustraction de certains régimes de retraite à l'application de dispositions de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1, r. 8).

Pour l'application de l'article 119.1, l'évaluation actuarielle requise est celle visée au paragraphe 2 de l'article 118 tel que remplacé par l'article 7 du Règlement concernant le financement des régimes de retraite des secteurs municipal et universitaire.

Lorsqu'un tel règlement cesse de s'appliquer à un régime de retraite, les dispositions des articles 318.2 à 318.4 s'appliquent à ce régime en substituant la date suivant celle de la cessation d'application du règlement à celle du 1^{er} janvier 2016 et en y adaptant les autres dates mentionnées à ces articles.

Les dispositions du chapitre X, dans leur rédaction en vigueur le 31 décembre 2015, continuent de s'appliquer à tout régime de retraite administré par Retraite Québec en vertu de la sous-section 4.0.1 de la section II du chapitre XIII.

2015, c. 29, a. 74; 2015, c. 20, a. 61; 2016, c. 13, a. 69

318.6. La cessation d'application du Règlement concernant des régimes complémentaires de retraite visés par l'arrangement relatif à AbitibiBowater Inc. en vertu de la Loi sur les arrangements avec les créanciers des

À jour au 1^{er} octobre 2017

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compagnies (chapitre R-15.1, r. 6.1) avant le 31 décembre 2020 n'a pas pour effet de mettre fin à l'application des dispositions de la section IV de ce règlement.

2015, c. 29, a. 74.

318.7. L'application des dispositions de la sous-section 4.0.1 de la section II du chapitre XIII, en vigueur le 31 décembre 2015, est maintenue à l'égard des rentes servies par la Régie en vertu de celles-ci le 31 décembre 2015.

De plus, un régime de retraite auquel s'applique le chapitre X qui satisfait à toutes les conditions prévues à l'article 230.0.0.1 tel qu'il se lisait le 31 décembre 2015 est assujéti aux dispositions mentionnées au premier alinéa, sauf s'il a été liquidé avant le 1^{er} janvier 2016.

2015, c. 29, a. 74.

318.8. Si le rapport de terminaison relatif à un régime de retraite visé par les dispositions de la sous-section 4.0.1 de la section II du chapitre XIII en vigueur à compter du 1^{er} janvier 2016 a été transmis à la Régie avant cette date, les droits des participants et des bénéficiaires sont établis selon ce rapport.

2015, c. 29, a. 74.

319. Dans toute autre loi, dans tout règlement, décret, arrêté, entente, contrat ou autre document, à moins que le contexte ne s'y oppose et compte tenu des adaptations de circonstance:

1° un renvoi à une disposition de la Loi sur les régimes supplémentaires de rentes (chapitre R-17) est un renvoi à la disposition correspondante de la présente loi;

2° les expressions «Loi sur les régimes supplémentaires de rentes» et «régime supplémentaire de rentes» sont respectivement remplacées par les expressions «Loi sur les régimes complémentaires de retraite» et «régime complémentaire de retraite».

1989, c. 38, a. 319.

319.1. Les articles 14.1 et 228.1 sont déclaratoires.

2008, c. 21, a. 28.

319.2. Le délai prévu à l'article 146.16 pour la transmission à la Régie du rapport relatif à l'évaluation actuarielle au 31 décembre 2014 d'un régime auquel s'applique le chapitre X.2 est calculé à partir du 30 avril 2015 plutôt qu'à partir du 31 décembre 2014.

Il en est de même du délai de transmission du plan de redressement et du délai de présentation de la demande d'enregistrement de toute modification au régime visant à donner suite à ce plan, respectivement prévus aux articles 146.28 et 146.37.

2015, c. 7, a. 3.

319.3. L'acquiescement effectué conformément à l'article 143 et, le cas échéant, à l'article 145.1 avant le 31 décembre 2014 relativement à un régime auquel s'applique le chapitre X.2 constitue un acquiescement final des droits du participant ou du bénéficiaire visé.

Un employeur peut toutefois verser une somme additionnelle à la caisse de retraite pour l'acquiescement, en tout ou en partie, de toute somme qui n'a plus à être acquiescée aux termes du premier alinéa.

En outre, un régime de retraite peut être modifié pour prévoir le versement, au cours de tout exercice financier du régime se terminant avant le 1^{er} janvier 2020, de sommes dont l'exigibilité est éteinte par l'effet

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du premier alinéa. Le montant d'un tel versement, ajouté à la somme des montants visés à l'article 146.12, ne doit pas avoir pour effet de rendre insuffisantes les cotisations.

2015, c. 7, a. 3.

319.4. Les sommes dues, le 31 décembre 2014, par un employeur partie à un régime de retraite auquel s'applique le chapitre X.2 à titre de cotisations à recevoir, en vertu des dispositions de la loi en vigueur le 30 décembre 2014, en excédent des cotisations prévues par le régime non versées à cette date sont éliminées.

2015, c. 7, a. 3.

319.5. Aucune somme qui doit être versée par un employeur partie à un régime auquel s'applique le chapitre X.2 par suite d'un jugement passé en force de chose jugée avant le 18 février 2015 ou relatif à une affaire pendante devant un tribunal judiciaire ou administratif à cette date ne peut, d'aucune façon, faire l'objet d'une récupération par l'administrateur du régime de retraite ou par un employeur qui y est partie.

2015, c. 7, a. 3.

319.6. Un régime de retraite auquel s'applique le chapitre X.2 doit être modifié pour procéder au retrait de tout employeur qui ne compte plus de participants actifs à son service le 31 décembre 2014. La date du retrait doit être le 31 décembre 2014.

Les droits des participants et bénéficiaires visés par un tel retrait doivent, au plus tard le 2 avril 2016, être acquittés conformément aux dispositions du premier alinéa de l'article 146.41.

La valeur des droits des participants et bénéficiaires est établie au 31 décembre 2014.

Un participant ou bénéficiaire visé au deuxième alinéa peut demander que ses droits soient maintenus dans le régime.

Le comité de retraite doit informer les participants et bénéficiaires des mesures prévues par le présent article, de sorte qu'ils disposent d'un délai d'au moins trois mois pour exercer leur droit. L'avis doit indiquer la possibilité que les droits des participants et bénéficiaires demeurant dans le régime soient ultérieurement réduits.

Les dispositions du présent article ne s'appliquent, relativement à un employeur dont tous les travailleurs visés par le régime sont engagés de façon ponctuelle et pour une durée déterminée, que si, au 31 décembre 2014, il ne compte plus de participants actifs à son service depuis au moins 12 mois.

2015, c. 7, a. 3.

319.7. Les droits des participants et bénéficiaires qui, le 31 décembre 2014, ne relèvent d'aucun employeur partie au régime doivent, au plus tard le 2 avril 2016, être acquittés conformément aux dispositions du premier alinéa de l'article 146.41.

À cette fin, les dispositions des troisième, quatrième et cinquième alinéas de l'article 319.6 s'appliquent.

2015, c. 7, a. 3.

319.8. Malgré les articles 20 et 21, pour les acquittements faits en vertu des articles 319.6 et 319.7, un plafonnement du degré de solvabilité, tel celui permis par l'article 146.20, peut être prévu par le régime de retraite aux conditions prévues à cet article, qui s'applique en y faisant les adaptations nécessaires.

Les dispositions de l'article 146.42 s'appliquent à un tel acquittement.

2015, c. 7, a. 3.

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319.9. En cas de retrait d'un employeur partie à un régime de retraite auquel s'applique le chapitre X.2 ou en cas de terminaison d'un tel régime, avant le 2 avril 2020, les règles suivantes s'appliquent:

1° toute réduction de droits des participants et bénéficiaires intervenue depuis le 31 décembre 2014 est annulée;

2° la dette de chaque employeur visé par le retrait ou la terminaison est établie comme si les dispositions du chapitre X.2 et de l'article 319.4 ne s'étaient pas appliquées;

3° la dette de chaque employeur visé par le retrait ou la terminaison éteinte par les dispositions de l'article 319.3 redevient exigible.

Les dispositions du premier alinéa ne s'appliquent toutefois pas si le retrait de l'employeur ou la terminaison du régime résulte de l'impossibilité d'adopter un plan de redressement, de l'aliénation ou de la fermeture de l'entreprise ou d'une partie de celle-ci, de l'insolvabilité de l'employeur ou d'un changement d'affiliation syndicale.

2015, c. 7, a. 3.

319.10. Lorsqu'un régime à cotisations négociées cesse d'être visé par un règlement donnant lieu à l'exclusion de l'application des dispositions du chapitre X.2 selon le deuxième alinéa de l'article 146.10, ces dispositions s'appliquent à compter de la date suivant celle de la cessation d'application du règlement. Les dispositions des articles 319.3 à 319.9 s'appliquent à ce régime en substituant cette date de début d'application à celle du 31 décembre 2014 et en adaptant les autres dates mentionnées à ces articles en fonction de cette date de début d'application.

Les dispositions de l'article 319.9 ne s'appliquent toutefois pas à un tel régime si le règlement visé au premier alinéa comportait une disposition le soustrayant à l'application des dispositions de la présente loi relatives à la dette de l'employeur.

2015, c. 7, a. 3.

319.11. Pour seule fin de la répartition de l'actif d'un régime de retraite visé par l'Entente sur les régimes de retraite relevant de plus d'une autorité gouvernementale, entrée en vigueur le 1^{er} juillet 2011, les droits des participants accumulés avant le 1^{er} janvier 2016 sont inclus dans les droits financés selon l'approche de solvabilité.

2015, c. 29, a. 75.

320. Les crédits affectés à l'application de la Loi sur les régimes supplémentaires de rentes (chapitre R-17) sont transférés pour permettre l'application de la présente loi.

Les crédits supplémentaires affectés à l'application de la présente loi pour l'exercice financier au cours duquel la présente loi entre en vigueur sont, dans la mesure déterminée par le gouvernement, pris sur le fonds consolidé du revenu.

1989, c. 38, a. 320.

321. Le ministre de l'Emploi et de la Solidarité sociale est responsable de l'application de la présente loi.

1989, c. 38, a. 321; 1992, c. 44, a. 81; 1994, c. 12, a. 67; 1997, c. 63, a. 128; 2001, c. 44, a. 30.



Le ministre des Finances exerce les fonctions ministre de l'Emploi et de la Solidarité sociale prévues à la présente loi. Décret 412-2016 du 25 mai 2016, (2016) 148 G.O. 2, 2923.

322. (Omis).

1989, c. 38, a. 322.

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ANNEXES ABROGATIVES

Conformément à l'article 9 de la Loi sur la refonte des lois et des règlements (chapitre R-3), le chapitre 38 des lois de 1989, tel qu'en vigueur le 1^{er} mars 1990, à l'exception de l'article 322, est abrogé à compter de l'entrée en vigueur du chapitre R-15.1 des Lois refondues.

Conformément à l'article 9 de la Loi sur la refonte des lois et des règlements (chapitre R-3), les articles 34, 35, 89, 107 à 110, le paragraphe 7^o du premier alinéa de l'article 244 et le paragraphe 3^o du premier alinéa de l'article 264 du chapitre 38 des lois de 1989, tels qu'en vigueur le 1^{er} septembre 1990, sont abrogés à compter de l'entrée en vigueur de la mise à jour au 1^{er} septembre 1990 du chapitre R-15.1 des Lois refondues.



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chapter R-15.1, r. 6

Regulation respecting supplemental pension plans

Supplemental Pension Plans Act

(chapter R-15.1, ss. 244, subpars. 1, 2, 4, 6 to 8, 10, 11, 13, 14 and 312)



The fees prescribed in the Regulation have been indexed as of 31 December 2016 pursuant to the notice published in Part 1 (French) of the Gazette officielle du Québec of 26 November 2016, page 1207. (ss. 13 and 13.0.1)

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 SUPPLEMENTAL PENSION PLANS

DIVISION I

REGISTRATION AND REPORTS

1. An application for registration of a pension plan must, in addition to the documents and information required under the second paragraph of section 24 of the Supplemental Pension Plans Act (chapter R-15.1), contain the following information:

(1) the name of each employer party to the plan and the nature of the enterprise of the principal employer party to the plan;

(2) the name of the plan and the date on which it becomes effective;

(3) a list of any other plans to which an employer referred to in subparagraph 1 is required to contribute;

(4) *(subparagraph revoked)*;

(5) *(subparagraph revoked)*;

(6) with respect to the active members:

(a) the number of those exercising included employment within the meaning of section 4 of the Pension Benefits Standards Act (R.S.C. 1985, c. 32 (2nd Suppl.)), distributed by sex;

(b) the number of active members working outside Canada, distributed by sex;

(c) the number of the other active members, distributed by sex and, according to the place where the work is carried out, by Canadian province and territory;

(6.1) with respect to the non-active members and beneficiaries:

(a) their total number;

(b) the number of those among them who are referred to in section 12;

(7) the date of the end of the fiscal year of the plan;

(8) *(subparagraph revoked)*;

(9) the name and office address of the signatory of the application;

(10) *(subparagraph revoked)*;

The signatory of the application must certify:

(1) that he is the administrator of the plan or that he is authorized to act on the administrator's behalf;

(2) that the person who certified the copy of the plan that accompanies the application to be a true copy is qualified to do so;

(3) that the information contained in the application is exact to the best of his knowledge.

O.C. 1158-90, s. 1; O.C. 173-2002, s. 1.

1.1. A simplified pension plan, governed by Division IV of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7), prescribes, on the one hand, the registration of the provisions applicable to all the

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employers that are parties to the plan in accordance with this section and, on the other hand, the registration of an amendment to the plan for the provisions specific to each employer in accordance with section 2.1.

An application for the registration of the provisions applicable to all the employers that are parties to the plan must contain the following information, in addition to the documents and information required under subparagraphs 1, 6 and 7 of the second paragraph of section 24 of the Act:

- (1) the name of the plan, the name of the financial institution that administers it, the address of its head office and, where applicable, the address of its principal establishment in Québec;
- (2) the effective date of those provisions and the number of active plan members on that date;
- (3) the name and office address of the signatory of the application.

The application must also contain an attestation by the signatory that:

(1) the financial institution that administers the plan has obtained the employer's written acknowledgement of the obligations incumbent upon it under the plan;

(2) the financial institution has obtained the employer's and the employees' association's written acknowledgement of the fact that the provisions to be registered correspond to what they agreed upon, where the employer has delegated powers to the association relating to the plan under the terms of an agreement referred to in paragraph 27 of section 10 of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act;

(3) the signatory is authorized to prepare and sign that application on behalf of that financial institution;

(4) the person who certified the copy of the plan that accompanies the application to be a true copy is qualified to do so;

(5) the information contained in the application are exact to the best of his knowledge.

O.C. 658-94, s. 1; O.C. 173-2002, s. 2; O.C. 1073-2009, s. 50.

2. An application for registration of an amendment to a pension plan must, in addition to the documents and information required under the second paragraph of section 24 of the Act, contain the following information:

- (1) the name of the plan and the number assigned to it by Retraite Québec;
- (2) the object of the amendment and the date on which it becomes effective;
- (3) where the amendment has the effect of reducing the benefits of members or beneficiaries, as the case may be:
 - (a) the date on which the collective agreement, arbitration award in lieu thereof, or order or decree making that amendment or rendering it compulsory becomes effective;
 - (b) the date of sending of the notice prescribed in the first paragraph of section 26 of the Act;
- (4) the name and office address of the signatory of the application;
- (5) a copy of the pertinent part of any collective agreement, arbitration award, order or decree under which the amendment was made.

The signatory of the application must certify:

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

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- (1) that he is the administrator of the plan or is authorized to act on the administrator's behalf;
- (2) that the person who certified the copy of the amendment that accompanies the application to be a true copy is qualified to do so;
- (3) that the information contained in the application is exact to the best of his knowledge.

The application for registration shall also be accompanied with a declaration in conformity with the declaration provided in Schedule 0.0.1.

O.C. 1158-90, s. 2; O.C. 173-2002, s. 3.

2.1. An application for the registration of an amendment to a simplified pension plan must contain the following information, in addition to the documents and information required under subparagraphs 1, 6 and 7 of the second paragraph of section 24 of the Act:

- (1) the name of the plan and the number assigned to it by Retraite Québec;
- (2) the object of the amendment and its effective date and, where the amendment has the effect of reducing the benefits of members or beneficiaries, as the case may be:
 - (a) the date on which the collective agreement establishing the amendment was signed;
 - (b) the effective date of the arbitration award standing in lieu of a collective agreement or the effective date of the decree or order rendering the amendment compulsory;
 - (c) the date of sending of the notice provided for in the first paragraph of section 26 of the Act;
- (3) in the case of the provisions specific to an employer and to members working for that employer, the name of the employer;
- (4) the name and office address of the signatory of the application.

The application must also contain the attestation provided for in the third paragraph of section 1.1, adapted as required to take into account the fact that the application concerns an amendment to the plan.

O.C. 658-94, s. 2; O.C. 173-2002, s. 4.

3. *(Revoked).*

O.C. 1158-90, s. 3; O.C. 173-2002, s. 5.

3.1. The notice that the pension committee must send Retraite Québec under section 119.1 of the Act shall contain the following information:

- (1) the name of the plan and the number assigned to it by Retraite Québec;
- (2) the date of the end of the plan's last fiscal year;
- (3) the degree of solvency of the plan as at that date.

O.C. 608-2016, s. 1

3.2. The notice must be accompanied with a document, prepared by an actuary, containing the following information:

- (1) the data, assumptions and methods used to determine the financial position of the plan on a solvency basis;

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(2) a certification of the actuary certifying the plan's degree of solvency at the end of the plan's last fiscal year;

(3) the name of the signatory, his professional title, the name and address of his office and the date of signing.

O.C. 608-2016, s. 1

4. A report on a complete actuarial valuation referred to in section 120 of the Act must contain the information and statements of the actuary provided for in Section 3260 of the standards of practice of the Canadian Institute of Actuaries, the information provided for in sections 4.1 to 4.6 and the following information:

(1) the name of the plan and the number assigned to it by Retraite Québec;

(2) the date of the actuarial valuation;

(3) the number of active members apportioned, where applicable, according to whether their benefits are accumulated under defined benefit provisions or money purchase provisions within the meaning of section 965.0.1 of the Taxation Act (chapter I-3) or both types of provisions, the number of non-active members to whom no pension is being paid and the number of the other non-active members and beneficiaries whose benefits are covered by the actuarial valuation;

(4) a summary of the provisions of the plan that must be taken into account for the purposes of the valuation, including those bearing on contributions, normal retirement age, conditions to be met to be entitled to an early pension, pension indexation formula, assumptions used in accordance with the second paragraph of section 61 of the Act and the refunds and benefits payable under the pension plan;

(5) the name of the signatory, the signatory's professional title, the name and address of the signatory's office and the date of signing.

O.C. 1158-90, s. 4; O.C. 173-2002, s. 6; O.C. 1073-2009, s. 1; O.C. 978-2011, s. 1; O.C. 800-2015, s. 1.

4.1. With respect to the portion of the actuarial valuation of the plan performed on a solvency basis, the report must contain the following information:

(1) the value of the plan's assets, the value of the plan's liabilities established without reference, if applicable, to any amendment to the plan considered for the first time at the valuation date, and the actuarial assumptions and methods used to determine those values;

(2) the value of the plan's liabilities distributed among the group of active members of the plan, the group of non-active members to whom no pension is paid and the group of the other non-active members and beneficiaries, the actuarial assumptions and methods used to determine the value, and the degree of solvency of the plan;

(3) the estimated amount of the administration costs referred to in the first paragraph of section 123 of the Act;

(4) where the plan provides for obligations to which the last sentence of the first paragraph of section 124 of the Act applies:

(a) a description of the obligations;

(b) the scenario used by the actuary to determine the plan's liabilities and, where that scenario results in liabilities that are less than the value of the obligations arising from the plan assuming that the plan is terminated on the valuation date in such circumstances that the benefits accrued to the members must be estimated at their maximum value, such maximum value;

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(5) the description of the approach used to estimate the premium referred to in section 126 of the Act;

(6) where the plan is both solvent and funded, that amortization payments remain to be paid in connection with an improvement unfunded actuarial liability determined in a prior actuarial valuation and that the provision for adverse deviation provided for in section 128 of the Act is not calculated at the valuation date, certification from the actuary certifying that a calculation of the provision at that date would have determined that the plan's assets were lower than the liabilities increased by the provision for adverse deviation.

O.C. 1073-2009, s. 1.

4.2. Where the provision for adverse deviation is calculated, the report must contain the following information:

(1) its amount, with an indication of the shares attributable to elements "R" and "S" of section 60.3;

(2) the amount of elements "R" and "S" of section 60.3 and the amount of element "D" determined in accordance with section 60.4;

(3) element d^R of section 60.4 and the actuarial assumptions and methods used to determine the element;

(4) the amount determined in accordance with paragraph 1 of element "V" of section 60.4 and element " d^M " of that section;

(5) the maximum amount of surplus assets that may be appropriated to the payment of employer contributions, determined in accordance with section 146.3.4 of the Act;

(6) the maximum amount of the reduction to which the pension committee may agree under section 15.0.0.5;

(7) the maximum amount of the reduction to which the pension committee may agree under the first paragraph of section 15.0.0.6, specifying that the amount is established on the assumption that the surplus assets of the plan will be in no way appropriated to the payment of employer contributions.

O.C. 1073-2009, s. 1.

4.3. With respect to the portion of the plan's actuarial valuation performed on a funding basis, the report must contain the following information:

(1) the value of the plan's assets, the value of the liabilities determined without reference to any amendment to the plan considered for the first time at the valuation date and the actuarial assumptions and methods used to determine those values;

(2) the value of the plan's liabilities distributed among the group of active members of the plan, the group of non-active members to whom no pension is paid and the group of the other non-active members and beneficiaries, and the actuarial assumptions and methods used to determine the value;

(3) the amount established in accordance with the first paragraph of section 135 of the Act.

O.C. 1073-2009, s. 1.

4.4. Where the actuarial valuation determines the value of the additional obligations arising from an amendment to the plan considered for the first time, the report must also contain the following information:

(1) a summary of the amendment covered by the valuation and the date and effective date of the amendment;

(2) the value, determined on a solvency basis, of the additional obligations arising from the amendment;

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- (3) where the provision for adverse deviation is calculated, the amount of surplus assets determined on a solvency basis that may be appropriated to the payment of that value;
- (4) the special amortization payment determined under section 132 of the Act, where applicable;
- (5) the value, determined on a funding basis, of the additional obligations arising from the amendment;
- (6) the amount of surplus assets determined on a funding basis that may be appropriated to the payment of that value.

O.C. 1073-2009, s. 1.

4.5. With respect to unfunded actuarial liabilities, the report must contain the following information:

- (1) for each solvency deficiency determined under section 130 of the Act:
 - (a) the type;
 - (b) the date of its determination and the date of the end of the period provided for its amortization;
 - (c) the monthly amounts related to the amortization payments to be paid until the end of that period and their present value;
- (2) a description of the amendments made under section 131 of the Act to the solvency deficiencies indicated in the last report on an actuarial valuation of the plan;
- (3) the amount of the funding deficiency, the date of the end of the period provided for its amortization and the monthly amounts related to the amortization payments to be paid until that date.

O.C. 1073-2009, s. 1.

4.6. The report must contain the following financial information:

- (1) the service contribution projected for the fiscal year or part of a fiscal year immediately following the actuarial valuation and the rule used to determine the service contribution;
- (2) the rule used to determine the service contributions for the 2 subsequent fiscal years;
- (3) the amounts to be paid respectively by the employer and by the members, and, for each amount, in the case of a defined benefit plan for which certain provisions are identical to those of a defined contribution plan, the share that must be paid for those provisions and the share that must be paid for the defined benefit provisions;
- (4) the employer contribution provided for in the plan, if it is greater than the contribution provided for in section 39 of the Act;
- (5) a description of the adjustments to the contributions arising from the application of the third paragraph of section 41 of the Act;
- (6) the amount of the letter of credit, or the total amount of such letters, and the amount taken into account in the assets to determine the plan's solvency.

O.C. 1073-2009, s. 1.

5. A report on a partial actuarial valuation carried out under the conditions provided for in the second paragraph of section 118 of the Act must contain the information provided for in sections 5.1 to 5.4 and the following information:

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- (1) the name of the plan and the number assigned to it by Retraite Québec;
- (2) the date of the actuarial valuation;
- (3) the name of the signatory, the signatory's professional title, the name and address of the signatory's office and the date of signing;
- (4) a certification of the actuary certifying that a complete actuarial valuation of the plan carried out at the valuation date would have shown that the plan is both solvent and funded.

The certifications provided for in this section and in sections 5.1 and 5.2 must be established on the basis of a conservative estimate made by the actuary.

O.C. 1158-90, s. 5; O.C. 568-91, s. 1; O.C. 173-2002, s. 7; O.C. 1073-2009, s. 2.

5.1. Where the provision for adverse deviation is calculated on the basis of estimates authorized by section 60.5, the report must contain the following information:

- (1) the amount;
- (2) a certification of the actuary certifying that a complete actuarial valuation of the plan carried out at the valuation date would have established an amount for the provision for adverse deviation equal to or less than the amount indicated in paragraph 1;
- (3) the maximum amount of surplus assets that may be appropriated to the payment of employer contributions;
- (4) the maximum amount of the reduction to which the pension committee may agree under section 15.0.0.5;
- (5) the maximum amount of the reduction to which the pension committee may agree under the first paragraph of section 15.0.0.6, specifying that the amount is established on the assumption that the surplus assets of the plan will be in no way appropriated to the payment of employer contributions;
- (6) a certification of the actuary certifying that, should complete actuarial valuation be carried out, the resulting amounts would be at least equal to those indicated in paragraphs 3 to 5.

O.C. 1073-2009, s. 2.

5.2. Where the actuarial valuation determines the value of the additional obligations arising from an amendment to the plan considered for the first time, the report must also contain the following information:

- (1) a summary of the amendment that is the subject of the valuation, the date and effective date of the amendment;
- (2) the value of the additional obligations arising from the amendment, determined on a solvency basis and on a funding basis;
- (3) where the provision for adverse deviation is calculated on the basis of estimates authorized by section 60.5,
 - (a) the amount of surplus assets that may be appropriated to the payment of the value of the additional obligations arising from the amendment, determined on a solvency basis, and the amount determined on a funding basis;
 - (b) a certification of the actuary certifying that a complete actuarial valuation carried out at the valuation date would have established amounts at least equal to the amounts referred to in subparagraph *a*;

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(4) where the provision for adverse deviation is not calculated, a certification of the actuary certifying that a calculation of the provision carried out at the valuation date would have established that the plan's assets are less than the liabilities increased by the provision for adverse deviation.

O.C. 1073-2009, s. 2.

5.3. With respect to unfunded actuarial liabilities, the report must contain the following information:

(1) for each improvement unfunded actuarial liability determined under section 130 of the Act,

(a) the date on which it was determined and the date of the end of the period provided for its amortization;

(b) the monthly amounts related to the amortization payments to be paid until the end of that period and their present value;

(2) a description of the amendments made under section 131 of the Act to the solvency deficiencies indicated in the last report on an actuarial valuation of the plan.

O.C. 1073-2009, s. 2.

5.4. The report must contain the following financial information:

(1) any adjustment made to the rule referred to in paragraph 2 of section 4.6 that is related to the fiscal year immediately following the actuarial valuation, to take into account any amendment considered for the first time upon that valuation;

(2) the amounts that must be paid respectively by the employer and by the members, and, for each amount, in the case of a defined benefit plan for which certain provisions are identical to the provisions of a defined contribution plan, the share that must be paid for those provisions and the share that must be paid for the defined benefit provisions;

(3) the employer contribution provided for in the plan, if the contribution is greater than the contribution provided for in section 39 of the Act;

(4) the amount of the letter of credit, or the total amount of such letters, and the amount taken into account in the assets for the purpose of determining the plan's solvency;

(5) a description of the adjustments to the contributions arising from the application of the third paragraph of section 41 of the Act.

O.C. 1073-2009, s. 2.

6. *(Revoked).*

O.C. 1158-90, s. 6; O.C. 568-91, s. 2; O.C. 173-2002, s. 8.

7. *(Revoked).*

O.C. 1158-90, s. 7; O.C. 1465-95, s. 1; O.C. 173-2002, s. 74; O.C. 1073-2009, s. 3.

7.1. *(Revoked).*

O.C. 658-94, s. 3; O.C. 1465-95, s. 2.

8. *(Revoked).*

O.C. 1158-90, s. 8; O.C. 1465-95, s. 2.

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9. *(Revoked).*

O.C. 1158-90, s. 9; Erratum, 1991 G.O. 2, 41; O.C. 568-91, s. 3; O.C. 1465-95, s. 2.

9.1. *(Revoked).*

O.C. 658-94, s. 4; O.C. 1465-95, s. 2.

10. *(Revoked).*

O.C. 1158-90, s. 10; O.C. 1465-96, s. 2.

10.1. *(Revoked).*

O.C. 658-94, s. 5; O.C. 1465-95, s. 2.

11. *(Revoked).*

O.C. 1158-90, s. 11; O.C. 1465-95, s. 2.

11.1. *(Revoked).*

O.C. 658-94, s. 6; O.C. 1465-95, s. 2.

DIVISION II

FEES

12. For the purposes of paragraphs 2, 3 and 4 of sections 13.0.1, 13.0.2 and 13.0.3, only members and beneficiaries in respect of whom Retraite Québec may exercise the powers granted to it by the Act or an act of delegation shall be taken into consideration.

O.C. 1158-90, s. 12; O.C. 173-2002, s. 9.

13. The following applications for registration shall, at the time they are filed with Retraite Québec, be accompanied with the fees indicated with respect thereto:

(1) an application concerning a standard contract for a life income fund referred to in section 19 or a locked-in retirement account referred to in section 29: \$1,000;

(2) an application concerning a simplified pension plan referred to in Division IV of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7), with respect to the provisions common to all the employers party to the plan: \$1,500;

(3) an application concerning a pension plan that is not referred to in paragraph 2 or 4: \$250 or, in the case of a plan to which chapter X of the Act applies: \$500, to which shall be added \$9.85 for each plan member or beneficiary on the date of the application, to a maximum of \$100,000;

(4) an application concerning a flexible pension plan referred to in Division VII of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act: \$1,000 plus fees calculated in accordance with paragraph 3;

(5) an application concerning an amendment to a pension plan referred to in section 31 of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act: \$1,000.

O.C. 1158-90, s. 13; O.C. 1895-93, s. 1; O.C. 658-94, s. 7; O.C. 173-2002, s. 9; O.C. 1073-2009, s. 50; O.C. 500-2014, s. 1.

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13.0.1. The annual statement provided for in section 161 of the Act shall, when transmitted to Retraite Québec, be accompanied with fees determined as follows: \$250 or in the case of a plan to which chapter X of the Act applies: \$500, to which shall be added \$9.85 for each plan member or beneficiary on the ending date of the fiscal year to which the statement pertains, to a maximum of \$100,000.

However, where the annual statement concerns a simplified pension plan, the fees are determined as follows: \$1,000 plus \$4.50 for each active plan member on the ending date of the fiscal year to which the statement pertains.

O.C. 173-2002, s. 9; O.C. 500-2014, s. 2.



With regard to the fiscal year ending after 30 December 2018, the amount “\$4.50” is replaced by “\$5.00”.

13.0.2. From 31 December 2002, the amount payable for an active member or for a member or beneficiary under paragraph 3 or 4 of section 13 or pursuant to the first paragraph of section 13.0.1 shall be adjusted on 31 December of each year by multiplying the amount payable before that date by the ratio that the average, for the 12-month period ending on 30 June of the current year, of the average weekly salaries and wages for the Industrial Composite in Canada for each of the months comprised in that period, as published by Statistics Canada pursuant to the Statistics Act (R.S.C. 1985, c. S-19) bears to the average, for the 12-month period ending at the end of June of the year immediately preceding the current year, of the average weekly salaries and wages for the Industrial Composite in Canada, as published by Statistics Canada pursuant to the Statistics Act. The product of the multiplication shall be increased or decreased to the next multiple of \$0.05.

The amount thus determined may not be less than the amount that was payable before the adjustment.

Retraite Québec gives public notice of the result of the adjustment made under this section in Part 1 of the *Gazette officielle du Québec* and, if Retraite Québec considers it expedient, by any other means.

The adjustment provided for in the first paragraph applies to any annual statement pertaining to a fiscal year ending during the 12-month period for which the adjustment is made.

O.C. 173-2002, s. 9; O.C. 500-2014, s. 3.



The striking out “the first paragraph of” in the first paragraph after “of section 13 pursuant to” applies to the fiscal year ending after 30 December 2019.

13.0.3. The termination report referred to in section 207.2 of the Act shall, when it is transmitted to Retraite Québec, be accompanied with fees determined as follows: \$250 or, in the case of a plan to which chapter X of the Act applies, \$500, plus, for each plan member and beneficiary on the date which precedes the termination date, an amount equal to twice the amount set for a member or beneficiary under paragraph 3 of section 13 and section 13.0.2 for the period in which the plan is terminated, to a maximum of \$100,000.

The termination report provided for in paragraph 2 of section 15 of the Regulation respecting the exemption of certain categories of pension plans from the application of provisions of the Supplemental Pension Plans Act (chapter R-15.1, r. 7), shall when it is submitted to Retraite Québec, be accompanied by fees of \$1,000.

O.C. 173-2002, s. 9; O.C. 1073-2009, s. 50.

13.1. Before distributing the surplus assets of a terminated pension plan, the administrator of the plan shall pay Retraite Québec a fee equal to 1% of the surplus assets; that fee may not be less than \$500 without however exceeding the surplus assets, or more than \$50,000.

This section also applies to the pension plans referred to in the second paragraph of section 311.1 of the Act. Notwithstanding the foregoing, this section does not apply where the surplus assets of the plan are the

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subject of proceedings, of an apportionment or of an order referred to in the first paragraph of that section, or of a judgment having compulsory effect prior to 1 January 1993.

O.C. 1895-93, s. 2; O.C. 173-2002, s. 10.

14. In the event of failure to produce a document referred to in section 13.0.1 or 13.0.3, additional fees equal to 10% of the fees initially due pursuant to the relevant provision must be paid for each complete month of delay, to a maximum of the fees initially due.

In the event of failure to pay the fees that must accompany a document referred to in the first paragraph, additional fees equal to 10% of the unpaid balance at the expiry of the time allotted for submitting the document to Retraite Québec must be paid for each complete month of delay, to a maximum of the said balance.

No additional fee is due pursuant to the second paragraph with respect to a month for which additional fees must be paid in application of the first paragraph. Moreover, in the event of failure to submit a termination report or failure to pay the fees that must accompany it, no additional fee is due with respect to a period prior to the latest of the following dates:

- (1) the date of expiry of the time allotted in section 207.2 of the Act;
- (2) the date that falls 90 days after the date of the plan's termination.

In the event of failure to produce the report referred to in section 120 of the Act or a document that must accompany the report, additional fees equal to 20% of the fees calculated in the manner prescribed by section 13.0.1 taking into account the number of members and beneficiaries indicated in the annual statement of information related to the last fiscal year of the plan ended on the date of the actuarial valuation, must be paid to Retraite Québec for each complete month of delay, up to the amount of the latter fees.

O.C. 1158-90, s. 14; O.C. 1681-97, s. 1; O.C. 173-2002, s. 11; O.C. 1073-2009, s. 4.

14.1. A financial institution shall pay Retraite Québec, before 31 December of each year, fees of \$250 for each standard contract for a life income fund or locked-in retirement account registered in its name. In case of failure to pay, additional fees equal to 10% of the balance owing at that date shall be paid to Retraite Québec.

O.C. 1681-97, s. 2; O.C. 173-2002, s. 12.

15. Any communication referred to in section 165 of the Act and concerning untraceable members or beneficiaries must be accompanied by payment of a fee of \$20 for each name mentioned therein.

O.C. 1158-90, s. 15; O.C. 173-2002, s. 13.

DIVISION II.0.0.1
LETTER OF CREDIT

O.C. 1073-2009, s. 5.

15.0.0.1. The letter of credit referred to in section 42.1 of the Act is an irrevocable standby letter of credit. It is established in accordance with form 3.

Despite any stipulation to the contrary, such a letter of credit is subject to the statutes of Québec and is governed by the International Standby Practices, 1998 (ICC, N^o. 590) insofar as those practices are compatible with the provisions of this Regulation.

O.C. 1073-2009, s. 5.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

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15.0.0.2. The letter of credit must be issued by a financial institution that meets the following requirements:

(1) it is authorized to issue letters of credit in Québec or elsewhere in Canada where an agreement referred to in section 249 of the Act applies;

(2) any of the following credit rating organizations gives it the rating indicated on the same line as the organization's name in the following table, or a higher rating:

Credit rating organization	Rating
Dominion Bond Rating Service	A
Fitch Ratings	A
Moody's Investors Service	A2
Standard & Poor's	A

O.C. 1073-2009, s. 5.

15.0.0.3. The date of expiry of the letter of credit must correspond to the date of the end of a fiscal year of the pension plan.

O.C. 1073-2009, s. 5.

15.0.0.4. The pension committee must, at the written request of the employer, agree to reduce the amount of the letter of credit in the following cases:

(1) the employer pays to the pension fund an amount at least equal to the amount of the reduction requested;

(2) the report on the last actuarial valuation of the pension plan the date of which is not prior to the date of the end of the last fiscal year of the plan shows that the assets, alone or increased by the amount by which the amount of the letter of credit exceeds the amount taken into account pursuant to the third paragraph of section 123 of the Act, are greater than liabilities increased by the provision for adverse deviation.

O.C. 1073-2009, s. 5.

15.0.0.5. Where the plan's assets increased by the amount by which the amount of the letter of credit exceeds the amount taken into account pursuant to the third paragraph of section 123 of the Act are greater than the plan's liabilities increased by the provision for adverse deviation, the reduction provided for in paragraph 2 of section 15.0.0.4 may not be greater than the lesser of the following amounts:

(1) the amount by which the amount of the letter of credit exceeds the amount taken into account pursuant to the third paragraph of section 123 of the Act;

(2) the amount by which the plan's assets increased by that excess amount exceeds the plan's liabilities increased by the provision for adverse deviation.

O.C. 1073-2009, s. 5.

15.0.0.6. Where the plan's assets alone exceeds the liabilities increased by the provision for adverse deviation, the reduction provided for in paragraph 2 of section 15.0.0.4 may not be greater than that excess amount.

However, if the employer appropriates all or part of the excess assets to the payment of employer contributions, the maximum amount of that reduction is equal to the remaining assets after deduction from the

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liabilities of the provision for adverse deviation and the total amounts indicated in a written notice that the employer must send to the pension committee with the reduction request and in which the employer specifies

(1) the amount that will be appropriated to the payment of employer contributions for the period comprised between the date of the latest actuarial valuation of the plan and the date on which the first fiscal year of the plan ends following the date of that valuation, taking into account section 41 of the Act;

(2) the amount that will be appropriated to the payment of employer contributions for the first 9 months of the fiscal year that follows the fiscal year referred to in subparagraph 1.

If the amount of the letter of credit may be reduced under the provisions of both section 15.0.0.5 and this section, the reduction requested must be carried out in accordance with section 15.0.0.5.

O.C. 1073-2009, s. 5.

15.0.0.7. Where the reduction in the amount of the letter of credit to which the pension committee agreed pursuant to paragraph 2 of section 15.0.0.4 has an effect on the amount taken into account under the third paragraph of section 123 of the Act and the report on the last actuarial valuation referred to in paragraph 2 of section 15.0.0.4 is subsequently amended or replaced, the value of the plan's assets determined on a solvency basis must be established, for the purposes of the amendment or replacement, taking into account the reduction of the amount of the letter of credit.

O.C. 1073-2009, s. 5.

15.0.0.8. In the event of non-renewal of the letter of credit, the financial institution that has issued the letter must pay the amount of the letter to the pension fund. The payment is not required if the pension committee sends, at least 30 days before the date of expiry of the letter, a written notice to that effect to the financial institution. A copy of that notice must immediately be sent to Retraite Québec.

O.C. 1073-2009, s. 5.

15.0.0.9. Where the pension committee becomes aware that a letter of credit provided to the committee no longer meets the standards of this Regulation, the committee must immediately inform the employer. The employer may, within 30 days of the notice, provide the pension committee with a new letter of credit or an amount equivalent to the amount of the letter. In such cases, the pension committee must agree to the cancellation of the non-complying letter of credit. In any other case, it must require payment thereof from the expiry of the 30-day period.

O.C. 1073-2009, s. 5.

15.0.0.10. Without prejudice to the provisions of section 15.0.0.4, in the event of termination of a pension plan, the pension committee must, within the time prescribed in the first paragraph of section 207.2 of the Act and after a 10-day notice to the employer, request the payment of the letter of credit up to the amount by which the plan's liabilities exceed the assets at the termination date, increased by the interest calculated at the rate determined pursuant to section 61 of the Act and that applied on that date.

The pension committee must agree to the cancellation of the letter of credit for the amount remaining to be paid.

O.C. 1073-2009, s. 5.

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DIVISION II.0.1

ADDITIONAL PENSION BENEFIT

O.C. 173-2002, s. 14.

15.0.1. For the purposes of applying the first paragraph of section 60.1 of the Act:

(1) the value of the member contributions referred to by A is determined by taking into account the value of the pension resulting from the member's credited service for any period of work during which the rules set out in section 60 of the Act apply to him by supposing that he is entitled, under the plan, to a pension whose value is determined in accordance with the second paragraph of section 60.1 of the Act for service credited to him for any period of work during which the indexation provided for in that section applies to him;

(2) the value of the member contributions referred to by B is determined by taking into account the value of the pension to which the member is entitled for service credited to him for any period of work during which, under the provisions of the plan, the rules set out in section 60 of the Act apply to him.

O.C. 173-2002, s. 14.

15.0.2. The additional pension benefit is, at the date on which the member ceased to be an active member, determined in one or the other of, or a combination of, the following forms, in accordance with the provisions of the pension plan:

(1) a life annuity;

(2) a lump-sum payment at the date on which the member ceased to be an active member.

O.C. 173-2002, s. 14; O.C. 204-2005, s. 1.

15.0.3. The life annuity purchased with the additional pension benefit is determined, on the date on which the member ceased to be an active member, using the assumptions referred to in section 61 of the Act that are used at that date to determine the value of the pension benefits to which section 60 of the Act applies and to which entitlement is obtained on that date.

O.C. 173-2002, s. 14.

DIVISION II.1

MEMBER BENEFITS AND PAYMENT OF AN EARLY BENEFIT

O.C. 1681-97, s. 3.

15.1. Unless provisions of the pension plan provide otherwise, payment of the early benefit referred to in section 69.1 of the Act is made from the benefits of the member that, accumulated as refunds or benefits, are related to amounts credited to the member's account as contributions paid, assets transferred and interest on such contributions and assets but that have not yet been used to provide a benefit.

O.C. 1681-97, s. 3.

15.2. Where payment of the early benefit referred to in section 69.1 of the Act is made from the benefits referred to in section 15.1, the value of such benefits, determined as at the date of payment, is reduced by the amount of the benefit paid.

O.C. 1681-97, s. 3.

15.3. Where payment of the early benefit referred to in section 69.1 of the Act is made from pension plan benefits accumulated by the member that are not referred to in section 15.1, the pension committee shall

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determine the amount of the portion of the normal pension that would have been payable to the member at the normal retirement age and that is equivalent to the benefit paid.

That amount, as well as the value of the benefits referred to in subparagraph 3 of the first paragraph of section 69.1 of the Act, shall be determined, as at the date of payment, according to the conditions or characteristics provided for the normal pension and according to the assumptions referred to in section 61 of the Act, other than those related to early or postponed payment of the pension which are used at that date to determine the value of the other benefits to which section 60 of the Act applies and to which entitlement is vested as at that date.

The benefits referred to in the first paragraph are then reduced in the following manner:

(1) The pension paid is reduced either by the amount determined in the second paragraph or, if its requirements and characteristics, with the exception of those related to early or postponed payment, are different from those used to determine such amount or, if its payment begins on a date other than that of the normal retirement age, by a sum equivalent to such amount;

(2) any other benefit, excluding the one referred to in section 69.1 of the Act and any refund that are payable to the member are reduced by the value of that portion of the pension of which the valuated amount is referred to in the second paragraph.

O.C. 1681-97, s. 3; O.C. 173-2002, s. 15.

DIVISION II.2
TEMPORARY PENSION

O.C. 1681-97, s. 3.

15.4. A member or spouse is entitled to the replacement of the pension to which he is entitled under a pension plan by the temporary pension referred to in section 91.1 of the Act only if he provides the pension committee with a declaration in conformity with the one prescribed in Schedule 0.1.

O.C. 1681-97, s. 3.

DIVISION III
OPTION TO REPLACE A PENSION

16. For the purposes of this Division, the spouse of a purchaser who is a former member or a member is a person who fulfills the conditions prescribed in the first and third paragraphs of section 85 of the Act, with the necessary modifications in the case of a former member.

Spousal status is established on the day of conversion of all or part of the balance of the fund into a life pension or, in the case of the benefit referred to in subparagraph 4 of the first paragraph of section 19, on the day preceding the day of the purchaser's death. The fourth paragraph of section 85 of the Act applies, with the necessary modifications, with respect to the spouse.

O.C. 1158-90, s. 16; O.C. 173-2002, s. 16.

16.1. A member or spouse who has become entitled to a pension under a defined contribution pension plan or under provisions that, in a defined benefit plan or defined benefit-defined contribution plan, are similar to those of a defined contribution plan is entitled, upon an application to the pension committee accompanied with a declaration in conformity with the one prescribed in Schedule 0.2, to replace it, before payment of it begins, by a lump-sum payment under the following conditions:

(1) he is at least 65 years of age;

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(2) the total of the sums credited to his account in the retirement savings instruments referred to in Schedule 0.2 do not exceed 40% of the Maximum Pensionable Earnings determined in accordance with the Act respecting the Québec Pension Plan (chapter R-9) for the year in which he applies for the payment.

O.C. 1681-97, s. 4.

16.2. On application to the pension committee accompanied with a declaration in conformity with the one prescribed in Schedule 0.3, a member or spouse at least 55 years of age but less than 65 years of age who has become entitled to a pension under a pension plan is entitled to replace it partially, before it comes into payment, by the payment in a lump sum of an amount equal to “Y” in the following formula:

$$G - W = Y$$

“G” is equal to 40% of the Maximum Pensionable Earnings determined, for the year in which the application is made, pursuant to the Act Respecting the Québec Pension Plan (chapter R-9);

“W” is equal to the total temporary income that the purchaser has received or must receive during the year under a supplemental pension plan subject to or created by law from the locked-in account of a voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) or the locked-in account of an equivalent voluntary retirement savings plan emanating from a legislative authority other than the Parliament of Québec and offering temporary variable payments, an annuity purchase contract of which the capital originates directly or not in such plan or a contract establishing a life income fund.

The member or spouse may not make the application provided for in the first paragraph more than once a year.

O.C. 1681-97, s. 4; O.C. 500-2014, s. 4.

16.3. Sections 15.1 to 15.3 apply, with the necessary modifications, with respect to the allocation of benefits and the determination of residual benefits of the member or spouse to whom a payment referred to in section 16.2 has been paid.

O.C. 1681-97, s. 4.

17. A member or spouse who has become entitled to a pension under a pension plan may replace such pension with a life or temporary annuity purchased with funds from the life income fund referred to in section 18. The exercise of this option involves the transfer to a life income fund of the value of the pension to be replaced.

Unless the pension plan has a more advantageous provision, the pension under the plan is not replaced by an annuity purchased from the funds of a life income fund, unless the pension to be replaced may, under the provisions of the Act, the pension plan or the Regulation, be transferred in whole or in part to another pension plan.

O.C. 1158-90, s. 17; O.C. 1681-97, s. 5.

18. A life income fund is a fund established under a contract entered into by a financial institution duly authorized for that purpose and a purchaser who is a former member, a member or the spouse thereof, and under the terms of which the institutions, in return for the capital that it receives, must pay the purchaser an income of which the amount may vary annually. That contract must fulfil the requirements of the Taxation Act (chapter I-3) to be a registered retirement income fund.

O.C. 1158-90, s. 18; O.C. 1681-97, s. 6.

19. Replacement of the pension referred to in section 92 of the Act by a life pension is authorized only where the provisions of the contract establishing the life income fund are in conformity with provisions of the standard contract previously registered with Retraite Québec that provide:

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(0.1) that the only amounts that may be transferred to a life income fund are amounts coming directly or initially from the fund of a pension plan subject to the Act or referred to in subparagraphs 1, 2, 2.1, 2.2, 4 or 5 of section 28, or another life income fund;

(1) the fiscal year of the fund must end on 31 December of each year and may not exceed 12 months;

(2) that the amount of the income paid during a fiscal year must, subject to the upper limits referred to in section 20.1 and the lower limit referred to in section 20.2, be set by the purchaser each year, or at another agreed to interval of more than one year if the financial institution guarantees the balance of the fund at the end of that interval and if the purchaser is not entitled to payment of the income in a form other than a life income; such an interval must, in every case, terminate at the end of a fiscal year of the fund;

(3) *(subparagraph revoked)*;

(4) that, where the purchaser who is a former member or a member dies before conversion of the total balance of the fund into a life pension, his spouse or, failing that, his successors are, entitled to a benefit of which the amount is equal to the balance;

(5) that the spouse of the purchaser who is a former member or beneficiary may, by giving notice in writing to the financial institution, waive his entitlement to receive the pension benefit provided for in paragraph 4 above or the life pension provided for in paragraph 2 of the second paragraph of section 23 and may, in the case of the pension benefit, revoke such a waiver by giving notice in writing to the financial institution to that effect before the death of the purchaser and, in the case of the life pension, before the date of conversion, in whole or in part, of the life income fund;

(6) that the spouse of the purchaser who is a former member or a member ceases to be entitled to the pension benefit provided for in paragraph 2 of the second paragraph of section 23 upon separation from bed and board, divorce, nullity of marriage, nullity or dissolution of a civil union or, in the case of a spouse who is not a married or civil union spouse, upon cessation of the conjugal relationship, unless the purchaser has transmitted to the financial institution the notice provided for in section 89 of the Act;

(6.0.1) that the seizable portion of the balance of the fund may be paid in a lump sum in execution of a judgment rendered in favour of the purchaser's spouse that gives entitlement to a seizure for unpaid alimony;

(6.1) that the entire balance of the fund may be paid in a lump-sum to the purchaser upon an application to the financial institution accompanied with a declaration in conformity with the one prescribed in Schedule 0.2 under the following conditions:

(a) the purchaser is at least 65 years of age at the end of the year preceding the application;

(b) the total sums credited to his account in the retirement savings instruments referred to in Schedule 0.2 do not exceed 40% of the Maximum Pensionable Earnings determined in accordance with the Act respecting the Québec Pension Plan (chapter R-9) for the year in which the purchaser applies for the payment;

(7) that the purchaser may transfer, in whole or in part, the balance of the fund to a pension plan governed by the Act or referred to in paragraph 1, 2, 2.1, 2.2, 3.1, 4 or 5 of section 28, unless the agreed to term of the investments has not expired;

(7.1) that the purchaser may, unless the agreed to term of the investments has not expired, require that the total balance of the fund be paid to him in a lump sum if he has not resided in Canada since at least 2 years;

(8) the name and address of the financial institution;

(9) the powers that, where applicable, are granted to the purchaser with respect to investment of the capital;

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(10) the method and factors used to establish the value of the fund or of the balance of the fund, for the purpose of a transfer of assets or a conversion into a pension, or upon a death;

(10.1) that if the income paid to the purchaser during a fiscal year of the fund exceeds the maximum amount that may be paid to him in accordance with the provisions of the contract of the Regulation, the purchaser may, unless the payment is attributable to a false declaration by him, require that the financial institution pay him, as a penalty, a sum equal to the surplus income paid;

(11) that the financial institution may not make any amendment that would have the effect of reducing benefits under the contract unless, before the date of the amendment, the purchaser has the right to transfer the balance of the fund and receives, not less than 90 days before the date on which he may exercise that right, a notice indicating the nature of the amendment and the date from which he may exercise that right;

(12) that the transfer referred to in subparagraphs 7 and 11 may, at the option of the financial institution and unless otherwise stipulated, be effected by remittance of the investment securities of the fund;

(13) that the financial institution may not, except to fulfil requirements under law, make any amendment other than the amendment provided for in subparagraph 11 without having given prior notice to the purchaser;

(14) that the financial institution may amend the contract only to the extent that it remains in conformity with the standard contract amended and registered with Retraite Québec.

Sections 27 to 31 of the Act and the second and third paragraphs of section 32 of the Act apply, with the necessary modifications, to the registration of a standard contract designed to propose the establishment of a life income fund and to amendments thereto. The registration of a standard contract may, in addition, be cancelled where no contract establishing a life income fund in conformity with it exists and where the financial institution attests that it no longer intends to make any contracts in conformity with that standard contract.

O.C. 1158-90, s. 19; O.C. 1681-97, s. 7; O.C. 173-2002, s. 17; O.C. 1073-2009, s. 6; O.C. 500-2014, s. 5.

19.1. The standard contract referred to in section 19 may also provide that the purchaser is entitled to the payment of a temporary income that he determines if he meets the following requirements:

(1) makes an application to the financial institution to that effect, accompanied with a declaration in conformity with the one prescribed in Schedule 0.4;

(2) is at least 54 years of age but under 65 years at the end of the year preceding the application.

In such case, the contract must also provide:

(1) that if the payment of a portion of the income is made in the form of a transfer to a retirement savings instrument of which the balance is not to be converted to a life annuity, such portion may not exceed the upper limit referred to in section 20, determined by assuming that the purchaser is not entitled to payment of a temporary income;

(2) that the temporary income may not be paid after the end of the year in which the purchaser reaches 65 years of age.

O.C. 1681-97, s. 8; I.N. 2014-03-01.

19.2. The standard contract that includes the provisions referred to in section 19.1 shall provide that the purchaser may, during a fiscal year of the life income fund, receive on application the balance of the fund, in whole or in part, in the form of a temporary income payable in monthly payments, none of which may exceed $\frac{1}{12}$ of the difference between the following amounts:

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(1) 40% of the Maximum Pensionable Earnings determined, for the year in which the payment is made, pursuant to the Act respecting the Québec Pension Plan (chapter R-9);

(2) 75% of the purchaser's income for the 12 months that follow, excluding the income provided for in this section,

provided the following conditions are met:

— the income of the purchaser for the 12 months that follow, excluding the income provided for in this section, does not exceed the amount referred to in subparagraph 1 hereinbefore;

— the purchaser makes an application to the financial institution to that effect, accompanied with a declaration in conformity to the one prescribed in Schedule 0.5 and his written undertaking to request a suspension of payments as soon as his income, excluding the income provided for in this section, reaches the amount referred to in subparagraph 1 hereinbefore;

— the purchaser was less than 54 years of age at the end of the year that precedes his application.

In such case, the contract shall stipulate:

(1) that the income provided for in this section may not be paid to the purchaser where he has requested a suspension of payments nor after the end of the year in which he reaches 54 years of age;

(2) that the purchaser who is entitled to receive the income referred to in this section and who is a member or spouse who has become entitled to a pension under a pension plan may, for the purposes of replacing such pension by a temporary income, apply once a year for the transfer from the pension plan to the life income fund of an amount equal to the lesser of the following amounts:

(a) the additional amount required for the balance of the life income fund to allow, until the end of the year, the payment of the monthly payments provided for in the first paragraph;

(b) the value of his benefits under the plan.

O.C. 1681-97, s. 8; O.C. 577-98, s. 1.

19.3. Replacement of the pension referred to in section 92 of the Act by a temporary pension is authorized only where the contract establishing the life income fund contains the provisions required in sections 19, 19.1 and 19.2.

O.C. 1681-97, s. 8.

20. The maximum amount of the life income for a fiscal year of the life income fund is equal to the amount "E" in the following formula:

$$F \times C - \frac{A}{D} = E$$

"F" represents the factor provided for in Schedule 0.6 with respect to the reference rate for the year covered by the fiscal year and the purchaser's age at the end of the preceding year;

"C" represents the balance of the fund at the beginning of the fiscal year, increased by any sums transferred to the fund after that date and reduced by any sums originating directly or not during the same year from a life income fund or the locked-in account of a voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) and offering variable payments of the purchaser;

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“A” represents the maximum temporary income for the fiscal year determined in accordance with section 20.4 or 20.5 or, if no amount was determined, the figure zero;

“D” represents the factor provided for in Schedule 0.7 with respect to the purchaser’s age at the end of the year preceding the one covered by the fiscal year.

The amount “E” may not be less than zero.

O.C. 1158-90, s. 20; O.C. 1681-97, s. 9; O.C. 577-98, s. 2; O.C. 500-2014, s. 6.

20.1. The amount of the income paid during a fiscal year of the life income fund may not exceed the amount “M” in the following formula:

$$A + E = M$$

“A” represents the maximum temporary income for the fiscal year determined in accordance with section 20.4 or 20.5 or, if no amount was determined, the figure zero;

“E” represents the maximum life income determined in accordance with section 20.

O.C. 1681-97, s. 9; O.C. 577-98, s. 2.

20.2. The amount of the income paid during the fiscal year of the life income fund may not be less than the minimum amount prescribed by the Taxation Act (chapter I-3), determined on the basis of the purchaser’s age. That amount may be determined on the basis of the age of the purchaser’s spouse where he is younger than the purchaser.

O.C. 1681-97, s. 9.

20.3. Where the purchaser of a life income fund established by a contract that provides for payment of a temporary income was at least 54 years of age but less than 65 years of age at the end of the year preceding the one covered by a fiscal year of the fund, the financial institution that manages the fund shall establish a reference temporary income the amount of which shall be equal to the lesser of the following amounts:

(1) 40% of the Maximum Pensionable Earnings, determined for the year covered by the fiscal year, pursuant to the Act respecting the Québec Pension Plan (chapter R-9);

(2) the amount “R” in the following formula:

$$F \times C \times D = R$$

“F” represents the factor provided for in Schedule 0.6 with respect to the reference rate for the year covered by the fiscal year and the purchaser’s age at the end of the preceding year;

“C” represents the balance of the fund at the beginning of the fiscal year, increased by the sums transferred to the fund after that date and reduced by the sums originating directly or not during the same year from a life income fund of the purchaser, or from a locked-in account of his voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) and offering variable payments;

“D” represents the factor provided for in Schedule 0.7 with respect to the purchaser’s age at the end of the year preceding the one covered by the fiscal year.

O.C. 1681-97, s. 9; O.C. 500-2014, s. 7.

20.4. A purchaser who is entitled to payment of the temporary income referred to in section 19.1 may determine, for each fiscal year of the life income fund, a maximum temporary income that may not exceed the lesser of the following amounts:

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- (1) the reference temporary income determined in accordance with section 20.3;
- (2) the amount “X” in the following formula:

$$G - T = X$$

“G” is equal to 40% of the Maximum Pensionable Earnings determined, for the year covered by the fiscal year, pursuant to the Act respecting the Québec Pension Plan (chapter R-9);

“T” represents the sum of the following amounts:

- (a) the total temporary income that the purchaser must receive during the year covered by the fiscal year under a pension plan subject to or established by law or under a contract creating a pension of which the capital comes directly or not from such a plan;
- (b) the total of the amounts that the purchaser has determined or that he must determine for his other life income funds, in the form of a maximum temporary income for the current fiscal year;
- (c) the total of the amounts that the member has determined or that he must determine for the locked-in account of his voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) for the maximum temporary variable payments for the current fiscal year.

However, in the event that the reference temporary income determined in accordance with section 20.3 is less than the amount “X” in the first paragraph, where the purchaser provides to the financial institution a declaration in conformity with the one prescribed in Schedule 0.8, the purchaser may determine, as the maximum temporary income, an amount that does not exceed the lesser of the following amounts:

- (1) the amount “X” in the first paragraph;
- (2) the balance of the fund at the beginning of the fiscal year, increased by any sums transferred to the fund and any income earned by the fund after that date and reduced by any sums originating directly or not during the same year from a life income fund of the purchaser, or from a locked-in account of his voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act and offering variable payments.

The purchaser may, at any time before the end of the fiscal year, determine a new, increased, maximum temporary income for the fiscal year. In such event, he shall send to the financial institution declarations in conformity with the ones prescribed in Schedules 0.4 and 0.8.

O.C. 1681-97, s. 9; O.C. 500-2014, s. 8.

20.5. The financial institution determines the maximum temporary income for the fiscal year of the life income fund following presentation of an application in accordance with section 19.2. The said income shall be equal to the product of multiplying the maximum monthly payment set in accordance with section 19.2 by the number of months remaining in the year as of the first day of the month of the application or, where the purchaser is entitled, for that month, to a temporary income by reason of a prior application, as of the first day of the following month; the product is increased where necessary by any income provided for in section 19.2 and paid to the purchaser during the year but prior to payment of the income payable as a consequence of the application and reduced by any income paid to the purchaser, during the same period, from another life income fund.

The maximum temporary income for the fiscal year may not be less than zero.

O.C. 577-98, s. 3.

21. The reference rate for a year is determined on the basis of the month-end, nominal rate of interest earned on long-term bonds issued by the Government of Canada for the month of November preceding the beginning of the fiscal year, as compiled monthly by Statistics Canada and published in the Bank of Canada Banking and Financial Statistics, Series V122487 in the CANSIM system, by applying successively to that rate the following adjustments:

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- (1) an increase of 0.5%;
- (2) the conversion of the increased rate, based on interest compounded semi-annually, to an effective annual rate of interest;
- (3) the rounding of the effective interest rate to the nearest multiple of 0.5%.

The reference rate thus determined may not, however, be less than 6%.

O.C. 1158-90, s. 21; Erratum, 1991 G.O. 2, 41; O.C. 1681-97, s. 10; O.C. 1073-2009, s. 7.

22. Where, in application of subparagraph 2 of the first paragraph of section 19, the amount of the life income paid to the purchaser is set at an interval of more than one year, the maximum income amount that may be paid during each of the fiscal years comprised in the interval is determined, on the date of the beginning of the first of those fiscal years, so as to be equal:

- (1) for the initial fiscal year, to the upper limit determined in accordance with section 20;
- (2) for each of the subsequent fiscal years, to the amount “L” in the following formula:

$$M \times \frac{J}{K} = L$$

“M” represents the upper limit determined for the initial fiscal year;

“J” represents the balance of the fund at the beginning of the fiscal year;

“K” represents the fund’s reference balance at the beginning of the fiscal year and is equal to the reference balance of the preceding fiscal year, reduced as of the first day of the said preceding fiscal year by the upper limit calculated for the initial fiscal year and increased by the earnings determined by applying, in the case of the first 16 fiscal years, the reference rate, and, in all other cases, a rate of interest of 6%.

For the application of subparagraph 2, the fund’s reference balance at the beginning of the initial fiscal year shall be equal to the balance of the fund at that date.

O.C. 1158-90, s. 22; O.C. 1681-97, s. 11.

22.1. Where a sum is transferred from a pension plan to a life income fund in accordance with subparagraph 2 of the second paragraph of section 19.2, sections 15.1 to 15.3 shall apply, with the necessary modifications, with respect to the allocation of benefits and the determination of the residual benefits of the member or spouse in the pension plan.

O.C. 1681-97, s. 12.

22.2. The sums transferred to a life income fund are deemed to come in their entirety from a life income fund of a given purchaser, or from the locked-in account of his voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) and offering variable payments, unless he sends to the financial institution that manages the fund to which the sums are transferred a declaration in conformity with the one prescribed in Schedule 0.9 or 0.9.1, as the situation requires.

O.C. 1681-97, s. 12; O.C. 577-98, s. 4; O.C. 500-2014, s. 9.

23. To be registered with Retraite Québec, a standard contract referred to in section 19 must, in addition to the provisions required by sections 19, 19.1 and 19.2, provide that the financial institution that manages the

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life income fund undertake to provide the statements prescribed in sections 24 to 26 at the times determined therein.

That contract must also provide that all or a part of the balance of the life pension fund may be converted only upon the following conditions:

(1) the insurer guarantees payment of that pension in periodic, equal amounts that may not vary unless each of them is uniformly increased in accordance with an index or rate provided for in the annuity contract or uniformly adjusted by reason of a seizure effected on the purchaser's benefits, a redetermination of the purchaser's pension, a partition of the purchaser's benefits in favour of his spouse, the payment of a temporary pension in accordance with the conditions provided for in section 91.1 of the Act or the option provided for in subparagraph 3 of the first paragraph of section 93 of the Act;

(2) in the event of the death of a purchaser who is a former member or a member, the insurer guarantees to the purchaser's spouse who has not waived it a life pension equal to at least 60% of the amount of purchaser's pension, including, during the replacement period, the amount of any temporary pension.

The provisions required by this section shall be included in any contract that establishes a life income fund.
O.C. 1158-90, s. 23; O.C. 1681-97, s. 13; O.C. 173-2002, s. 18.

24. The financial institution shall, at the beginning of each fiscal year of a life income fund that it manages, provide the purchaser with a statement that indicates:

(1) the balance of the fund at the said date and, where required, the reconciliation of that balance with the balance indicated on the previous statement pertinent thereto with, notably, an indication of the sums on deposit, the accumulated earnings, the withdrawals made and the fees charged;

(2) where the beginning of the fiscal year is later than the beginning of the year, the sums coming directly or initially during the year from another life income fund of the purchaser, or from the locked-in account of his voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) and offering variable payments;

(3) the maximum amount that may be paid to the purchaser as income a life during the current fiscal year;

(4) the minimum amount that must be paid to the purchaser as income during the current fiscal year;

(5) where the contract that establishes the fund provides for the payment of a temporary income and the purchaser was at least 54 years of age but less than 65 years of age at the end of the preceding year:

(a) the terms and conditions that the purchaser must meet to be entitled to payment of the temporary income referred to in section 19.1;

(b) the reference temporary income for the current fiscal year;

(c) the effect of payment of an income greater than the amount referred to in paragraph 3, for each year until the end of the year in which the purchaser reaches 65 years of age, on the income that may be paid to him after that date;

(d) under what conditions the purchaser may obtain payment of a temporary income greater than the reference temporary income;

(6) where the contract establishing the funds provides for payment of a temporary income and the purchaser was less than 54 years of age at the end of the preceding year, the terms and conditions that the purchaser must meet to be entitled to payment of the temporary income referred to in section 19.2;

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(7) that the transfer to the fund of sums originating directly or not from a life income fund of the purchaser, or from the locked-in account of his voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act and offering variable payments during a given year may not result in a revision of the maximum amount that may be paid to the purchaser by the fund during the fiscal year;

(8) that if the purchaser wishes to transfer, in whole or in part, the balance of the fund and still receive from the fund the income that he determined for the fiscal year, he must ensure that the balance of the fund after the transfer is at least equal to the difference between the income determined for the fiscal year and the income that he has already received since the beginning of the fiscal year.

Where the contract establishing the fund provides for payment of a temporary income and the purchaser was at least 54 years of age but less than 65 years of age at the end of the preceding year, the financial institution shall accompany the statement with a copy of the declarations that are prescribed in Schedules 0.4 and 0.8.

O.C. 1158-90, s. 24; O.C. 1681-97, s. 14; O.C. 173-2002, s. 19; O.C. 500-2014, s. 10.

24.1. Where sums that do not originate, during the same year, directly or indirectly from a life income fund of the purchaser, or from the locked-in account of his voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) and offering variable payments are deposited in a fund that it manages or the purchaser informs it of the maximum temporary income that he determines, the financial institution shall, within the following 30 days, supply the purchaser with a statement that indicates the following:

(1) the balance of the fund at the beginning of the fiscal year and the sums that have been deposited therein, identifying any amounts coming directly or not during that year from a life income fund of the purchaser, or from the locked-in account of his voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act and offering variable payments, as well as the balance of the fund for the purpose of calculating the maximum amount that may be paid to the purchaser as income during the fiscal year;

(2) the maximum amount that may be paid to the purchaser as income during the fiscal year;

(3) the minimum amount that must be paid to the purchaser as income during the fiscal year;

(4) where the contract establishing the fund provides for payment of a temporary income and the purchaser is at least 54 years of age but less than 65 years of age at the end of the preceding year:

(a) the reference temporary income for the current fiscal year;

(b) the maximum temporary income, if any, determined by the purchaser.

O.C. 1681-97, s. 15; O.C. 1073-2009, s. 8; O.C. 500-2014, s. 11.

25. Where the purchaser who is a former member or a member dies before the total balance of the life income fund has been converted into a life pension, the financial institution that manages that fund must provide to the purchaser's spouse or, failing that, to his successors a statement established at the date of death and containing the information prescribed in paragraph 1 of section 24 and established at the date of the member's death.

O.C. 1158-90, s. 25; O.C. 173-2002, s. 20.

26. Where the total balance of the life income fund is transferred to another financial institution or converted into a life pension with an insurer, the institution that manages the fund must provide to the purchaser a statement containing the information prescribed in paragraph 1 of section 24 and established at the date of the transfer or of the annuity contract.

O.C. 1158-90, s. 26.

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DIVISION IV

TRANSFER OF BENEFITS AND ASSETS

27. For the purposes of this Division, the spouse is the person who fulfils the conditions prescribed in the first and third paragraphs of section 85 of the Act.

Spousal status is established on the day on which payment of the pension to the purchaser begins or on the day preceding his death, whichever comes first. The fourth paragraph of section 85 of the Act applies, with the necessary modifications, with respect to the spouse referred to in this section.

O.C. 1158-90, s. 27; O.C. 173-2002, s. 21.

28. The pension plans not governed by the Act and to which transfers may be made under section 98 of the Act are:

(1) a supplemental pension plan governed by an act emanating from a legislative authority other than the Parliament of Québec and granting entitlement to a deferred pension;

(2) a supplemental pension plan established by an act emanating from the Parliament of Québec or from another legislative authority;

(2.1) the locked-in account of a voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1);

(2.2) the locked-in account of an equivalent voluntary retirement savings plan emanating from a legislative authority other than the Parliament of Québec, provided the member joins that plan as part of his employment;

(3) for sums that may be refunded to the member or paid to him in a lump sum, with accrued interest, a registered retirement savings plan or the not locked-in account of a voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act;

(3.1) a life income fund referred to in section 18;

(4) a locked-in retirement account referred to in section 29;

(5) an annuity contract referred to in section 30.

O.C. 1158-90, s. 28; O.C. 1681-97, s. 16; O.C. 173-2002, s. 22; O.C. 500-2014, s. 12.

29. A locked-in retirement account is an account established under an agreement in writing entered into by a purchaser who is a former member, a member or the spouse thereof and a financial institution authorized for that purpose in order to pay a retirement pension to the purchaser. That agreement must fulfil the requirements of the Taxation Act (chapter I-3) in order to be a registered retirement savings plan.

An agreement establishing a locked-in retirement account must be in conformity with the standard contract previously registered with Retraite Québec, which must provide:

(1) that the only sums that may be transferred into the locked-in retirement account are the sums originating, directly or initially, from the fund of a pension plan governed by the Act or referred to in paragraph 1, 2, 2.1, 2.2, 3.1 or 5 of section 28, or from another locked-in retirement account;

(2) that, with the exception of the cases referred to in paragraphs 3 and 8 to 9.1, the balance of the account may only be converted into a life pension guaranteed by an insurer and established for the duration of the life of the purchaser alone or for the duration of the life of the purchaser and the life of his spouse; the periodic amounts paid under that pension must be equal, unless each amount to be paid is uniformly increased

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by reason of an index or a rate provided for in the contract or uniformly adjusted by reason of a seizure effected on the benefits of the purchaser, a redetermination of the purchaser's pension, partition of the purchaser's benefits with his spouse, the payment of a temporary pension under the conditions provided for in section 91.1 of the Act or the election provided for under paragraph 3 of the first paragraph of section 93 of the Act.

(3) that where the purchaser who is a former member or a member dies before the conversion of the balance of the account into a pension, that balance is paid to his spouse or, failing that, to his successors;

(4) that the purchaser may require the conversion of the balance of the account into a life pension at any time, unless the term agreed to for the investments has not expired;

(5) that the balance of the account may not be converted into a pension guaranteed by an insurer unless, at the death of the purchaser who is a former member or a member, a life pension equal to at least 60% of the amount of the purchaser's pension, including, during the replacement period, the amount of any temporary pension is granted to his spouse who has not waived it;

(6) that the purchaser's spouse may, by giving written notice to the financial institution, waive his right to receive the payment provided for in paragraph 3 or the pension provided for in paragraph 5 and may revoke such a waiver by transmitting to the financial institution a written notice to that effect before, in the case referred to in paragraph 3, the death of the purchaser or, in the case referred to in paragraph 5, the date of conversion, in whole or in part, of the balance of the account into a life pension;

(7) that the spouse of the purchaser ceases to be entitled to the benefit provided for in paragraph 3 or, as the case may be, in paragraph 5 upon separation from bed and board, divorce, nullity of marriage, dissolution or nullity of civil union or, in the case of a spouse who is not a married or civil union spouse, upon cessation of conjugal relationship, unless the purchaser has transmitted to the financial institution the notice provided for in paragraph 7 of the second paragraph section 89 of the Act;

(7.1) that the seizable portion of the balance of the fund may be paid in a lump sum in execution of a judgment rendered in favour of the purchaser's spouse that gives entitlement to a seizure for unpaid alimony;

(8) that the purchaser may transfer, in whole or in part, the balance of the account to a pension plan governed by the Act or referred to in paragraph 1, 2, 2.1, 2.2, 3.1, 4 or 5 of section 28, unless the agreed to term of the investments has not expired;

(8.1) that the purchaser may, unless the agreed to term of the investments has not expired, require that the total balance of the fund be paid to him in a lump sum if he has not resided in Canada since at least 2 years;

(9) that the purchaser may withdraw all or a part of the balance of the account and receive a payment or a series of payments where a physician certifies that his physical or mental disability reduces his life expectancy;

(9.1) that the entire balance of the account may be paid in a lump-sum to a purchaser on application to the financial institution accompanied with a declaration in conformity with the one prescribed in Schedule 0.2, on the following conditions:

(a) the purchaser was at least 65 years of age at the end of the year preceding the application;

(b) the total of the sums credited to him in the retirement savings instruments mentioned in Schedule 0.2 does not exceed 40% of the Maximum Pensionable Earnings, for the year in which the purchaser applies for payment, pursuant to the Act respecting the Québec Pension Plan (chapter R-9);

(10) that the purchaser is entitled to receive, at least once a year, a statement indicating the sums deposited, their source, the accumulated earnings, the fees debited since the last statement and the balance of the account;

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(10.1) that where a sum is paid from the account contrary to the provisions of the contract or the Regulation purchaser may, unless the payment is attributable to a false declaration by him, require that the financial institution pay him, as a penalty, a sum equal to the irregular payment;

(11) that the financial institution may make no amendment that would entail a reduction of the benefits resulting from the agreement unless the purchaser is entitled, before the date of the amendment, to a transfer of the balance of the account and has received, at least 90 days before the date on which he may exercise that entitlement, a notice indicating to him the subject of the amendment and the date from which he may exercise that entitlement;

(12) that the transfer referred to in subparagraphs 8 and 11 may, at the option of the financial institution and unless otherwise stipulated, be effected by remittance of the investment securities respecting the account;

(13) that the financial institution may not, except to fulfil requirements under law, make any amendment other than that provided for in subparagraph 11 without having previously notified the purchaser;

(14) that the financial institution may amend the agreement only to the extent that it remains in conformity with the standard contract amended and registered with Retraite Québec.

Sections 27 to 31 of the Act and the second and third paragraphs of section 32 of the Act apply, with the necessary modifications, to the registration of a standard contract designed to propose the establishment of a locked-in retirement account and to amendments thereto. The registration of a standard contract may, in addition, be cancelled where no contract establishing a life income fund in conformity with it exists and where the financial institution attests that it no longer intends to make any contracts in conformity with that standard contract.

O.C. 1158-90, s. 29; O.C. 1681-97, s. 17; O.C. 173-2002, s. 23; O.C. 1073-2009, s. 9; O.C. 500-2014, s. 13.

30. An annuity contract is a contract under which, in consideration for capital originating directly or initially from the fund of a supplemental pension plan, an insurer guarantees to the purchaser who is a former member, a member or the spouse thereof a life pension of which payment begins immediately after the transfer of the capital or is deferred to a later date. The text of that contract must provide that:

(1) the insurer may, for the purposes of purchasing the pension, accept only sums originating directly or initially from the pension fund of a plan governed by the Act or referred to in paragraphs 1, 2, 2.1, 2.2, 3.1 or 4 of section 28, or from another insurer who is a party to a similar annuity contract;

(2) with the exception of the cases referred to in paragraph 3 or in section 31, the pension benefit resulting from the contract may not be paid to the purchaser or to his spouse except in the form of a life pension established for the duration of the life of the purchaser alone or for the duration of the life of the purchaser and the life of his spouse; the periodic amounts paid under that pension must be equal, unless each amount to be paid is increased by reason of an index or rate provided for in the contract or uniformly adjusted by reason of a seizure effected on the benefits of the purchaser, a redetermination of the purchaser's pension, the partition of the benefits of the purchaser with his spouse, the payment of a temporary pension under the conditions provided for in section 91.1 of the Act or the election provided for in subparagraph 3 of the first paragraph of section 93 of the Act;

(3) where the purchaser who is a former member or a member dies before the beginning of payment of the pension, his spouse or, failing that, his successors are entitled to a benefit at least equal to the capital transferred to the insurer with interest accrued at the rate obtained monthly on 5-year personal term deposits in chartered banks, as compiled by the Bank of Canada;

(4) where the purchaser who is a former member or a member dies after the beginning of payment of his pension, the insurer grants to the purchaser's spouse who has not waived it a life pension equal to at least 60% of the amount of the purchaser's pension, including, during the period of replacement, the amount of any temporary pension;

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(5) the spouse of the purchaser may, by giving written notice to the insurer, waive his entitlement to receive the benefit provided for in paragraph 3 or the pension provided for in paragraph 4 and may revoke such a waiver by giving written notice to that effect to the insurer before, in the case of the benefit, the death of the purchaser or, in the case of the pension, the beginning of payment of the purchaser's pension;

(6) the spouse of the purchaser ceases to be entitled to the benefit provided for in paragraph 3 or, as the case may be, in paragraph 4 upon separation from bed and board, divorce, nullity of marriage, dissolution or nullity of civil union or, in the case of a spouse who is not a married or civil union spouse, upon cessation of conjugal relationship, unless the purchaser has transmitted to the insurer the notice provided for in section 89 of the Act;

(7) where the pension paid to the purchaser was determined by taking into account his spouse's entitlement to the pension provided for in paragraph 4, the purchaser may, if the spouse is no longer entitled to that pension pursuant to paragraph 6, require that his pension be replaced by another pension, which has the same characteristics as the replaced pension, with the exception of the benefit granted to the spouse under paragraph 4, and whose value is equal to the value that pension commuted to the date of the purchaser's application for replacement;

(8) the seizable portion of the capital accrued to pay the pension may be paid in a lump sum in execution of a judgment rendered in favour of the purchaser's spouse that gives entitlement of a seizure for unpaid alimony.

O.C. 1158-90, s. 30; Erratum, 1991 G.O. 2, 41; O.C. 173-2002, s. 24; O.C. 1073-2009, s. 10; O.C. 500-2014, s. 14.

31. Notwithstanding section 30, the annuity contract may provide that:

(1) the purchaser may transfer, in whole or in part, the commuted value of the pension that he receives or his deferred pension to a pension plan governed by the Act or referred to in paragraph 1, 2, 2.1, 2.2, 3.1, 4 or 5 of section 28;

(2) the purchaser may, if a physician certifies that his physical or mental disability reduces his life expectancy, replace all or a part of his deferred pension by a payment or a series of payments; that payment or, as the case may be the sum of those payments must at least equal the discounted value of the pension or of the part thereof replaced;

(3) that the purchaser, if he meets the following conditions:

— make an application to this effect to the insurer, accompanied with a declaration in conformity with the one prescribed in Schedule 0.10, prior to the beginning of payment of the pension to be replaced;

— be at least 55 years of age but less than 65 years of age,

may replace, in whole or in part, the pension referred to in paragraph 2 of section 30 with a temporary pension the annual amount of which may not, for the year in which payment begins, exceed 40% of the Maximum Pensionable Earnings determined pursuant to the Act respecting the Québec Pension Plan (chapter R-9).

O.C. 1158-90, s. 31; O.C. 1681-97, s. 18; O.C. 173-2002, s. 25; O.C. 500-2014, s. 15.

DIVISION IV.1

TRANSFER, PARTITION AND SEIZURE OF THE PURCHASER'S BENEFITS

O.C. 173-2002, s. 26.

31.1. The benefits accrued in behalf of the purchaser in a life income fund or a locked-in retirement account or under an annuity contract referred to in section 30, which, following their partition or transfer in the cases and under the conditions referred to in sections 107 and 110 of the Act, are granted to the spouse of

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the purchaser, are paid by transferring their value to a plan governed by the Act or referred to in paragraph 1, 2, 2.1, 2.2, 3.1, 4 or 5 of section 28.

A sum granted to the spouse of the purchaser following a seizure for unpaid alimony effected on the benefits or sums accrued on behalf of the purchaser in a life income fund or a locked-in retirement account or under an annuity contract referred to in section 30 shall be paid in a lump sum. That sum may, moreover, be paid without taking into account any conditions or time periods related to the purchaser's benefits.

O.C. 173-2002, s. 26; O.C. 500-2014, s. 16.

DIVISION V

TRANSFER OF BENEFITS BETWEEN SPOUSES

§ 1. — *Application and interpretation*

32. This Division applies only to pension plans governed by Chapter I of the Act.

O.C. 1158-90, s. 32.

33. For the purposes of this Division:

“capital benefits” means benefits that have been accumulated by the member in the form of refunds, pensions or other pension benefits where those capital benefits are a function of the amounts which, credited to his account in the form of contributions paid, assets transferred and interest on those contributions and assets, have not yet been used for the purchase of a pension or other pension benefit; (*droits en capital*)

“pension benefits” means benefits that have been accumulated by the member in the form of refunds, pensions or other benefits and that, taking into account the obligations prescribed by the pension plan or the elections exercised by the member, are expressed as a pension or other pension benefits of a determined amount or of an amount corresponding to a percentage of the member's remuneration and includes benefits relative to excess member contributions, with accrued interest, up to the ceiling set in section 60 of the Act, and benefits relative to the additional pension benefit provided for in section 60.1 of the Act; (*droits en rente*)

“date of institution of the action” means the date of the application for separation from bed and board, for divorce, for annulment of marriage, dissolution or nullity of a civil union, or for payment of a compensatory allowance, according to the procedure at the origin of the partition or transfer of benefits; (*date de l'introduction de l'instance*)

“period of membership” means, unless provided otherwise in this Regulation, the number of whole months or parts of months between the date of which the member became a member of the pension plan and the date on which he ceased to be an active member, without taking into account the months during which he did not work for an employer who is a party to the plan; where the member is active on the valuation date, the date on which the member ceased to be an active member corresponds to the valuation date; in the case of transfer of benefits or assets, the contribution period also comprises the period relative to membership in the plans from which the rights and assets were transferred. (*période de participation*)

“valuation date” means

- (1) for the purposes of preparing the statement referred to in section 108 of the Act,
 - (a) the date of the institution of the action, if the application for the statement is made after the institution of an action provided for in the first paragraph of section 108;
 - (b) the date the member and the member's spouse ceased to live together, if the application for the statement is made on the occasion of mediation concerning a family matter;

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(c) the date set for determining the net value of family patrimony, if the application for the statement is made during a joint procedure before a notary for the dissolution of a civil union;

(d) the date of the cessation of the conjugal relationship, if the application for the statement is made following the cessation of the conjugal relationship of spouses who are not married or civil union spouses;

(2) for any other purposes, the date set for the valuation of the member's benefits in the pension plan by the judgment, transaction contract or agreement giving rise to the partition or transfer of the benefits or, if there is no provision in the judgment, contract or agreement, the date provided for by the act governing the partition of the spouses' property. (*date de l'évaluation*).

The period of membership defined in the first paragraph may, if the pension plan so stipulates, be determined in days instead of months. In such case, this section as well as sections 35, 39 to 42 and 44 apply by substituting the word "days" for the word "months".

O.C. 1158-90, s. 33; Erratum, 1991 G.O. 2, 41; O.C. 173-2002, s. 27; O.C. 1073-2009, s. 11.

33.1. For the purposes of sections 34 to 45 regarding married spouses whose marriage entailed the dissolution of their civil union:

- (1) the date of the marriage is replaced by the date of the civil union;
- (2) the period of the marriage begins on the date of the civil union.

O.C. 1073-2009, s. 12.

§ 2. — *Statement of the member's benefits*

34. The application for the statement provided for in section 108 of the Act shall contain the following documents and information:

- (1) the name and address of the member or of his spouse;
- (2) in the case of married spouses, a proof of the date of their marriage and either a proof of the date on which proceedings were instituted or, where the application is made on the occasion of a mediation, a joint declaration of the date on which they ceased to live together;
 - (2.1) in the case of civil union spouses:
 - (a) proof of the date of their civil union;
 - (b) any of the following documents, as the case may be:
 - i. proof of the date on which the action was instituted;
 - ii. where the application is made on the occasion of a mediation, a joint declaration of the date on which the spouses ceased to live together;
 - iii. where the application is made during a joint procedure before a notary for the dissolution of the civil union, a joint declaration of the date set for determining the net value of family patrimony;
- (3) in the case of spouses who are not married or civil union spouses, an attestation from the member as to his spousal status as well as an attestation from the member and his spouse of the dates on which their conjugal relationship began and ended and, if they lived in a conjugal relationship for at least 1 year but less than 3 years, a proof of one or the other of the cases referred to in paragraph 2 of the first paragraph of section 85 of the Act.

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The application made on the occasion of a mediation shall also contain the written confirmation of an accredited mediator to the effect that he received a mandate within the context of a family mediation. The application made during a joint procedure before a notary for the dissolution of the civil union must also contain a written confirmation of a notary to the effect that he or she received a mandate in connection with the joint procedure.

O.C. 1158-90, s. 34; O.C. 173-2002, s. 28; O.C. 1073-2009, s. 13.

35. The pension committee must, within 60 days of receiving the application, provide the applicant and his spouse with the statement referred to in section 108 of the Act.

That statement is divided into 2 parts, the first of which must contain the following information:

(1) the total benefits accumulated by the member from the date on which he or she became a member of the plan until the valuation date, and the value of those benefits;

(2) the benefits and value referred to in subparagraph 1, with an indication as to whether they are capital benefits or pension benefits;

(3) *(subparagraph revoked)*;

(4) in the case of married or civil union spouses:

(a) the value of the benefits accrued during the marriage or civil union, distributed according to their nature as capital benefits or pension benefits;

(b) except where the value referred to in subparagraph *a* is calculated in accordance with paragraph 1 of the first paragraph of section 39, the number of months in the period of membership which began on the date on which the member joined the plan concerned as well as the number of those months in the period of the marriage or civil union and, where such information is available, the number of months in the period of membership in any other plan from which benefits or assets were transferred as well as the number of such months in the period of marriage or civil union;

(c) *(subparagraph replaced)*;

(5) the residual value of the member's benefits after the final partition of benefits or the final transfer granted to a former spouse of the member that had the effect of reducing the member's benefits, where the pension committee has that residual value.

The first part of the statement shall be signed by the person who prepared it. Unless it the Court is shown that the benefits and periods appearing on the statement must be corrected or that the values appearing on the statement were not determined according to the rules provided for in this Division, the statement shall constitute proof of its content.

O.C. 1158-90, s. 35; O.C. 568-91, s. 4; O.C. 173-2002, s. 29; O.C. 1073-2009, s. 14.

35.1. The second part of the statement shall contain the following information:

(1) the name of the plan and the number assigned to it by Retraite Québec;

(2) in the case of married or civil union spouses, the date of the marriage or civil union and the valuation date;

(3) in the case of spouses who are not married or civil union spouses, the dates of the beginning and end of the conjugal relationship of the member and his spouse;

(4) the date on which the member joined the plan;

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(5) the personnel information relative to a member and his spouse and taken into account in determining the first part of the statement, with a mention that it may be in their interest to have the information corrected if it is erroneous;

(6) the name and address of the person to be contacted for any information concerning the plan;

(7) the terms, conditions and periods applicable to payment of the share that goes to the spouse, taking into account in particular, the plan's degree of solvency;

(8) the rules governing the calculation of the interest that is added to the amount granted to the spouse;

(9) in the event that the member's benefits include benefits or assets transferred from another plan and where the pension committee does not have the information required for the application of section 41, a mention of the fact that the value of the member's benefits given in the statement could be different if the committee was provided with the lacking information;

(10) in the event that, before producing the statement, the member's pension was determined to take into account entitlement of his or her spouse to the pension referred to in section 87 of the Act, a brief description of the rights and obligations arising from section 89.1 of the Act.

O.C. 173-2002, s. 30; O.C. 1073-2009, s. 15.

35.2. *(Revoked).*

O.C. 173-2002, s. 30; O.C. 1073-2009, s. 16.

§ 3. — *Total benefits accumulated by the member*

36. The total benefits accumulated by the member must be distributed according to their nature as capital benefits or pension benefits.

O.C. 1158-90, s. 36; O.C. 568-91, s. 5; O.C. 173-2002, s. 31; O.C. 1073-2009, s. 17.

36.1. The total benefits accumulated by the member correspond either to the bridging benefit, to the retirement, disability or replacement pension to which the member is entitled at the valuation date, or, if the member is not entitled to one of the pensions at the valuation date, to the deferred pension to which the member would be entitled if he or she terminated active membership on that date.

Where applicable, the following amounts established on the valuation date with accrued interest or the benefit that may be constituted by those amounts and interest and to which the member is entitled on that date or would be entitled if he or she terminated active membership on that date are included in the total benefits accumulated by the member:

(1) voluntary contributions credited to the member;

(2) excess member contributions over the limit set in section 60 of the Act;

(3) the additional pension benefit provided for in section 60.1 of the Act;

(4) the amounts previously transferred even otherwise than under section 98 of the Act.

O.C. 1073-2009, s. 17.

37. The value of the member's total benefits corresponds to the value of the capital benefits and of the pension benefits accumulated at the valuation date.

The value of the pension benefits must be determined according to assumptions referred to in section 61 of the Act which, at that date, are used to establish the value of other benefits to which section 60 of the Act

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applies and to which entitlement is acquired at that date, it being understood that the progression of the member's remuneration after that date is not taken into account to determine that value.

The value of a deferred pension whose payment has not begun is determined according to the following formula:

$$\frac{O + P}{2}$$

“O” represents the value of the pension to which the member is entitled and the benefits resulting therefrom by supposing that payment of the pension begins on date on which the member reaches the normal retirement age;

“P” represents the value of the pension to which the member is entitled and the benefits resulting therefrom by supposing that the member acts so as to maximize it.

However, in the case of a member whose benefits correspond to a deferred pension to which the member would be entitled if the member terminated active membership on the valuation date, the value of the benefits related to the additional benefit referred to in section 60.1 of the Act and, unless the member has received payment of the benefit provided for in subdivision 0.1 of Division III of Chapter VI of the Act, the value of the benefits related to member contributions, with accrued interest, in excess of the limit set in section 60 of the Act are established assuming that the value of the deferred pension to which the member is entitled in accordance with the terms of subparagraph 1 of the first paragraph of section 60 of the Act and, for the purpose of calculating elements A and B of section 60.1 of the Act, is, with respect to the member's service credited for the period during which section 60 of the Act applied with respect to the member, the value established according to the formula provided for in the third paragraph of this section.

O.C. 1158-90, s. 37; O.C. 173-2002, s. 32; O.C. 1073-2009, s. 18.

37.1. Where the valuation date corresponds to a date other than the date of the institution of the action and the value of the member's benefits at the valuation date is not known, the value of the member's total benefits corresponds to amount E in the following formula:

$$V \times p/X = E$$

“V” represents the value established in accordance with section 37 on the date of the institution of the action or on the date on which the transaction contract has been executed before a notary or, failing that, on the date of application for the statement;

“p” represents the number of months in the period of membership relative to the benefits included between the date on which the member's membership began and the valuation date;

“X” represent the number of months in the period of membership relative to the benefits included between the date on which the member's membership began and the date on which value “V” is established.

O.C. 1073-2009, s. 19.

§ 4. — *Value of benefits accumulated during the marriage or civil union*

O.C. 1158-90, Sd. 4; O.C. 1073-2009, s. 20.

38. Where the member is entitled to a retirement, disability or replacement pension at the valuation date, the value of the benefits accumulated by the member on the date of his or her marriage or civil union is

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established assuming that the member is also entitled to such a pension for the service credited until that latter date.

O.C. 1158-90, s. 38; O.C. 1073-2009, s. 21.

39. The value of the capital benefits accumulated during the marriage or civil union is, depending on the circumstances, determined as follows:

(1) where the pension committee has information related to the sum accumulated as at the date of the marriage or civil union:

(a) if no benefit referred to in section 69.1 of the Act was paid or if no transfer referred to in subparagraph 2 of the second paragraph of section 19.2 of the Regulation was made between the date of the marriage or civil union and the valuation date, the value corresponds to the difference between the value of the capital benefits accumulated as at the valuation date and the sum accumulated as at the date of the marriage or civil union, increased by interest for the period included between the date of the marriage or civil union and the valuation date;

(b) if a benefit referred to in section 69.1 of the Act was paid or if a transfer referred to in subparagraph 2 of the second paragraph of section 19.2 of the Regulation was made between the date of the marriage or civil union and the valuation date and the pension committee has information related, as the case may be, to the amount accumulated to the date of payment of the benefit or the amount and the date of the transfer, the value is equal to the amount “W” in the following formula:

$$W = Y - Z \times \frac{Y}{Y + S}$$

“Y” represents the accumulated sum as at the valuation date;

“Z” represents the accumulated sum as at the date of the marriage or civil union, increased by the interest for the period included between the date of the marriage or civil union and the valuation date.

“S” represents the amount of the benefit paid, increased by interest for the period included between the date of payment and the valuation date;

(2) where the pension committee does not have information relative to the amount accumulated at the date of marriage or civil union or, where required, those related to the amount or to the date of payment of a benefit referred to in section 69.1 of the Act or to the date of a transfer referred to in subparagraph 2 of the second paragraph of section 19.2 of the Regulation, that value is equal to the amount obtained by multiplying the value of the capital benefits accumulated at the valuation date by the fraction represented by the number of months in the period of membership relative to those benefits between the date of marriage or civil union and the valuation date over the number of months in the period of membership relative to those benefits.

The interest referred to in subparagraph 1 of the first paragraph is calculated at the rates of return used during the period in question to calculate interest on the member contributions or, in the case of a non-contributory plan, on the employer contributions. Where that rate is not available, interest is calculated at the yearly rates provided for in Schedule I for the years indicated and, for the subsequent period, at the average annual rates of return on 5-year personal term deposits with chartered banks.

The average annual rates of return referred to in the second paragraph are determined by taking the average of the rates of return on those terms deposits, as compiled monthly by Statistics Canada and published in the

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Bank of Canada Banking and Financial Statistics, Series V122515 in CANSIM system. However, where the annual rates of return published monthly and available for the current year are fewer than 6 in number, that average is taken on the basis of the last 6 rates of return available.

Where the result of the calculation made in accordance with the third paragraph is not a multiple of one-quarter of one percent, the average is rounded down to the nearest one-quarter.

O.C. 1158-90, s. 39; O.C. 1681-97, s. 19; O.C. 173-2002, s. 33; O.C. 1073-2009, s. 22.

40. The value of the pension benefits accumulated during the marriage or civil union is equal to the amount obtained by multiplying the total value of the pension benefits by the fraction represented by the number of months in the period of membership relative to those benefits between the date of marriage or civil union and the valuation date over the number of months in the period of membership relative to those benefits.

O.C. 1158-90, s. 40; O.C. 173-2002, s. 34; O.C. 1073-2009, s. 23.

41. Where all or part of the capital benefits or of the pension benefits, as the case may be, consists of benefits or assets transferred from another pension plan and where the sums or benefits transferred, as well as the period of membership related thereto, are known, the value of the capital benefits or of the pension benefits accumulated during the marriage or civil union is, notwithstanding section 39 or section 40, equal to amount “V” in the following formula:

$$[G - T] \times \frac{a/p}{P} + T \times \frac{P - A}{P} = V$$

“G” represents the total value of the capital benefits or of the pension benefits, as the case may be, accumulated at the valuation date;

“T” represents, in the case of capital benefits, the amounts transferred plus interest calculated at the rates provided for in the second paragraph of section 39, for the period between the date of transfer and the valuation date and, in the case of pension benefits, the value of those transferred benefits, discounted at the valuation date;

“p” represents the number of months in the period of membership, excluding the months relative to all benefits or assets transferred;

“a” represents the number of months in the period of membership represented by “p” between the date of marriage or civil union and the valuation date;

“A” represents the number of months previous to the marriage or civil union in the period of membership in the plan from which the amounts or benefits were transferred;

“P” represents the number of months in the period of membership in the plan from which the sums or benefits were transferred.

O.C. 1158-90, s. 41; O.C. 173-2002, s. 35; O.C. 1073-2009, s. 24.

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42. Where the member's benefits have been partitioned or transferred to a spouse on a date prior to the valuation date, the value of the benefits accumulated during the most recent marriage or civil union must be determined as follows:

(1) where the residual value of the capital benefits or the amount of the residual pension arising from the partition or transfer is known, it corresponds to amount "N" in the following formula:

$$[G - R] \times M/Q = N$$

"G" represents the total residual value of the capital benefits or, in the case of pension benefits, the value of the total residual pension, at the valuation date;

"R" represents:

(1) in the case of capital benefits, their residual value at the date of the valuation of the previous partition or transfer, increased by interest calculated at the rate provided for in the second paragraph of section 39, for the period between that date and the valuation date;

(2) in the case of pension benefits, the value, at the valuation date, of the residual pension calculated at the date of the valuation of the previous partition or transfer;

"M" represents the number of months of membership in the period of the most recent marriage or civil union;

"Q" represents the number of months of membership between the date of the valuation of the previous partition or transfer and the valuation date;

(2) where the residual value of the capital benefits or the amount of the residual pension arising from that partition or transfer is not known, it corresponds to the total residual value of the member's benefits, adjusted pro rata to the number of months of the most recent marriage or civil union included in the period of membership over the total number of months elapsed before and during that marriage or civil union and included in that period of membership.

O.C. 1158-90, s. 42; O.C. 173-2002, s. 36; O.C. 1073-2009, s. 25.

43. Where the residual value of the capital benefits accumulated at the date of the member's most recent marriage or civil union is known, the value of the benefits accumulated during that marriage or civil union is, notwithstanding the rules provided for in section 42, calculated in accordance with subparagraph 1 of the first paragraph of section 39 by substituting the residual value of the benefits for the value of the benefits.

O.C. 1158-90, s. 43; O.C. 173-2002, s. 37; O.C. 1073-2009, s. 26.

44. Where the valuation date corresponds to a date other than the date of institution of the action and the value of the member's benefits at the valuation date is not known, the value of the benefits accumulated by the member during the marriage or civil union is established by taking into account the following rules:

(1) the value of the capital benefits accumulated during the marriage or civil union is determined in the manner provided for in subparagraph 2 of the first paragraph of section 39 or, where applicable, section 42;

(2) for any purposes other than calculating the number of months in the period of membership included between the date of the marriage or civil union and the valuation date, the date of institution of the action, the date on which the transaction contract is executed before a notary or, failing that, the date of the application for the statement is considered the valuation date for the purposes of sections 36.1 to 43.

O.C. 1158-90, s. 44; O.C. 173-2002, s. 38; O.C. 1073-2009, s. 27.

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45. The total value of the benefits accumulated by the member during the member's marriage or civil union is equal to the sum of the value of the capital benefits and of the pension benefits accumulated during the marriage or civil union.

O.C. 1158-90, s. 45; O.C. 1073-2009, s. 28.

§ 5. — *Execution of partition or of transfer of benefits*

46. The application for partition or transfer of the member's benefits must be submitted with a copy of the following documents:

(1) if it follows a judgment pronouncing separation from bed and board, divorce, nullity of marriage or dissolution or nullity of civil union or ordering payment of a compensatory allowance,

(a) that judgment and any other judgment related to the partition or transfer of the member's benefits;

(b) the certificate of non-appeal;

(c) where applicable, the agreement entered into by the spouses on the partition or transfer of the member's benefits;

(2) if it follows the dissolution of a civil union by notarized joint declaration, the declaration and the transaction contract;

(3) if it follows the cessation of the conjugal relationship of spouses who are not married or civil union spouses, the agreement entered into by the spouses on the partition of the member's benefits.

O.C. 1158-90, s. 46; O.C. 173-2002, s. 39; O.C. 1073-2009, s. 29.

47. Unless the application for partition or for execution of the transfer is a joint application, the pension committee must, upon receipt, send the applicant's spouse a written notice informing him of that application and of the amount claimed by his spouse.

The pension committee may not execute the partition or transfer before the expiry of a 60-day period following the sending of that notice to the applicant's spouse, nor may the pension committee do so if it is advised that the member's spouse has duly waived his entitlement or that the member has filed a judicial application in order to oppose the partition or transfer.

O.C. 1158-90, s. 47; O.C. 1073-2009, s. 30.

48. Where the partitioned or transferred benefits were part of the capital benefits, interest calculated at the rates provided for in the second paragraph of section 39 fits or, where the benefits were part of the pension benefits, at the rate used to determine their value, must be added to the sum granted to the spouse.

Interest accrues from the valuation date.

O.C. 1158-90, s. 48; O.C. 173-2002, s. 40; O.C. 1073-2009, s. 31.

49. Unless the Court indicates otherwise, the pension committee may partition the member's benefits or execute the transfer of part of those benefits only to the extent that that partition or that transfer does not have the effect of depriving the member of more than half of the total value of the benefits that he accumulated before and during his marriage or civil union.

Where the judgment, the agreement entered into by married or civil union spouses, or the notarized transaction contract does not provide for the amount or the portion of the value of the member's benefits

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allocated to the spouse, the value of the benefits that the member accumulated during the marriage or civil union is divided equally between the spouses.

O.C. 1158-90, s. 49; O.C. 1073-2009, s. 32.

50. The pension committee shall, within 60 days following either receipt of a joint application concerning partition or execution of a transfer, or the expiry of the period provided for in the second paragraph of section 47 and, except in the latter case, unless it has been notified of the spouse's waiver or of a judicial opposition to the partition or transfer of the member's benefits take, with respect to the sum allocated to the spouse, increased by the interest, one of the following measures:

(1) transfer the sum to another pension plan of which the spouse is a member or to a plan referred to in paragraph 2.1, 2.2, 3.1, 4 or 5 of section 28;

(2) provided that the plan so allows,

(a) where the spouse already has benefits under the plan, transfer the sum to the account of the spouse;

(b) where the spouse does not have benefits under the plan, grant to the spouse, who then becomes a member, benefits under the plan;

(3) pay the sum to the spouse or transfer it to a plan referred to in paragraphs 3 of section 28, in the following cases:

(a) the partitioned or transferred benefits correspond to a refund to which the member would have been entitled at the valuation date, it being understood that subject to subparagraph *b*, the amount granted to the spouse may not be paid to the spouse in a proportion greater than the proportion in which the member's benefits could have been refunded to the member;

(b) on the date of the application, that amount in question is less than 20% of the maximum pensionable earnings determined under the Act respecting the Québec Pension Plan (chapter R-9) for the year in which the transfer of partition is applied for;

(c) the spouse has ceased to live in Canada since at least 2 years.

Where the spouse fails to indicate to the pension committee the payment method selected from those mentioned in the first paragraph,

(1) the interest referred to in section 48 ceases to accrue on the expiry of the period during which the committee must act according to that paragraph and begins to accrue again, if applicable, only at the date on which the spouse indicates his or her selection;

(2) the pension committee may, on its own initiative and as soon as the period expires, transfer on behalf of the spouse the sum to be paid into one of the plans referred to in subparagraph 1, 2 or 3 of the first paragraph, as the case may be.

O.C. 1158-90, s. 50; O.C. 173-2002, s. 41; O.C. 1073-2009, s. 33; O.C. 500-2014, s. 17.

51. *(Revoked).*

O.C. 1158-90, s. 51; O.C. 173-2002, s. 42.

52. Sections 143 and 145 to 146 of the Act apply, with the necessary modifications, to the sum that may be the subject of a measure provided for in subparagraph 1 or 3 of the first paragraph of section 50.

The sum paid or transferred in accordance with subparagraph 1 or 3 of the first paragraph of section 50 must bear, to the sum granted to the spouse increased by interest, a proportion at least equivalent to the

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proportion that the contributions, amounts and interest referred to in section 145.1 of the Act bear to the total value of the member's benefits.

O.C. 1158-90, s. 52; O.C. 173-2002, s. 43; O.C. 1073-2009, s. 34.

53. The partition or transfer of a member's benefits executed in the year of a judgment pronouncing divorce, separation from bed and board, nullity of marriage or dissolution or nullity of civil union or ordering payment of a compensatory allowance may be revoked or annulled only for one of the causes provided for in article 424 of the Civil Code.

O.C. 1158-90, s. 53; O.C. 173-2002, s. 44; O.C. 1073-2009, s. 35.

54. The pension committee must, where no retirement, disability or replacement pension is being paid to the member at the date of execution of the partition or transfer of pension benefits, determine at that date the amount of the part of the normal pension which, determined according to the sum paid to the spouse or transferred to the spouse's account, would have been payable to the member at normal retirement age according to the conditions and characteristics provided for by the plan for that pension. The pension committee must keep a record of that amount.

Where the pension benefits correspond to a postponed pension, the amount provided for in first paragraph is determined on the basis of the value of the retirement pension recalculated at the date of execution of the partition or transfer in accordance with section 79 of the Act.

The amount provided for in the first paragraph is determined, if the plan so provides, by taking into account the periodic increase of the pension amount, before payment begins, in relation to an index of rate provided for in the plan. It is determined in all cases by using the assumptions provided for in the second paragraph of section 37.

O.C. 1158-90, s. 54; O.C. 173-2002, s. 45; O.C. 1073-2009, s. 36.

§ 6. — *Residual benefits of the member*

55. Execution of the partition or transfer of the member's benefits shall reduce his benefits as follows:

(1) where the benefits partitioned or transferred are part of the capital benefits, the value of those benefits shall be reduced by the sum paid to the spouse or transferred to the spouse's account;

(2) where the benefits partitioned or transferred are part of the pension benefits,

— any retirement, disability or replacement pension of which payment has begun is, after having been, where required, re-determined under section 89.1 of the Act, reduced by the proportion represented by the sum paid to the spouse or transferred to the spouse's account over the value that the pension paid to the member on the day preceding the effective date of the judgment, dissolution of the civil union or cessation of conjugal relationship would have had on the date of execution of the partition or transfer, it being understood that the latter value is determined by using the same assumptions as those used to determine the value of the benefits attributed to the spouse;

— any retirement, disability or replacement pension of which payment begins after the execution of the partition or transfer must be reduced by the amount referred to in section 54 or, if payment of that pension begins on a date other than the date of normal retirement age, by a sum equal to that amount;

— any other benefits, with the exception of a phased retirement benefit and a benefit referred to in section 69.1 of the Act, and any benefit or refund that must be paid or transferred must be reduced, up to its amount or value by the value of the pension of which the amount is referred to in section 54.

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The pension plan may provide for reducing the member's benefits in a different manner, provided that manner leads to a lesser reduction of such benefits.

O.C. 1158-90, s. 55; O.C. 1681-97, s. 20; O.C. 173-2002, s. 46; O.C. 1073-2009, s. 37.

56. Where the member's benefits that may be partitioned or transferred to the spouse include both an entitlement to a refund and an entitlement to receive a pension benefit, each of those entitlements must be reduced by the sum paid to the spouse or transferred to the spouse's account over the total value of such refund and benefit.

O.C. 1158-90, s. 56; O.C. 568-91, s. 6; O.C. 1073-2009, s. 38.

DIVISION V.1**SEIZURE OF THE MEMBER'S BENEFITS**

O.C. 173-2002, s. 47.

56.0.1. This division applies with respect to a seizure referred to in the second paragraph of section 109 of the Act that is effected by the member's spouse or on his behalf.

O.C. 173-2002, s. 47.

56.0.2. The value of the benefits accrued by the member at the date on which the seizure is carried out is determined pursuant to sections 36 to 37.1, which are applied by replacing the valuation date with the date of seizure.

O.C. 173-2002, s. 47; O.C. 1073-2009, s. 39.

56.0.3. Where the benefits attributed to the spouse are paid from the benefits of the member that are pension benefits within the meaning of section 33 and no pension is being paid to the member at the date on which the seizure is effected, the pension committee shall determine at that date the amount of the portion of the normal pension that, determined according to the value of the benefits attributed to the spouse, would have been paid to the member by the plan for that pension. The pension committee must conserve a mention of that amount in its records.

Where the pension benefits correspond to a postponed pension, the amount provided for in the first paragraph is determined on the basis of the value of the pension recalculated at the date of the seizure, pursuant to section 79 of the Act.

In every case, the amount provided for in the first paragraph shall be determined by using the same assumptions as those used to determine the value of the member's benefits at the date of the seizure.

O.C. 173-2002, s. 47.

56.0.4. Where the member's benefits include both entitlement to a refund and entitlement to receive a pension benefit, both of them must be reduced in the proportion that represents the value of the benefits attributed to the spouse upon seizure over the total value of those benefits.

O.C. 173-2002, s. 47.

56.0.5. Subject to section 56.0.4 and any contrary provision of the pension plan, capital benefits within the meaning of section 33 are the first to be used to pay the benefits attributed to the spouse.

O.C. 173-2002, s. 47.

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56.0.6. The benefits allocated to the spouse may be paid without taking into account the conditions or time periods that affect the member's benefits. Such payment reduces the member's benefits in the following manner:

(1) where the benefits attributed to the spouse are paid from capital benefits, the value of the capital benefits is reduced by the amount paid;

(2) where the benefits attributed to the spouse are paid from pension benefits:

— any retirement, disability or replacement pension of which payment has begun is reduced in proportion to the amount paid to the spouse over the value of the pension being paid at the date of the seizure;

— any retirement, disability or replacement pension of which payment begins after the payment to the spouse must be reduced by the amount referred to in section 56.0.3 or, where the payment of the pension begins on a date other than the date of the normal retirement age, by a sum equal to the amount of the payment to the spouse;

— any other pension benefit, except for a phased retirement benefit and a pension benefit referred to in section 69.1 of the Act, as well as any benefit or refund that must be paid or transferred must be reduced, up to its amount or its value, by the value of the pension of which the amount is referred to in section 56.0.3.

The pension plan may provide for reducing the member's benefits in a different manner, provided that manner leads to a lesser reduction of such benefits.

O.C. 173-2002, s. 47; O.C. 1073-2009, s. 40.

DIVISION VI

INFORMATION FOR MEMBERS AND BENEFICIARIES

56.1. The summary of the pension plan provided for in section 111 of the Act must contain, in addition to the information provided for in that section, the following information:

- (1) the index or rate provided for in the plan for indexation of the pension before and during its payment;
- (2) the rules applicable to the transfer of the member's benefits to another pension plan;
- (3) the plans referred to by any general agreement allowing the member's benefits or assets to be transferred to them;
- (4) the nature of the fees that may be charged to the member;
- (5) the rules that apply where members decide investments that may be made with the plan's assets;
- (6) in the case of a plan to which chapter X of the Act applies, a mention that for members who cease to be active members, only those whose benefits are not paid before the plan's termination or who cease to be active members less than 3 years prior to that date remain members for the purposes of the eventual allocation of surplus assets upon the plan's termination.

O.C. 173-2002, s. 48.

56.2. The annual statement provided for in section 112 of the Act shall have 2 parts, of which the first concerns the benefits of the member or beneficiary to whom the statement is sent and the second the financial situation of the pension plan.

O.C. 173-2002, s. 48.

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57. The first part of the annual statement referred to in section 112 of the Act and transmitted to an active member must contain the following information:

- (1) the member's name;
- (2) the name of the pension plan and the number that Retraite Québec assigned to it;
- (3) the fiscal year in question;
- (4) the name and address of the person to contact for any information concerning the plan;
- (5) the address of the office of the pension committee;
- (6) the name of any person entered in the records of the plan as the spouse or beneficiary of the member or, where necessary, a mention of the absence of an entry related to either of those capacities;
- (7) the date on which the member became a member of the plan;
- (8) *(subparagraph revoked)*;
- (9) the date on which the normal pension becomes payable to the member;
- (10) the member contributions and the additional voluntary contributions entered in the member's account during the fiscal year as well as the total of such contributions, distributed by type, with the interest accrued since the member joined the plan up to the end of the said fiscal year, less, in the case of contributions paid under a defined contribution pension plan or under provisions similar to those of such a plan contained in a defined benefit plan, any sums applied to payment of an early pension benefit or the execution of a seizure, transfer or partition of benefits;
- (11) *(subparagraph revoked)*;
- (12) the employer contributions entered in the member's account during the fiscal year under a defined contribution plan or under provisions identical to the provisions of such a plan contained in a defined benefit plan, as well as the total of the employer contributions entered in that member's account at the end of the fiscal year, including accrued interest, less any sums applied to payment of an early pension benefit or to the execution of a seizure, transfer or partition of benefits;
- (13) the benefits and sums transferred to the member's account and the sums paid into the account during the fiscal year to purchase past service, the total of such benefits and sums thus transferred or paid to the member's account since the date on which he became a member of the plan, with accrued interest, and distributed according as the benefits or amounts must or must not be used to constitute a pension as well as any credited service added or the amount of the normal pension constituted with such benefits and sums;
- (14) the rate applied during the fiscal year for the calculation of interest on the contributions and on the sums referred to in paragraphs 10 to 13, or the method used to calculate that interest;
- (15) in the case of any plan other than a defined contribution plan:
 - (a) the service, including that referred to in paragraph 13, credited to the member for the calculation of the normal pension and appearing in the records of the plan at the end of the fiscal year;
 - (b) the annual amount of the normal pension that would be payable to the member for his recognised credited service at the end of the fiscal year;
 - (c) the amount of the reduction of that pension resulting from the payment, if any, of an early pension benefit or the execution of a seizure, a transfer or a partition of benefits;

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(d) where the normal pension is determined on the basis of the member's annual remuneration or average remuneration, the remuneration or, where necessary, the average remuneration that the committee took into account to determine the amount provided for in subparagraph b;

(16) *(subparagraph revoked)*;

(17) *(subparagraph revoked)*.

At least once every 3 years, the first part of the statement sent to a person who, as an active member of a pension plan other than a defined contribution plan would have been entitled to transfer the value of his benefits at the end of the preceding fiscal year if he had then ceased to be an active member, shall also include the following information:

(1) the value of the benefits that the member would have been able to transfer at the end of that fiscal year, accompanied with a mention explaining that the value is provided for information purposes and that the value of the benefits is subject to large variations by reason in particular of fluctuations in the interest rates used to determine the value as well as the payment conditions of the pension benefits;

(2) the latest date on which the member will be able to cease to be an active member and still have a transfer right;

(3) the personal information relative to the member and his spouse which were taken into account in determining the value referred to in paragraph 1, with a mention that it may be in the interest of the member and his spouse to have that information correct if it is erroneous.

O.C. 1158-90, s. 57; Erratum, 1991 G.O. 2, 41; O.C. 568-91, s. 7; O.C. 173-2002, s. 49.

57.1. The statement provided to a member in application of section 112.1 of the Act shall contain the following information:

(1) the name of the member;

(2) the name of the pension plan and the number that Retraite Québec assigned to it;

(3) the date of payment of the early benefit;

(4) in the event that the benefits referred to in section 15.1 were used to pay the benefit:

(a) the amount of the benefit paid;

(b) the balance of the value of the benefits after payment of the benefit;

(5) in the event that the benefits referred to in section 15.3 were used to pay the benefit:

(a) the amount of the benefit paid;

(b) the amount of the reduction of the member's pension following payment of the said benefit;

(c) a mention that the amount will be adjusted if the conditions or characteristics of the pension paid under the plan, with the exception of those related to early or postponed payment, are different from those used to determine the amount or if payment of the pension begins on a date other than the date of the normal retirement age.

O.C. 1681-97, s. 21; O.C. 173-2002, s. 50.

58. The statement referred to in the first paragraph of section 113 of the Act shall, in addition to what is stated in that paragraph with respect to a refund, the pension benefit or other benefits provided for under the pension plan, contain the following information:

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- (1) the date on which the member ceased to be an active member;
- (2) the amount that may be refunded to him;
- (3) for the period elapsed since the end of the fiscal year covered by the last annual statement sent to the member affected until the date on which he ceased to be an active member, the information provided for in paragraphs 1 to 15 of the first paragraph of section 57;
- (4) in the event that the member is entitled to payment of a retirement pension in respect of which he exercised an option provided for in the plan, the following information:
 - (a) the date on which payment of the retirement pension began;
 - (b) the amount of that pension, excluding the amounts referred to in subparagraphs *c* to *h*;
 - (c) the amount by which that pension is reduced by reason of payment of an early pension benefit or execution of a seizure, a transfer or partition of benefits, as well as the amount of any adjustments related to joint and survivor rights, an early pension, a postponement or the exercise of an option provided for in section 93 of the Act;
 - (d) in the case of a temporary pension or pension fraction, the amount thereof and the date on which it will cease to be paid;
 - (e) the member contributions which exceed the maximum set in section 60 of the Act and the amount of the additional pension constituted with that excess;
 - (f) the value of the additional pension benefit to which the member is entitled pursuant to section 60.1 of the Act, the amount of the pension constituted with that benefit and the portion, if any, of the value of the additional pension benefit that must be paid to him in a lump sum;
 - (g) the amount of the additional pension constituted with the member's additional voluntary contributions or contributions paid during the period of postponement of the pension and the interest accrued thereon;
 - (h) the amount of the pension constituted following a transfer of benefits or assets or a purchase of past service for the member;
- (5) where the member is entitled to payment of a retirement pension without exercising the choices provided for under the plan, the following information:
 - (a) the date on which payment of the retirement pension may begin;
 - (b) the amount of that pension, excluding pension amounts referred to in subparagraphs *c* to *g*, with a mention of the adjustments made following payment of an early pension benefit or execution of a seizure, transfer or partition of benefits and the adjustments related to integration, early payment or postponement of the normal pension;
 - (c) a description of the choices provided for under the plan;
 - (d) the member contributions that exceed the maximum set in article 60 of the Act, and the amount of the additional pension constituted with that excess;
 - (e) the value of the additional pension benefit to which the member is entitled in accordance with section 60.1 of the Act, the amount of the pension constituted with that benefit and the portion, if any, of the value of the additional pension benefit that must be paid to him in a lump sum;
 - (f) the amount of the additional pension constituted with the member's additional voluntary contributions and the interest accrued thereon;

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

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(g) the amount of any pension constituted following a transfer of benefits or assets or the purchase of past service to the advantage of the member;

(6) where the member is entitled to payment of a disability pension, the information referred to in subparagraphs *e* to *h* of paragraph 4, as well as the following information:

(a) the date on which payment of the disability pension begins;

(b) the amount of the disability pension or the amount of the payment or series of payments resulting from the option provided for in paragraph 4 of the first paragraph of section 93 of the Act, with, the latter case, the due date of each payment;

(c) the amount of the reduction of the disability pension resulting from payment of an early pension benefit or execution of a seizure, transfer or partition of benefits;

(d) in the case of a temporary pension or pension fraction, the amount thereof and the date on which it will cease to be paid;

(7) in the event of the member's death, the nature and amount of the death benefit;

(8) in all other cases, the following information:

(a) the value of the deferred pension vested to the member;

(b) the member contributions that exceed the maximum set in section 60 of the Act;

(c) the value of the additional pension benefit to which the member is entitled pursuant to section 60.1 of the Act, the amount of the pension constituted with that benefit and the portion, if any, of the value of the additional pension benefit that must be paid to the member in a lump sum;

(d) the value and amount, if any, of the pension constituted following a transfer of benefits or assets or the purchase of past service to the advantage of the member;

(e) the amount of the reduction of the deferred pension resulting from payment of an early pension benefit or execution of a seizure, transfer or partition of benefits;

(9) the pension plan's degree of solvency determined at the date of the last actuarial valuation of the entire plan;

(10) the personal information related to the member and his spouse, which was taken into account in determining the amounts shown on the statement, with a mention that it may be in the member's interest to have any erroneous information corrected.

O.C. 1158-90, s. 58; O.C. 568-91, s. 8; O.C. 1681-97, s. 22; O.C. 173-2002, s. 51.

59. The first part of the annual statement referred to in section 112 of the Act and sent to a non-active member must contain the following information:

(1) that provided for in paragraphs 1 to 6 of the first paragraph of section 57;

(2) where a member has begun receiving a retirement pension:

(a) the amount of the pension;

(b) where a pension must be reduced to take into account, in whole or in part, benefits payable under a public plan, the beginning date of the reduction and its amount;

(c) in the case of a pension or a fraction of a temporary pension, the date on which payment will cease;

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

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(d) the nature of the death benefit payable by supposing that the member had died on the date of the statement.

(3) where a member has begun receiving a disability pension, the information referred to in subparagraphs *a* and *c* of paragraph 2, with the necessary modifications, where the pension is not a life pension, as well as, in the latter case, the anticipated date of the final payment;

(4) where a member is entitled to a deferred pension:

(a) the date on which he ceased to be an active member;

(b) the anticipated amount of the pension, where the plan is not a defined contribution plan;

(c) the amount of the reduction of the pension resulting from payment of an early pension benefit or execution of a seizure, transfer, or partition of benefits;

(d) the amount of the member contributions and employer contributions paid under the plan where the plan is a defined contribution plan, or under provisions similar to those of a defined contribution plan where the plan is a defined benefit plan, with accrued interest;

(e) the amount of the member contributions that exceed the ceiling set in section 60 of the Act and the amount of the additional voluntary contributions, with, in each case, accrued interest;

(f) the amount of the pension constituted with the additional pension benefit to which the member is entitled under section 60.1 of the Act;

(g) the benefits and sums transferred to the member's account and the sums paid to his account for the purchase of past service during the fiscal year, the total of the benefits and sums thus transferred or paid to the member's account since the date on which he became a member of the plan, with accrued interest, distributed according as they must or must not be used to constitute a pension and any credited service added or the amount of the normal pension constituted with such benefits and sums;

(h) the rate applied or the method used during the fiscal year to calculate the interest referred to in subparagraphs *d* to *g*;

(5) where the value of the member's benefits has been paid only in part by the application of section 142 or 143 of the Act, the balance owing and an indication of each year in which a payment will be made.

At least once every 3 years, the first part of the statement sent to a non-active member who is entitled to a deferred pension under a plan other than a defined contribution plan and who, on a date subsequent to the sending of the statement, will be able to transfer the value of his benefits to another pension plan, shall also contain the following information:

(1) the value, at the end of the fiscal year, of the benefits that may be transferred, accompanied with a mention explaining that the value is provided for information purposes and that the value of the benefits is subject to large variations by reason in particular of fluctuations in the interest rates used to determine the value as well as the payment conditions of the deferred pension;

(2) the latest date on which the member will be able to exercise his transfer right;

(3) the personnel information relative to a member and his spouse and taken into account in determining the value referred to in paragraph 1 with a mention that it may be in their interest to have the information corrected if it is erroneous.

O.C. 1158-90, s. 59; O.C. 568-91, s. 9; O.C. 1681-97, s. 23; O.C. 173-2002, s. 51.

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59.0.1. The first part of the annual statement referred to in section 112 of the Act and sent to the beneficiary must contain the following information:

- (1) the beneficiary's name;
- (2) the information provided for in paragraphs 2 to 5 of the first paragraph of section 57;
- (3) the amount of the pension benefit paid;
- (4) where there is provision for a reduction of the pension benefit, the amount of the reduction and the date on which the reduction may be effective;
- (5) in the case of a temporary pension benefit, the date on which the benefit will cease to be paid;
- (6) the index or rate used for the indexation of the pension benefit.

O.C. 173-2002, s. 52.

59.0.2. The second part of an annual statement referred to in section 112 of the Act shall, where the statement is sent to a member or beneficiary of a pension plan to which chapter X of the Act applies, contain the following information:

- (1) the degree of solvency of the pension plan determined at the date of the most recent actuarial valuation of the whole plan, and where the degree is less than 100%, the measures taken to bring it up to 100%;
- (2) the lesser of the pension plan's surplus assets determined on a funding basis and those assets determined on a solvency basis on the occasion of the last actuarial valuation of the whole plan;
- (3) the employer contribution that the employer paid during the fiscal year concerned;
- (4) the member contributions paid by the members during the fiscal year concerned;
- (5) the portion of the plan's excess assets used to pay the employer contribution during the fiscal year and the portion used during that year to fund additional commitments resulting from an amendment to the plan.

Where the statement is sent to a member or beneficiary not referred to in the first paragraph, this part must indicate the plan's surplus assets and the portion thereof used to pay the employer contribution during the fiscal year.

O.C. 173-2002, s. 52.

59.1. In the case of a simplified pension plan, the statements referred to in paragraph 1 of section 112 and in section 113 of the Act must indicate whether the administration costs, are borne in whole or in part by the members or by the pension fund, as well as the amount, per member, of those costs or the formula for determining them, showing separately the portion of those costs borne by the member, the pension fund and the employer.

O.C. 658-94, s. 8; O.C. 173-2002, s. 53.

60. The other documents that may, under section 114 of the Act, be consulted by an eligible employee, a member or a beneficiary are:

- (1) any provision forming part of a document providing for working conditions relative to the pension plan;
 - (1.1) the internal by-laws of the pension committee;

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- (2) the investment policy of the pension committee;
- (3) the deeds of delegation of powers by the pension committee;
- (4) any general agreement permitting the members to transfer benefits or assets into another plan;
- (5) the annual statements and financial reports referred to in section 161 of the Act;
- (6) the reports transmitted to Retraite Québec relative to the actuarial valuations of the plan;
- (7) the documents referred to in paragraph 3 of section 24 of the Act;
- (7.1) in the case of an insured pension plan, any report prepared by the insurer relative to the plan;
- (8) the correspondence between Retraite Québec and the pension committee during the 60 months preceding the date of the application for consultation, with the exception of correspondence concerning another employee, member or beneficiary;
- (9) *(paragraph revoked).*

O.C. 1158-90, s. 60; O.C. 173-2002, s. 54; O.C. 1073-2009, s. 41.

DIVISION VI.1

RESERVE AND PROVISION FOR ADVERSE DEVIATION

O.C. 1073-2009, s. 42.

§ 1. — *Elements establishing the reserve*

O.C. 1073-2009, s. 42.

60.1. The following elements are likely to contribute to the establishment of the reserve provided for in section 128 of the Act:

- (1) the contributions paid into the pension fund that exceed the contributions required for the pension plan to be solvent, including the contributions the employer is relieved from paying pursuant to section 42.1 of the Act;
- (2) the favourable variances arising from the changes made to the actuarial assumptions and methods or the differences between the assumptions used and the results obtained, taking into account the return derived from the variances;
- (3) the amendments to the plan that reduced the value of the members' benefits.

O.C. 1073-2009, s. 42.

§ 2. — *Provision for adverse deviation*

O.C. 1073-2009, s. 42.

60.2. In addition to the cases where it must be determined under the Act, the provision for adverse deviation provided for in section 128 of the Act is calculated during the last actuarial valuation of a pension plan on the basis of which

- (1) amortization payments must be paid with respect to an improvement unfunded actuarial liability determined in a prior actuarial valuation while a complete actuarial valuation shows that the plan is both

*Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6*SUPPLEMENTAL PENSION PLANS

solvent and funded, unless an actuary certifies that the plan's assets are less than the liabilities increased by the provision for adverse deviation;

(2) the amortization payments remaining to be paid in connection with any improvement unfunded actuarial liability determined in a prior actuarial valuation are eliminated pursuant to section 131 of the Act;

(3) the surplus assets are appropriated to the payment of employer contributions under section 146.3.4 of the Act;

(4) the employer applies for the reduction of the amount of the letter of credit under section 15.0.0.4.

The value of the liabilities taken into account for calculating the provision for adverse deviation is established without reference, where applicable, to any amendment to the plan considered for the first time in the valuation.

O.C. 1073-2009, s. 42.

60.3. The provision for adverse deviation is equal to amount "P" in the following formula:

$$(T \times R) + (7\% \times S) + X = P$$

"T" represents the rate, expressed in percentage, obtained by multiplying "D" determined in accordance with section 60.4 by 0.0175;

"R" represents the value of the liabilities associated to the pensions being paid, excluding guaranteed pensions, increased, if the policies established by the pension committee so provide, by the value of the benefits of the members in the pension plan who are less than 10 years under normal retirement age and to whom no pension is paid, the latter value excluding here the value of the contributions referred to in paragraphs 1 and 2 of "S" paid by those members and the value of the guaranteed pensions constituted in their respect;

"S" represents the value of the plan's liabilities reduced by an amount representing the sum of the following values:

(1) the value of the additional voluntary contributions and optional ancillary contributions paid into the pension fund, with interest accrued;

(2) the value of the contributions paid under a defined contribution plan to which Chapter X of the Act applies or under provisions that, in a defined benefit plan, are identical to the provisions of a defined contribution plan, with interest accrued;

(3) the value of the liabilities associated to the pensions being paid increased, if the policies established by the pension committee so provide, by the value of the benefits of the members in the plan who are less than 10 years under normal retirement age and to whom no pension is paid, the latter value excluding here the value of the contributions referred to in paragraphs 1 and 2 paid by those members;

(4) the value of the liabilities associated to the guaranteed deferred pensions not referred to in paragraph 3;

"X" represents

(1) in the case where the rate represented by "T" is less than 7%, the result of the formula

$$(R-V) \times (7\% - T)$$

in which "V" is equal to the element "V" in section 60.4;

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(2) in the other cases, zero.

O.C. 1073-2009, s. 42.

60.4. Where the value represented by “R” of section 60.3 is null, “D” of that section is equal to zero.

In other cases, “D” corresponds to the result, in absolute value, of the following formula:

$$\frac{R \times d^R - V \times d^M}{R}$$

R

“R” represents element “R” of section 60.3;

“d^R” represents the duration of the liabilities constituting “R”;

“V” represents the lesser of

(1) the amount that is equivalent to the product of the assets of the pension plan at the date of the actuarial valuation and the average of the percentages represented by the amount of the fixed-income investments taken into account for that calculation over the assets of the plan at the valuation date and the last day of each of the 11 months preceding the day of the valuation or, in the case of a plan effective for less than a year, the last day of each month included between the date of coming into force of the plan and the valuation date;

(2) the amount that is equivalent to the value represented by element “R”;

“d^M” represents the result of the sum of each amount used to calculate the average referred to in paragraph 1 of element “V” multiplied by its term, divided by the total of those amounts.

For the purposes of paragraph 1 of element “V”:

(1) the plan’s assets are reduced by the value of guaranteed pensions and the value of the contributions referred to in paragraphs 1 and 2 of element “S” of section 60.3 which are the subject of a separate investment;

(2) the amount of the fixed-income investments of a pension plan is determined by including the amount of any variable income investment associated with a financial instrument that converts it into a fixed income investment but excluding the amount of any fixed income investment associated with a financial instrument that converts it into a variable income investment.

O.C. 1073-2009, s. 42.

60.5. Element “d^M” of section 60.4 is determined by the actuary responsible for the actuarial valuation using the terms calculated by the person who invests any part of the plan’s assets.

For the purposes of a partial actuarial valuation, the actuary may estimate elements “R” and “S” of section 60.3 and the duration of liabilities constituting element “R”.

O.C. 1073-2009, s. 42.

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DIVISION VI.2

STABILIZATION PROVISION

O.C. 608-2016, s. 2

60.6. The target level of the stabilization provision provided for under section 125 of the Act is determined using the following scale, based on the percentage of the assets allocated to variable-yield investments in accordance with the target set out in the plan's investment policy in effect at the date of the actuarial valuation of the plan, and the ratio between the duration of the assets and the duration of the liabilities at that date:

TARGET LEVEL OF THE STABILIZATION PROVISION (%)

		Duration of the assets/Duration of the liabilities (%)				
		0	25	50	75	100
Assets allocated to variable- yield investments (%)	0	12	10	8	6	5
	20	14	12	10	8	6
	40	16	14	12	10	8
	50	17	15	13	11	9
	60	19	17	15	13	11
	70	22	20	18	16	14
	80	24	22	20	18	16
	100	27	25	23	21	20

Assets allocated to variable-yield investments are those not allocated to fixed-income investments.

Where the percentage of the assets of the plan allocated to variable-yield investments or the ratio between the duration of the assets and the duration of the liabilities is between two percentage points indicated on the scale, the target level of the stabilization provision is calculated using a linear interpolation and rounded off to the first decimal.

O.C. 608-2016, s. 2

60.7. Derivatives may not be considered assets for the purpose of establishing the target level of the stabilization provision.

However, derivatives that increase the pension fund's exposure to stock market risks shall be added to assets allocated to variable-yield investments.

Furthermore, derivatives may be taken into consideration for the purpose of establishing the duration of the assets.

O.C. 608-2016, s. 2

60.8. For the purposes of this Division, fixed-income investments are:

- (1) cash on hand;

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(2) money market securities whose rating, attributed by a rating agency referred to in the third paragraph, is the one indicated with regard to that agency or a higher rating;

(3) bond market securities whose rating, attributed by a rating agency referred to in the third paragraph, is the one indicated with regard to that agency or a higher rating;

(4) first or second mortgages the amount of which is not more than 75% of the value of the property that is used as a security for the payment.

Up to 50% of the assets invested in infrastructure or in immovables (real estate) can be considered fixed-income investments. Investments in stock market securities are excluded.

The minimum ratings, by rating agency and type of investment, are as follows:

Rating agency	Rating	
	Bond market securities	Money market securities
Dominion Bond Rating Service	BBB	R-2 (middle)
Fitch Ratings	BBB-	F-3
Moody's Investors Service	Baa3	P-3
Standard & Poor's	BBB-	A-3

Money market or bond market securities whose rating attributed by another rating agency recognized by a competent authority is at least equal to the one indicated for the agencies mentioned in the third paragraph can also be considered as fixed-income investments.

O.C. 608-2016, s. 2

60.9. The duration of the assets is determined by the actuary who is responsible for carrying out the actuarial valuation. It is equal to the total of the durations of each of the fixed-income investments provided for in the investment policy weighted on the basis of the target determined for that investment in the policy.

The duration of each investment is established according to the benchmark index provided in the investment policy for the investment. The duration of an investment for which no index is provided in the investment policy is calculated by the person or body who invests any part of the plan's assets.

The duration attributed to an investment in infrastructure or in immovables (real estate) shall not exceed 6.

O.C. 608-2016, s. 2

60.10. The duration of the liabilities is established by the actuary responsible for carrying out the actuarial valuation using the following formula:

$$(P - P_+) / (2 * P * 0,01)$$

where

“P” is the value of the liabilities on a funding basis, as at the date of the actuarial valuation, established using the discount rate determined by the actuary;

“P₋” is the same value of the liabilities established using the discount rate minus 1%;

“P₊” is the same value of the liabilities established using the same discount rate plus 1%.

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For the application of this section, the liabilities of the plan must be increased by the value of the additional obligations resulting from any amendment considered for the first time at the date of the actuarial valuation of the plan.

O.C. 608-2016, s. 2

60.11. Where no target is set out in the investment policy of the plan in effect on 31 December 2015, the target provided for in the investment policy in effect on the date on which the actuarial valuation report referred to under section 318.2 of the Act is produced shall be used.

O.C. 608-2016, s. 2

DIVISION VII

INVESTMENTS

61. A loan cannot be granted to an employer, a partnership or a person referred to in section 177 of the Act unless that loan is fully secured by any of the following types of security:

- (1) in the case of a member, his spouse or his child, a hypothec on an immovable;
- (2) in other cases:
 - (a) a hypothec of the first rank;
 - (b) a hypothec of an investment presumed sure and referred to in section 1339 of the Civil Code or the pledge of a gilt-edged security referred to in section 3 of the Securities Regulation (chapter V-1.1, r. 50);
 - (c) the hypothec of a security guaranteed by a security of the first rank;
 - (d) the guarantee of the gouvernement du Québec, of the Government of Canada, of a Canadian province, of any of their agencies or of a financial institution empowered to guarantee borrowings in Canada.

O.C. 1158-90, s. 61; O.C. 173-2002, s. 55.

DIVISION VII.1

MERGER OF THE ASSETS AND LIABILITIES OF SEVERAL PENSION PLANS

O.C. 173-2002, s. 56.

61.1. The notice provided for in section 196 of the Act must contain:

- (1) the name of the absorbed plan and the number assigned to it by Retraite Québec;
- (2) the name of the absorbing plan and the number assigned to it by Retraite Québec;
- (3) the number of members and beneficiaries of the absorbed plan at the effective date of the amendment intended to merge the assets and liabilities of the affected plans;
- (4) where a merger does not include the total assets of the absorbed plan, a description of the group constituted by the members and beneficiaries whose benefits would be transferred to the absorbing plan and their number;
- (5) the provisions of the affected plans relative to the allocation of the surplus assets determined upon termination and, where one of the plans has no provisions of that nature, a mention of that fact and of the rule set out in the second paragraph of section 288.1 of the Act;

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(6) in the case provided for in the fourth paragraph of section 196 of the Act, a mention of the rule therein set out, the identity of those whose consent is required under section 146.5 of the Act for an amendment to the absorbed plan and a mention that the consents have or have not already been obtained;

(7) where Retraite Québec authorizes a merger, a mention that only the provisions of the absorbing plan will apply, with respect to the employer's entitlement to appropriate the surplus assets of the plan to the payment of his contributions as well as the allocation of surplus assets upon termination in respect of the members and beneficiaries of the absorbed plan who are affected by the merger;

(8) a mention that the members and beneficiaries whose benefits may be transferred from the absorbed plan to the absorbing plan may, within 60 days following receipt of the notice or of the publication, if any, of the notice provided for in the second paragraph of section 230.4 of the Act, according to the latest of them, to make known in writing to the pension committee their opposition to the merger of the plans;

(9) the address of the pension committee;

(10) the name of the signatory, the attestation that he is duly authorized by the pension committee to give the notice and the date of signing.

O.C. 173-2002, s. 56.

DIVISION VIII
LIQUIDATION OF THE BENEFITS OF THE MEMBERS AND BENEFICIARIES

O.C. 1158-90, Div. VIII; O.C. 173-2002, s. 57.

62. The report provided for in the second paragraph of section 202 of the Act must contain the following information:

(1) the name of the plan and the number assigned to it by Retraite Québec;

(2) the effective date of the amendment giving rise to the withdrawal and the name of the affected employer;

(3) the value of the plan's assets at the date of the valuation of the members' and beneficiaries' benefits;

(4) the employer and member contributions required and those paid for the period between the date of the plan's last fiscal year and the year of the withdrawal, distinguishing the contributions relative to the affected employer from the total contributions of the other employers;

(5) the assets allocated to the group constituted of the benefits of the affected members and beneficiaries and the assets allocated to all the other groups, in accordance with sections 220 to 227 of the Act as well as the description and method used;

(6) where required, the assumptions and methods used to determine the value of the assets and of the benefits of the plan's members and beneficiaries;

(7) the value of the benefits of the members and beneficiaries not affected by the withdrawal;

(8) the names of the members and beneficiaries affected by the withdrawal, grouped according to the categories provided for in paragraph 2 of section 201 of the Act, as well as the nature and the value of their benefits at the date of their valuation;

(9) the degree of solvency of the plan at the date of the valuation of the members' and beneficiaries' benefits;

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(10) where, with respect to the employer and the members and beneficiaries affected by the withdrawal, the contributions paid are less than the contributions required, the report must, in addition, indicate the distribution of the total contributions required and the total contributions paid among those members and beneficiaries, with a mention for each of them of the portion related to employer contributions, member contributions and additional voluntary contributions;

(11) the debt, if any, of the employer affected by the withdrawal, a description of the measures put into effect to ensure the collection of the debt and its distribution among the members and beneficiaries affected by the withdrawal;

(12) where, at the date of the valuation of the benefits of the members and beneficiaries affected by the withdrawal, the assets allocated to the group consisting of the benefits are, after deducting any contribution relative to that group and referred to in section 227 of the Act, less than the value of the benefits of those members and beneficiaries, the amount of the reduction in benefits that each of them will sustain if the employer's debt and the unpaid contributions are not collected;

(13) a description of the payment methods offered to each category of members and beneficiaries affected by the withdrawal;

(14) a certificate by the author of the report that it was prepared in conformity with the provisions of the Act and the Regulation;

(15) the name and address of the author of the report, his professional title and the date of signing.

In the case provided for in paragraph 12 of the first paragraph, the value of the members' and beneficiaries' benefits affected by the withdrawal shall be distributed in accordance with each item of the payment order provided for in section 218 of the Act.

O.C. 1158-90, s. 62; O.C. 173-2002, s. 57; O.C. 1073-2009, s. 43.

63. The termination declaration that the pension committee sends in application of section 207.1 of the Act must be in conformity with that provided in Schedule II where the termination follows a notice by the employer and that provided in Schedule III where the termination follows a decision of Retraite Québec. The pension committee that sends a declaration in conformity with that provided in Schedule II must attach to it a copy of the termination notice.

O.C. 1158-90, s. 63; O.C. 1895-93, s. 3; O.C. 173-2002, s. 57.

64. The termination report provided for in section 207.2 of the Act must contain the following information, subject to the adaptations required in the case of an insured plan or a plan referred to in paragraph 2 of section 116 of the Act:

- (1) the name of the plan and the number assigned to it by Retraite Québec;
- (2) the plan's termination date;
- (3) the value of the plan's assets at the date of termination, distributed according to the nature of each element of which it is constituted;
- (4) the employer and member contributions required and those paid for the period between the end of the preceding fiscal year of the plan and the date of termination;
- (5) in the case of a plan is referred to in the second paragraph of section 230.0.1 of the Act:
 - (a) the assets allocated to each group of benefits, determined in accordance with sections 220 to 227 and 230.0.1 of the Act;

SUPPLEMENTAL PENSION PLANS

(b) the share of surplus assets, if any, allocated to each group of benefits and the proportion of the surplus assets at the termination date represented by that share;

(c) the description of the method used to determine the sums referred to in subparagraphs *a* and *b*;

(6) where required, the assumptions and methods used to determine the value of the assets and the value of the benefits of the plan's members and beneficiaries;

(7) the names of the members and beneficiaries affected by the termination, distributed by employer and according to the categories referred to in section 207 of the Act, as well as the nature and value of their benefits at the date of termination;

(8) in the case of a plan to which Chapter X of the Act applies, the ratio of the value of the assets to the value of liabilities determined in accordance with section 212.1 of the Act, each value being reduced by an amount representing the sum of the following values:

(a) the value of additional voluntary contributions paid into the pension fund, with interest accrued;

(b) the value of contributions paid into the pension fund under provisions that, in a defined benefit plan, are identical to the provisions of a defined contribution plan, with interest accrued;

(c) the value of the sums received by the plan following a transfer even not covered by Chapter VII of the Act, with interest accrued;

(8.1) if applicable, the amount which must be paid under section 15.0.0.10;

(9) where, with respect to the employer affected by the termination, the contributions paid are less than the contributions required, a mention of the unpaid portion related to employer contributions, member contributions and additional voluntary contributions;

(10) the debt, if any, of each employer affected by the termination, determined in accordance with section 228 of the Act;

(11) where, at the date of termination, the assets allocated to a group of benefits of members and beneficiaries affected by the termination is, after reduction of any contribution relative to that group and referred to in section 227 of the Act, less than the value of the benefits of the those members and beneficiaries, the amount of the reduction of benefits that each of them will sustain if the employer's debt and the unpaid contributions are not collected;

(12) the list of the payment methods offered to each category of members and beneficiaries affected by the termination;

(13) a certificate by the author of the report:

(a) that the report was prepared in conformity with the provisions of the Act and the Regulation;

(b) where the report must be prepared by an actuary, that it is in conformity with the standards of the Canadian Institute of Actuaries;

(c) where the report may be prepared by the pension committee, that the author is a member of the committee or that he is mandated by the committee to prepare the report;

(14) the name of the author of the report, his professional title and the date of signing.

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In the case provided for in paragraph 11 of the first paragraph, the value of the benefits of the affected members and beneficiaries shall be distributed in accordance with each item of the payment order provided for in section 218 of the Act.

O.C. 1158-90, s. 64; O.C. 173-2002, s. 57; O.C. 1073-2009, s. 44.

65. The statement provided for in section 207.3 of the Act must contain, in addition to the information prescribed in that section, the following information:

(1) the information referred to in paragraphs 3 to 10 of section 58, determined or updated at the date of termination;

(2) the assets and liabilities as well as the surplus or deficiency of the pension plan's assets indicated in the termination report for the employer to whom the member or beneficiary to whom the statement is addressed is connected;

(3) where there is a deficiency of assets, the measures put into place to cause the amounts due to the pension fund to be paid by the employer concerned;

(4) the information referred to in paragraphs 9 to 11 of the first paragraph of section 64 relative to the member or beneficiary or to the employer with whom he is connected;

(5) where the plan's assets, in whole or in part, is allocated to the members and beneficiaries in application of the second or third paragraph of section 230.1 of the Act, the proportion of the surplus assets that is allocated to the participant or beneficiary.

O.C. 1158-90, s. 65; O.C. 1895-93, s. 4; O.C. 173-2002, s. 57.

66. The supplement to the termination report referred to in section 207.5 of the Act must contain the following information:

(1) the name of the pension plan and the number assigned to it by Retraite Québec;

(2) the plan's surplus assets at the date of termination and at the latest date at which its value is known;

(3) a description of the method of apportionment for the surplus assets, in accordance with any declaration, agreement, arbitration decision referred to in the first paragraph of section 230.1 of the Act, or to any increase or allocation provided for in the second or third paragraph of section 230.1 of the Act or in section 230.3 or the Act;

(4) the name of each employer who is party to the plan and, for each of them, the surplus assets allocated to the group of benefits connected to each, the portion of the surplus assets granted to each at the dates referred to in paragraph 2 and the proportion that such portion represents at the same dates with respect to the total surplus assets of the plan;

(5) where a portion of the surplus assets is granted to persons who remain or who are considered to be members or beneficiaries under section 240.2, 308.3 or 310.1 of the Act, the actuarial assumptions and methods used to determine the presumed value of their benefits for the purposes of determining their share of the surplus assets;

(6) where a portion of the surplus assets is granted to the members or beneficiaries:

(a) their names;

(b) the share that each of them would have received had the surplus assets been allocated at the date of termination;

(c) an estimate of the share that each will receive, determined at the latest date referred to in paragraph 2;

 SUPPLEMENTAL PENSION PLANS

(d) the methods for payment of the surplus assets thus allocated;

(7) the author's certificate:

(a) that the supplement to the termination report was prepared in conformity with the provisions of the Law and the Regulation;

(b) where the supplement must be prepared by an actuary, that it is in conformity with the standards of the Canadian Institute of Actuaries;

(c) where the supplement may be prepared by the pension committee, that the author is a member of the committee or that he is mandated by the committee to prepare the supplement;

(8) the name of the author, his professional title and the date of signing.

O.C. 1158-90, s. 66; O.C. 1895-93, s. 5; O.C. 173-2002, s. 57.

67. Except where otherwise indicated, the benefits of a member or beneficiary that are referred to in sections 62 to 66 do not include the share that he may have in the surplus assets.

O.C. 1158-90, s. 67; O.C. 1895-93, s. 6; O.C. 173-2002, s. 57.

67.1. The draft agreement referred to in section 230.1 of the Act must indicate, in addition to the information prescribed in that section, the following information:

(1) the name of the plan and the number assigned to it by Retraite Québec;

(2) the date of termination of the plan;

(3) the name of each employer who is party to the draft agreement;

(4) the share of the surplus assets at the date of termination that would be granted to each employer who is party to the draft agreement;

(5) the share of the surplus assets at the date of termination that would be granted to the members and beneficiaries, as a whole, who are affected by the draft agreement;

(6) where the agreement does not allocate the total surplus assets that it covers to the employer and where persons remain or are deemed to be members or beneficiaries in accordance with section 240.2, 308.3 or 310.1 of the Act, the actuarial assumptions and methods used to determine the presumed value of the benefits of such persons for the purpose of determining the portion of the surplus due to them.

A draft agreement that does not cover all the members and beneficiaries of the plan must stipulate that it covers only some of them.

Where the draft agreement proposes that the share of the surplus assets apportioned to a member or beneficiary be determined according to a method that has a distribution formula specific to a group members or beneficiaries determined in the report, the report must indicate the share of the surplus assets at the date of termination to be granted to each group.

O.C. 1895-93, s. 7; O.C. 173-2002, s. 57.

67.2. The actuary's certificate required under the third paragraph of section 230.2 of the Act for a specific method of apportionment of the surplus assets must:

(1) define the group of members or beneficiaries that the method affects;

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- (2) describe the circumstances justifying that those members or beneficiaries receive a share of the surplus assets that is greater than that which they would have received prorata;
- (3) determine the portion of the surplus assets that results from those circumstances;
- (4) be attached to the draft agreement so as to be a part thereof.

O.C. 1895-93, s. 7; O.C. 173-2002, s. 57.

67.3. The notice provided for in section 230.4 of the Act must indicate, in addition to the information prescribed in that paragraph, the following information:

- (1) the name of the pension plan and the number assigned to it by Retraite Québec;
- (2) in the case of a multi-employer plan, the surplus assets determined in application of section 230.0.1 of the Act with respect to each employer who is party to the draft agreement and the proportion of the surplus assets at the date of termination represented by that portion;
- (3) the number of members and beneficiaries for the purposes of distributing the surplus assets referred to in the draft agreement as well as the value of their benefits;
- (4) the plan's assets, the liabilities and the surplus indicated in the termination report provided for in section 207.2 of the Act;
- (5) where the plan has no provision relative to allocation of surplus assets determined upon termination, a mention of that fact and of the rule set out in the second paragraph of section 288.1 of the Act;
- (6) a mention of the rule set out in paragraph 1 or 2 of section 230.6 of the Act that applies to the draft agreement in view of the method of apportionment proposed;
- (7) the address of the pension committee;
- (8) the name of the signatory, the certificate that he is duly authorized by the pension committee to give the notice and the date of signing.

Where the draft agreement does not cover all plan's the members and beneficiaries, the notice must contain the following additional information:

- (1) the total number of members and beneficiaries for the purposes of apportioning the plan's surplus assets and the value of their benefits;
- (2) where a portion of the surplus assets is not covered by the draft agreement but has already been apportioned in conformity with the Act, the proportion of the total surplus assets that was thus granted to any group members or beneficiaries and to any employer.

Where the draft agreement proposes that the share of the surplus assets apportioned to a member or beneficiary be determined according to a method that has a distribution formula specific to a group members or beneficiaries determined in the report, the report must indicate the share of the surplus assets at the date of termination to be granted to each group.

O.C. 173-2002, s. 57.

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DIVISION VIII.1

ACTUARIAL ASSUMPTIONS

O.C. 1895-93, s. 7; O.C. 173-2002, s. 57.

67.4. The assumptions referred to in the first paragraph of section 61 of the Act are those described in subsections 3530 and 3540 of the Standards of Practice of the Canadian Institute of Actuaries. The mortality table promulgated by the Actuarial Standards Board of the Institute on 9 June 2015, whose date of coming into force is 1 October 2015, must be used. The mortality table must be sex-specific.

These assumptions apply taking into account the rules set out in paragraphs 3520.09 to 3520.11 of Section 3520 of the standards of practice.

O.C. 173-2002, s. 57; O.C. 204-2005, s. 2; S.Q. 2009, c. 1, s. 5; O.C. 978-2011, s. 2; O.C. 800-2015, s. 2.

67.5. Where the value of the member's benefits for the purposes of section 66 or 66.1 of the Act is determined more than 90 days after the date on which the member received the statement referred to in section 113 of the Act but before payment of a pension to him begins, the assumptions referred to in section 61 of the Act that are used at the date of the application for a refund to determine the value of the pension benefits to which section 60 of the Act applies and to which entitlement is acquired at that date shall be used. That value is increased by interest calculated at the rate used to determine it between the date of the application for a refund and the date of the refund.

O.C. 173-2002, s. 57.

67.6. For determining the value of the pension referred to in paragraph 1 of the first paragraph of section 86 of the Act, the assumptions referred to in section 61 of the Act that are used at the date of the member's death to determine the value of the pension benefits to which section 60 of the Act and to which entitlement was acquired at that date shall be used.

O.C. 173-2002, s. 57.

DIVISION VIII.2

SPOUSE'S WAIVER

O.C. 173-2002, s. 57.

67.7. The declaration provided for in section 88.1 of the Act is made in written form, signed by the waiving spouse and contains:

- (1) the date of the declaration;
- (2) the names and addresses of the member and the waiving spouse;
- (3) the name of the member's pension plan and the number assigned to it by Retraite Québec;
- (4) the name of the member's employer;
- (5) an indication of each benefit that the spouse declares to be waived, that is, the benefit provided for in section 86 of the Act or the pension provided for in section 87 or 88 of the Act.

O.C. 173-2002, s. 57.

 SUPPLEMENTAL PENSION PLANS

DIVISION VIII.3

REPLACEMENT VALUE

O.C. 173-2002, s. 57.

67.8. The value of the replacement pension that the member elected to receive under section 92.1 of the Act must be at least equal to the value of the replaced pension, commuted to the date of replacement.

O.C. 173-2002, s. 57.

DIVISION IX

MISCELLANEOUS AND TRANSITIONAL PROVISIONS

O.C. 1158-90, Div. IX; O.C. 568-91, s. 10.

68. *(Revoked).*

O.C. 1158-90, s. 68; O.C. 658-94, s. 9; O.C. 1465-95, s. 3.

69. This Regulation replaces the General Regulation respecting supplemental pension plans (R.R.Q., 1981, c. R-17, r. 1), except with respect to:

(1) matters pending referred to in section 286 of the Act and matters governed by the Act respecting supplemental pension plans (chapter R-17) under the first paragraph of section 73, to the extent that that Act applies to those matters;

(2) *(paragraph revoked);*

(3) pension plans governed by an agreement concluded with the representatives of a government other than the gouvernement du Québec under section 74 of the Act respecting supplemental pension plans, for which sections 21, 53 and 92 of that General Regulation continue to apply, notwithstanding any inconsistent provision of the Act, until the date of tabling in the National Assembly of a new agreement concluded under section 249 of the Act.

O.C. 1158-90, s. 69; O.C. 173-2002, s. 58.

69.1. Until it is determined under an actuarial valuation the date of which is after 14 December 2009, the portion of the employer contribution of which an employer may be relieved under section 42.1 of the Act may not exceed an amount corresponding to the amount obtained by multiplying by 20% the difference, established at the date of the last actuarial valuation of the pension plan, between the assets and liabilities of the plan, determined on a solvency basis.

O.C. 1073-2009, s. 45.

70. The provisions of section 87 of the Act, as it read as of 1 January 2001, that are relative to the bridge benefit do not apply to the spouse of a member where the member began to receive such a benefit prior to that date.

O.C. 1158-90, s. 70; O.C. 173-2002, s. 59.

70.0.1. Where the application provided for in section 89.1 of the Act is made by a member referred to in section 300.4 of the Act, the amount of the pension resulting from the new determination is calculated in accordance with the following formula:

$$A \times B$$

 SUPPLEMENTAL PENSION PLANS

 —
 C

“A” represents the amount of the pension being paid to the member at the date of the application;

“B” represents the amount of the pension that would be paid to the member at the date of the application if he had not had a spouse at the date on which payment of his pension began;

“C” represents the amount of the pension that would be paid to the member at the date of the application were no account take of the judgment or the cessations of the conjugal relationship following which the application was made as well as any partition or transfer of benefits that followed such judgment or cessation.

O.C. 173-2002, s. 60; O.C. 1073-2009, s. 46.

70.1. The provisions of a pension plan that, where such provisions were in effect on 4 June 1997, allowed a member or spouse who had become entitled to a pension to choose, before it comes into payment, to replace it, in whole or in part, by a pension of which the amount is changed in accordance with the Act in order to take into account an amount similar to the benefits determined under the Old Age Security Act (R.S.C. 1985, c. O-9), the Act respecting the Québec Pension Plan (chapter R-9) or a similar plan within the meaning of subparagraph *u* of section 1 of that Act, continue to apply with respect to any person who was a member of the plan on the date mentioned hereinabove and to that member’s spouse.

O.C. 1681-97, s. 24.

71. *(Revoked).*

O.C. 1158-90, s. 71; O.C. 173-2002, s. 61.

72. *(Revoked).*

O.C. 1158-90, s. 72; O.C. 568-91, s. 11; O.C. 173-2002, s. 61.

73. Any amendment, division or merger referred to in sections 20 to 23 of the Act or Chapter XII of that Act and submitted to the Régie before 23 March 1989 is governed by the Act respecting supplemental pension plans (chapter R-17) if the Régie, before that date, had subordinated its approval to conditions met before 1 January 1990.

Those sections and that Chapter apply to any matter that they cover and that is pending before the Régie at 22 March 1989.

This section has effect from 23 March 1989.

O.C. 1158-90, s. 73; O.C. 173-2002, s. 62.

74. Subject to the provisions of section 45.1 of the Act, the employer contributions paid before 1 January 1990 under a defined contribution plan or under provisions which, in a defined benefit plan, are identical to the provisions of a defined contribution plan, with accrued interest where applicable, shall bear interest from that date at the rate referred to in section 44 or 45 of the Act.

O.C. 1158-90, s. 74; O.C. 173-2002, s. 63.

75. Where a member ceased to be an active member before 1 January 2001 and where the valuation date is prior to that date, the first paragraph of section 36.1 must be applied with respect to the service credited to the member before 1 January 1990 separately from the service credited after that date, taking into account the transitional provisions of the Act and assuming that, for the purposes of section 293 of the Act as it read before 1 January 2001, the period of continuous employment of the member ended on the valuation date.

SUPPLEMENTAL PENSION PLANS

Moreover, where the member is not entitled to a pension on the date on which the member ceased to be an active member or on the valuation date, as the case may be, the member's total benefits correspond to a refund.

O.C. 1158-90, s. 75; O.C. 173-2002, s. 64; O.C. 1073-2009, s. 47.

75.1. Subparagraph 1 of the second paragraph of section 50 does not apply where the application for partition is made to the pension committee before 1 January 2010.

O.C. 1073-2009, s. 48.

76. *(Revoked).*

O.C. 1158-90, s. 76; O.C. 173-2002, s. 77.

76.1. *(Revoked).*

O.C. 1895-93, s. 8.

76.2. *(Revoked).*

O.C. 1895-93, s. 8.

77. *(Revoked).*

O.C. 1158-90, s. 77; O.C. 173-2002, s. 65.

78. *(Omitted).*

O.C. 1158-90, s. 78; O.C. 173-2002, s. 75.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

FORM 1

(Revoked)

O.C. 1465-95, s. 5; O.C. 173-2002, s. 73; O.C. 1073-2009, s. 49.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

FORM 2

(Revoked)

O.C. 1465-95, s. 5; O.C. 173-2002, s. 73; O.C. 1073-2009, s. 49.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

FORM 3

(s. 15.0.0.1)

Irrevocable standby letter of credit

Financial institution issuing the letter of credit

Name: _____

Address: _____

Originator (employer)

Name: _____

Address: _____

Beneficiary (pension fund)

Name: _____

Beneficiary (administrator of the pension fund)

Address: _____

Letter of credit No.: _____

Date of issue: YEAR MONTH DAY
 | | | | | | | | | | | | | | | |
 | | | | | | | | | | | | | | | |

Date of expiry: YEAR MONTH DAY
 | | | | | | | | | | | | | | | |
 | | | | | | | | | | | | | | | |

At the request of _____ *(Name of the originator)* _____

the undersigned, _____ *(Name of the financial institution issuing the letter of credit)* _____

hereby issues an irrevocable standby letter of credit in favour of _____ *(Name of the beneficiary pension fund)* _____

for the sum of _____ *(Amount in letters)* _____

Canadian dollars. (CA\$ _____ *(Amount in figures)* _____)

That amount is payable upon presentation of a written demand to

_____ *(Address in Québec of the place where the demand must be made)* _____

The demand must mention the number and date of issue of the present letter of credit and be signed by a person authorized by the administrator of the pension fund to present the demand. Payment will be made to the order of the beneficiary pension fund.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.0.1

(s. 2)

DECLARATION ACCOMPANYING THE APPLICATION FOR REGISTRATION OF AN AMENDMENT TO A PENSION PLAN

(The administrator of the pension plan affected by the application for registration or his mandatary must:

— either complete section A that follows;

— or have section B completed by an actuary who is a member of the Canadian Institute of Actuaries and has the title of “Fellow” or who has a status that the Institute recognizes as equivalent.)

Section A

I, _____, declare that I have read the application for application attached herewith and I certify to the best of my knowledge that:

(Only one box may be checked.)

- The report on the actuarial valuation of the plan attached to this declaration takes into account the amendment(s) made to the plan.
- The amendment(s) made to the plan does not (do not) have the effect of changing the contribution required from the employer or the members or the other sums to be paid into the pension fund, nor the effect of changing the benefits or refunds payable by the fund.
- The plan, as amended, is an uninsured plan under which the benefits of all the members and beneficiaries arise at all times from the sums credited to their accounts.
- The plan, as amended, is an uninsured plan under which the benefits of the members and beneficiaries are constituted solely of benefits or refunds guaranteed at all times by an insurer and of benefits arising, at all times, solely from the sums credited to their accounts.
- The plan as amended is an insured plan for which the insurer undertakes to assume all the costs and fees relative to its termination.

_____ (signature) _____ (date)

Section B

I, _____ (actuary FCIA) _____, declare that I have

read the application for registration and the amendment(s) to the plan cover thereunder and I certify that:

(Only one box may be checked.)

- The effect of the amendment(s) has already been valued in the report on the actuarial valuation of the plan dated _____,
- The amendment(s) does not give rise to any change in the employer contribution, the member contribution, if any, the liabilities or the assets of the plan as determined in the report dated _____ on the actuarial valuation of the plan as at _____.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

_____ (*signature*) _____ (*date*) _____

O.C. 173-2002, s. 66.

SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.1*(s. 15.4)*

DECLARATION OF THE MEMBER OR THE SPOUSE

I declare that I am not now receiving any temporary income under any other supplemental pension plan subject to or established by an act of the Parliament of Québec or any other legislative authority or under an annuity purchase contract of which the capital comes directly or not from such a plan.

I declare furthermore that no other application intended to allow me to receive a temporary income from such a plan or contract has been made or accepted.

_____ (*Date*) _____ (*Signature*) _____

NOTE: Whosoever makes a false declaration with the intention of obtaining a temporary income payable under a pension plan or contract mentioned in this declaration is subject to the penalties provided for in sections 257 and 262 of the Supplemental Pension Plans Act (chapter R-15.1).

O.C. 1681-97, s. 25; O.C. 173-2002, s. 67.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.2

(ss. 16.1, 19 and 29)

DECLARATION OF THE MEMBER OR PURCHASER

I declare:

(1) that the total of the locked-in amounts credited to my account in the following retirement savings instruments:

(a) defined contribution pension plans;

(b) defined benefit or defined benefit-defined contribution pension plans in application of provisions similar to those of a defined contribution plan;

(c) life income funds;

(d) locked-in retirement accounts;

(e) registered retirement savings plans of which the balance must be converted into a life annuity (locked-in RRSPs);

(f) the voluntary retirement savings plans governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1),

is \$ _____;

(2) that the total is based on the most recent information that I have;

(3) that the said information is less than 18 months old.

_____ *(Date)* _____ *(Signature)* _____

NOTE: Whosoever makes a false declaration with the intention of obtaining a lump-sum payment payable under a retirement savings instrument mentioned in the declaration is subject to the penalties provided for in sections 257 and 262 of the Supplemental Pension Plans Act (chapter R-15.1).

O.C. 1681-97, s. 25; O.C. 500-2014, s. 18.

 SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.3*(s. 16.2)*

DECLARATION OF THE MEMBER OR THE SPOUSE

I declare:

(1) that I am not a party to any contract establishing a life income fund or locked-in retirement account or any registered retirement savings plan of which the balance must be converted into a life annuity (locked-in RRSP);

(2) that the total amount of the temporary pensions and temporary variable payments that I will receive during the current year under the following contracts:

(a) supplemental pension plans subject to or established by an act of the Parliament of Québec or any other legislative authority;

(b) annuity purchase contracts of which the capital comes directly or not from such a plan;

(c) the voluntary retirement savings plans governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) or an equivalent voluntary retirement savings plan emanating from a legislative authority other than the Parliament of Québec,

is \$ _____.

_____ *(Date)* _____ *(Signature)* _____

NOTE: Whosoever makes a false declaration with the intention of obtaining the lump-sum payment provided for in section 92 of the Act is subject to the penalties provided for in sections 257 and 262 of the Supplemental Pension Plans Act (chapter R-15.1).

O.C. 1681-97, s. 25; O.C. 173-2002, s. 68; O.C. 500-2014, s. 19.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.4*(ss. 19.1 and 20.4)*

DECLARATION OF THE PURCHASER

I declare:

- (1) that I was at least 54 years of age but less than 65 years of age at the end of last year;
- (2) that the total amount of the temporary pensions that I will receive during the current year under the following plans or contracts:

(a) supplemental pension plans subject to or established by an act of the Parliament of Québec or any other legislative authority;

(b) annuity purchase contracts of which the capital comes directly or not from such plans,

is \$ _____;

(3) that the overall total maximum temporary income that I have determined for my life income funds, excluding the one for which I am making this declaration, is \$ _____;

(4) that the overall total maximum temporary variable payments that I have determined for the locked-in accounts of my voluntary retirement savings plans governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1), excluding the one for which I am making this declaration, is \$ _____.

_____ (Date) _____ (Signature) _____

NOTE: Whosoever makes a false declaration with the intention of obtaining a temporary income payable under a pension plan or contract mentioned in the declaration is subject to the penalties provided for in sections 257 and 262 of the Supplemental Pension Plans Act (chapter R-15.1).

O.C. 1681-97, s. 25; O.C. 173-2002, s. 69; O.C. 500-2014, s. 20.

*Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6*SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.5*(s. 19.2)*

DECLARATION OF THE PURCHASER

I declare:

(1) that the income whose payment I shall receive during the next 12 months, other than the temporary income of which I am applying for payment from the life income fund with respect to which I am making this declaration, is \$ _____;

(2) that I am not a party to any other contract establishing a life income fund;

(3) that a total of \$ _____ has been paid to me during the current year from the life income funds to which I have been party, other than the one with respect to which I am making this declaration, and that the said total included \$ _____ that was paid to me in the form of a temporary income.

_____ *(Date)* _____ *(Signature)* _____

NOTE: Whosoever makes a false declaration with the intention of obtaining a temporary income payable from the life income fund mentioned in the declaration is subject to the penalties provided for in sections 257 and 262 of the Supplemental Pension Plans Act (chapter R-15.1).

O.C. 1681-97, s. 25.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.6

(ss. 20 and 20.3)

Age	Reference rate															
	6.00%	6.50%	7.00%	7.50%	8.00%	8.50%	9.00%	9.50%	10.00%	10.50%	11.00%	11.50%	12.00%	12.50%	13.00%	13.50%
under 55	0.061	0.063	0.066	0.069	0.072	0.075	0.078	0.081	0.084	0.087	0.090	0.093	0.097	0.100	0.103	0.107
55	0.064	0.067	0.070	0.073	0.076	0.079	0.082	0.085	0.088	0.091	0.094	0.097	0.101	0.104	0.107	0.111
56	0.065	0.067	0.070	0.073	0.076	0.079	0.082	0.085	0.088	0.091	0.095	0.098	0.101	0.104	0.108	0.111
57	0.065	0.068	0.071	0.074	0.077	0.080	0.083	0.086	0.089	0.092	0.095	0.098	0.102	0.105	0.108	0.112
58	0.066	0.069	0.071	0.074	0.077	0.080	0.083	0.086	0.090	0.093	0.096	0.099	0.102	0.106	0.109	0.112
59	0.067	0.069	0.072	0.075	0.078	0.081	0.084	0.087	0.090	0.093	0.097	0.100	0.103	0.106	0.110	0.113
60	0.067	0.070	0.073	0.076	0.079	0.082	0.085	0.088	0.091	0.094	0.097	0.101	0.104	0.107	0.110	0.114
61	0.068	0.071	0.074	0.077	0.079	0.082	0.086	0.089	0.092	0.095	0.098	0.101	0.105	0.108	0.111	0.115
62	0.069	0.072	0.074	0.077	0.080	0.083	0.086	0.089	0.093	0.096	0.099	0.102	0.105	0.109	0.112	0.115
63	0.070	0.073	0.075	0.078	0.081	0.084	0.087	0.090	0.094	0.097	0.100	0.103	0.106	0.110	0.113	0.116
64	0.071	0.074	0.076	0.079	0.082	0.085	0.088	0.091	0.095	0.098	0.101	0.104	0.107	0.111	0.114	0.117
65	0.072	0.075	0.077	0.080	0.083	0.086	0.089	0.093	0.096	0.099	0.102	0.105	0.108	0.112	0.115	0.118
66	0.073	0.076	0.079	0.082	0.085	0.088	0.091	0.094	0.097	0.100	0.103	0.106	0.110	0.113	0.116	0.119
67	0.074	0.077	0.080	0.083	0.086	0.089	0.092	0.095	0.098	0.101	0.104	0.108	0.111	0.114	0.117	0.121
68	0.076	0.078	0.081	0.084	0.087	0.090	0.093	0.096	0.100	0.103	0.106	0.109	0.112	0.115	0.119	0.122
69	0.077	0.080	0.083	0.086	0.089	0.092	0.095	0.098	0.101	0.104	0.107	0.111	0.114	0.117	0.120	0.123
70	0.079	0.082	0.085	0.088	0.091	0.094	0.097	0.100	0.103	0.106	0.109	0.112	0.115	0.119	0.122	0.125
71	0.081	0.084	0.087	0.089	0.092	0.095	0.098	0.102	0.105	0.108	0.111	0.114	0.117	0.120	0.123	0.127
72	0.083	0.086	0.089	0.092	0.095	0.098	0.101	0.104	0.107	0.110	0.113	0.116	0.119	0.122	0.125	0.129
73	0.085	0.088	0.091	0.094	0.097	0.100	0.103	0.106	0.109	0.112	0.115	0.118	0.121	0.124	0.127	0.131
74	0.088	0.091	0.094	0.097	0.099	0.102	0.105	0.108	0.111	0.114	0.117	0.120	0.124	0.127	0.130	0.133
75	0.091	0.094	0.097	0.100	0.102	0.105	0.108	0.111	0.114	0.117	0.120	0.123	0.126	0.129	0.132	0.135
76	0.094	0.097	0.100	0.103	0.106	0.109	0.112	0.114	0.117	0.120	0.123	0.126	0.129	0.132	0.135	0.138
77	0.098	0.101	0.104	0.107	0.110	0.112	0.115	0.118	0.121	0.124	0.127	0.130	0.133	0.136	0.139	0.142
78	0.103	0.106	0.109	0.111	0.114	0.117	0.120	0.123	0.126	0.128	0.131	0.134	0.137	0.140	0.143	0.146
79	0.108	0.111	0.114	0.117	0.119	0.122	0.125	0.128	0.131	0.134	0.137	0.139	0.142	0.145	0.148	0.151
80	0.115	0.117	0.120	0.123	0.125	0.128	0.131	0.133	0.136	0.139	0.142	0.144	0.147	0.150	0.153	0.155
81	0.121	0.124	0.127	0.129	0.132	0.135	0.137	0.140	0.143	0.145	0.148	0.151	0.153	0.156	0.159	0.161
82	0.129	0.132	0.134	0.137	0.139	0.142	0.145	0.147	0.150	0.153	0.155	0.158	0.161	0.163	0.166	0.169
83	0.138	0.140	0.143	0.146	0.148	0.151	0.154	0.156	0.159	0.161	0.164	0.167	0.169	0.172	0.175	0.177
84	0.148	0.151	0.153	0.156	0.159	0.161	0.164	0.167	0.169	0.172	0.174	0.177	0.180	0.182	0.185	0.187
85	0.160	0.163	0.165	0.168	0.171	0.173	0.176	0.179	0.181	0.184	0.187	0.189	0.192	0.194	0.197	0.200
86	0.173	0.176	0.179	0.182	0.184	0.187	0.190	0.193	0.195	0.198	0.200	0.200	0.200	0.200	0.200	0.200
87	0.189	0.191	0.194	0.197	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200
88 or over	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

Reference rate								
Age	6.00%	6.50%	7.00%	7.50%	8.00%	8.50%	9.00%	9.50%
	10.00%	10.50%	11.00%	11.50%	12.00%	12.50%	13.00%	13.50%
under 55	0.061	0.063	0.066	0.069	0.072	0.075	0.078	0.081
0.081	0.084	0.087	0.090	0.093	0.097	0.100	0.103	0.107
55	0.064	0.067	0.070	0.073	0.076	0.079	0.082	0.085
0.088	0.091	0.094	0.097	0.101	0.104	0.107	0.111	
56	0.065	0.067	0.070	0.073	0.076	0.079	0.082	0.085
0.088	0.091	0.095	0.098	0.101	0.104	0.108	0.111	
57	0.065	0.068	0.071	0.074	0.077	0.080	0.083	0.086
0.089	0.092	0.095	0.098	0.102	0.105	0.108	0.112	
58	0.066	0.069	0.071	0.074	0.077	0.080	0.083	0.086
0.090	0.093	0.096	0.099	0.102	0.106	0.109	0.112	
59	0.067	0.069	0.072	0.075	0.078	0.081	0.084	0.087
0.090	0.093	0.097	0.100	0.103	0.106	0.110	0.113	
60	0.067	0.070	0.073	0.076	0.079	0.082	0.085	0.088
0.091	0.094	0.097	0.101	0.104	0.107	0.110	0.114	
61	0.068	0.071	0.074	0.077	0.079	0.082	0.086	0.089
0.092	0.095	0.098	0.101	0.105	0.108	0.111	0.115	
62	0.069	0.072	0.074	0.077	0.080	0.083	0.086	0.089
0.093	0.096	0.099	0.102	0.105	0.109	0.112	0.115	
63	0.070	0.073	0.075	0.078	0.081	0.084	0.087	0.090
0.094	0.097	0.100	0.103	0.106	0.110	0.113	0.116	
64	0.071	0.074	0.076	0.079	0.082	0.085	0.088	0.091
0.095	0.098	0.101	0.104	0.107	0.111	0.114	0.117	
65	0.072	0.075	0.077	0.080	0.083	0.086	0.089	0.093
0.096	0.099	0.102	0.105	0.108	0.112	0.115	0.118	
66	0.073	0.076	0.079	0.082	0.085	0.088	0.091	0.094
0.097	0.100	0.103	0.106	0.110	0.113	0.116	0.119	
67	0.074	0.077	0.080	0.083	0.086	0.089	0.092	0.095
0.098	0.101	0.104	0.108	0.111	0.114	0.117	0.121	
68	0.076	0.078	0.081	0.084	0.087	0.090	0.093	0.096
0.100	0.103	0.106	0.109	0.112	0.115	0.119	0.122	
69	0.077	0.080	0.083	0.086	0.089	0.092	0.095	0.098
0.101	0.104	0.107	0.111	0.114	0.117	0.120	0.123	
70	0.079	0.082	0.085	0.088	0.091	0.094	0.097	0.100
0.103	0.106	0.109	0.112	0.115	0.119	0.122	0.125	
71	0.081	0.084	0.087	0.089	0.092	0.095	0.098	0.102
0.105	0.108	0.111	0.114	0.117	0.120	0.123	0.127	
72	0.083	0.086	0.089	0.092	0.095	0.098	0.101	0.104
0.107	0.110	0.113	0.116	0.119	0.122	0.125	0.129	
73	0.085	0.088	0.091	0.094	0.097	0.100	0.103	0.106
0.109	0.112	0.115	0.118	0.121	0.124	0.127	0.131	
74	0.088	0.091	0.094	0.097	0.099	0.102	0.105	0.108
0.111	0.114	0.117	0.120	0.124	0.127	0.130	0.133	
75	0.091	0.094	0.097	0.100	0.102	0.105	0.108	0.111
0.114	0.117	0.120	0.123	0.126	0.129	0.132	0.135	
76	0.094	0.097	0.100	0.103	0.106	0.109	0.112	0.114
0.117	0.120	0.123	0.126	0.129	0.132	0.135	0.138	
77	0.098	0.101	0.104	0.107	0.110	0.112	0.115	0.118
0.121	0.124	0.127	0.130	0.133	0.136	0.139	0.142	
78	0.103	0.106	0.109	0.111	0.114	0.117	0.120	0.123
0.126	0.128	0.131	0.134	0.137	0.140	0.143	0.146	
79	0.108	0.111	0.114	0.117	0.119	0.122	0.125	0.128
0.131	0.134	0.137	0.139	0.142	0.145	0.148	0.151	

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

80	0.115	0.117	0.120	0.123	0.125	0.128	0.131	0.133
0.136	0.139	0.142	0.144	0.147	0.150	0.153	0.155	
81	0.121	0.124	0.127	0.129	0.132	0.135	0.137	0.140
0.143	0.145	0.148	0.151	0.153	0.156	0.159	0.161	
82	0.129	0.132	0.134	0.137	0.139	0.142	0.145	0.147
0.150	0.153	0.155	0.158	0.161	0.163	0.166	0.169	
83	0.138	0.140	0.143	0.146	0.148	0.151	0.154	0.156
0.159	0.161	0.164	0.167	0.169	0.172	0.175	0.177	
84	0.148	0.151	0.153	0.156	0.159	0.161	0.164	0.167
0.172	0.174	0.177	0.180	0.182	0.185	0.187		
85	0.160	0.163	0.165	0.168	0.171	0.173	0.176	0.179
0.181	0.184	0.187	0.189	0.192	0.194	0.197	0.200	
86	0.173	0.176	0.179	0.182	0.184	0.187	0.190	0.193
0.195	0.198	0.200	0.200	0.200	0.200	0.200	0.200	
87	0.189	0.191	0.194	0.197	0.200	0.200	0.200	0.200
0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	
88 or over		0.200	0.200	0.200	0.200	0.200	0.200	0.200
0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200	0.200

O.C. 1681-97, s. 25.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.7*(ss. 20 and 20.3)*

Age	
under 54	1.000
54	1.691
55	1.706
56	1.804
57	1.953
58	2.151
59	2.379
60	2.705
61	3.202
62	4.090
63	5.811
64	10.989
65 or over	1.000

O.C. 1681-97, s. 25.

SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.8*(s. 20.4)*

DECLARATION OF THE PURCHASER

I declare:

(1) that I am not a party to any contract establishing a locked-in retirement account or a registered retirement pension plan of which the balance must be converted into a life annuity (locked-in RRSP);

(2) that the amount that I have determined or intend to determine as the maximum temporary income for the current fiscal year is, for each of my life income funds and the locked-in accounts of my voluntary retirement savings plans governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) and offering temporary variable payments, at least equal to the reference temporary income calculated for this fund.

_____ (*Date*) _____ (*Signature*) _____

NOTE: Whosoever makes a false declaration with the intention of obtaining a temporary income payable from the life income fund mentioned in the declaration is subject to the penalties provided for in sections 257 and 262 of the Supplemental Pension Plans Act (chapter R-15.1).

O.C. 1681-97, s. 25; O.C. 173-2002, s. 70; O.C. 500-2014, s. 21.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

 SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.9*(s. 22.2)***DECLARATION OF THE PURCHASER WHEN TRANSFERRING SUMS TO A LIFE INCOME FUND**
(purchaser aged 54 years or over at the end of the year preceding the year of the transfer)

I declare that there is in the total of \$_____ transferred to the life income fund that is the object of this declaration a sum of \$_____ does not come directly or indirectly from a life income fund established by a contract, or from the locked-in account of a voluntary retirement savings plan governed by the Voluntary Retirement Savings Plans Act (chapter R-17.0.1) and offering variable payments to which I have been a party during the current year.

_____ *(Date)* _____ *(Signature)* _____

NOTE: Whosoever makes a false declaration with the intention of obtaining an income payable from the life income fund mentioned in the declaration is subject to the penalties provided for in sections 257 and 262 of the Supplemental Pension Plans Act (chapter R-15.1).

O.C. 1681-97, s. 25; O.C. 577-98, s. 6; O.C. 500-2014, s. 22.

SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.9.1*(s. 22.2)*DECLARATION OF THE PURCHASER WHEN TRANSFERRING SUMS TO A LIFE INCOME FUND
(purchaser aged under 54 years at the end of the year preceding the year of the transfer)

I declare:

(1) that since the beginning of the current year, I have not received any temporary income from a life income fund other than the one concerned by this declaration;

(2) that, of the total of \$ _____ transferred to the life income fund concerned by the present declaration, a sum of \$ _____ does not come directly or indirectly from a life income fund established by a contract to which I have been party during the current year.

(Date) _____ *(Signature)* _____

NOTE: Whosoever makes a false declaration with the intention of obtaining an income payable from the life income fund mentioned in the declaration is subject to the penalties provided for in sections 257 and 262 of the Supplemental Pension Plans Act (chapter R-15.1).

O.C. 577-98, s. 7; O.C. 173-2002, s. 71.

SUPPLEMENTAL PENSION PLANS

SCHEDULE 0.10*(s. 31)*

DECLARATION OF THE PURCHASER

I declare that I am not now receiving any temporary income under a supplemental pension plan subject to or established by an act of the Parliament of Québec or any other legislative authority or under any other annuity purchase contract of which the capital comes directly or not from such a plan.

I further declare that no other application intended to allow me to receive a temporary income from such a plan or contract has been made or accepted.

_____ *(Date)* _____ *(Signature)* _____

NOTE: Whosoever makes a false declaration with the intention of obtaining a temporary income payable under a contract mentioned in the declaration is subject to the penalties provided for in sections 257 and 262 of the Supplemental Pension Plans Act (chapter R-15.1).

O.C. 1681-97, s. 25.

 SUPPLEMENTAL PENSION PLANS

SCHEDULE I*(s. 39)*

ANNUAL RATES OF INTEREST REFERRED TO IN SECTION 39

	%
— For each of the years prior to 1951	: 3.00
— For each of the years from 1951 to 1955	: 4.00
— For each of the years from 1956 to 1960	: 4.50
— For each of the years from 1961 to 1965	: 5.00
— For each of the years 1966 and 1967	: 5.75
— For the following years:	
	1968: 6.50
	1969: 7.50
	1970: 7.50
	1971: 6.25
	1972: 6.75
	1973: 7.75
	1974: 8.75
	1975: 8.25
	1976: 9.25
	1977: 7.75
	1978: 8.75
	1979: 10.00
	1980: 11.25
	1981: 14.75
	1982: 12.75
	1983: 8.25
	1984: 11.00
	1985: 9.50
	1986: 8.25

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

1987: 7.00

1988: 7.75

1989: 9.50

O.C. 1158-90, Sch. I; O.C. 1465-95, s. 4.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

SCHEDULE II

(s. 63)

DECLARATION OF TERMINATION OF A PENSION PLAN

(following notice given by the employer who is party to the plan)

Name of the plan: _____

Number: _____

I, _____, being duly authorized to act as the administrator or mandatary of the administrator of the plan mentioned above, declare that the plan is being terminated and that the date of its termination is _____.

I certify that:

(1) the termination follows a decision of the employer who is party to the plan (or, in the case of a multi-employer plan, the unanimous decision of the employers who are parties to the plan);

(2) to the best of my knowledge, no agreement prevents the employer or the employers from terminating the plan;

(3) the employer or the employers communicated their decision to terminate the plan by giving written notice, a copy of which is attached hereto, that, to the best of my knowledge, was transmitted to all the affected members and beneficiaries (that is, all the plan's members and beneficiaries whose benefits were not paid in full before the termination date and, if the termination resulted from a division, merger, disposal or closure of the enterprise or a part of the enterprise, all the members whose active membership ceased during the period between the date on which the members were informed of the event in question and the date of termination), the accredited association representing the members, the pension committee and the insurer, if any;

(4) the notice mentioned in paragraph 3 indicates the plan's date of termination as well as the members and beneficiaries affected;

(5) the date of termination mentioned above is not subsequent to the day preceding the day on which the benefits of the plan's last member or beneficiary were paid in full;

(6) to the best of my knowledge, the date of termination (check, as appropriate, one of the following boxes):

is not prior to the date of the cessation of collection of member contributions nor the date preceding by 30 days the transmittal of the notice of termination to the active members;

is prior to the date of the cessation of collection of member contributions or the date preceding by 30 days the transmittal of the notice of termination to the active members, but each of the members whose active membership ended on the occasion of the termination or thereafter has consented in writing to the termination of the plan at the date mentioned above and the pension committee is able to produce those consents at the request of Retraite Québec;

(7) the pension committee received the written notice of termination from the employer (or employers) on

 _____ (signature) _____ (date) _____

SUPPLEMENTAL PENSION PLANS

Attachment: notice of termination.

O.C. 173-2002, s. 72.

Regulation Respecting Supplemental Pension Plans, C.Q.L.R., c. R-15.1, r. 6

SUPPLEMENTAL PENSION PLANS

SCHEDULE III

(s. 63)

DECLARATION OF TERMINATION OF A PENSION PLAN

(following a decision of Retraite Québec)

Name of the plan: _____

Number: _____

I, _____, being duly authorized to act as administrator or as the mandatary of the administrator of the plan mentioned above, declare that I was notified of the decision of Retraite Québec to terminate the plan at _____,

I certify that:

(1) the pension committee that administers the plan received a copy of Retraite Québec's decision on _____;

(2) the pension committee transmitted a copy of the decision of Retraite Québec to all the members and beneficiaries affected by the decision, the accredited association representing the members, the employer and the insurer, if any.

_____ (signature) _____ (date) _____

O.C. 173-2002, s. 72.

TRANSITIONAL

2014

(O.C. 500-2014) SECTION 23(1) section 2 of this amending Regulation has effect with regard to the fiscal year ending after 30 December 2018;

(2) paragraph 2 of section 3 of this amending Regulation applies to the fiscal year ending after 30 December 2019.

2011

(O.C. 978-2011) SECTION 3. The provisions of section 4 of this Regulation, as amended by section 1, apply to the complete actuarial valuation report undertaken after 30 December 2011. A complete actuarial valuation undertaken after 30 December 2010 but prior to 31 December 2011 can, however, be undertaken according to these provisions.

SECTION 4. This Regulation comes into force on 5 October 2011. The provisions in section 3, however, have effect from 31 December 2010. The provisions in section 1 have effect from 31 December 2011.

UPDATES

O.C. 1158-90, 1990 G.O. 2, 2318 and 1991 G.O. 2, 41

O.C. 1159-90, 1990 G.O. 2, 2333

SUPPLEMENTAL PENSION PLANS

O.C. 568-91, 1991 G.O. 2, 1535
O.C. 1895-93, 1993 G.O. 2, 7150
O.C. 658-94, 1994 G.O. 2, 1876
O.C. 1465-95, 1995 G.O. 2, 3145
O.C. 1681-97, 1997 G.O. 2, 6329
O.C. 577-98, 1998 G.O. 2, 1808
O.C. 173-2002, 2002 G.O. 2, 1495
O.C. 204-2005, 2005 G.O. 2, 703
S.Q. 2009, c. 1, s. 5
O.C. 1073-2009, 2009 G.O. 2, 3515
D. 978-2011, 2011 G.O. 2, 2661
O.C. 500-2014, 2014 G.O. 2, 1184A
O.C. 800-2015, 2015 G.O. 2, 2232
S.Q. 2015, c. 20, s. 61
O.C. 608-2016, 2016 G.O. 2, 2882



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chapitre R-15.1, r. 6

Règlement sur les régimes complémentaires de retraiteLoi sur les régimes complémentaires de retraite
(chapitre R-15.1, a. 244, par. 1, 2, 4, 6 à 8, 10, 11, 13, 14 et a. 312)*Les droits prévus au règlement ont été indexés à compter du 31 décembre 2016 selon l'avis publié à la Partie 1 de la Gazette officielle du Québec le 26 novembre 2016, page 1207. (a. 13 et 13.0.1)***TABLE DES MATIÈRES**

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 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

SECTION I

ENREGISTREMENT ET RAPPORTS

1. La demande d'enregistrement d'un régime de retraite doit contenir, outre les documents et renseignements requis en vertu du deuxième alinéa de l'article 24 de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1), les suivants:

1° le nom de chaque employeur partie au régime et la nature de l'entreprise du principal employeur partie au régime;

2° le nom du régime et la date de son entrée en vigueur;

3° la liste des autres régimes auxquels tout employeur visé au paragraphe 1 est tenu de cotiser;

4° (*paragraphe abrogé*);

5° (*paragraphe abrogé*);

6° en ce qui concerne les participants actifs:

a) le nombre de ceux qui exercent un emploi inclus au sens de l'article 4 de la Loi sur les normes de prestation de pension (L.R.C. 1985, c. 32 (2^e Suppl.)), ventilé par sexe;

b) le nombre de ceux qui travaillent hors du Canada, ventilé par sexe;

c) le nombre des autres participants actifs, ventilé par sexe et, selon l'endroit où le travail est exécuté, par province et territoire canadiens;

6.1° en ce qui concerne les participants non actifs et les bénéficiaires:

a) leur nombre total;

b) le nombre de ceux d'entre eux qui sont visés par l'article 12;

7° la date de la fin de l'exercice financier du régime;

8° (*paragraphe abrogé*);

9° le nom du signataire de la demande ainsi que l'adresse de son bureau;

10° (*paragraphe abrogé*);

Le signataire de la demande doit attester:

1° qu'il est celui qui administre le régime ou qu'il est autorisé à agir en son nom;

2° que la personne qui a certifié la conformité de la copie du régime accompagnant la demande était habilitée à le faire;

3° que les renseignements contenus dans la demande sont exacts au meilleur de sa connaissance.

D. 1158-90, a. 1; D. 173-2002, a. 1.

1.1. Un régime de retraite simplifié, régi par la section IV du Règlement sur la soustraction de certaines catégories de régimes de retraite à l'application de dispositions de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1, r. 7), requiert d'une part, l'enregistrement des dispositions applicables à tous les

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employeurs parties au régime conformément au présent article et, d'autre part, l'enregistrement d'une modification au régime pour les dispositions particulières à chaque employeur conformément à l'article 2.1.

La demande d'enregistrement des dispositions applicables à tous les employeurs parties au régime doit contenir, outre les documents et renseignements requis en vertu des paragraphes 1, 6 et 7 du deuxième alinéa de l'article 24 de la Loi, les renseignements suivants:

1° le nom du régime, le nom de l'établissement financier qui l'administre et l'adresse de son siège et, le cas échéant, celui de son principal établissement au Québec;

2° la date d'entrée en vigueur de ces dispositions ainsi que le nombre des participants actifs au régime à cette date;

3° le nom du signataire de la demande et l'adresse de son bureau.

La demande doit également contenir une attestation du signataire selon laquelle:

1° l'établissement financier qui administre le régime a obtenu le consentement écrit de l'employeur aux obligations qui lui incombent en vertu du régime;

2° cet établissement financier a obtenu le consentement écrit de l'employeur et de l'association de travailleurs comme quoi les dispositions à enregistrer correspondent à ce qu'ils ont convenu, lorsque l'employeur a délégué à l'association des pouvoirs relatifs au régime aux termes d'une convention visée au paragraphe 27 de l'article 10 du Règlement sur la soustraction de certaines catégories de régimes de retraite à l'application de dispositions de la Loi sur les régimes complémentaires de retraite;

3° il est autorisé à faire et à signer cette demande au nom de cet établissement financier;

4° la personne qui a certifié la conformité de la copie du régime accompagnant la demande était habilitée à le faire;

5° les renseignements contenus dans la demande sont exacts au meilleur de sa connaissance.

D. 658-94, a. 1; D. 173-2002, a. 2; D. 1073-2009, a. 50.

2. La demande d'enregistrement d'une modification d'un régime de retraite doit contenir, outre les documents et renseignements requis en vertu du deuxième alinéa de l'article 24 de la Loi, les suivants:

1° le nom du régime et le numéro que lui a attribué Retraite Québec;

2° l'objet de la modification et sa date de prise d'effet;

3° lorsque la modification a pour effet de réduire les droits des participants ou bénéficiaires, selon le cas:

a) la date de la prise d'effet de la convention collective, de la sentence arbitrale en tenant lieu ou du décret établissant ou rendant obligatoire cette modification;

b) la date d'envoi de l'avis prévu au premier alinéa de l'article 26 de la Loi;

4° le nom du signataire de la demande ainsi que l'adresse de son bureau;

5° le cas échéant, copie de la partie pertinente de la convention collective, de la sentence arbitrale ou du décret en vertu duquel la modification a été établie.

Le signataire de la demande doit attester:

1° qu'il est celui qui administre le régime ou qu'il est autorisé à agir en son nom;

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2° que la personne qui a certifié la conformité de la copie de la modification accompagnant la demande était habilitée à le faire;

3° que les renseignements contenus dans la demande sont exacts au meilleur de sa connaissance.

La demande d'enregistrement doit également être accompagnée d'une déclaration conforme à celle prévue à l'annexe 0.0.1.

D. 1158-90, a. 2; D. 173-2002, a. 3.

2.1. La demande d'enregistrement d'une modification à un régime de retraite simplifié doit contenir, outre les documents et renseignements requis en vertu des paragraphes 1, 6 et 7 du deuxième alinéa de l'article 24 de la Loi, les renseignements suivants:

1° le nom du régime et le numéro que lui a attribué Retraite Québec;

2° l'objet de la modification et la date de sa prise d'effet et, lorsque la modification a pour effet de réduire les droits des participants ou bénéficiaires, selon le cas:

a) la date de la signature de la convention collective établissant cette modification;

b) la date de prise d'effet de la sentence arbitrale tenant lieu de convention collective ou du décret rendant obligatoire cette modification;

c) la date d'envoi de l'avis prévu au premier alinéa de l'article 26 de la Loi;

3° dans le cas des dispositions particulières à un employeur et aux participants qui travaillent pour lui, le nom de l'employeur;

4° le nom du signataire de la demande et l'adresse de son bureau.

La demande doit également contenir l'attestation prévue au troisième alinéa de l'article 1.1 modifiée pour tenir compte du fait que la demande vise une modification du régime.

D. 658-94, a. 2; D. 173-2002, a. 4.

3. *(Abrogé).*

D. 1158-90, a. 3; D. 173-2002, a. 5.

3.1. L'avis que doit transmettre le comité de retraite à Retraite Québec en application de l'article 119.1 de la Loi doit contenir les renseignements suivants:

1° le nom du régime et le numéro que lui a attribué Retraite Québec;

2° la date de fin du dernier exercice financier du régime;

3° le degré de solvabilité du régime à cette date.

D. 608-2016, a. 1

3.2. L'avis doit être accompagné d'un document, préparé par un actuaire, qui contient les renseignements suivants:

1° les données, hypothèses et méthodes utilisées pour établir la situation financière probable du régime selon l'approche de solvabilité;

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2° une certification de l'actuaire attestant le degré de solvabilité du régime à la date de fin du dernier exercice financier du régime;

3° le nom du signataire, son titre professionnel, le nom et l'adresse de son bureau ainsi que la date de sa signature.

D. 608-2016, a. 1

4. Un rapport relatif à une évaluation actuarielle complète visé à l'article 120 de la Loi doit contenir les renseignements et les déclarations de l'actuaire prévus à la section 3260 des normes de pratique de l'Institut canadien des actuaires, les renseignements prévus aux articles 4.1 à 4.6 ainsi que les renseignements suivants:

1° le nom du régime et le numéro que lui a attribué Retraite Québec;

2° la date de l'évaluation actuarielle;

3° le nombre des participants actifs réparti, le cas échéant, selon que leurs droits sont accumulés en vertu de dispositions à cotisations déterminées ou de dispositions à prestations déterminées au sens de l'article 965.0.1 de la Loi sur les impôts (chapitre I-3) ou en vertu de ces 2 types de dispositions, le nombre des participants non actifs à qui aucune rente n'est servie et celui des autres participants non actifs et bénéficiaires dont les droits sont visés par l'évaluation actuarielle;

4° un résumé des dispositions du régime devant être prises en compte aux fins de l'évaluation, notamment celles portant sur les cotisations, l'âge normal de retraite, les conditions à remplir pour avoir droit à une rente anticipée, la formule d'indexation des rentes, les hypothèses utilisées conformément au deuxième alinéa de l'article 61 de la Loi et les remboursements et prestations payables au titre du régime;

5° le nom du signataire, son titre professionnel, le nom et l'adresse de son bureau ainsi que la date de la signature.

D. 1158-90, a. 4; D. 173-2002, a. 6; D. 1073-2009, a. 1; D. 978-2011, a. 1; D. 800-2015, a. 1.

4.1. En ce qui concerne la partie de l'évaluation actuarielle du régime réalisée selon l'approche de solvabilité, le rapport doit contenir les renseignements suivants:

1° la valeur de l'actif du régime, celle du passif établie en faisant abstraction, le cas échéant, de toute modification du régime considérée pour la première fois à la date de l'évaluation ainsi que les hypothèses et méthodes actuarielles utilisées pour établir ces valeurs;

2° la valeur du passif du régime ventilée entre le groupe des participants actifs au régime, celui des participants non actifs à qui aucune rente n'est servie et celui des autres participants non actifs et des bénéficiaires, les hypothèses et méthodes actuarielles utilisées pour établir cette valeur ainsi que le degré de solvabilité du régime;

3° le montant estimé des frais d'administration visé au premier alinéa de l'article 123 de la Loi;

4° dans le cas où le régime prévoit des engagements auxquels s'applique la dernière phrase du premier alinéa de l'article 124 de la Loi:

a) une description de ces engagements;

b) le scénario retenu par l'actuaire pour établir le passif du régime et, si ce scénario établit un passif inférieur à la valeur des engagements nés du régime en supposant qu'il se termine à la date de l'évaluation dans des circonstances telles que les droits des participants doivent être estimés à leur valeur maximale, cette dernière valeur;

5° la description de l'approche utilisée pour estimer la prime visée à l'article 126 de la Loi;

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6° dans le cas où le régime est à la fois solvable et capitalisé, que des cotisations d'équilibre restent à verser relativement à un déficit actuariel de modification déterminé lors d'une évaluation actuarielle antérieure et que la provision pour écarts défavorables prévue à l'article 128 de la Loi n'est pas calculée à la date de l'évaluation, une certification de l'actuaire attestant que, si cette provision était calculée à cette date, l'actif du régime serait inférieur au passif augmenté de la provision pour écarts défavorables.

D. 1073-2009, a. 1.

4.2. Dans le cas où la provision pour écarts défavorable est calculée, le rapport doit, de plus, contenir les renseignements suivants:

- 1° son montant, avec indication des quotes-parts attribuables aux éléments «R» et «S» de l'article 60.3;
- 2° le montant des éléments «R» et «S» de l'article 60.3 et celui de l'élément «D» déterminé conformément à l'article 60.4;
- 3° l'élément «d^R» de l'article 60.4, ainsi que les hypothèses et méthodes actuarielles utilisées pour l'établir;
- 4° le montant déterminé conformément au paragraphe 1 de l'élément «V» de l'article 60.4, ainsi que l'élément «d^M» du même article;
- 5° le montant maximum d'excédent d'actif qui peut être affecté à l'acquittement de cotisations patronales, établi conformément à l'article 146.3.4 de la Loi;
- 6° le montant maximum de la réduction à laquelle le comité de retraite peut consentir selon l'article 15.0.0.5;
- 7° le montant maximum de la réduction à laquelle le comité de retraite peut consentir selon le premier alinéa de l'article 15.0.0.6, en précisant que ce montant est établi en présumant que l'excédent d'actif du régime ne sera aucunement affecté à l'acquittement de cotisations patronales.

D. 1073-2009, a. 1.

4.3. En ce qui concerne la partie de l'évaluation actuarielle du régime réalisée selon l'approche de capitalisation, le rapport doit contenir les renseignements suivants:

- 1° la valeur de l'actif du régime, celle du passif établie en faisant abstraction, le cas échéant, de toute modification du régime considérée pour la première fois à la date de l'évaluation, ainsi que les hypothèses et méthodes actuarielles utilisées pour établir ces valeurs;
- 2° la valeur du passif du régime ventilée entre le groupe des participants actifs au régime, celui des participants non actifs à qui aucune rente n'est servie et celui des autres participants non actifs et des bénéficiaires, ainsi que les hypothèses et méthodes actuarielles utilisées pour établir cette valeur;
- 3° le montant établi conformément au premier alinéa de l'article 135 de la Loi.

D. 1073-2009, a. 1.

4.4. Lorsque l'évaluation actuarielle détermine la valeur des engagements supplémentaires résultant d'une modification du régime considérée pour la première fois, le rapport doit, de plus, contenir les renseignements suivants:

- 1° le résumé de la modification qui fait l'objet de l'évaluation, la date où la modification est intervenue ainsi que celle de sa prise d'effet;
- 2° la valeur, déterminée selon l'approche de solvabilité, des engagements supplémentaires qui résultent de la modification;

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3° dans le cas où la provision pour écarts défavorable est calculée, le montant d'excédent d'actif déterminé selon l'approche de solvabilité qui peut être affecté à l'acquittement de cette valeur;

4° la cotisation d'équilibre spéciale déterminée en application de l'article 132 de la Loi, le cas échéant;

5° la valeur, déterminée selon l'approche de capitalisation, des engagements supplémentaires qui résultent de la modification;

6° le montant d'excédent d'actif déterminé selon l'approche de capitalisation qui peut être affecté à l'acquittement de cette valeur.

D. 1073-2009, a. 1.

4.5. En ce qui concerne les déficits actuariels, le rapport doit contenir les renseignements suivants:

1° pour chaque déficit actuariel de solvabilité déterminé en application de l'article 130 de la Loi:

a) son type;

b) la date où il a été déterminé ainsi que celle de la fin de la période prévue pour l'amortir;

c) les mensualités relatives aux cotisations d'équilibre à verser jusqu'à la fin de cette période et leur valeur actualisée;

2° une description des modifications apportées en application de l'article 131 de la Loi aux déficits actuariels de solvabilité indiqués dans le dernier rapport portant sur une évaluation actuarielle du régime;

3° le montant du déficit actuariel de capitalisation, la date de la fin de la période prévue pour l'amortir et les mensualités relatives aux cotisations d'équilibre à verser jusqu'à cette date.

D. 1073-2009, a. 1.

4.6. Le rapport doit contenir les autres renseignements financiers suivants:

1° la cotisation d'exercice prévue pour l'exercice financier ou la partie d'exercice financier qui suit immédiatement l'évaluation actuarielle et la règle qui sert à la déterminer;

2° la règle qui sert à déterminer les cotisations d'exercice pour les 2 exercices financiers subséquents;

3° les montants qui doivent être versés respectivement par l'employeur et par les participants avec, pour chacun de ces montants, dans le cas d'un régime à prestations déterminées dont certaines dispositions sont identiques à celles d'un régime à cotisation déterminée, la quote-part qui doit être versée pour ces dispositions et celle qui doit l'être pour les dispositions à prestations déterminées;

4° la cotisation patronale prévue au régime, si elle est supérieure à celle prévue à l'article 39 de la Loi;

5° une description des ajustements aux cotisations résultant de l'application du troisième alinéa de l'article 41 de la Loi;

6° le montant de la lettre de crédit ou le montant total de telles lettres et celui pris en compte dans l'actif aux fins de déterminer la solvabilité du régime.

D. 1073-2009, a. 1.

5. Un rapport qui concerne une évaluation actuarielle partielle faite dans les conditions prévues au deuxième alinéa de l'article 118 de la Loi doit contenir les renseignements prévus aux articles 5.1 à 5.4 ainsi que les renseignements suivants:

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- 1° le nom du régime et le numéro que lui a attribué Retraite Québec;
- 2° la date de l'évaluation actuarielle;
- 3° le nom du signataire, son titre professionnel, le nom et l'adresse de son bureau ainsi que la date de la signature;
- 4° une certification de l'actuaire attestant qu'une évaluation actuarielle complète du régime faite à la même date montrerait que le régime est à la fois solvable et capitalisé.

Les certifications prévues au présent article et aux articles 5.1 et 5.2 doivent être établies sur la base d'une estimation prudente faite par l'actuaire.

D. 1158-90, a. 5; D. 173-2002, a. 7; D. 1073-2009, a. 2.

5.1. Dans le cas où la provision pour écarts défavorables est calculée sur la base d'estimations autorisées par l'article 60.5, le rapport doit contenir les renseignements suivants:

- 1° son montant;
- 2° une certification de l'actuaire attestant que, si une évaluation actuarielle complète était effectuée à la date de l'évaluation, elle permettrait l'établissement d'un montant de provision pour écarts défavorables égal ou inférieur à celui indiqué au paragraphe 1;
- 3° le montant maximum d'excédent d'actif qui peut être affecté à l'acquittement de cotisations patronales;
- 4° le montant maximum de la réduction à laquelle le comité de retraite peut consentir selon l'article 15.0.0.5;
- 5° le montant maximum de la réduction à laquelle le comité de retraite peut consentir selon le premier alinéa de l'article 15.0.0.6, en précisant que ce montant est établi en présumant que l'excédent d'actif du régime ne sera aucunement affecté à l'acquittement de cotisations patronales;

6° une certification de l'actuaire attestant que, si une évaluation actuarielle complète était effectuée à la date de l'évaluation, elle permettrait l'établissement de montants au moins égaux à ceux indiqués aux paragraphes 3 à 5.

D. 1073-2009, a. 2.

5.2. Lorsque l'évaluation actuarielle détermine la valeur des engagements supplémentaires résultant d'une modification du régime considérée pour la première fois, le rapport doit, de plus, contenir les renseignements suivants:

- 1° le résumé de la modification qui fait l'objet de l'évaluation, la date où la modification est intervenue ainsi que celle de sa prise d'effet;
- 2° la valeur des engagements supplémentaires qui résultent de la modification, déterminée selon l'approche de solvabilité et selon l'approche de capitalisation;
- 3° dans le cas où la provision pour écarts défavorables est calculée sur la base d'estimations autorisées par l'article 60.5:

a) le montant d'excédent d'actif qui peut être affecté à l'acquittement de la valeur des engagements supplémentaires résultant de la modification, établi selon l'approche de solvabilité, de même que celui établi selon l'approche de capitalisation;

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b) une certification de l'actuaire attestant que, si une évaluation actuarielle complète était effectuée à la date de l'évaluation, elle permettrait l'établissement de montants au moins égaux aux montants visés au sous-paragraphe a;

4° dans le cas où la provision pour écarts défavorables n'est pas calculée, une certification de l'actuaire attestant que si cette provision était calculée à la date de l'évaluation, l'actif du régime serait inférieur au passif augmenté de la provision pour écarts défavorables.

D. 1073-2009, a. 2.

5.3. En ce qui concerne les déficits actuariels, le rapport doit contenir les renseignements suivants:

1° pour chaque déficit actuariel de modification déterminé en application de l'article 130 de la Loi:

- a) la date où il a été déterminé ainsi que celle de la fin de la période prévue pour l'amortir;
- b) les mensualités relatives aux cotisations d'équilibre à verser jusqu'à la fin de cette période et leur valeur actualisée;

2° une description des modifications apportées en application de l'article 131 de la Loi aux déficits actuariels de solvabilité indiqués dans le dernier rapport portant sur une évaluation actuarielle du régime.

D. 1073-2009, a. 2.

5.4. Le rapport doit contenir les autres renseignements financiers suivants:

1° les ajustements apportés, le cas échéant, à la règle visée au paragraphe 2 de l'article 4.6 qui se rapporte à l'exercice financier qui suit immédiatement l'évaluation actuarielle, pour tenir compte de toute modification considérée pour la première fois lors de cette évaluation;

2° les montants qui doivent être versés respectivement par l'employeur et par les participants avec, pour chacun de ces montants, dans le cas d'un régime à prestations déterminées dont certaines dispositions sont identiques à celles d'un régime à cotisation déterminée, la quote-part qui doit être versée pour ces dispositions et celle qui doit l'être pour les dispositions à prestations déterminées;

3° la cotisation patronale prévue au régime, si celle-ci est supérieure à la cotisation prévue à l'article 39 de la Loi;

4° le montant de la lettre de crédit ou le montant total de telles lettres et celui pris en compte dans l'actif aux fins de déterminer la solvabilité du régime;

5° une description des ajustements aux cotisations résultant de l'application du troisième alinéa de l'article 41 de la Loi.

D. 1073-2009, a. 2.

6. *(Abrogé).*

D. 1158-90, a. 6; D. 173-2002, a. 8.

7. *(Abrogé).*

D. 1158-90, a. 7; D. 1465-95, a. 1; D. 173-2002, a. 74; D. 1073-2009, a. 3.

7.1. *(Abrogé).*

D. 658-94, a. 3; D. 1465-95, a. 2.

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8. *(Abrogé).*

D. 1158-90, a. 8; D. 1465-95, a. 2.

9. *(Abrogé).*

D. 1158-90, a. 9; D. 1465-95, a. 2.

9.1. *(Abrogé).*

D. 658-94, a. 4; D. 1465-95, a. 2.

10. *(Abrogé).*

D. 1158-90, a. 10; D. 1465-95, a. 2.

10.1. *(Abrogé).*

D. 658-94, a. 5; D. 1465-95, a. 2.

11. *(Abrogé).*

D. 1158-90, a. 11; D. 1465-95, a. 2.

11.1. *(Abrogé).*

D. 658-94, a. 6; D. 1465-95, a. 2.

SECTION II**DROITS**

12. Pour les fins des paragraphes 2, 3 et 4 de l'article 13 et des articles 13.0.1, 13.0.2 et 13.0.3, il n'est tenu compte que des participants et des bénéficiaires à l'égard desquels Retraite Québec peut exercer des pouvoirs qui lui sont conférés par la Loi ou par un acte de délégation.

D. 1158-90, a. 12; D. 173-2002, a. 9.

13. Les demandes d'enregistrement suivantes doivent, au moment de leur présentation à Retraite Québec, être accompagnées des droits indiqués à leur égard:

1° celle concernant le contrat type d'un fonds de revenu viager visé à l'article 19 ou d'un compte de retraite immobilisé visé à l'article 29: 1 000 \$;

2° celle concernant un régime de retraite simplifié visé par la section IV du Règlement sur la soustraction de certaines catégories de régimes de retraite à l'application de dispositions de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1, r. 7), pour ce qui concerne les dispositions communes à l'ensemble des employeurs parties à ce régime: 1 500 \$;

3° celle concernant un régime de retraite qui n'est pas visé au paragraphe 2 ou 4: 250 \$ ou, dans le cas d'un régime auquel s'applique le chapitre X de la Loi, 500 \$, auxquels s'ajoutent 9,85 \$ pour chaque participant ou bénéficiaire du régime à la date de la demande, sous réserve d'un maximum de 100 000 \$;

4° celle concernant un régime de retraite flexible visé par la section VII du Règlement sur la soustraction de certaines catégories de régimes de retraite à l'application de dispositions de la Loi sur les régimes complémentaires de retraite: 1 000 \$ auxquels s'ajoutent les droits calculés conformément au paragraphe 3;

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

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5° celle concernant une modification d'un régime de retraite visée à l'article 31 du Règlement sur la soustraction de certaines catégories de régimes de retraite à l'application de dispositions de la Loi sur les régimes complémentaires de retraite: 1 000 \$.

D. 1158-90, a. 13; D. 1895-93, a. 1; D. 658-94, a. 7; D. 173-2002, a. 9; D. 1073-2009, a. 50; D. 500-2014, a. 1.

13.0.1. La déclaration annuelle prévue à l'article 161 de la Loi doit, au moment de sa transmission à Retraite Québec, être accompagnée de droits s'établissant comme suit: 250 \$ ou, dans le cas d'un régime auquel s'applique le chapitre X de la Loi, 500 \$, auxquels s'ajoutent 9,85 \$ pour chaque participant ou bénéficiaire du régime à la date de la fin de l'exercice financier sur lequel porte la déclaration, sous réserve d'un maximum de 100 000 \$.

Toutefois, dans le cas d'une déclaration annuelle qui se rapporte à un régime de retraite simplifié, les droits s'établissent comme suit: 1 000 \$ plus 4,50 \$ par participant actif du régime à la date de la fin de l'exercice financier sur lequel porte la déclaration.

D. 173-2002, a. 9; D. 500-2014, a. 2.



Pour l'exercice financier se terminant après le 30 décembre 2018, le montant de «4,50 \$» sera remplacé par «5,00 \$».

13.0.2. À compter du 31 décembre 2002, le montant payable pour un participant actif ou pour un participant ou un bénéficiaire selon le paragraphe 3 ou 4 de l'article 13 ou en vertu du premier alinéa de l'article 13.0.1 est ajusté le 31 décembre de chaque année en multipliant le montant payable avant cette date par le rapport entre la moyenne, pour la période de 12 mois se terminant le 30 juin de l'année en cours, des traitement et salaire hebdomadaires moyens de l'ensemble des industries au Canada pour chacun des mois compris dans cette période, tels que les publie Statistique Canada en vertu de la Loi sur la statistique (L.R.C. 1985, c. S-19), et la moyenne, pour la période de 12 mois se terminant à la fin du mois de juin de l'année qui précède immédiatement l'année en cours, des traitement et salaire hebdomadaires moyens de l'ensemble des industries au Canada pour chacun des mois compris dans cette période, tels que les publie Statistique Canada en vertu de la Loi sur la statistique. Le produit de ce calcul est augmenté ou diminué au multiple de 0,05 \$ le plus près.

Le montant ainsi fixé ne peut être inférieur au montant qui était payable avant l'ajustement.

Retraite Québec informe le public du résultat de l'ajustement fait en vertu du présent article dans la Partie 1 de la *Gazette officielle du Québec* et, si elle le juge approprié, par tout autre moyen.

L'ajustement prévu au premier alinéa s'applique à toute déclaration annuelle se rapportant à un exercice financier qui se termine durant la période de 12 mois pour laquelle l'ajustement est fait.

D. 173-2002, a. 9; D. 500-2014, a. 3.



La suppression, dans le premier alinéa et après «de l'article 13 ou en vertu», de «du premier alinéa», s'applique à l'égard de l'exercice financier se terminant après le 30 décembre 2019.

13.0.3. Le rapport de terminaison visé à l'article 207.2 de la Loi doit, au moment de sa transmission à Retraite Québec, être accompagné de droits s'établissant comme suit: 250 \$ ou, dans le cas d'un régime auquel s'applique le chapitre X de la Loi, 500 \$, auxquels s'ajoutent, pour chaque participant ou bénéficiaire du régime à la date qui précède celle de la terminaison, un montant équivalent au double de celui fixé pour un participant ou un bénéficiaire selon le paragraphe 3 de l'article 13 et l'article 13.0.2 pour la période au cours de laquelle le régime se termine, sous réserve d'un maximum de 100 000 \$.

Le rapport de terminaison prévu au paragraphe 2 de l'article 15 du Règlement sur la soustraction de certaines catégories de régimes de retraite à l'application de dispositions de la Loi sur les régimes

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complémentaires de retraite (chapitre R-15.1, r. 7) doit, au moment de sa production à Retraite Québec, être accompagné d'un droit de 1 000 \$.

D. 173-2002, a. 9; D. 1073-2009, a. 50.

13.1. Avant de distribuer l'excédent d'actif d'un régime de retraite terminé, celui qui l'administre doit payer à Retraite Québec un droit égal à 1% de l'excédent d'actif; ce droit ne peut toutefois pas être inférieur à 500 \$, sans cependant dépasser l'excédent d'actif, ni être supérieur à 50 000 \$.

Le présent article s'applique même aux régimes de retraite visés au second alinéa de l'article 311.1 de la Loi. Il ne s'applique toutefois pas si l'excédent d'actif du régime fait l'objet soit d'une procédure, d'une répartition ou d'un décret visé au premier alinéa de cet article, soit d'un jugement qui a force de chose jugée avant le 1^{er} janvier 1993.

D. 1895-93, a. 2; D. 173-2002, a. 10.

14. En cas de défaut de production d'un écrit visé à l'article 13.0.1 ou 13.0.3, sont versés à Retraite Québec, pour chaque mois complet de retard, des droits additionnels égaux à 10% des droits initialement dus en vertu de la disposition pertinente, jusqu'à concurrence du montant des droits initialement dus.

En cas de défaut de paiement des droits qui doivent accompagner un écrit auquel s'applique le premier alinéa, sont versés à Retraite Québec, pour chaque mois complet de retard, des droits additionnels égaux à 10% du solde impayé à l'expiration du délai prévu pour la présentation de l'écrit à Retraite Québec, jusqu'à concurrence du montant de ce solde.

Aucun droit additionnel n'est dû en vertu du deuxième alinéa à l'égard d'un mois pour lequel des droits additionnels doivent être versés en application du premier alinéa. De plus, en cas de défaut de production d'un rapport de terminaison ou de défaut de paiement des droits qui doivent l'accompagner, aucun droit additionnel n'est dû à l'égard d'une période antérieure à la plus tardive des dates suivantes:

1° celle de l'expiration du délai prévu à l'article 207.2 de la Loi;

2° celle qui suit de 90 jours la date de la terminaison du régime.

En cas de défaut de production du rapport visé à l'article 120 de la Loi ou d'un document qui doit l'accompagner, sont versés à Retraite Québec, pour chaque mois complet de retard, des droits égaux à 20% des droits calculés de la manière prescrite par l'article 13.0.1 en tenant compte du nombre de participants et de bénéficiaires indiqué dans la déclaration annuelle de renseignements relative au dernier exercice financier du régime terminé à la date de l'évaluation actuarielle, jusqu'à concurrence du montant de ces droits.

D. 1158-90, a. 14; D. 1681-97, a. 1; D. 173-2002, a. 11; D. 1073-2009, a. 4.

14.1. Un établissement financier doit verser à Retraite Québec, avant le 31 décembre de chaque année, un droit de 250 \$ pour chaque contrat type de fonds de revenu viager ou de compte de retraite immobilisé enregistré à son nom. En cas de défaut de paiement, sont versés à Retraite Québec, pour chaque mois complet de retard, des droits additionnels égaux à 10% du solde impayé à la date précitée.

D. 1681-97, a. 2; D. 173-2002, a. 12.

15. Toute communication visée à l'article 165 de la Loi et concernant des participants ou bénéficiaires introuvables doit être accompagnée du paiement d'un droit de 20 \$ pour chaque nom qui y est mentionné.

D. 1158-90, a. 15; D. 173-2002, a. 13.

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SECTION II.0.0.1

LETTRE DE CRÉDIT

D. 1073-2009, a. 5.

15.0.0.1. La lettre de crédit prévue à l'article 42.1 de la Loi est une lettre de crédit de soutien irrévocable. Elle est établie selon le formulaire 3.

Malgré toute stipulation contraire, une telle lettre de crédit est soumise aux lois du Québec et est régie par les normes prévues aux Règles et pratiques internationales relatives aux standby, 1998 (CCI, n° 590), dans la mesure où ces normes sont compatibles avec les dispositions du présent règlement.

D. 1073-2009, a. 5.

15.0.0.2. La lettre de crédit doit être émise par un établissement financier qui répond aux conditions suivantes:

1° il est autorisé à émettre des lettres de crédit au Québec ou dans un autre endroit au Canada où s'applique une entente visée à l'article 249 de la Loi;

2° l'une ou l'autre des agences de notation suivantes lui attribue la cote indiquée en regard de son nom dans le tableau qui suit ou encore une cote supérieure:

Agence de notation	Cote
Dominion Bond Rating Service	A
Fitch Ratings	A
Moody's Investors Service	A2
Standard & Poor's	A

D. 1073-2009, a. 5.

15.0.0.3. La date d'expiration de la lettre de crédit doit coïncider avec celle de la fin d'un exercice financier du régime de retraite.

D. 1073-2009, a. 5.

15.0.0.4. Le comité de retraite doit, sur demande écrite de l'employeur, consentir à la réduction du montant de la lettre de crédit dans les cas suivants:

1° l'employeur verse à la caisse de retraite une somme au moins égale à la réduction demandée;

2° le rapport relatif à la dernière évaluation actuarielle du régime de retraite dont la date n'est pas antérieure à celle de la fin du dernier exercice financier du régime montre que l'actif du régime, soit à lui seul, soit augmenté de l'excédent du montant de la lettre de crédit sur celui pris en compte en application du troisième alinéa de l'article 123 de la Loi, est supérieur au total du passif du régime et de la provision pour écarts défavorables.

D. 1073-2009, a. 5.

15.0.0.5. Dans le cas où l'actif du régime augmenté de l'excédent du montant de la lettre de crédit sur celui pris en compte en application du troisième alinéa de l'article 123 de la Loi est supérieur au total du passif du régime et de la provision pour écarts défavorables, la réduction prévue au paragraphe 2 de l'article 15.0.0.4 ne peut être supérieure au moindre des montants suivants:

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1° celui de l'excédent du montant de la lettre de crédit sur le montant pris en compte en application du troisième alinéa de l'article 123 de la Loi;

2° le montant par lequel le total de l'actif du régime et de cet excédent dépasse le total du passif du régime et de la provision pour écarts défavorables.

D. 1073-2009, a. 5.

15.0.0.6. Dans le cas où l'actif du régime de retraite excède à lui seul le total de son passif et de la provision pour écarts défavorables, la réduction prévue au paragraphe 2 de l'article 15.0.0.4 ne peut être supérieure à cet excédent.

Toutefois, si l'employeur affecte tout ou partie de l'excédent d'actif du régime à l'acquittement de cotisations patronales, le montant maximum de cette réduction est égal au reste de l'actif du régime après déduction de son passif, de la provision pour écarts défavorables et du total des montants indiqués dans un avis écrit que l'employeur doit transmettre au comité de retraite avec la demande de réduction et dans lequel il précise:

1° le montant qui sera affecté à l'acquittement de cotisations patronales pour la période comprise entre la date de la plus récente évaluation actuarielle du régime et celle de la première fin d'exercice financier du régime qui suit la date de cette évaluation, compte tenu de l'article 41 de la Loi;

2° le montant qui sera affecté à l'acquittement de cotisations patronales pour les 9 premiers mois de l'exercice financier qui suit celui visé au paragraphe 1.

Si le montant de la lettre de crédit peut être réduit à la fois selon les dispositions de l'article 15.0.0.5 et selon celles du présent article, la réduction demandée doit être effectuée conformément à l'article 15.0.0.5 en premier lieu.

D. 1073-2009, a. 5.

15.0.0.7. Si la réduction du montant de la lettre de crédit à laquelle le comité de retraite a consenti en application du paragraphe 2 de l'article 15.0.0.4 a un effet sur le montant pris en compte selon le troisième alinéa de l'article 123 de la Loi et que le rapport relatif à l'évaluation actuarielle visée par le paragraphe 2 de l'article 15.0.0.4 est par la suite modifié ou remplacé, la valeur de l'actif du régime déterminée selon l'approche de solvabilité doit être établie, aux fins de la modification ou du remplacement, en tenant compte de la réduction du montant de la lettre de crédit.

D. 1073-2009, a. 5.

15.0.0.8. En cas de non-renouvellement de la lettre de crédit, l'établissement financier qui l'a émise doit en payer le montant à la caisse de retraite. Le paiement n'est toutefois pas requis si le comité de retraite transmet à l'établissement financier, au moins 30 jours avant la date d'expiration de la lettre, un avis écrit à cet effet. Copie de cet avis doit sans délai être transmise à Retraite Québec.

D. 1073-2009, a. 5.

15.0.0.9. Lorsque le comité de retraite constate qu'une lettre de crédit qui lui a été fournie cesse d'être conforme aux normes du présent règlement, il doit en aviser sans délai l'employeur. Celui-ci peut, dans les 30 jours de cet avis, fournir au comité de retraite une nouvelle lettre de crédit ou une somme équivalente au montant de la lettre. Dans ces cas, le comité de retraite doit consentir à l'annulation de la lettre de crédit non conforme. Dans tout autre cas, il doit en demander le paiement dès l'expiration du délai de 30 jours.

D. 1073-2009, a. 5.

15.0.0.10. Sans préjudice des dispositions de l'article 15.0.0.4, en cas de terminaison du régime de retraite, le comité de retraite doit, dans le délai prévu au premier alinéa de l'article 207.2 de la Loi et après un avis de 10 jours à l'employeur, demander le paiement de la lettre de crédit à hauteur du montant représentant

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l'excédent de la valeur du passif du régime sur celle de son actif à la date de la terminaison, augmenté d'intérêts calculés au taux déterminé en application de l'article 61 de la Loi qui s'appliquait à cette date.

Le comité de retraite doit consentir à l'annulation de la lettre de crédit pour le solde.

D. 1073-2009, a. 5.

SECTION II.0.1**PRESTATION ADDITIONNELLE**

D. 173-2002, a. 14.

15.0.1. Pour l'application du premier alinéa de l'article 60.1 de la Loi:

1° la valeur des cotisations salariales visées à l'élément «A» est déterminée en tenant compte de la valeur de la rente résultant des services reconnus au participant relativement à toute période de travail durant laquelle les règles énoncées à l'article 60 de la Loi s'appliquent à son égard et en supposant qu'il ait droit, au titre du régime, à une rente dont la valeur est établie conformément au deuxième alinéa de l'article 60.1 de la Loi pour les services qui lui sont reconnus relativement à toute période de travail durant laquelle l'indexation prévue à cet article s'applique à son égard;

2° la valeur des cotisations salariales visées à l'élément «B» est déterminée en tenant compte de la valeur de la rente à laquelle le participant a droit pour les services qui lui sont reconnus relativement à toute période de travail durant laquelle, aux termes du régime, les règles énoncées à l'article 60 de la Loi s'appliquent à son égard.

D. 173-2002, a. 14.

15.0.2. La prestation additionnelle est, à la date où le participant cesse d'être actif, établie sous l'une ou l'autre des formes suivantes ou sous une combinaison de celles-ci, selon ce que prévoit le régime de retraite:

1° une rente viagère;

2° une prestation payable en un seul versement à la date où le participant cesse d'être actif.

D. 173-2002, a. 14; D. 204-2005, a. 1.

15.0.3. La rente viagère constituée avec la prestation additionnelle est déterminée, à la date où le participant cesse d'être actif, suivant les hypothèses visées à l'article 61 de la Loi qui sont utilisées à cette date pour établir la valeur de prestations auxquelles s'applique l'article 60 de la Loi et dont le droit s'acquiert à cette même date.

D. 173-2002, a. 14.

SECTION II.1**DROITS DU PARTICIPANT ET VERSEMENT D'UNE PRESTATION ANTICIPÉE**

D. 1681-97, a. 3.

15.1. Sous réserve de dispositions contraires prévues par le régime de retraite, sont d'abord affectés au paiement de la prestation anticipée visée à l'article 69.1 de la Loi, les droits du participant qui, accumulés au titre de remboursements ou de prestations, sont fonction des sommes qui ont été portées au compte du participant au titre de cotisations versées, d'actifs transférés et d'intérêts sur ces cotisations et actifs mais n'ont pas encore servi à la constitution d'une prestation.

D. 1681-97, a. 3.

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15.2. Lorsque la prestation anticipée visée à l'article 69.1 de la Loi est acquittée sur les droits visés à l'article 15.1, la valeur de ces droits, établie à la date du paiement, est réduite du montant de la prestation.

D. 1681-97, a. 3.

15.3. Lorsque la prestation anticipée visée à l'article 69.1 de la Loi est acquittée sur les droits du participant au titre du régime qui ne sont pas visés à l'article 15.1, le comité de retraite détermine le montant de la partie de la rente normale qui aurait été payable au participant à l'âge normal de la retraite et qui équivaut au montant de la prestation versée.

Ce montant, ainsi que la valeur des droits visés au paragraphe 3 du premier alinéa de l'article 69.1 de la Loi, doivent être déterminés à la date du paiement suivant les conditions et caractéristiques de la rente normale et suivant les hypothèses visées à l'article 61 de la Loi, autres que celles relatives à l'anticipation et à l'ajournement de la rente, qui sont utilisées à cette date pour établir la valeur d'autres prestations auxquelles s'applique l'article 60 de la Loi et dont le droit s'acquiert à cette date.

Les droits visés au premier alinéa sont ensuite réduits de la manière suivante:

1° la rente servie est réduite du montant déterminé conformément au deuxième alinéa ou, si ses conditions et caractéristiques, à l'exception de celles relatives à l'anticipation et à l'ajournement, diffèrent de celles utilisées pour établir ce montant ou que son service commence à une date autre que celle de l'âge normal de la retraite, d'une somme équivalente à ce montant;

2° toute autre prestation, à l'exclusion de celle visée à l'article 69.1 de la Loi, et tout remboursement payables au participant sont réduits de la valeur de la partie de la rente dont le montant est déterminé conformément au deuxième alinéa.

D. 1681-97, a. 3; D. 173-2002, a. 15.

SECTION II.2**RENTE TEMPORAIRE**

D. 1681-97, a. 3.

15.4. Un participant ou conjoint n'a droit au remplacement de la rente à laquelle il a acquis droit au titre d'un régime de retraite par la rente temporaire visée à l'article 91.1 de la Loi que s'il fournit au comité de retraite une déclaration conforme à celle prévue à l'annexe 0.1.

D. 1681-97, a. 3.

SECTION III**OPTION DE REMPLACEMENT DE LA RENTE**

16. Pour l'application de la présente section, le conjoint du constituant qui est un ancien participant ou un participant est celui qui satisfait aux conditions prévues au premier et au troisième alinéas de l'article 85 de la Loi, compte tenu des adaptations nécessaires lorsqu'il s'agit d'un ancien participant.

La qualité de ce conjoint s'établit au jour de la conversion de tout ou partie du solde du fonds en rente viagère ou, dans le cas de la prestation visée au paragraphe 4 du premier alinéa de l'article 19, au jour qui précède celui du décès du constituant. Le quatrième alinéa de l'article 85 de la Loi s'applique, compte tenu des adaptations nécessaires, à l'égard de ce conjoint.

D. 1158-90, a. 16; D. 173-2002, a. 16.

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16.1. Le participant ou conjoint qui a acquis droit à une rente au titre d'un régime de retraite à cotisation déterminée ou au titre de dispositions qui, dans un régime à prestations déterminées ou à cotisation et prestations déterminées, sont identiques à celles d'un régime à cotisation déterminée, a le droit de la remplacer avant qu'elle soit servie par un paiement en un seul versement sur demande au comité de retraite accompagnée d'une déclaration conforme à celle prévue à l'annexe 0.2, dans les conditions suivantes:

1° il est âgé d'au moins 65 ans;

2° le total des sommes accumulées pour son compte dans les instruments d'épargne-retraite mentionnés à l'annexe 0.2 n'excède pas 40% du maximum des gains admissibles établi conformément à la Loi sur le régime de rentes du Québec (chapitre R-9) pour l'année au cours de laquelle il demande le paiement.

D. 1681-97, a. 4.

16.2. Sur demande au comité de retraite accompagnée d'une déclaration conforme à celle prévue à l'annexe 0.3, le participant ou conjoint âgé d'au moins 55 ans mais de moins de 65 ans qui a acquis droit à une rente au titre d'un régime de retraite a le droit de la remplacer partiellement, avant qu'elle soit servie, par le paiement en un seul versement d'un montant égal au montant «Y» de la formule suivante:

$$G - W = Y$$

«G» est égal à 40% du maximum des gains admissibles établi, pour l'année au cours de laquelle la demande est présentée, conformément à la Loi sur le régime de rentes du Québec (chapitre R-9);

«W» est égal au total des revenus temporaires que le constituant a reçus ou doit recevoir au cours de l'année en vertu d'un régime complémentaire de retraite régi ou établi par une loi, du compte immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1) ou du compte immobilisé d'un régime volontaire d'épargne-retraite équivalent émanant d'une autorité législative autre que le Parlement du Québec et offrant des paiements variables temporaires, d'un contrat constitutif d'une rente dont le capital provient directement ou non d'un tel régime ou d'un contrat établissant un fonds de revenu viager.

Le participant ou conjoint ne peut présenter une demande prévue au premier alinéa plus d'une fois par année.

D. 1681-97, a. 4; D. 500-2014, a. 4.

16.3. Les articles 15.1 à 15.3 s'appliquent, compte tenu des adaptations nécessaires, en ce qui concerne l'affectation des droits et la détermination des droits résiduels du participant ou conjoint à qui un paiement visé à l'article 16.2 a été versé.

D. 1681-97, a. 4.

17. Le participant ou conjoint qui a acquis droit à une rente au titre d'un régime de retraite peut la remplacer par une rente viagère ou temporaire constituée avec un fonds de revenu viager visé à l'article 18. L'exercice de cette option comporte le transfert de la valeur de la rente à remplacer dans un fonds de revenu viager.

À moins que le régime de retraite ne comporte une disposition plus avantageuse, il n'est procédé au remplacement de la rente prévue par le régime par une rente constituée avec un fonds de revenu viager que si la rente à remplacer peut, aux termes de la Loi, du régime ou du présent règlement, faire l'objet d'un transfert partiel ou total dans un autre régime de retraite.

D. 1158-90, a. 17; D. 1681-97, a. 5.

18. Le fonds de revenu viager est celui qui est établi en vertu d'un contrat intervenu entre un établissement financier dûment habilité à cette fin et un constituant qui est un ancien participant, un participant ou son conjoint, et aux termes duquel, en contrepartie du capital qu'il reçoit, l'établissement doit verser au

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constituant un revenu dont le montant peut varier annuellement. Ce contrat doit satisfaire aux exigences que requiert la Loi sur les impôts (chapitre I-3) pour être un fonds enregistré de revenu de retraite.

D. 1158-90, a. 18; D. 1681-97, a. 6.

19. Le remplacement de la rente visée à l'article 92 de la Loi par une rente viagère n'est autorisé que si les dispositions du contrat établissant le fonds de revenu viager sont conformes à celles du contrat type préalablement enregistré auprès de Retraite Québec qui prévoient:

0.1° que les seules sommes qui peuvent être transférées dans le fonds de revenu viager sont celles provenant, directement ou initialement, de la caisse d'un régime de retraite régi par la Loi ou visé au paragraphe 1, 2, 2.1, 2.2, 4 ou 5 de l'article 28, ou d'un fonds de revenu viager;

1° que l'exercice financier du fonds doit se terminer le 31 décembre de chaque année et ne peut excéder 12 mois;

2° que le montant du revenu versé au cours d'un exercice financier est, sous réserve du plafond visé à l'article 20.1 et du plancher visé à l'article 20.2, fixé par le constituant à chaque année, ou à un autre intervalle convenu de plus d'une année si l'établissement financier garantit le solde du fonds à la fin de cet intervalle et si le constituant n'a pas droit au versement du revenu sous une forme autre que viagère; un tel intervalle doit, dans tous les cas, se terminer à la fin d'un exercice financier du fonds;

3° (*paragraphe abrogé*);

4° que dans le cas où le constituant qui est un ancien participant ou un participant décède avant la conversion de la totalité du solde du fonds en rente viagère, son conjoint ou, à défaut, ses ayants cause ont droit à une prestation dont le montant est égal à ce solde;

5° que le conjoint du constituant qui est un ancien participant ou un participant peut, par avis écrit notifié à l'établissement financier, renoncer à son droit de recevoir la prestation prévue au paragraphe 4 ci-dessus ou la rente prévue au paragraphe 2 du deuxième alinéa de l'article 23, et qu'il peut révoquer une telle renonciation en notifiant à l'établissement financier un avis écrit à cet effet avant le décès du constituant, dans le cas de la prestation, et avant la date de conversion de tout ou partie du solde du fonds en rente viagère, dans celui de la rente;

6° que le conjoint du constituant qui est un ancien participant ou un participant cesse d'avoir droit à la prestation prévue au paragraphe 2 du deuxième alinéa de l'article 23 lors d'une séparation de corps, d'un divorce, d'une annulation de mariage, d'une dissolution ou d'une annulation d'union civile ou, s'il est non lié par un mariage ou une union civile, lors de la cessation de vie maritale, à moins que le constituant ait transmis à l'établissement financier l'avis prévu à l'article 89 de la Loi;

6.0.1° que la partie saisissable du solde du fonds peut être payée en un seul versement en exécution d'un jugement qui, rendu en faveur du conjoint du constituant, fait droit à une saisie pour dette alimentaire;

6.1° que la totalité du solde du fonds peut être payée en un seul versement au constituant sur demande à l'établissement financier accompagnée d'une déclaration conforme à celle prévue à l'annexe 0.2, dans les conditions suivantes:

a) le constituant était âgé d'au moins 65 ans à la fin de l'année précédant la demande;

b) le total des sommes accumulées pour son compte dans les instruments d'épargne-retraite mentionnés à l'annexe 0.2 n'excède pas 40% du maximum des gains admissibles établi conformément à la Loi sur le régime de rentes du Québec (chapitre R-9) pour l'année au cours de laquelle le constituant demande le paiement;

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7° que le constituant peut transférer tout ou partie du solde du fonds dans un régime de retraite régi par la Loi ou visé au paragraphe 1, 2, 2.1, 2.2, 3.1, 4 ou 5 de l'article 28, à moins que le terme convenu des placements ne soit pas échu;

7.1° que le constituant peut, à moins que le terme convenu des placements ne soit pas échu, exiger que la totalité du solde du fonds lui soit payée en un seul versement s'il ne réside plus au Canada depuis au moins 2 ans;

8° les nom et adresse de l'établissement financier;

9° les pouvoirs qui, le cas échéant, sont accordés au constituant relativement au placement du capital;

10° la méthode et les facteurs utilisés pour établir la valeur du fonds ou, selon le cas, du solde du fonds aux fins d'un transfert d'actifs ou d'une conversion en rente, ou lors d'un décès;

10.1° que si le revenu versé au constituant au cours d'un exercice financier du fonds excède le montant maximum qui peut lui être versé conformément aux dispositions du contrat ou du présent règlement, le constituant peut, à moins que ce versement ne soit attribuable à une fausse déclaration de sa part, exiger que l'établissement financier lui paie, à titre de pénalité, une somme égale à l'excédent de revenu versé;

11° que l'établissement financier ne peut apporter aucune modification qui aurait pour effet de réduire des droits résultant du contrat à moins que le constituant ait, avant la date de la modification, droit au transfert du solde du fonds et ait reçu, au moins 90 jours avant la date où il peut exercer ce droit, un avis lui indiquant l'objet de la modification ainsi que la date à compter de laquelle il peut exercer ce droit;

12° que le transfert visé aux paragraphes 7 et 11 peut, au choix de l'établissement financier et à moins de stipulations contraires, être effectué par la remise des titres de placements du fonds;

13° que l'établissement financier ne peut, sauf pour satisfaire aux exigences d'une loi, apporter aucune modification autre que celle prévue au paragraphe 11 sans en avoir avisé préalablement le constituant;

14° que l'établissement financier peut modifier le contrat dans la seule mesure où il demeure conforme au contrat type modifié et enregistré auprès de Retraite Québec.

Les articles 27 à 31 de la Loi ainsi que les deuxième et troisième alinéas de l'article 32 de cette Loi s'appliquent, compte tenu des adaptations nécessaires, à l'enregistrement d'un contrat type visant à proposer l'établissement d'un fonds de revenu viager ainsi qu'à ses modifications. L'enregistrement d'un tel contrat type peut en outre être radié lorsqu'aucun contrat conforme à celui-ci et établissant un fonds de revenu viager n'est en cours et que l'établissement financier intéressé atteste qu'il n'entend plus conclure de contrat conforme à ce contrat type.

D. 1158-90, a. 19; D. 1681-97, a. 7; D. 173-2002, a. 17; D. 1073-2009, a. 6; D. 500-2014, a. 5.

19.1. Le contrat type visé à l'article 19 peut également prévoir que le constituant a droit au versement d'un revenu temporaire qu'il détermine s'il satisfait aux conditions suivantes:

1° présenter à l'établissement financier une demande en ce sens, accompagnée d'une déclaration conforme à celle prévue à l'annexe 0.4;

2° avoir été âgé d'au moins 54 ans mais de moins de 65 ans à la fin de l'année précédant celle visée par la demande.

Dans ce cas, le contrat doit stipuler:

1° que, si le versement d'une partie du revenu s'effectue sous la forme d'un transfert dans un instrument d'épargne-retraite dont le solde n'a pas à être converti en rente viagère, cette partie ne peut excéder le plafond visé à l'article 20, établi en supposant que le constituant n'a pas droit au versement d'un revenu temporaire;

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2° que le revenu temporaire ne peut être versé après la fin de l'année au cours de laquelle le constituant atteint l'âge de 65 ans.

D. 1681-97, a. 8.

19.2. Le contrat type qui comporte les dispositions visées à l'article 19.1 doit prévoir que le constituant peut, au cours d'un exercice financier du fonds de revenu viager, recevoir sur demande tout ou partie du solde du fonds sous la forme d'un revenu temporaire payable en versements mensuels dont aucun ne peut excéder $\frac{1}{12}$ de la différence entre les montants suivants:

1° 40% du maximum des gains admissibles établi, pour l'année du paiement, conformément à la Loi sur le régime de rentes du Québec (chapitre R-9);

2° 75% des revenus du constituant pour les 12 mois qui suivent, à l'exclusion du revenu prévu au présent article,

pourvu qu'il soit satisfait aux conditions suivantes:

— les revenus du constituant pour les 12 mois qui suivent, à l'exclusion du revenu prévu au présent article, n'excèdent pas le montant visé au paragraphe 1 ci-dessus;

— le constituant présente à l'établissement financier une demande en ce sens accompagnée d'une déclaration conforme à celle prévue à l'annexe 0.5 et de son engagement écrit de demander l'interruption des versements dès que ses revenus, à l'exclusion du revenu prévu au présent article, atteignent le montant visé au paragraphe 1 ci-dessus;

— le constituant était âgé de moins de 54 ans à la fin de l'année précédant la demande.

Dans ce cas, le contrat doit stipuler:

1° que le revenu prévu au présent article ne peut être versé au constituant lorsque celui-ci a demandé l'interruption des versements ni après la fin de l'année au cours de laquelle il atteint 54 ans;

2° que le constituant qui a droit de recevoir le revenu prévu au présent article et qui est un participant ou conjoint qui a acquis droit à une rente au titre d'un régime de retraite peut, pour les fins du remplacement de cette rente par ce revenu temporaire, demander une fois par année le transfert, du régime de retraite dans le fonds de revenu viager, d'une somme égale au moindre des montants suivants:

a) le montant additionnel requis pour que le solde du fonds de revenu viager permette, jusqu'à la fin de l'année, le service des versements mensuels prévus au premier alinéa;

b) la valeur de ses droits au titre du régime.

D. 1681-97, a. 8; D. 577-98, a. 1.

19.3. Le remplacement de la rente visée à l'article 92 de la Loi par une rente temporaire n'est autorisé que si le contrat établissant le fonds de revenu viager comporte les dispositions exigées par les articles 19, 19.1 et 19.2.

D. 1681-97, a. 8.

20. Le plafond du revenu viager pour un exercice financier du fonds de revenu viager est égal au montant «E» de la formule suivante:

A

$$F \times C - \frac{\quad}{\quad} = E$$

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D

«F» représente le facteur prévu à l'annexe 0.6 en rapport avec le taux de référence de l'année couverte par l'exercice et l'âge du constituant à la fin de l'année précédente;

«C» représente le solde du fonds au début de l'exercice, augmenté des sommes transférées au fonds après cette date et réduit des sommes provenant directement ou non au cours de la même année d'un fonds de revenu viager ou du compte immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1) et offrant des paiements variables du constituant;

«A» représente le revenu temporaire maximum de l'exercice déterminé conformément à l'article 20.4 ou 20.5 ou, si aucun montant n'a été déterminé, le chiffre zéro;

«D» représente le facteur prévu à l'annexe 0.7 en rapport avec l'âge du constituant à la fin de l'année précédant celle couverte par l'exercice.

Le montant «E» ne peut être inférieur à zéro.

D. 1158-90, a. 20; D. 1681-97, a. 9; D. 577-98, a. 2; D. 500-2014, a. 6.

20.1. Le montant du revenu versé au cours d'un exercice financier du fonds de revenu viager ne peut excéder le montant «M» de la formule suivante:

$$A + E = M$$

«A» représente le revenu temporaire maximum de l'exercice déterminé conformément à l'article 20.4 ou 20.5 ou, si aucun montant n'a été déterminé, le chiffre zéro;

«E» représente le plafond du revenu viager établi selon l'article 20.

D. 1681-97, a. 9; D. 577-98, a. 2.

20.2. Le montant du revenu versé au cours d'un exercice financier du fonds de revenu viager ne peut être inférieur au montant minimum prescrit par la Loi sur les impôts (chapitre I-3), déterminé en fonction de l'âge du constituant. Ce montant peut être déterminé en fonction de l'âge du conjoint du constituant, s'il est plus jeune que le constituant.

D. 1681-97, a. 9.

20.3. Lorsque le constituant d'un fonds de revenu viager établi par un contrat qui prévoit le versement d'un revenu temporaire était âgé d'au moins 54 ans mais de moins de 65 ans à la fin de l'année précédant celle couverte par un exercice financier du fonds, l'établissement financier qui gère le fonds doit établir un revenu temporaire de référence dont le montant est égal au moindre des suivants:

1° 40% du maximum des gains admissibles établi, pour l'année couverte par l'exercice, conformément à la Loi sur le régime de rentes du Québec (chapitre R-9);

2° le montant «R» de la formule suivante:

$$F \times C \times D = R$$

«F» représente le facteur prévu à l'annexe 0.6 en rapport avec le taux de référence de l'année couverte par l'exercice et l'âge du constituant à la fin de l'année précédente;

«C» représente le solde du fonds au début de l'exercice, augmenté des sommes transférées au fonds après cette date et réduit des sommes provenant directement ou non au cours de la même année d'un fonds de revenu viager du constituant ou du compte immobilisé de son régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1) et offrant des paiements variables;

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«D» représente le facteur prévu à l'annexe 0.7 en rapport avec l'âge du constituant à la fin de l'année précédant celle couverte par l'exercice.

D. 1681-97, a. 9; D. 500-2014, a. 7.

20.4. Le constituant qui a droit au versement d'un revenu temporaire visé à l'article 19.1 peut fixer, pour chaque exercice financier du fonds de revenu viager, un revenu temporaire maximum qui n'excède pas le moindre des montants suivants:

- 1° le revenu temporaire de référence établi selon l'article 20.3;
- 2° le montant «X» de la formule suivante:

$$G - T = X$$

«G» est égal à 40% du maximum des gains admissibles établi, pour l'année couverte par l'exercice, conformément à la Loi sur le régime de rentes du Québec (chapitre R-9);

«T» représente la somme des montants suivants:

- a) le total des revenus temporaires que le constituant doit recevoir au cours de l'année couverte par l'exercice financier en vertu d'un régime de retraite régi ou établi par une loi ou en vertu d'un contrat constitutif d'une rente dont le capital provient directement ou non d'un tel régime;
- b) le total des montants que le constituant a fixés ou qu'il doit fixer pour ses autres fonds de revenu viager à titre de revenu temporaire maximum de l'exercice financier en cours;
- c) le total des montants que le participant a fixé ou qu'il doit fixer pour les comptes immobilisés de ses régimes volontaires d'épargne-retraite régis par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1) à titre de paiements variables temporaires maximums de l'année en cours.

Toutefois, dans le cas où le revenu temporaire de référence établi selon l'article 20.3 est inférieur au montant «X» du premier alinéa, si le constituant fournit à l'établissement financier une déclaration conforme à celle prévue à l'annexe 0.8, le constituant peut fixer, à titre de revenu temporaire maximum, un montant qui n'excède pas le moindre des suivants:

- 1° le montant «X» du premier alinéa;
- 2° le solde du fonds au début de l'exercice, augmenté des sommes transférées au fonds et des revenus réalisés sur le fonds après cette date et réduit des sommes provenant directement ou non au cours de la même année d'un fonds de revenu viager du constituant ou du compte immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite et offrant des paiements variables.

Le constituant peut, en tout temps avant la fin de l'exercice, fixer de nouveau, en l'augmentant, le revenu temporaire maximum de l'exercice. Il doit alors transmettre à l'établissement financier des déclarations conformes à celles prévues aux annexes 0.4 et 0.8.

D. 1681-97, a. 9; D. 500-2014, a. 8.

20.5. L'établissement financier détermine le revenu temporaire maximum pour l'exercice financier du fonds de revenu viager à la suite de la présentation d'une demande conformément à l'article 19.2. Ce revenu est égal au produit du versement mensuel maximum établi selon le premier alinéa de l'article 19.2 par le nombre de mois qui restent à écouler dans l'année à compter du premier jour du mois de la demande ou, si le constituant a droit pour ce mois à un revenu temporaire en raison d'une demande antérieure, du premier du mois suivant; ce produit est, le cas échéant, augmenté de tout revenu prévu à l'article 19.2 payé au constituant durant l'année mais avant le versement du revenu payable par suite de la demande et réduit de tout revenu payé au constituant, pendant cette même période, sur un autre fonds de revenu viager.

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Le revenu temporaire maximum de l'exercice ne peut être inférieur à zéro.

D. 577-98, a. 3.

21. Le taux de référence pour une année est établi sur la base du taux d'intérêt nominal de fin de mois obtenu sur les obligations à long terme émises par le gouvernement du Canada pour le mois de novembre précédant le début de l'exercice, tel que compilé mensuellement par Statistique Canada et publié dans la revue Statistiques bancaires et financières de la Banque du Canada dans la série V122487 du fichier CANSIM, en appliquant successivement à ce taux les ajustements suivants:

1° une majoration de 0,5%;

2° la conversion du taux majoré, lequel repose sur un intérêt composé semestriellement, en taux d'intérêt effectif annuel;

3° l'arrondissement du taux d'intérêt effectif au plus proche multiple de 0,5%.

Le taux de référence ainsi établi ne peut toutefois être inférieur à 6%.

D. 1158-90, a. 21; D. 1681-97, a. 10; D. 1073-2009, a. 7.

22. Lorsqu'en application du paragraphe 2 du premier alinéa de l'article 19, le montant du revenu viager versé au constituant est fixé à un intervalle de plus d'une année, le montant maximum du revenu qui peut être versé au cours de chacun des exercices financiers compris dans l'intervalle est déterminé, à la date du début du premier de ces exercices, de manière à être égal:

1° pour l'exercice initial, au plafond déterminé en application de l'article 20;

2° pour chacun des exercices subséquents, au montant «L» de la formule suivante:

$$M \times \frac{J}{K} = L$$

«M» représente le plafond déterminé pour l'exercice initial;

«J», représente le solde du fonds au début de l'exercice;

«K», représentant le solde de référence du fonds au début de l'exercice, est égal au solde de référence de l'exercice précédent réduit, dès le premier jour de ce dernier exercice, du plafond déterminé pour l'exercice initial et augmenté des gains établis en utilisant, dans le cas des 16 premiers exercices, le taux de référence et, dans les autres cas, un taux d'intérêt de 6%.

Pour l'application du paragraphe 2, le solde de référence du fonds au début de l'exercice initial est égal au solde du fonds à cette date.

D. 1158-90, a. 22; D. 1681-97, a. 11.

22.1. Lorsqu'une somme est transférée d'un régime de retraite dans un fonds de revenu viager en application du paragraphe 2 du deuxième alinéa de l'article 19.2, les articles 15.1 à 15.3 s'appliquent, compte tenu des adaptations nécessaires, en ce qui concerne l'affectation des droits et la détermination des droits résiduels du participant ou conjoint dans le régime de retraite.

D. 1681-97, a. 12.

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22.2. Les sommes transférées dans un fonds de revenu viager sont réputées provenir en totalité d'un fonds de revenu viager ou du compte immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1) et offrant des paiements variables du même constituant, à moins que celui-ci ne transmette à l'établissement financier qui gère le fonds dans lequel les sommes sont transférées une déclaration conforme à celle prévue à l'annexe 0.9 ou 0.9.1, selon le cas.

D. 1681-97, a. 12; D. 577-98, a. 4; D. 500-2014, a. 9.

23. Pour être enregistré par Retraite Québec, le contrat type visé à l'article 19 doit, outre les dispositions exigées par les articles 19, 19.1 et 19.2, prévoir que l'établissement financier qui gère le fonds de revenu viager s'engage à fournir les relevés prévus aux articles 24 à 26 aux moments qui y sont déterminés.

Ce contrat doit aussi prévoir que la conversion de tout ou partie du solde du fonds en rente viagère ne peut être faite qu'aux conditions suivantes:

1° l'assureur garantit le paiement de cette rente en montants périodiques égaux qui ne pourront varier que si chacun d'eux est uniformément augmenté en fonction d'un indice ou taux prévu au contrat de rente ou uniformément modifié en raison d'une saisie pratiquée sur les droits du constituant, du nouvel établissement de la rente du constituant, du partage des droits du constituant avec son conjoint, du versement d'une rente temporaire selon les conditions prévues à l'article 91.1 de la Loi ou de l'option prévue au paragraphe 3 du premier alinéa de l'article 93 de la Loi;

2° dans le cas du décès du constituant qui est un ancien participant ou un participant, l'assureur garantit à son conjoint qui n'y a pas renoncé une rente viagère au moins égale à 60% du montant de la rente du constituant incluant, le cas échéant, pendant la durée du remplacement, le montant de la rente temporaire.

Les dispositions exigées par le présent article doivent faire partie de tout contrat établissant un fonds de revenu viager.

D. 1158-90, a. 23; D. 1681-97, a. 13; D. 173-2002, a. 18.

24. L'établissement financier doit, au début de chaque exercice financier d'un fonds de revenu viager qu'il gère, fournir au constituant un relevé indiquant:

1° le solde du fonds à cette date et, le cas échéant, la conciliation de ce solde avec celui indiqué dans le relevé pertinent précédent avec, notamment, l'indication des sommes déposées, des gains accumulés, des retraits effectués et des frais débités;

2° lorsque le début de l'exercice est postérieur à celui de l'année, les sommes provenant directement ou non au cours de l'année d'un fonds de revenu viager du constituant ou du compte immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1) et offrant des paiements variables;

3° le montant maximum qui peut être servi au constituant à titre de revenu viager au cours de l'exercice courant;

4° le montant minimum qui doit être servi au constituant à titre de revenu au cours de l'exercice courant;

5° lorsque le contrat qui établit le fonds prévoit le versement d'un revenu temporaire et que le constituant était âgé d'au moins 54 ans mais de moins de 65 ans à la fin de l'année précédente:

a) les conditions que le constituant doit remplir pour avoir droit au versement du revenu temporaire visé à l'article 19.1;

b) le revenu temporaire de référence pour l'exercice courant;

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c) l'effet du versement d'un revenu supérieur au montant visé au paragraphe 3, à chaque année jusqu'à la fin de celle où le constituant atteindra l'âge de 65 ans, sur le revenu qui pourrait lui être versé après cette date;

d) dans quelles conditions le constituant peut obtenir le versement d'un revenu temporaire supérieur au revenu temporaire de référence;

6° lorsque le contrat qui établit le fonds prévoit le versement d'un revenu temporaire et que le constituant était âgé de moins de 54 ans à la fin de l'année précédente, les conditions que le constituant doit remplir pour avoir droit au versement du revenu temporaire visé à l'article 19.2;

7° que le transfert dans le fonds de sommes provenant directement ou non d'un fonds de revenu viager ou du compte immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite et offrant des paiements variables du constituant au cours de la même année ne peut entraîner la révision du montant maximum qui peut être servi au constituant par le fonds au cours de l'exercice;

8° que si le constituant désire transférer tout ou partie du solde du fonds tout en recevant de ce fonds le revenu qu'il a fixé pour l'exercice, il doit s'assurer que le solde du fonds à la suite du transfert soit au moins égal à la différence entre le revenu fixé pour l'exercice et celui qu'il a déjà reçu depuis le début de l'exercice.

Lorsque le contrat qui établit le fonds prévoit le versement d'un revenu temporaire et que le constituant était âgé d'au moins 54 ans mais de moins de 65 ans à la fin de l'année précédente, l'établissement financier doit joindre à ce relevé un exemplaire des déclarations conformes à celles prévues aux annexes 0.4 et 0.8.

D. 1158-90, a. 24; D. 1681-97, a. 14; D. 173-2002, a. 19; D. 500-2014, a. 10.

24.1. Lorsque des sommes qui ne proviennent, au cours de la même année, ni directement ni indirectement d'un fonds de revenu viager ou du compte immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1) et offrant des paiements variables du constituant sont déposées dans un fonds qu'il gère ou que le constituant l'informe du revenu temporaire maximum qu'il fixe, l'établissement financier doit, dans les 30 jours qui suivent, fournir au constituant un relevé indiquant:

1° le solde du fonds au début de l'exercice, les sommes qui y ont été déposées depuis, en distinguant celles qui proviennent directement ou non au cours de la même année d'un fonds de revenu viager ou du compte immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite et offrant des paiements variables du constituant, ainsi que le solde du fonds pour les fins du calcul du montant maximum qui peut être versé au constituant à titre de revenu au cours de l'exercice;

2° le montant maximum qui peut être versé au constituant à titre de revenu au cours de l'exercice;

3° le montant minimum qui doit être servi au constituant à titre de revenu au cours de l'exercice courant;

4° lorsque le contrat qui établit le fonds prévoit le versement d'un revenu temporaire et que le constituant était âgé d'au moins 54 ans mais de moins de 65 ans à la fin de l'année précédente:

a) le revenu temporaire de référence pour l'exercice courant;

b) le revenu temporaire maximum fixé par le constituant le cas échéant.

D. 1681-97, a. 15; D. 1073-2009, a. 8; D. 500-2014, a. 11.

25. Lorsque le constituant qui est un ancien participant ou un participant décède avant que la totalité du solde du fonds de revenu viager n'ait été convertie en une rente viagère, l'établissement financier qui gère ce fonds doit fournir à son conjoint ou, à défaut, à ses ayants cause un relevé établi à la date du décès et

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contenant les renseignements prévus au paragraphe 1 de l'article 24 et établis à la date du décès du participant.

D. 1158-90, a. 25; D. 173-2002, a. 20.

26. Lorsque la totalité du solde du fonds de revenu viager est transférée à un autre établissement financier ou convertie en rente viagère auprès d'un assureur, l'établissement qui gère le fonds doit fournir au constituant un relevé contenant les renseignements prévus au paragraphe 1 de l'article 24 et établis à la date du transfert ou du contrat de rente.

D. 1158-90, a. 26.

SECTION IV
TRANSFERT DE DROITS ET D'ACTIFS

27. Pour l'application de la présente section, le conjoint est celui qui satisfait aux conditions prévues au premier et au troisième alinéas de l'article 85 de la Loi.

La qualité de conjoint s'établit au jour où débute le service de la rente au constituant ou à celui qui précède son décès, suivant la première de ces éventualités. Le quatrième alinéa de l'article 85 de la Loi s'applique, compte tenu des adaptations nécessaires, à l'égard du conjoint visé au présent article.

D. 1158-90, a. 27; D. 173-2002, a. 21.

28. Les régimes de retraite non régis par la Loi et dans lesquels des transferts peuvent être effectués en application de l'article 98 de la Loi, sont:

1° un régime complémentaire de retraite régi par une loi émanant d'une autorité législative autre que le Parlement du Québec et accordant droit à une rente différée;

2° un régime complémentaire de retraite établi par une loi émanant du Parlement du Québec ou d'une autre autorité législative;

2.1° le compte immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1);

2.2° le compte immobilisé d'un régime volontaire d'épargne-retraite équivalent émanant d'une autorité législative autre que le Parlement du Québec si le participant adhère à ce régime dans le cadre de son emploi;

3° pour les sommes qui peuvent être remboursées au participant ou lui être payées en un seul versement, avec les intérêts accumulés, un régime enregistré d'épargne-retraite ou le compte non immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite;

3.1° un fonds de revenu viager visé à l'article 18;

4° un compte de retraite immobilisé visé à l'article 29;

5° un contrat de rente visé à l'article 30.

D. 1158-90, a. 28; D. 1681-97, a. 16; D. 173-2002, a. 22; D. 500-2014, a. 12.

29. Le compte de retraite immobilisé est celui établi suivant une convention écrite conclue entre un constituant qui est un ancien participant, un participant ou son conjoint et un établissement financier habilité à cette fin en vue du versement d'une rente de retraite au constituant. Cette convention doit satisfaire aux exigences que requiert la Loi sur les impôts (chapitre I-3) pour être un régime enregistré d'épargne-retraite.

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La convention établissant le compte de retraite immobilisé doit être conforme au contrat type préalablement enregistré auprès de Retraite Québec qui doit prévoir:

1° que les seules sommes qui peuvent être transférées dans le compte de retraite immobilisé sont celles provenant, directement ou initialement, de la caisse d'un régime de retraite régi par la Loi ou visé au paragraphe 1, 2, 2.1, 2.2, 3.1 ou 5 de l'article 28, ou d'un autre compte de retraite immobilisé;

2° qu'à l'exception des cas visés aux paragraphes 3 et 8 à 9.1, le solde du compte ne peut qu'être converti en rente viagère garantie par un assureur et établie pour la durée de la vie du constituant seul ou pour la durée de la vie du constituant et celle de son conjoint; les montants périodiques versés au titre de cette rente doivent être égaux à moins que chaque montant à verser soit uniformément augmenté en fonction d'un indice ou taux prévu au contrat ou qu'il soit uniformément modifié en raison d'une saisie pratiquée sur les droits du constituant, du nouvel établissement de la rente du constituant, du partage des droits du constituant avec son conjoint, du versement d'une rente temporaire selon les conditions prévues à l'article 91.1 de la Loi ou de l'option prévue au paragraphe 3 du premier alinéa de l'article 93 de la Loi;

3° que, dans le cas où le constituant qui est un ancien participant ou un participant décède avant la conversion du solde du compte en rente, ce solde est versé à son conjoint ou, à défaut, à ses ayants cause;

4° que le constituant peut exiger la conversion du solde du compte en rente viagère en tout temps, à moins que le terme convenu des placements ne soit pas échu;

5° que le solde du compte ne peut être converti en rente garantie par un assureur que si, au décès du constituant qui est un ancien participant ou un participant, il est accordé à son conjoint qui n'y a pas renoncé une rente viagère au moins égale à 60% du montant de la rente du constituant incluant, le cas échéant, pendant la durée du remplacement, le montant de la rente temporaire;

6° que le conjoint du constituant peut, par avis écrit notifié à l'établissement financier, renoncer à son droit de recevoir le versement prévu au paragraphe 3 ou la rente prévue au paragraphe 5, et qu'il peut révoquer une telle renonciation en transmettant à l'établissement financier un avis écrit à cet effet avant le décès du constituant, dans le cas visé au paragraphe 3, et avant la date de conversion de tout ou partie du solde du compte en rente viagère, dans le cas visé au paragraphe 5;

7° que le conjoint du constituant cesse d'avoir droit à la prestation prévue au paragraphe 3 ou, selon le cas, au paragraphe 5 lors d'une séparation de corps, d'un divorce, d'une annulation de mariage, d'une dissolution ou d'une annulation d'union civile ou, s'il est non lié par un mariage ou une union civile, lors de la cessation de vie maritale, à moins que le constituant ait transmis à l'établissement financier l'avis prévu à l'article 89 de la Loi;

7.1° que la partie saisissable du solde du compte peut être payée en un seul versement en exécution d'un jugement qui, rendu en faveur du conjoint du constituant, fait droit à une saisie pour dette alimentaire;

8° que le constituant peut transférer tout ou partie du solde du compte dans un régime de retraite régi par la Loi ou visé au paragraphe 1, 2, 2.1, 2.2, 3.1, 4 ou 5 de l'article 28, à moins que le terme convenu des placements ne soit pas échu;

8.1° que le constituant peut, à moins que le terme convenu des placements ne soit pas échu, exiger que la totalité du solde du compte lui soit payée en un seul versement s'il ne réside plus au Canada depuis au moins 2 ans;

9° que le constituant peut retirer tout ou partie du solde du compte et recevoir un paiement ou une série de paiements lorsqu'un médecin certifie que son invalidité physique ou mentale réduit son espérance de vie;

9.1° que la totalité du solde du compte peut être payée en un seul versement au constituant sur demande à l'établissement financier accompagnée d'une déclaration conforme à celle prévue à l'annexe 0.2, dans les conditions suivantes:

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- a) le constituant était âgé d'au moins 65 ans à la fin de l'année précédant la demande;
- b) le total des sommes accumulées pour son compte dans les instruments d'épargne-retraite mentionnés à l'annexe 0.2 n'excède pas 40% du maximum des gains admissibles établi conformément à la Loi sur le régime de rentes du Québec (chapitre R-9) pour l'année au cours de laquelle le constituant demande le paiement;
- 10° que le constituant a droit de recevoir, au moins une fois l'an, un relevé indiquant les sommes déposées, leur provenance, les gains accumulés, les frais débités depuis le dernier relevé ainsi que le solde du compte;
- 10.1° que si une somme est payée sur le compte en contravention des dispositions de la convention ou du présent règlement, le constituant peut, à moins que ce paiement ne soit attribuable à une fausse déclaration de sa part, exiger que l'établissement financier lui verse, à titre de pénalité, une somme égale au paiement irrégulier;
- 11° que l'établissement financier ne peut apporter aucune modification qui aurait pour effet de réduire des droits résultant de la convention à moins que le constituant ait, avant la date de la modification, droit au transfert du solde du compte et ait reçu, au moins 90 jours avant la date où il peut exercer ce droit, un avis lui indiquant l'objet de la modification ainsi que la date à compter de laquelle il peut exercer ce droit;
- 12° que le transfert visé aux paragraphes 8 et 11 peut, au choix de l'établissement financier et à moins de stipulations contraires, être effectué par la remise des titres de placement relatifs au compte;
- 13° que l'établissement financier ne peut, sauf pour satisfaire aux exigences d'une loi, apporter aucune modification autre que celle prévue au paragraphe 11 sans en avoir avisé préalablement le constituant;
- 14° que l'établissement financier peut modifier la convention dans la seule mesure où elle demeure conforme au contrat type modifié et enregistré auprès de Retraite Québec.

Les articles 27 à 31 de la Loi ainsi que les deuxième et troisième alinéas de l'article 32 de cette Loi s'appliquent, compte tenu des adaptations nécessaires, à l'enregistrement d'un contrat type visant à proposer l'établissement d'un compte de retraite immobilisé ainsi qu'à ses modifications. L'enregistrement d'un tel contrat type peut en outre être radié lorsqu'aucune convention conforme à celui-ci et établissant un compte de retraite immobilisé n'est en cours et que l'établissement financier intéressé atteste qu'il n'entend plus conclure de convention conforme à ce contrat type.

D. 1158-90, a. 29; D. 1681-97, a. 17; D. 173-2002, a. 23; D. 1073-2009, a. 9; D. 500-2014, a. 13.

30. Le contrat de rente est celui en vertu duquel, en contrepartie d'un capital provenant directement ou initialement de la caisse d'un régime complémentaire de retraite, un assureur garantit au constituant qui est un ancien participant, un participant ou son conjoint une rente viagère dont le service débute immédiatement après le transfert du capital ou est différé à une date ultérieure. Le texte de ce contrat doit prévoir:

- 1° que l'assureur ne peut, aux fins de la constitution de la rente, accepter que des sommes provenant, directement ou initialement, de la caisse de retraite d'un régime régi par la Loi ou visé au paragraphe 1, 2, 2.1, 2.2, 3.1 ou 4 de l'article 28, ou d'un autre assureur partie à un contrat de rente semblable;
- 2° qu'à l'exception des cas visés au paragraphe 3 ou à l'article 31, la prestation résultant du contrat ne peut être versée au constituant ou à son conjoint que sous forme de rente viagère établie pour la durée de la vie du constituant seul ou pour la durée de la vie du constituant et celle de son conjoint; les montants périodiques versés au titre de cette rente doivent être égaux à moins que chaque montant à verser soit uniformément augmenté en fonction d'un indice ou taux prévu au contrat ou qu'il soit uniformément modifié en raison d'une saisie pratiquée sur les droits du constituant, du nouvel établissement de la rente du constituant, du partage des droits du constituant avec son conjoint, du versement d'une rente temporaire selon les conditions prévues à l'article 91.1 de la Loi ou de l'option prévue au paragraphe 3 du premier alinéa de l'article 93 de la Loi;

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3° que, dans le cas où le constituant qui est un ancien participant ou un participant décède avant le début du service de la rente, son conjoint ou, à défaut, ses ayants cause ont droit à une prestation au moins égale au capital transféré à l'assureur, avec les intérêts accumulés au taux obtenu mensuellement sur les dépôts personnels à terme de 5 ans dans les banques à charte et tel que compilé par la Banque du Canada;

4° que, dans le cas où le constituant qui est un ancien participant ou un participant décède après le début du service de sa rente, l'assureur accorde à son conjoint qui n'y a pas renoncé une rente viagère au moins égale à 60% du montant de la rente du constituant incluant, le cas échéant, pendant la durée du remplacement, le montant de la rente temporaire;

5° que le conjoint du constituant peut, par avis écrit notifié à l'assureur, renoncer à son droit de recevoir la prestation prévue au paragraphe 3 ou la rente prévue au paragraphe 4, et qu'il peut révoquer une telle renonciation en notifiant à l'assureur un avis écrit à cet effet avant le décès du constituant, dans le cas de la prestation, et avant la date du début du service de la rente au constituant, dans le cas de la rente;

6° que le conjoint du constituant cesse d'avoir droit à la prestation prévue au paragraphe 3 ou, selon le cas, au paragraphe 4 lors d'une séparation de corps, d'un divorce, d'une annulation de mariage, d'une dissolution ou d'une annulation d'union civile ou, s'il est non lié par un mariage ou une union civile, lors de la cessation de vie maritale, à moins que le constituant ait transmis à l'assureur l'avis prévu à l'article 89 de la Loi;

7° que, dans le cas où la rente servie au constituant a été établie en tenant compte du droit de son conjoint à la rente prévue au paragraphe 4, le constituant peut, si le conjoint n'a plus droit à cette rente en vertu du paragraphe 6, exiger que sa rente soit remplacée par une autre qui comporte les mêmes caractéristiques que la rente remplacée, à l'exception du droit attribué au conjoint par le paragraphe 4, et dont la valeur est égale à celle de cette rente, actualisée à la date de cette demande;

8° que la partie saisissable du capital accumulé pour le service de la rente peut être payée en un seul versement en exécution d'un jugement qui, rendu en faveur du conjoint du constituant, fait droit à une saisie pour dette alimentaire.

D. 1158-90, a. 30; D. 173-2002, a. 24; D. 1073-2009, a. 10; D. 500-2014, a. 14.

31. Le contrat de rente peut, malgré l'article 30, prévoir:

1° que le constituant peut transférer tout ou partie de la valeur actualisée de la rente qu'il reçoit ou de sa rente différée dans un régime de retraite régi par la Loi ou visé au paragraphe 1, 2, 2.1, 2.2, 3.1, 4 ou 5 de l'article 28;

2° que le constituant peut, si un médecin certifie que son invalidité physique ou mentale réduit son espérance de vie, remplacer tout ou partie de sa rente différée par un paiement ou une série de paiements; ce paiement ou, selon le cas, la somme de ces paiements doit au moins égaler la valeur actualisée de la rente ou de la partie de la rente remplacée;

3° que, s'il remplit les conditions suivantes:

— présenter une demande en ce sens à l'assureur, accompagnée d'une déclaration conforme à celle prévue à l'annexe 0.10, avant le début du service de la rente à remplacer;

— être âgé d'au moins 55 ans mais de moins de 65 ans,

le constituant peut remplacer en tout ou en partie la rente visée au paragraphe 2 de l'article 30 par une rente temporaire dont le montant annuel ne peut excéder 40% du maximum des gains admissibles établi conformément à la Loi sur le régime de rentes du Québec (chapitre R-9) pour l'année au cours de laquelle commence son service.

D. 1158-90, a. 31; D. 1681-97, a. 18; D. 173-2002, a. 25; D. 500-2014, a. 15.

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SECTION IV.1

CESSION, PARTAGE ET SAISIE DES DROITS DU CONSTITUANT

D. 173-2002, a. 26.

31.1. Les droits accumulés au nom du constituant dans un fonds de revenu viager ou un compte de retraite immobilisé ou au titre d'un contrat de rente visé à l'article 30 qui, à la suite de leur partage ou de leur cession dans les cas et les circonstances visés aux articles 107 et 110 de la Loi, sont attribués au conjoint du constituant sont acquittés par le transfert de leur valeur dans un régime régi par la Loi ou visé au paragraphe 1, 2, 2.1, 2.2, 3.1, 4 ou 5 de l'article 28.

Doit être acquittée par un paiement en un seul versement la somme attribuée au conjoint du constituant à la suite d'une saisie pour dette alimentaire pratiquée sur les droits ou les sommes accumulés au nom du constituant dans un fonds de revenu viager ou un compte de retraite immobilisé ou au titre d'un contrat de rente visé à l'article 30. Cette somme peut en outre être acquittée sans qu'il soit tenu compte des conditions ou délais qui affectent les droits du constituant.

D. 173-2002, a. 26; D. 500-2014, a. 16.

SECTION V

CESSION DE DROITS ENTRE CONJOINTS

§ 1. — *Domaine d'application et interprétation*

32. La présente section ne s'applique qu'aux régimes de retraite régis par le chapitre I de la Loi.

D. 1158-90, a. 32.

33. Pour l'application de la présente section:

«droits en capital» s'entend des droits qui ont été accumulés par le participant au titre de remboursements, de rentes ou autres prestations lorsque ces droits sont fonction de sommes qui, portées à son compte au titre de cotisations versées, d'actifs transférés et d'intérêts sur ces cotisations et actifs, n'ont pas encore servi à la constitution d'une rente ou d'une autre prestation;

«droits en rente» s'entend des droits qui ont été accumulés par le participant au titre de remboursements, de rentes ou autres prestations et qui, compte tenu des engagements prévus par le régime de retraite ou des options exercées par le participant, sont exprimés en rente ou autres prestations d'un montant déterminé ou d'un montant correspondant à un pourcentage de la rémunération du participant et inclut les droits relatifs à l'excédent des cotisations salariales du participant, avec les intérêts accumulés, sur le plafond établi à l'article 60 de la Loi et ceux relatifs à la prestation additionnelle prévue à l'article 60.1 de la Loi;

«date de l'évaluation» désigne:

1° aux fins de la préparation du relevé prévu à l'article 108 de la Loi:

a) la date de l'introduction de l'instance, si le relevé est demandé après introduction d'une demande en justice prévue au premier alinéa de cet article;

b) la date de la cessation de la vie commune du participant et de son conjoint, si le relevé est demandé à l'occasion d'une médiation effectuée préalablement à des procédures en matière familiale;

c) la date fixée pour l'établissement de la valeur nette du patrimoine familial, si le relevé est demandé au cours d'une démarche commune de dissolution de l'union civile devant notaire;

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d) la date de la cessation de la vie maritale des conjoints, si le relevé est demandé à la suite de la cessation de la vie maritale de conjoints non liés par un mariage ou une union civile;

2° à toutes autres fins, la date fixée pour l'évaluation des droits du participant dans le régime de retraite par le jugement, le contrat de transaction ou la convention qui donne lieu au partage ou à la cession de ces droits ou, en cas de silence du jugement, du contrat ou de la convention, la date prévue par la loi qui gouverne le partage des biens des conjoints;

«date de l'introduction de l'instance» réfère à la date de la demande en séparation de corps, de divorce, en annulation de mariage, en dissolution ou en annulation d'union civile ou en paiement d'une prestation compensatoire, selon la procédure à l'origine du partage ou de la cession de droits;

«période de participation» s'entend, à moins de dispositions contraires du présent règlement, du nombre de mois compris en tout ou en partie entre la date de l'adhésion du participant au régime de retraite et la date où il a cessé d'être actif, sans tenir compte des mois au cours desquels il n'était pas au service d'un employeur partie au régime; dans le cas où le participant est actif à la date de l'évaluation, la date où il a cessé d'être actif correspond à celle de l'évaluation; dans le cas de transfert de droits ou d'actifs, la période de participation comprend aussi celle qui est relative à l'adhésion aux régimes d'où proviennent les droits ou actifs transférés.

La période de participation définie au premier alinéa peut, si le régime de retraite le stipule, être établie en jours plutôt qu'en mois. Dans ce cas, le présent article ainsi que les articles 35, 39 à 42 et 44 s'appliquent en y remplaçant le mot «mois» par le mot «jours».

D. 1158-90, a. 33; D. 173-2002, a. 27; D. 1073-2009, a. 11.

33.1. Pour l'application des articles 34 à 45 en ce qui concerne des conjoints mariés dont le mariage a emporté dissolution de leur union civile:

1° la date du mariage est remplacée par la date de l'union civile;

2° la période du mariage commence à la date de l'union civile.

D. 1073-2009, a. 12.

§ 2. — *Relevé des droits du participant*

34. La demande du relevé prévu à l'article 108 de la Loi doit contenir les documents et renseignements suivants:

1° les nom et adresse du participant et de son conjoint;

2° dans le cas de conjoints mariés, une preuve de la date de leur mariage et soit une preuve de la date de l'introduction de l'instance ou, s'agissant d'une demande faite à l'occasion d'une médiation, une attestation conjointe de la date de la cessation de leur vie commune;

2.1° dans le cas de conjoints unis civilement:

a) une preuve de la date de leur union civile;

b) l'un des documents suivants, selon le cas:

i. une preuve de la date de l'introduction de l'instance;

ii. s'agissant d'une demande faite à l'occasion d'une médiation, une attestation conjointe de la date de la cessation de leur vie commune;

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iii. s'agissant d'une demande faite au cours d'une démarche commune de dissolution de l'union civile devant notaire, une attestation conjointe de la date fixée pour l'établissement de la valeur nette du patrimoine familial;

3° dans le cas de conjoints non liés par un mariage ou une union civile, une attestation du participant quant à son état matrimonial ainsi qu'une attestation du participant et de son conjoint quant aux dates de début et de fin de leur vie maritale et, s'ils ont vécu maritalement au moins 1 an mais moins de 3 ans, une preuve de l'un ou l'autre des cas visés au paragraphe 2 du premier alinéa de l'article 85 de la Loi.

La demande faite à l'occasion d'une médiation doit également contenir la confirmation écrite d'un médiateur accrédité à l'effet qu'il a obtenu un mandat dans le cadre d'une médiation familiale. Celle faite au cours d'une démarche commune de dissolution de l'union civile devant notaire doit aussi contenir la confirmation écrite d'un notaire qu'il a obtenu un mandat dans le cadre de cette démarche.

D. 1158-90, a. 34; D. 173-2002, a. 28; D. 1073-2009, a. 13.

35. Le comité de retraite doit, dans les 60 jours de la réception de la demande, fournir au demandeur et à son conjoint le relevé visé à l'article 108 de la Loi.

Ce relevé est divisé en 2 parties dont la première doit contenir les renseignements suivants:

1° les droits globaux accumulés par le participant depuis la date de son adhésion au régime jusqu'à la date de l'évaluation, ainsi que la valeur de ces droits;

2° les droits et valeur visés au paragraphe 1, ventilés suivant qu'il s'agit de droits en capital ou en rente;

3° (*paragraphe abrogé*);

4° dans le cas de conjoints mariés ou unis civilement:

a) la valeur des droits accumulés pendant le mariage ou l'union civile, ventilés suivant qu'il s'agit de droits en capital ou en rente;

b) sauf dans le cas où la valeur visée au sous-paragraphe a est calculée conformément au paragraphe 1 du premier alinéa de l'article 39, le nombre de mois compris dans la période de participation qui a débuté à la date de l'adhésion du participant au régime concerné ainsi que le nombre de ces mois compris dans la période du mariage ou de l'union civile et, quand ces données sont disponibles, le nombre de mois compris dans la période de participation à tout autre régime d'où proviennent des droits ou actifs transférés ainsi que le nombre de ces mois compris dans la période du mariage ou de l'union civile;

c) (*sous-paragraphe remplacé*);

5° dans le cas où le comité de retraite la détient, la valeur résiduelle des droits du participant après le dernier partage de droits ou la dernière cession accordée à un ancien conjoint du participant et qui a eu pour effet de réduire les droits de ce dernier.

La première partie du relevé doit être signée par celui qui l'a établie. Elle fait preuve de son contenu à moins qu'il soit démontré au tribunal que les droits et périodes dont elle fait état doivent être rectifiés ou que les valeurs qu'elle indique n'ont pas été déterminées suivant les règles prévues par la présente section.

D. 1158-90, a. 35; D. 173-2002, a. 29; D. 1073-2009, a. 14.

35.1. La deuxième partie du relevé doit contenir les renseignements suivants:

1° le nom du régime de retraite et le numéro que Retraite Québec lui a attribué;

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2° dans le cas de conjoints mariés ou unis civilement, la date du mariage ou de l'union civile et celle de l'évaluation;

3° dans le cas de conjoints non liés par un mariage ou une union civile, les dates de début et de fin de la vie maritale du participant et de son conjoint;

4° la date de l'adhésion du participant au régime;

5° les renseignements personnels dont il a été tenu compte dans l'établissement de la première partie du relevé et qui concernent le participant ou son conjoint, avec la mention qu'il peut être dans l'intérêt de ceux-ci de faire rectifier ces renseignements s'ils sont erronés;

6° les nom et adresse de la personne ressource à joindre pour tout renseignement concernant le régime;

7° les modalités et délais applicables à l'acquittement de la part qui revient au conjoint compte tenu notamment du degré de solvabilité du régime;

8° les règles gouvernant le calcul des intérêts qui s'ajoutent au montant attribué au conjoint;

9° dans le cas où les droits du participant comprennent des droits ou des actifs transférés d'un autre régime et où le comité de retraite ne détient pas les renseignements requis pour l'application de l'article 41, la mention du fait que la valeur des droits du participant indiquée dans le relevé pourrait être différente si le comité était informé des renseignements qui lui manquent;

10° dans le cas où, avant la production du relevé, la rente du participant a été établie de manière à tenir compte du droit de son conjoint à la rente visée à l'article 87 de la Loi, une brève description des droits et obligations qui découlent de l'article 89.1 de la Loi.

D. 173-2002, a. 30; D. 1073-2009, a. 15.

35.2. *(Abrogé).*

D. 173-2002, a. 30; D. 1073-2009, a. 16.

§ 3. — *Droits globaux accumulés par le participant*

36. Les droits globaux du participant doivent être ventilés suivant qu'il s'agit de droits en capital ou de droits en rente.

D. 1158-90, a. 36; D. 173-2002, a. 31; D. 1073-2009, a. 17.

36.1. Les droits globaux du participant correspondent soit à la prestation de rattachement, à la rente de retraite, à la rente d'invalidité ou à la rente de remplacement à laquelle il a droit à la date de l'évaluation soit, s'il n'a pas alors acquis droit à l'une de ces rentes, à la rente différée à laquelle il aurait droit s'il mettait fin à sa participation active à cette date.

Le cas échéant, sont également incluses dans les droits globaux du participant les sommes suivantes établies à la date de l'évaluation et augmentées des intérêts accumulés, ou la prestation que ces sommes et intérêts permettent de constituer et à laquelle le participant a droit à cette date ou à laquelle il aurait droit s'il mettait fin à sa participation active à cette date:

1° les cotisations volontaires portées à son compte;

2° l'excédent de ses cotisations salariales sur le plafond fixé par l'article 60 de la Loi;

3° la prestation additionnelle visée à l'article 60.1 de la Loi;

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

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4° les sommes qui ont déjà fait l'objet d'un transfert même non visé à l'article 98 de la Loi.

D. 1073-2009, a. 17.

37. La valeur des droits globaux du participant correspond à la somme de la valeur de ses droits en capital et de la valeur de ses droits en rente à la date de l'évaluation.

La valeur des droits en rente doit être déterminée suivant les hypothèses visées à l'article 61 de la Loi qui, à cette date, sont utilisées pour établir la valeur d'autres prestations auxquelles s'applique l'article 60 de la Loi et dont le droit s'acquiert à cette date, étant entendu qu'il n'est pas tenu compte, aux fins de cette détermination, de l'évolution de la rémunération du participant après cette date.

La valeur d'une rente différée dont le service n'est pas commencé est établie selon la formule suivante:

$$\frac{O + P}{2}$$

«O» représente la valeur de la rente différée à laquelle le participant a droit et des droits qui en sont dérivés, déterminée en supposant que le service de la rente débute à la date où le participant atteint l'âge normal de la retraite;

«P» représente la valeur de la rente différée à laquelle le participant a droit et des droits qui en sont dérivés, déterminée en supposant que le participant agit de manière à la maximiser.

Toutefois, dans le cas du participant dont les droits correspondent à la rente différée à laquelle il aurait droit s'il mettait fin à sa participation active à la date de l'évaluation, la valeur des droits relatifs à la prestation additionnelle prévue à l'article 60.1 de la Loi et, sauf si le participant a reçu le versement d'une prestation prévue à la sous-section 0.1 de la section III du chapitre VI de la Loi, celle des droits relatifs à l'excédent des cotisations salariales, avec les intérêts accumulés, sur le plafond établi à l'article 60 de la Loi sont établies en supposant que la valeur de la rente différée aux termes du paragraphe 1 du premier alinéa de l'article 60 de la Loi et pour les fins du calcul des éléments «A» et «B» de l'article 60.1 de la Loi est, quant aux services reconnus se rapportant à la période de travail durant laquelle l'article 60 de la Loi s'applique à son égard, celle établie selon la formule prévue au troisième alinéa du présent article.

D. 1158-90, a. 37; D. 173-2002, a. 32; D. 1073-2009, a. 18.

37.1. Si la date de l'évaluation correspond à une date autre que celle de l'introduction de l'instance et que la valeur des droits du participant à la date de l'évaluation n'est pas connue, la valeur des droits globaux du participant correspond au montant «E» de la formule suivante:

$$V \times p/X = E$$

«V» représente la valeur établie conformément à l'article 37 à la date de l'introduction de l'instance ou à celle où le contrat de transaction a été reçu devant notaire ou, à défaut, à la date de la demande de relevé;

«p» représente le nombre de mois de la période de participation relative à ces droits compris entre la date de l'adhésion du participant au régime de retraite et celle de l'évaluation;

«X» représente le nombre de mois de la période de participation relative à ces droits compris entre la date de l'adhésion du participant au régime et la date à laquelle la valeur «V» est établie.

D. 1073-2009, a. 19.

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§ 4. — Valeur des droits accumulés pendant le mariage ou l'union civile

D. 1158-90, ss. 4; D. 1073-2009, a. 20.

38. Dans le cas où le participant a droit à une rente de retraite, une rente d'invalidité ou une rente de remplacement à la date de l'évaluation, la valeur des droits qu'il a accumulés à la date de son mariage ou de son union civile est déterminée en supposant qu'il a aussi droit à une telle rente pour les services qui lui ont été reconnus jusqu'à cette dernière date.

D. 1158-90, a. 38; D. 1073-2009, a. 21.

39. La valeur des droits en capital accumulés pendant le mariage ou l'union civile est, selon les circonstances, déterminée comme suit:

1° lorsque le comité de retraite détient les données relatives à la somme accumulée à la date du mariage ou de l'union civile:

a) si aucune prestation visée à l'article 69.1 de la Loi n'a été acquittée et si aucun transfert visé au paragraphe 2 du deuxième alinéa de l'article 19.2 du présent règlement n'a été effectué entre la date du mariage ou de l'union civile et celle de l'évaluation, cette valeur correspond à la différence entre la valeur des droits en capital accumulés à la date de l'évaluation et la somme accumulée à la date du mariage ou de l'union civile augmentée d'intérêts pour la période comprise entre la date du mariage ou de l'union civile et celle de l'évaluation;

b) si une prestation visée à l'article 69.1 de la Loi a été acquittée ou si un transfert visé au paragraphe 2 du deuxième alinéa de l'article 19.2 du présent règlement a été effectué entre la date du mariage ou de l'union civile et celle de l'évaluation et que le comité de retraite détient les données relatives, selon le cas, au montant et à la date de paiement de cette prestation ou au montant et à la date de ce transfert, cette valeur est égale au montant «W» de la formule suivante:

$$W = Y - Z \times \frac{Y}{Y + S}$$

«Y» représente la somme accumulée à la date de l'évaluation;

«Z» représente la somme accumulée à la date du mariage ou de l'union civile, augmentée d'intérêts pour la période comprise entre cette date et celle de l'évaluation;

«S» représente le montant de la prestation acquittée augmenté d'intérêts pour la période comprise entre la date de l'acquittement et celle de l'évaluation;

2° lorsque le comité de retraite ne détient pas les données relatives à la somme accumulée à la date du mariage ou de l'union civile ou, le cas échéant, celles relatives au montant ou à la date de paiement d'une prestation visée à l'article 69.1 de la Loi ou au montant ou à la date d'un transfert visé au paragraphe 2 du deuxième alinéa de l'article 19.2 du présent règlement, cette valeur est égale au montant obtenu en multipliant la valeur des droits en capital accumulés à la date de l'évaluation par la fraction que représente le nombre de mois de la période de participation relative à ces droits compris entre la date du mariage ou de l'union civile et celle de l'évaluation sur le nombre de mois de la période de participation relative à ces droits.

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Les intérêts visés au paragraphe 1 du premier alinéa sont calculés aux taux de rendement utilisés durant la période concernée pour le calcul des intérêts sur les cotisations salariales versées par le participant ou, dans le cas d'un régime non contributif, sur les cotisations patronales. Lorsque ce taux n'est pas disponible, les intérêts sont calculés aux taux annuels prévus à l'annexe I pour les années indiquées et, pour les intérêts à calculer pour la période subséquente, aux taux annuels moyens obtenus sur les dépôts personnels à terme de 5 ans dans les banques à charte.

Les taux annuels moyens visés au deuxième alinéa sont déterminés en faisant la moyenne des taux obtenus sur ces dépôts, tels que compilés mensuellement par Statistique Canada et publiés dans la revue Statistiques bancaires et financières de la Banque du Canada dans la série V122515 du fichier CANSIM. Toutefois, lorsque les taux annuels publiés mensuellement qui peuvent être disponibles sont pour l'année courante d'un nombre inférieur à 6, cette moyenne est faite sur la base des 6 derniers taux disponibles.

Dans le cas où le résultat du calcul fait en application du troisième alinéa n'est pas un multiple du quart d'un pour cent, la moyenne est arrondie au quart inférieur.

D. 1158-90, a. 39; D. 1681-97, a. 19; D. 173-2002, a. 33; D. 1073-2009, a. 22.

40. La valeur des droits en rente accumulés pendant le mariage ou l'union civile est égale au montant obtenu par la multiplication de la valeur globale des droits en rente par la fraction que représente le nombre de mois de la période de participation relative à ces droits compris entre la date du mariage ou de l'union civile et celle de l'évaluation sur le nombre de mois de la période de participation relative à ces droits.

D. 1158-90, a. 40; D. 173-2002, a. 34; D. 1073-2009, a. 23.

41. Lorsque tout ou partie des droits en capital ou en rente, selon le cas, est constitué des droits ou d'actifs transférés d'un autre régime de retraite et que les sommes ou droits transférés, ainsi que la période de participation qui s'y rapporte, sont connus, la valeur des droits en capital ou en rente accumulés pendant le mariage ou l'union civile est, malgré l'article 39 ou l'article 40, égale au montant «V» de la formule suivante:

$$[G - T] \times a/p + T \times \frac{P - A}{P} = V$$

«G» représente la valeur globale des droits en capital ou en rente, selon le cas, accumulés à la date de l'évaluation;

«T» représente, dans le cas de droits en capital, les sommes transférées, augmentées d'intérêts calculés aux taux prévus au deuxième alinéa de l'article 39 pour la période comprise entre la date du transfert et celle de l'évaluation et, dans le cas de droits en rente, la valeur des droits transférés, actualisée à la date de l'évaluation;

«p» représente le nombre de mois de la période de participation, à l'exclusion des mois relatifs à tous droits ou actifs transférés;

«a» représente le nombre de mois de la période de participation représentée par «p» qui sont compris entre la date du mariage ou de l'union civile et celle de l'évaluation;

«A» représente le nombre de mois antérieurs au mariage ou à l'union civile et compris dans la période de participation au régime d'où proviennent les sommes ou droits transférés;

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«P» représente le nombre de mois compris dans toute la période de participation au régime d'où proviennent les sommes ou droits transférés.

D. 1158-90, a. 41; D. 173-2002, a. 35; D. 1073-2009, a. 24.

42. Dans le cas où les droits du participant ont fait l'objet d'un partage ou d'une cession au profit d'un conjoint à une date antérieure à celle de l'évaluation, la valeur des droits que le participant a accumulés pendant le dernier mariage ou la dernière union civile est égale:

1° dans le cas où la valeur résiduelle des droits en capital ou le montant de la rente résiduelle résultant de la cession ou du partage antérieur est connu, au montant «N» de la formule suivante:

$$[G - R] \times M/Q = N$$

«G» représente la valeur résiduelle globale des droits en capital ou, dans le cas de droits en rente, la valeur de la rente résiduelle globale, à la date de l'évaluation;

«R» représente:

1° quant aux droits en capital, leur valeur résiduelle à la date de l'évaluation relative à la cession ou au partage antérieur, augmentée d'intérêts calculés aux taux prévus au deuxième alinéa de l'article 39 pour la période comprise entre cette date et la date de l'évaluation;

2° quant aux droits en rente, la valeur, à la date de l'évaluation, de la rente résiduelle calculée à la date de l'évaluation relative à la cession ou au partage antérieur;

«M» représente le nombre de mois de participation compris dans la période du dernier mariage ou de la dernière union civile;

«Q» représente le nombre de mois de participation compris entre la date de l'évaluation relative à la cession ou au partage antérieur et la date de l'évaluation;

2° dans le cas contraire, à la valeur résiduelle globale des droits du participant ajustée dans la proportion que représente le nombre de mois du dernier mariage ou de la dernière union civile compris dans la période de participation sur le nombre total de mois écoulés avant et pendant ce mariage ou cette union civile et compris dans la période de participation.

D. 1158-90, a. 42; D. 173-2002, a. 36; D. 1073-2009, a. 25.

43. Lorsque la valeur résiduelle des droits en capital accumulés à la date du dernier mariage ou de la dernière union civile du participant est connue, la valeur des droits accumulés pendant ce mariage ou cette union civile est, malgré les règles prévues à l'article 42, calculée conformément au paragraphe 1 du premier alinéa de l'article 39 en y substituant la valeur résiduelle des droits à la valeur des droits.

D. 1158-90, a. 43; D. 173-2002, a. 37; D. 1073-2009, a. 26.

44. Si la date de l'évaluation correspond à une date autre que celle de l'introduction de l'instance et que la valeur des droits du participant à la date de l'évaluation n'est pas connue, la valeur des droits que le participant a accumulés durant le mariage ou l'union civile est établie en tenant compte des règles suivantes:

1° la valeur des droits en capital accumulés pendant le mariage ou l'union civile est déterminée de la manière prévue au paragraphe 2 du premier alinéa de l'article 39 ou, le cas échéant, à l'article 42;

2° à toutes fins autres que le calcul du nombre de mois de la période de participation compris entre la date du mariage ou de l'union civile et celle de l'évaluation, la date de l'introduction de l'instance, celle où le

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contrat de transaction a été reçu devant notaire ou, à défaut, celle de la demande de relevé est considérée comme date de l'évaluation pour l'application des articles 36.1 à 43.

D. 1158-90, a. 44; D. 173-2002, a. 38; D. 1073-2009, a. 27.

45. La valeur totale des droits accumulés par le participant pendant son mariage ou son union civile est égale à la somme de la valeur des droits en capital et de la valeur des droits en rente qu'il a accumulés pendant le mariage ou l'union civile.

D. 1158-90, a. 45; D. 1073-2009, a. 28.

§ 5. — Exécution du partage ou de la cession de droits

46. La demande de partage ou de cession des droits du participant doit être accompagnée d'une copie des documents suivants:

1° si elle fait suite à un jugement prononçant la séparation de corps, le divorce, la nullité du mariage ou la dissolution ou la nullité de l'union civile ou ordonnant le paiement d'une prestation compensatoire:

- a) ce jugement et tout autre jugement relatif au partage ou à la cession des droits du participant;
- b) le certificat de non appel;
- c) le cas échéant, l'entente intervenue entre les conjoints relativement au partage ou à la cession des droits du participant;

2° si elle fait suite à la dissolution d'une union civile par déclaration commune notariée, cette déclaration et le contrat de transaction;

3° si elle fait suite à la cessation de la vie maritale de conjoints non liés par un mariage ou une union civile, l'entente intervenue entre les conjoints relativement au partage des droits du participant.

D. 1158-90, a. 46; D. 173-2002, a. 39; D. 1073-2009, a. 29.

47. Sauf si la demande de partage ou d'exécution de la cession est conjointe, le comité de retraite doit, sur réception, donner au conjoint du demandeur un avis écrit l'informant de cette demande et de la somme demandée par son conjoint.

Le comité de retraite ne peut procéder à l'exécution du partage ou de la cession avant l'expiration des 60 jours qui suivent l'expédition de cet avis au conjoint du demandeur. De plus, il ne peut le faire s'il est avisé que le conjoint du participant a dûment renoncé à ses droits ou que le participant a introduit une demande judiciaire afin de s'opposer au partage ou à la cession.

D. 1158-90, a. 47; D. 1073-2009, a. 30.

48. Doivent être ajoutés à la somme qui revient au conjoint des intérêts calculés aux taux prévus au deuxième alinéa de l'article 39 si les droits partagés ou cédés faisaient partie de droits en capital ou au taux utilisé pour établir leur valeur si ces droits faisaient partie de droits en rente.

Les intérêts courent à compter de la date de l'évaluation.

D. 1158-90, a. 48; D. 173-2002, a. 40; D. 1073-2009, a. 31.

49. À moins d'indications contraires du tribunal, le comité de retraite ne peut partager les droits du participant ni exécuter la cession d'une partie de ces droits que dans la mesure où ce partage ou cette cession n'a pas pour effet de priver le participant de plus de la moitié de la valeur totale des droits qu'il a accumulés avant et pendant son mariage ou son union civile.

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Dans le cas où le jugement, l'entente intervenue entre des conjoints mariés ou unis civilement ou le contrat de transaction notarié ne prévoit pas la portion de la valeur des droits du participant ou la somme qui revient au conjoint, la valeur des droits que le participant a accumulés pendant le mariage ou l'union civile est répartie également entre les conjoints.

D. 1158-90, a. 49; D. 1073-2009, a. 32.

50. Dans les 60 jours suivant soit la réception d'une demande conjointe concernant le partage ou l'exécution de la cession soit l'expiration du délai prévu au deuxième alinéa de l'article 47 et sauf, dans ce dernier cas, s'il a été avisé de la renonciation du conjoint ou d'une opposition judiciaire au partage ou à la cession, le comité de retraite doit prendre à l'égard de la somme qui revient au conjoint, augmentée des intérêts, l'une des mesures suivantes:

1° transférer cette somme dans un autre régime de retraite auquel le conjoint adhère ou dans un régime visé au paragraphe 2.1, 2.2, 3.1, 4 ou 5 de l'article 28;

2° pourvu que le régime le permette:

- a) dans le cas où le conjoint a déjà des droits au titre du régime, transférer cette somme à son compte;
- b) dans le cas contraire, accorder au conjoint, qui prend alors la qualité de participant, des droits au titre du régime;

3° verser cette somme au conjoint ou la transférer dans un régime visé au paragraphe 3 de l'article 28 dans les cas suivants:

a) les droits partagés ou cédés correspondent à un remboursement auquel le participant aurait eu droit à la date de l'évaluation, étant entendu que, sous réserve du sous-paragraphe b, la somme qui revient au conjoint ne peut lui être versée dans une proportion supérieure à celle dans laquelle les droits du participant pouvaient être remboursés à celui-ci;

b) à la date de la demande, cette somme est inférieure à 20% du maximum des gains admissibles établi conformément à la Loi sur le régime de rentes du Québec (chapitre R-9) pour l'année au cours de laquelle est présentée la demande relative au partage ou à la cession;

c) le conjoint a cessé de résider au Canada depuis au moins 2 ans.

Dans le cas où le conjoint omet d'indiquer au comité de retraite le mode d'acquittement qu'il choisit parmi ceux mentionnés au premier alinéa:

1° les intérêts visés à l'article 48 cessent de courir à l'expiration du délai dans lequel le comité doit agir selon cet alinéa et ne recommencent à courir, le cas échéant, qu'à compter de la date où le conjoint fait connaître son choix;

2° le comité de retraite peut, à son initiative et dès l'expiration de ce délai, transférer pour le compte du conjoint la somme à acquitter dans un des régimes visés au paragraphe 1, 2 ou 3 du premier alinéa, selon le cas.

D. 1158-90, a. 50; D. 173-2002, a. 41; D. 1073-2009, a. 33; D. 500-2014, a. 17.

51. (Abrogé).

D. 1158-90, a. 51; D. 173-2002, a. 42.

52. Les articles 143 et 145 à 146 de la Loi s'appliquent, compte tenu des adaptations nécessaires, à la somme qui peut faire l'objet d'une mesure prévue au paragraphe 1 ou 3 du premier alinéa de l'article 50.

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La somme versée ou transférée conformément au paragraphe 1 ou 3 du premier alinéa de l'article 50 doit représenter, par rapport à la somme qui revient au conjoint augmentée des intérêts, une proportion au moins équivalente à celle des cotisations, montants et intérêts visés à l'article 145.1 de la Loi par rapport à la valeur totale des droits du participant.

D. 1158-90, a. 52; D. 173-2002, a. 43; D. 1073-2009, a. 34.

53. Le partage ou la cession des droits d'un participant qui est exécuté dans l'année du jugement prononçant le divorce, la séparation de corps, la nullité du mariage ou la dissolution ou la nullité de l'union civile ou ordonnant le paiement d'une prestation compensatoire ne peut être révoqué ni annulé que pour l'une des causes visées à l'article 424 du Code civil.

D. 1158-90, a. 53; D. 173-2002, a. 44; D. 1073-2009, a. 35.

54. Le comité de retraite doit, dans le cas où aucune rente de retraite, d'invalidité ou de remplacement n'est servie au participant à la date de l'exécution du partage ou de la cession de droits en rente, établir à cette date le montant de la partie de la rente normale qui, déterminée selon la somme versée au conjoint ou transférée pour son compte, aurait été payable au participant à l'âge normal de la retraite suivant les conditions et caractéristiques prévues par le régime pour cette rente. Le comité de retraite doit conserver ce montant dans ses registres.

Dans le cas où les droits en rente correspondent à une rente ajournée, le montant prévu au premier alinéa est établi en fonction de la valeur de la rente de retraite revalorisée à la date de l'exécution du partage ou de la cession conformément à l'article 79 de la Loi.

Le montant prévu au premier alinéa est établi, si le régime le prévoit, en tenant compte de l'augmentation périodique du montant de la rente, avant le début de son service, en fonction d'un indice ou taux prévu au régime. Il est établi dans tous les cas en utilisant les hypothèses prévues au deuxième alinéa de l'article 37.

D. 1158-90, a. 54; D. 173-2002, a. 45; D. 1073-2009, a. 36.

§ 6. — *Droits résiduels du participant*

55. L'exécution du partage ou de la cession des droits du participant réduit ses droits de la manière suivante:

1° lorsque les droits partagés ou cédés font partie de droits en capital, la valeur de ces droits est réduite de la somme versée au conjoint ou transférée pour son compte;

2° lorsque les droits partagés ou cédés font partie de droits en rente,

— toute rente de retraite, d'invalidité ou de remplacement dont le service a débuté est, après avoir été, le cas échéant, établie de nouveau selon l'article 89.1 de la Loi, réduite dans la proportion que représente la somme versée au conjoint ou transférée pour son compte sur la valeur qu'aurait eue, à la date de l'exécution du partage ou de la cession, la rente qui était servie au participant le jour qui a précédé la prise d'effet du jugement, la dissolution de l'union civile ou la cessation de la vie maritale, étant entendu que cette dernière valeur est établie en utilisant les mêmes hypothèses que celles utilisées pour la détermination de la valeur des droits attribués au conjoint;

— toute rente de retraite, d'invalidité ou de remplacement dont le service débute après l'exécution du partage ou de la cession doit être réduite du montant visé à l'article 54 ou, si le service de cette rente débute à une date autre que celle de l'âge normal de la retraite, d'une somme équivalant à ce montant.

— toute autre prestation, à l'exclusion d'une prestation de retraite progressive et d'une prestation visée à l'article 69.1 de la Loi, ainsi que tout droit et tout remboursement qui doit être versé ou transféré doit être réduit, jusqu'à concurrence de son montant ou de sa valeur, de la valeur de la rente dont le montant est visé à l'article 54.

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Le régime de retraite peut prévoir une manière différente de réduire les droits du participant pourvu qu'elle conduise à une réduction moindre de ces droits.

D. 1158-90, a. 55; D. 1681-97, a. 20; D. 173-2002, a. 46; D. 1073-2009, a. 37.

56. Lorsque les droits du participant qui peuvent faire l'objet d'un partage ou d'une cession au conjoint comprennent à la fois le droit à un remboursement et celui de recevoir une prestation, chacun de ces droits doit être réduit dans la proportion que représente la somme versée au conjoint ou transférée pour son compte sur la valeur totale de tels remboursement et prestation.

D. 1158-90, a. 56; D. 1073-2009, a. 38.

SECTION V.1
SAISIE DES DROITS DU PARTICIPANT

D. 173-2002, a. 47.

56.0.1. La présente section s'applique relativement à la saisie qui, visée au deuxième alinéa de l'article 109 de la Loi, est pratiquée par le conjoint du participant ou pour son compte.

D. 173-2002, a. 47.

56.0.2. La valeur des droits accumulés par le participant à la date où s'opère la saisie est déterminée selon les articles 36 à 37.1 qui s'appliquent en remplaçant la date de l'évaluation par celle de la saisie.

D. 173-2002, a. 47; D. 1073-2009, a. 39.

56.0.3. Dans le cas où les droits attribués au conjoint sont acquittés sur les droits du participant qui sont des droits en rente au sens de l'article 33, aucune rente n'étant par ailleurs servie au participant à la date où est pratiquée la saisie, le comité de retraite établit à cette date le montant de la partie de la rente normale qui, déterminée selon la valeur des droits attribués au conjoint, aurait été payable au participant à l'âge normal de la retraite suivant les conditions et caractéristiques prévues par le régime pour cette rente. Le comité de retraite doit conserver ce montant dans ses registres.

Dans le cas où les droits en rente correspondent à une rente ajournée, le montant prévu au premier alinéa est établi en fonction de la valeur de la rente de retraite revalorisée à la date de la saisie conformément à l'article 79 de la Loi.

Dans tous les cas, le montant prévu au premier alinéa est établi en utilisant les mêmes hypothèses que celles utilisées pour la détermination de la valeur des droits du participant à la date de la saisie.

D. 173-2002, a. 47.

56.0.4. Lorsque les droits du participant comprennent à la fois le droit à un remboursement et celui de recevoir une prestation, chacun de ces droits doit être réduit dans la proportion que représente la valeur des droits attribués au conjoint à la suite de la saisie sur la valeur totale de ces droits.

D. 173-2002, a. 47.

56.0.5. Sous réserve de l'article 56.0.4 et de toute disposition contraire du régime de retraite, sont d'abord affectés à l'acquittement des droits attribués au conjoint les droits en capital au sens de l'article 33.

D. 173-2002, a. 47.

56.0.6. Les droits attribués au conjoint peuvent être acquittés sans qu'il soit tenu compte des conditions ou délais qui affectent les droits du participant. L'acquittement réduit les droits de celui-ci de la manière suivante:

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

1° lorsque les droits attribués au conjoint sont acquittés sur les droits en capital, la valeur de ceux-ci est réduite du montant payé;

2° lorsque les droits attribués au conjoint sont acquittés sur les droits en rente,

— toute rente de retraite, d'invalidité ou de remplacement dont le service a débuté est réduite dans la proportion que représente le montant payé au conjoint sur la valeur de la rente servie à la date de la saisie;

— toute rente de retraite, d'invalidité ou de remplacement dont le service débute après l'acquittement doit être réduite du montant visé à l'article 56.0.3 ou, si le service de cette rente débute à une date autre que celle de l'âge normal de la retraite, d'une somme équivalente à ce montant;

— toute autre prestation, à l'exclusion d'une prestation de retraite progressive et d'une prestation visée à l'article 69.1 de la Loi, ainsi que tout droit et tout remboursement qui doit être versé ou transféré doit être réduit, jusqu'à concurrence de son montant ou de sa valeur, de la valeur de la rente dont le montant est visé à l'article 56.0.3.

Le régime de retraite peut prévoir une manière différente de réduire les droits du participant pourvu qu'elle conduise à une réduction moindre de ces droits.

D. 173-2002, a. 47; D. 1073-2009, a. 40.

SECTION VI
INFORMATION DES PARTICIPANTS ET BÉNÉFICIAIRES

56.1. Le sommaire du régime de retraite prévu à l'article 111 de la Loi doit contenir, en plus des renseignements prévus à cet article, les suivants:

- 1° l'indice ou le taux prévu au régime pour l'indexation de la rente avant et pendant son service;
- 2° les règles applicables au transfert des droits du participant dans un autre régime de retraite;
- 3° les régimes visés par toute entente-cadre permettant d'y transférer des droits ou des actifs relatifs au participant;
- 4° la nature des frais qui peuvent être imposés au participant;
- 5° les règles qui s'appliquent dans les cas où des participants décident des placements qui peuvent être faits avec l'actif du régime;
- 6° dans le cas d'un régime auquel le chapitre X de la Loi s'applique, la mention que, des participants qui cessent d'être actifs, seuls ceux dont les droits ne sont pas acquittés avant la date de la terminaison du régime ou qui cessent d'être actifs moins de 3 ans avant cette date demeurent des participants pour les fins de l'attribution éventuelle de l'excédent d'actif à la terminaison du régime.

D. 173-2002, a. 48.

56.2. Le relevé annuel prévu à l'article 112 de la Loi se compose de 2 parties dont la première se rapporte aux droits du participant ou du bénéficiaire à qui il est transmis et la seconde, à la situation financière du régime de retraite.

D. 173-2002, a. 48.

57. La première partie du relevé annuel visé à l'article 112 de la Loi et transmis à un participant actif doit contenir les renseignements suivants:

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- 1° le nom du participant;
- 2° le nom du régime de retraite et le numéro que lui a attribué Retraite Québec;
- 3° l'exercice financier concerné;
- 4° les nom et adresse de la personne ressource à joindre pour tout renseignement concernant le régime;
- 5° l'adresse du bureau du comité de retraite;
- 6° le nom de toute personne inscrite dans les registres du régime à titre de conjoint ou de bénéficiaire du participant ou, le cas échéant, l'absence d'inscription à l'un ou l'autre de ces titres;
- 7° la date de l'adhésion du participant au régime;
- 8° *(paragraphe abrogé)*;
- 9° la date où la rente normale devient payable au participant;
- 10° les cotisations salariales et les cotisations volontaires inscrites au compte du participant au cours de l'exercice financier ainsi que le total de ces cotisations, ventilé selon leur type, accumulées avec intérêt depuis l'adhésion du participant au régime jusqu'à la fin dudit exercice, déduction faite, dans le cas de cotisations versées au titre d'un régime de retraite à cotisation déterminée ou en vertu de dispositions identiques à celles d'un tel régime contenues dans un régime à prestations déterminées, des sommes appliquées au paiement d'une prestation anticipée ou à l'exécution d'une saisie, d'une cession ou d'un partage de droits;
- 11° *(paragraphe abrogé)*;
- 12° les cotisations patronales inscrites au compte du participant au cours de l'exercice financier en vertu d'un régime à cotisation déterminée ou en vertu de dispositions identiques à celles d'un tel régime contenues dans un régime à prestations déterminées ainsi que le total des cotisations patronales inscrites au compte de ce participant à la fin de l'exercice avec les intérêts accumulés déduction faite des sommes appliquées au paiement d'une prestation anticipée ou à l'exécution d'une saisie, d'une cession ou d'un partage de droits;
- 13° les droits et les sommes transférés au compte du participant et les sommes qui y ont été versées pour le rachat de services passés au cours de l'exercice financier, le total de ces droits et sommes ainsi transférés ou versées au compte du participant depuis la date de son adhésion au régime, augmenté des intérêts accumulés et ventilé selon que les droits et sommes doivent ou non servir à la constitution d'une rente ainsi que, le cas échéant, les services reconnus ajoutés ou le montant de la rente normale constituée avec ces droits ou ces sommes;
- 14° le taux appliqué au cours de l'exercice financier pour le calcul des intérêts sur les cotisations et sur les sommes visées aux paragraphes 10 à 13, ou la méthode utilisée pour calculer ces intérêts;
- 15° dans le cas de tout régime autre qu'un régime à cotisation déterminée:
 - a) les services, incluant ceux visés au paragraphe 13, reconnus au participant pour le calcul de la rente normale et inscrits dans les registres du régime à la fin de l'exercice financier;
 - b) le montant annuel de la rente normale qui serait payable au participant au titre des services qui lui sont reconnus à la fin de l'exercice financier;
 - c) le cas échéant, le montant de la réduction de cette rente résultant du paiement d'une prestation anticipée ou de l'exécution d'une saisie, d'une cession ou d'un partage de droits;

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d) lorsque la rente normale est établie suivant la rémunération annuelle ou suivant une moyenne de la rémunération du participant, la rémunération ou, le cas échéant, la rémunération moyenne que le comité a prise en compte pour l'établissement du montant prévu au sous-paragraphe *b*;

16° (*paragraphe abrogé*);

17° (*paragraphe abrogé*).

Au moins tous les 3 ans, la première partie du relevé transmis à celui qui, étant participant actif à un régime autre qu'un régime à cotisation déterminée, aurait eu droit au transfert de la valeur de ses droits à la fin du dernier exercice financier s'il avait alors cessé d'être actif, doit également indiquer les renseignements suivants:

1° la valeur des droits que le participant aurait pu transférer à la fin de cet exercice, accompagnée d'une mention expliquant que cette information n'est fournie qu'à titre indicatif et que la valeur des droits est susceptible de variations importantes en raison notamment des fluctuations des taux d'intérêts utilisés pour l'établir ainsi que des conditions de paiement des prestations;

2° la date la plus lointaine à laquelle le participant pourra cesser d'être actif tout en ayant droit au transfert;

3° les renseignements personnels relatifs au participant et à son conjoint et dont il a été tenu compte dans l'établissement de la valeur visée au paragraphe 1, avec la mention qu'il peut être dans l'intérêt de ceux-ci de faire rectifier ces renseignements s'ils sont erronés.

D. 1158-90, a. 57; D. 173-2002, a. 49.

57.1. Le relevé fourni à un participant en application de l'article 112.1 de la Loi doit contenir les renseignements suivants:

1° le nom du participant;

2° le nom du régime de retraite et le numéro que lui a attribué Retraite Québec;

3° la date du paiement de la prestation anticipée;

4° dans le cas où des droits visés à l'article 15.1 ont été affectés au paiement de la prestation:

a) le montant de la prestation payée;

b) le solde de la valeur de ces droits après paiement de la prestation;

5° dans le cas où des droits visés à l'article 15.3 ont été affectés au paiement de la prestation:

a) le montant de la prestation payée;

b) le montant de la réduction de la rente du participant consécutive au paiement de la prestation;

c) la mention que ce montant sera ajusté si les conditions et caractéristiques de la rente servie par le régime, à l'exception de celles relatives à l'anticipation ou à l'ajournement, diffèrent de celles utilisées pour établir ce montant ou si le service de cette rente commence à une date autre que celle de l'âge normal de la retraite.

D. 1681-97, a. 21; D. 173-2002, a. 50.

58. Le relevé visé au premier alinéa de l'article 113 de la Loi doit, outre ce qui est énoncé à cet alinéa relativement au remboursement, à la prestation ou aux autres droits prévus par le régime de retraite, contenir les renseignements suivants:

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- 1° la date où le participant a cessé d'être actif;
- 2° le montant qui peut lui être remboursé;
- 3° pour la période écoulée depuis la fin de l'exercice financier auquel se rapporte le dernier relevé annuel transmis au participant visé jusqu'à la date où il a cessé d'être actif, les informations prévues aux paragraphes 1 à 15 du premier alinéa de l'article 57;
- 4° dans le cas où le participant a droit au service d'une rente de retraite à l'égard de laquelle il a exercé les choix prévus au régime, les renseignements suivants:
- a) la date du début du service de la rente de retraite;
 - b) le montant de cette rente à l'exclusion des montants visés aux sous-paragraphes *c* à *h*;
 - c) le montant dont cette rente est réduite en raison du paiement d'une prestation anticipée ou de l'exécution d'une saisie, d'une cession ou d'un partage de droits, ainsi que le montant des ajustements relatifs à la réversibilité, à l'anticipation, à l'ajournement ou à l'exercice d'une option prévue à l'article 93 de la Loi;
 - d) s'il s'agit d'une rente ou fraction de rente temporaire, son montant et la date à laquelle elle cessera d'être servie;
 - e) les cotisations salariales qui excèdent le plafond fixé par l'article 60 de la Loi, et le montant de la rente additionnelle constituée avec cet excédent;
 - f) la valeur de la prestation additionnelle à laquelle le participant a droit selon l'article 60.1 de la Loi, le montant de la rente constituée avec cette prestation et, le cas échéant, la partie de la valeur de la prestation additionnelle qui doit lui être payée en un seul versement;
 - g) le montant de la rente additionnelle constituée avec ses cotisations volontaires ou avec les cotisations versées pendant la période d'ajournement de la rente et les intérêts accumulés sur celles-ci;
 - h) le montant de la rente constituée à la suite d'un transfert de droits ou d'actifs ou du rachat de services passés au profit du participant;
- 5° dans le cas où le participant a droit au service d'une rente de retraite mais n'a pas exercé les choix prévus par le régime, les renseignements suivants:
- a) la date où peut débiter le service de la rente de retraite;
 - b) le montant de cette rente à l'exclusion des montants de rente visés aux sous-paragraphes *c* à *g*, avec la mention des ajustements consécutifs au paiement d'une prestation anticipée ou à l'exécution d'une saisie, d'une cession ou d'un partage de droits et de ceux relatifs à la coordination, à l'anticipation et à l'ajournement de la rente normale;
 - c) une description des choix prévus au régime;
 - d) les cotisations salariales qui excèdent le plafond fixé par l'article 60 de la Loi, et le montant de la rente additionnelle constituée avec cet excédent;
 - e) la valeur de la prestation additionnelle à laquelle le participant a droit selon l'article 60.1 de la Loi, le montant de la rente constituée avec cette prestation et, le cas échéant, la partie de la valeur de la prestation additionnelle qui doit lui être payée en un seul versement;
 - f) le montant de la rente additionnelle constituée avec ses cotisations volontaires et les intérêts accumulés sur celles-ci;

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g) le cas échéant, la valeur et le montant de la rente constituée à la suite d'un transfert de droits ou d'actifs ou du rachat de services passés au profit du participant;

6° dans le cas où le participant a droit au service d'une prestation d'invalidité, les renseignements visés aux sous-paragraphes e à h du paragraphe 4 ainsi que les suivants:

a) la date du début du service de la rente d'invalidité;

b) le montant de la rente d'invalidité, ou le montant du paiement ou de la série de paiements résultant de l'option prévue au paragraphe 4 du premier alinéa de l'article 93 de la Loi avec, dans ce dernier cas, l'échéance de chaque paiement;

c) le montant de la réduction de la prestation d'invalidité résultant du paiement d'une prestation anticipée ou de l'exécution d'une saisie, d'une cession ou d'un partage de droits;

d) s'il s'agit d'une rente ou fraction de rente temporaire, son montant et la date à laquelle elle cessera d'être servie;

7° dans le cas du décès du participant, la nature et le montant des prestations de décès;

8° dans les autres cas, les renseignements suivants:

a) la valeur de la rente différée acquise par le participant;

b) les cotisations salariales qui excèdent le plafond fixé par l'article 60 de la Loi;

c) la valeur de la prestation additionnelle à laquelle le participant a droit selon l'article 60.1 de la Loi, le montant de la rente constituée avec cette prestation et, le cas échéant, la partie de la valeur de la prestation additionnelle qui doit lui être payée en un seul versement;

d) le cas échéant, la valeur et le montant de la rente constituée à la suite d'un transfert de droits ou d'actifs ou du rachat de services passés au profit du participant;

e) le montant de la réduction de la rente différée résultant du paiement d'une prestation anticipée ou de l'exécution d'une saisie, d'une cession ou d'un partage de droits;

9° le degré de solvabilité du régime de retraite établi à la date de la dernière évaluation actuarielle de tout le régime;

10° les renseignements personnels relatifs au participant et à son conjoint et dont il a été tenu compte dans l'établissement des montants indiqués dans le relevé, avec la mention qu'il peut être dans l'intérêt du participant de faire rectifier ces renseignements s'ils sont erronés.

D. 1158-90, a. 58; D. 1681-97, a. 22; D. 173-2002, a. 51.

59. La première partie du relevé annuel visé à l'article 112 de la Loi et transmis au participant non actif doit contenir les renseignements suivants:

1° ceux prévus aux paragraphes 1 à 6 du premier alinéa de l'article 57;

2° dans le cas où le participant a commencé à recevoir une rente de retraite:

a) le montant de cette rente;

b) s'il s'agit d'une rente qui doit être réduite pour tenir compte de tout ou partie des prestations payables en vertu d'un régime général, la date du début de cette réduction et son montant;

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c) s'il s'agit d'une rente ou d'une fraction de rente temporaire, son montant et la date à laquelle elle cessera d'être servie;

d) la nature de la prestation de décès payable dans l'hypothèse où le participant serait décédé à la date du relevé;

3° dans le cas où le participant a commencé à recevoir une prestation d'invalidité, les renseignements visés aux sous-paragraphes *a* et *c* du paragraphe 2, compte tenu des adaptations nécessaires dans le cas d'une prestation non viagère, ainsi que, dans le cas de cette dernière prestation, la date du dernier des versements prévus;

4° dans le cas où le participant a droit à une rente différée:

a) la date où il a cessé d'être actif;

b) le montant prévu de la rente, s'il s'agit d'un régime autre qu'un régime à cotisation déterminée;

c) le montant de la réduction de cette rente résultant du paiement d'une prestation anticipée ou de l'exécution d'une saisie, d'une cession ou d'un partage de droits;

d) le montant des cotisations salariales et celui des cotisations patronales versées au titre du régime s'il s'agit d'un régime de retraite à cotisation déterminée ou en vertu de dispositions identiques à celles d'un tel régime s'il s'agit d'un régime à prestations déterminées, avec les intérêts accumulés;

e) le montant des cotisations salariales qui excèdent le plafond fixé par l'article 60 de la Loi et celui des cotisations volontaires, avec les intérêts accumulés dans chaque cas;

f) le montant de la rente constituée avec la prestation additionnelle à laquelle le participant a droit en vertu de l'article 60.1 de la Loi;

g) les droits et les sommes transférés au compte du participant et les sommes qui y ont été versées pour le rachat de services passés au cours de l'exercice financier, le total des droits et des sommes ainsi transférés ou versées au compte du participant depuis la date de son adhésion au régime, avec les intérêts accumulés, ventilés selon qu'ils doivent ou non servir à la constitution d'une rente et, le cas échéant, les services reconnus ajoutés ou le montant de la rente normale constituée avec ces droits ou ces sommes;

h) le taux appliqué ou la méthode utilisée au cours de l'exercice financier pour le calcul des intérêts visés aux sous-paragraphes *d* à *g*;

5° dans le cas où la valeur des droits du participant n'a été acquittée qu'en partie par application de l'article 142 ou 143 de la Loi, le solde qui reste à acquitter et l'indication de chaque année au cours de laquelle un paiement sera fait.

Au moins tous les 3 ans, la première partie du relevé transmis à un participant non actif qui a droit à une rente différée au titre d'un régime autre qu'un régime à cotisation déterminée et qui pourra, à une date postérieure à celle de la transmission du relevé, transférer la valeur de ses droits dans un autre régime de retraite doit également contenir les renseignements suivants:

1° la valeur, à la fin de l'exercice financier, des droits susceptibles d'être transférés, accompagnée d'une mention expliquant que cette information n'est fournie qu'à titre indicatif et que la valeur des droits est susceptible de variations importantes en raison notamment des fluctuations des taux d'intérêts utilisés pour l'établir ainsi que des conditions de paiement de la rente différée;

2° la date la plus lointaine à laquelle le participant pourra exercer son droit au transfert;

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3° les renseignements personnels relatifs au participant et à son conjoint et dont il a été tenu compte dans l'établissement de la valeur visée au paragraphe 1, avec la mention qu'il peut être dans l'intérêt du participant de faire rectifier ces renseignements s'ils sont erronés.

D. 1158-90, a. 59; D. 1681-97, a. 23; D. 173-2002, a. 51.

59.0.1. La première partie du relevé annuel visé à l'article 112 de la Loi et transmis au bénéficiaire doit contenir les renseignements suivants:

- 1° le nom du bénéficiaire;
- 2° les renseignements prévus aux paragraphes 2 à 5 du premier alinéa de l'article 57;
- 3° le montant de la prestation versée;
- 4° si une réduction de cette prestation est prévue, le montant de cette réduction et la date où elle pourra intervenir;
- 5° s'il s'agit d'une prestation temporaire, son montant et la date à laquelle elle cessera d'être servie;
- 6° l'indice ou le taux utilisé pour l'indexation de cette prestation.

D. 173-2002, a. 52.

59.0.2. La deuxième partie de tout relevé annuel visé à l'article 112 de la Loi doit, si le relevé est transmis à un participant ou bénéficiaire d'un régime de retraite auquel le chapitre X de la Loi s'applique, contenir les renseignements suivants:

- 1° le degré de solvabilité du régime de retraite établi à la date de la dernière évaluation actuarielle de tout le régime et, si ce degré est inférieur à 100%, les mesures prises pour lui faire atteindre ce niveau;
- 2° le moindre de l'excédent d'actif du régime de retraite déterminé selon l'approche de capitalisation et de celui déterminé selon l'approche de solvabilité lors de la dernière évaluation actuarielle de tout le régime;
- 3° la cotisation patronale que l'employeur a versée au cours de l'exercice financier concerné;
- 4° les cotisations salariales que les participants ont versées au cours de l'exercice financier concerné;
- 5° la part de l'excédent d'actif du régime affectée à l'acquittement de la cotisation patronale au cours de l'exercice financier et celle affectée au cours de cet exercice au financement d'engagements supplémentaires résultant d'une modification du régime.

Si le relevé est transmis à un participant ou bénéficiaire qui n'est pas visé au premier alinéa, cette partie doit indiquer l'excédent d'actif du régime et la part de cet excédent qui a été affectée à l'acquittement de la cotisation patronale au cours de l'exercice financier.

D. 173-2002, a. 52.

59.1. Dans le cas d'un régime de retraite simplifié, les relevés visés au paragraphe 1 de l'article 112 et à l'article 113 de la Loi doivent indiquer si les dépenses d'administration sont à la charge en tout ou en partie des participants ou de la caisse de retraite, ainsi que le montant de ces dépenses ou la formule pour le déterminer et ce, par participant en ventilant la part de ces dépenses assumée par le participant, la caisse de retraite ou l'employeur.

D. 658-94, a. 8; D. 173-2002, a. 53.

60. Les autres documents qui, en vertu de l'article 114 de la Loi, peuvent être consultés par un travailleur admissible, un participant ou un bénéficiaire sont:

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

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1° toute disposition faisant partie d'un document prévoyant des conditions de travail relatives au régime de retraite;

1.1° le règlement intérieur du comité de retraite;

2° la politique de placement du comité de retraite;

3° les actes de délégation des pouvoirs du comité de retraite;

4° toute entente-cadre permettant aux participants de transférer des droits ou des actifs dans un autre régime;

5° les déclarations annuelles et les rapports financiers visés à l'article 161 de la Loi;

6° les rapports qui, transmis à Retraite Québec, sont relatifs aux évaluations actuarielles du régime;

7° les documents visés au paragraphe 3 du deuxième alinéa de l'article 24 de la Loi;

7.1° dans le cas d'un régime de retraite garanti, tout rapport préparé par l'assureur relativement au régime;

8° la correspondance échangée entre Retraite Québec et le comité de retraite au cours des 60 mois qui précèdent la date de la demande de consultation, à l'exception de celle portant sur un autre travailleur, participant ou bénéficiaire;

9° (*paragraphe abrogé*).

D. 1158-90, a. 60; D. 173-2002, a. 54; D. 1073-2009, a. 41.

SECTION VI.1

RÉSERVE ET PROVISION POUR ÉCARTS DÉFAVORABLES

D. 1073-2009, a. 42.

§ 1. — *Éléments constitutifs de la réserve*

D. 1073-2009, a. 42.

60.1. Les éléments suivants sont susceptibles de contribuer à la constitution de la réserve prévue à l'article 128 de la Loi:

1° les cotisations versées à la caisse de retraite qui excèdent celles requises pour que le régime de retraite soit solvable, incluant les cotisations dont l'employeur est libéré du paiement en application de l'article 42.1 de la Loi;

2° les écarts favorables résultant des changements apportés aux hypothèses et méthodes actuarielles ou des différences entre les hypothèses utilisées et les résultats obtenus, en tenant compte du rendement obtenu sur ces écarts;

3° les modifications au régime qui ont réduit la valeur des droits des participants.

D. 1073-2009, a. 42.

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§ 2. — *Provision pour écarts défavorables*

D. 1073-2009, a. 42.

60.2. Outre les cas où elle doit être déterminée en application de la Loi, la provision pour écarts défavorables prévue à l'article 128 de la Loi est calculée lors de la dernière évaluation actuarielle d'un régime de retraite sur la base de laquelle:

1° des cotisations d'équilibre doivent être versées relativement à un déficit actuariel de modification déterminé lors d'une évaluation actuarielle antérieure alors que l'évaluation actuarielle complète montre que le régime est solvable et capitalisé, sauf si un actuaire certifie que l'actif du régime est inférieur au passif augmenté de la provision pour écarts défavorables;

2° les cotisations d'équilibre qui restent à verser relativement à tout déficit actuariel de modification déterminé lors d'une évaluation actuarielle antérieure sont éliminées en application de l'article 131 de la Loi;

3° l'excédent d'actif est affecté à l'acquittement de cotisations patronales en vertu de l'article 146.3.4 de la Loi;

4° l'employeur demande la réduction du montant de la lettre de crédit en vertu de l'article 15.0.0.4.

La valeur du passif pris en considération pour le calcul de la provision pour écarts défavorables est établie en faisant abstraction, le cas échéant, de toute modification du régime considérée pour la première fois lors de l'évaluation.

D. 1073-2009, a. 42.

60.3. La provision pour écarts défavorables est égale au montant «P» de la formule suivante:

$$(T \times R) + (7\% \times S) + X = P$$

«T» représente le taux, exprimé en pourcentage, obtenu en multipliant l'élément «D» déterminé conformément à l'article 60.4 par 0,0175;

«R» représente la valeur du passif associé aux rentes en service, autres que les rentes garanties, augmentée, si les politiques établies par le comité de retraite en disposent ainsi, de la valeur des droits des participants au régime de retraite dont l'âge est inférieur de moins de 10 ans à l'âge normal de la retraite et à qui aucune rente n'est servie, cette dernière valeur excluant ici celle des cotisations visées aux paragraphes 1 et 2 de l'élément «S» versées par ces participants et celle des rentes garanties constituées pour leur compte;

«S» représente la valeur du passif du régime réduite d'un montant représentant la somme des valeurs suivantes:

1° celle des cotisations volontaires et des cotisations accessoires optionnelles versées à la caisse de retraite, avec les intérêts accumulés;

2° celle des cotisations versées au titre d'un régime à cotisation déterminée auquel s'applique le chapitre X de la Loi ou en vertu de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles d'un régime à cotisation déterminée, avec les intérêts accumulés;

3° celle du passif associé aux rentes en service augmentée, si les politiques établies par le comité de retraite en disposent ainsi, de la valeur des droits des participants au régime dont l'âge est inférieur de moins de 10 ans à l'âge normal de la retraite et à qui aucune rente n'est servie, cette dernière valeur excluant ici celle des cotisations visées aux paragraphes 1 et 2 versées par ces participants;

4° celle du passif associé aux rentes différées garanties non visées par le paragraphe 3;

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«X» représente:

1° dans le cas où le taux que représente l'élément «T» est inférieur à 7%, le résultat de la formule

$$(R - V) \times (7\% - T)$$

dans laquelle «V» est égal à l'élément «V» de l'article 60.4;

2° dans les autres cas, zéro.

D. 1073-2009, a. 42.

60.4. Dans le cas où la valeur que représente l'élément «R» de l'article 60.3 est nulle, l'élément «D» de cet article est égal à zéro.

Dans les autres cas, cet élément «D» correspond au résultat, en valeur absolue, de la formule suivante:

$$R \times d^R - V \times d^M$$

R

«R» représente l'élément «R» de l'article 60.3;

«d^R» représente la durée du passif constituant l'élément «R»;

«V» représente le moindre des montants suivants:

1° celui qui équivaut au produit de l'actif du régime de retraite à la date de l'évaluation actuarielle par la moyenne des pourcentages que représente le montant des placements à revenu fixe pris en compte aux fins de ce calcul sur l'actif du régime à la date de l'évaluation ainsi que le dernier jour de chacun des 11 mois qui précèdent le jour de cette évaluation ou, dans le cas d'un régime en vigueur depuis moins d'un an, le dernier jour de chaque mois compris entre la date d'entrée en vigueur du régime et celle de l'évaluation;

2° celui qui équivaut à la valeur que représente l'élément «R»;

«d^M» représente le résultat de la somme de chaque montant ayant servi au calcul de la moyenne visée au paragraphe 1 de l'élément «V» multiplié par sa durée, divisée par le total de ces montants.

Aux fins du paragraphe 1 de l'élément «V»:

1° l'actif du régime est réduit de la valeur des rentes garanties ainsi que de celle des cotisations visées aux paragraphes 1 et 2 de l'élément «S» de l'article 60.3 qui font l'objet d'un placement distinct;

2° le montant des placements à revenu fixe d'un régime de retraite est déterminé en incluant celui de tout placement à revenu variable associé à un instrument financier qui le transforme en placement à revenu fixe mais en excluant celui de tout placement à revenu fixe associé à un instrument financier qui le transforme en placement à revenu variable.

D. 1073-2009, a. 42.

60.5. L'élément «d^M» de l'article 60.4 est établi par l'actuaire responsable de l'évaluation actuarielle à l'aide des durées calculées par celui qui effectue le placement de toute partie de l'actif du régime.

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Aux fins d'une évaluation actuarielle partielle, l'actuaire peut estimer les éléments «R» et «S» de l'article 60.3 de même que la durée du passif constituant cet élément «R».

D. 1073-2009, a. 42.

SECTION VI.2

PROVISION DE STABILISATION

D. 608-2016, a. 2

60.6. Le niveau visé de la provision de stabilisation prévue à l'article 125 de la Loi est déterminé, conformément à la grille suivante, en fonction du pourcentage de l'actif alloué dans des placements à revenu variable selon la cible de la politique de placement du régime en vigueur à la date de l'évaluation actuarielle du régime et du rapport entre la durée de l'actif et celle du passif du régime à cette date:

		Durée actif/durée passif (%)				
		0	25	50	75	100
Actif alloué dans des placements à revenu variable (%)	0	12	10	8	6	5
	20	14	12	10	8	6
	40	16	14	12	10	8
	50	17	15	13	11	9
	60	19	17	15	13	11
	70	22	20	18	16	14
	80	24	22	20	18	16
	100	27	25	23	21	20

L'actif alloué dans des placements à revenu variable est celui alloué dans des placements autres qu'à revenu fixe.

Lorsque le pourcentage de l'actif du régime alloué dans des placements à revenu variable ou le rapport entre la durée de l'actif et celle du passif du régime se situe entre deux pourcentages indiqués dans la grille, le niveau visé de la provision de stabilisation est calculé par interpolation linéaire et le résultat est arrondi à la première décimale.

D. 608-2016, a. 2

60.7. Les instruments dérivés ne peuvent être considérés dans l'actif pour établir le niveau visé de la provision de stabilisation.

Toutefois, les instruments dérivés qui ont pour effet d'augmenter l'exposition de la caisse du régime aux risques du marché boursier doivent être ajoutés à l'actif alloué dans des placements à revenu variable.

De plus, les instruments dérivés peuvent être considérés aux fins d'établir la durée de l'actif.

D. 608-2016, a. 2

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60.8. Pour l'application de la présente section, les placements à revenu fixe sont les suivants:

1° l'encaisse;

2° les titres sur le marché monétaire dont la cote, établie par une agence de notation mentionnée au troisième alinéa, est celle indiquée relativement à cette agence ou une cote supérieure;

3° les titres sur le marché obligataire dont la cote, attribuée par une agence de notation mentionnée au troisième alinéa, est celle indiquée relativement à cette agence ou une cote supérieure;

4° les créances hypothécaires de premier ou de deuxième rang dont le montant n'est pas supérieur à 75% de la valeur des biens-fonds qui en garantissent le paiement.

L'actif placé dans des biens en infrastructure ou dans des biens immobiliers peut, à concurrence de 50%, être considéré comme un placement à revenu fixe. Sont exclus les placements dans des titres sur le marché boursier.

Les cotes minimales, selon l'agence de notation et le type de placement, sont les suivantes:

Agence de notation	Cote	
	Titres sur le marché obligataire	Titres sur le marché monétaire
DBRS	BBB	R-2 (moyen)
Fitch Ratings	BBB-	F-3
Moody's Investors Service	Baa3	P-3
Standard & Poor's	BBB-	A-3

Peuvent en outre être considérés comme des placements à revenu fixe, les titres sur le marché monétaire ou obligataire dont la cote attribuée par une autre agence de notation, reconnue par une autorité compétente, est d'un niveau au moins équivalent à celui indiqué relativement aux agences mentionnées au troisième alinéa.

D. 608-2016, a. 2

60.9. La durée de l'actif est établie par l'actuaire responsable de l'évaluation actuarielle. Elle est égale au total de la durée de chaque placement à revenu fixe prévu par la politique de placement pondérée en fonction de la cible de la politique de placement établie pour ce placement.

La durée de chaque placement est établie selon l'indice de référence prévu par la politique de placement relativement à ce placement. La durée d'un placement pour lequel aucun indice n'est prévu par la politique de placement est calculée par celui qui effectue le placement de toute partie de l'actif du régime.

La durée attribuée à un placement dans des biens en infrastructure ou dans des biens immobiliers ne peut excéder 6.

D. 608-2016, a. 2

60.10. La durée du passif est établie par l'actuaire responsable de l'évaluation actuarielle selon la formule suivante:

$$(P - P_+) / (2 * P * 0,01)$$

dans laquelle,

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

« P » est la valeur du passif selon l'approche de capitalisation, à la date de l'évaluation actuarielle, établie en utilisant le taux d'actualisation déterminé par l'actuaire;

« P₋ » est cette valeur du passif établie en utilisant ce taux d'actualisation moins 1%;

« P₊ » est cette même valeur du passif établie en utilisant ce même taux d'actualisation plus 1%.

Pour l'application du présent article, le passif du régime doit être augmenté de la valeur des engagements supplémentaires résultant de toute modification considérée pour la première fois à la date de l'évaluation actuarielle du régime.

D. 608-2016, a. 2

60.11. À défaut de cible fixée par la politique de placement du régime en vigueur le 31 décembre 2015, la cible prévue par la politique de placement en vigueur à la date de production du rapport relatif à l'évaluation actuarielle visée à l'article 318.2 de la Loi doit être utilisée.

D. 608-2016, a. 2

SECTION VII

PLACEMENTS

61. Il ne peut être consenti un prêt à l'employeur ou à une société ou personne visée à l'article 177 de la Loi que si ce prêt est totalement garanti, selon le cas, par l'une ou l'autre des sûretés suivantes:

1° dans le cas d'un participant, de son conjoint ou enfant, une hypothèque sur un immeuble;

2° dans les autres cas:

a) une hypothèque de premier rang;

b) l'hypothèque d'un placement présumé sûr visé à l'article 1339 du Code civil ou d'une valeur de premier ordre visée à l'article 3 du Règlement sur les valeurs mobilières (chapitre V-1.1, r. 50);

c) l'hypothèque d'un titre garanti par une sûreté de premier rang;

d) la garantie du gouvernement du Québec, du Canada, d'une province canadienne, de l'un de leurs organismes ou d'un établissement financier habilité à garantir des emprunts au Canada.

D. 1158-90, a. 61; D. 173-2002, a. 55.

SECTION VII.1

FUSIONS DES ACTIFS ET DES PASSIFS DE PLUSIEURS RÉGIMES DE RETRAITE

D. 173-2002, a. 56.

61.1. L'avis prévu à l'article 196 de la Loi doit contenir:

1° le nom du régime absorbé et le numéro que Retraite Québec lui a attribué;

2° le nom du régime absorbant et le numéro que Retraite Québec lui a attribué;

3° le nombre de participants et de bénéficiaires que compte le régime absorbé à la date de la prise d'effet de la modification visant à fusionner les actifs et les passifs des régimes visés;

*Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6***RÉGIMES COMPLÉMENTAIRES DE RETRAITE**

4° dans le cas où la fusion ne vise pas la totalité de l'actif du régime absorbé, la description du groupe formé des participants et des bénéficiaires dont les droits seraient transférés au régime absorbant et leur nombre;

5° les dispositions des régimes concernés relatives à l'attribution de l'excédent d'actif déterminé lors de la terminaison et, si l'un des régimes ne comporte aucune disposition de cette nature, la mention de ce fait et de la règle édictée par le deuxième alinéa de l'article 288.1 de la Loi;

6° dans le cas prévu au quatrième alinéa de l'article 196 de la Loi, la mention de la règle qui y est énoncée, l'identité de ceux dont l'assentiment est requis en vertu de l'article 146.5 de la Loi pour la modification du régime absorbé et la mention que ces assentiments ont déjà été obtenus ou non;

7° la mention que, si Retraite Québec autorise la fusion, seules les dispositions du régime absorbant s'appliqueront, pour ce qui concerne le droit de l'employeur d'affecter l'excédent d'actif du régime à l'acquittement de ses cotisations ainsi que l'attribution d'excédent d'actif en cas de terminaison, à l'égard des participants et bénéficiaires du régime absorbé qui seront visés par la fusion;

8° la mention que les participants et les bénéficiaires dont les droits pourraient être transférés du régime absorbé au régime absorbant peuvent, dans les 60 jours de la date de réception de l'avis ou, le cas échéant, de celle de la publication de l'avis prévu au deuxième alinéa de l'article 230.4 de la Loi, selon la plus tardive, faire connaître par écrit au comité de retraite leur opposition à la fusion des régimes;

9° l'adresse du comité de retraite;

10° le nom du signataire, l'attestation qu'il est dûment autorisé par le comité pour faire cet avis ainsi que la date de la signature.

D. 173-2002, a. 56.

SECTION VIII**LIQUIDATION DES DROITS DES PARTICIPANTS ET DES BÉNÉFICIAIRES**

D.1158-90, sec. VIII; D. 173-2002, a. 57.

62. Le rapport prévu au deuxième alinéa de l'article 202 de la Loi doit contenir les renseignements suivants:

1° le nom du régime de retraite et le numéro que Retraite Québec lui a attribué;

2° la date de la prise d'effet de la modification qui donne lieu au retrait et le nom de l'employeur visé;

3° la valeur de l'actif du régime à la date de l'évaluation des droits des participants et bénéficiaires;

4° les cotisations patronales et salariales requises et celles versées pour la période comprise entre la date de la fin du dernier exercice financier du régime et celle du retrait, en distinguant les cotisations qui se rapportent à l'employeur visé de celles qui se rapportent à l'ensemble des autres employeurs;

5° l'actif alloué au groupe composé des droits des participants et bénéficiaires visés par le retrait et celui alloué à l'ensemble des autres groupes conformément aux articles 220 à 227 de la Loi ainsi que la description de la méthode utilisée;

6° le cas échéant, les hypothèses et méthodes utilisées pour établir la valeur de l'actif et celle des droits des participants et bénéficiaires du régime;

7° la valeur des droits des participants et des bénéficiaires non visés par le retrait;

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

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8° les noms des participants et des bénéficiaires visés par le retrait, regroupés selon les catégories prévues au paragraphe 2 de l'article 201 de la Loi, ainsi que la nature et la valeur de leurs droits à la date de leur évaluation;

9° le degré de solvabilité du régime à la date de l'évaluation des droits des participants et bénéficiaires;

10° dans le cas où, à l'égard de l'employeur et des participants et bénéficiaires visés par le retrait, les cotisations versées sont inférieures aux cotisations requises, la mention de la part des cotisations non versées qui est afférente aux cotisations patronales, aux cotisations salariales et aux cotisations volontaires;

11° le cas échéant, la dette de l'employeur visé par le retrait, la description des moyens mis en oeuvre pour en assurer le recouvrement ainsi que la répartition de cette dette entre les participants et les bénéficiaires visés par le retrait;

12° dans le cas où, à la date de l'évaluation des droits des participants et bénéficiaires visés par le retrait, l'actif alloué au groupe composé de ces droits est, après déduction de toute cotisation relative à ce groupe et visée à l'article 227 de la Loi, inférieur à la valeur des droits de ces participants et bénéficiaires, le montant de la réduction de droits que subirait chacun d'eux si la dette de l'employeur et les cotisations non versées n'étaient pas recouvrées;

13° la description des modes d'acquittement offerts à chaque catégorie de participants ou bénéficiaires visés par le retrait;

14° l'attestation de l'auteur du rapport que celui-ci a été préparé conformément aux dispositions de la Loi et du présent règlement;

15° les nom et adresse de l'auteur du rapport, son titre professionnel ainsi que la date de la signature.

Dans le cas prévu au paragraphe 12 du premier alinéa, la valeur des droits des participants et bénéficiaires visés par le retrait doit être ventilée selon chaque élément de l'ordre d'acquittement prévu à l'article 218 de la Loi.

D. 1158-90, a. 62; D. 173-2002, a. 57; D. 1073-2009, a. 43.

63. La déclaration de terminaison que le comité de retraite transmet en application de l'article 207.1 de la Loi doit être conforme à celle prévue à l'annexe II lorsque la terminaison fait suite à l'avis d'un employeur et à l'annexe III lorsque la terminaison fait suite à une décision de Retraite Québec. Le comité qui transmet une déclaration conforme à celle prévue à l'annexe II doit y annexer une copie de l'avis de terminaison.

D. 1158-90, a. 63; D. 1895-93, a. 3; D. 173-2002, a. 57.

64. Le rapport de terminaison prévu à l'article 207.2 de la Loi doit contenir les renseignements suivants, compte tenu des adaptations nécessaires, dans le cas d'un régime garanti ou d'un régime visé au paragraphe 2 de l'article 116 de la Loi:

1° le nom du régime de retraite et le numéro que Retraite Québec lui a attribué;

2° la date de la terminaison du régime;

3° la valeur de l'actif du régime à la date de la terminaison, ventilée selon la nature de chaque élément qui le compose;

4° les cotisations patronales et salariales requises et celles versées pour la période comprise entre la date de la fin du dernier exercice financier du régime et la date de la terminaison;

5° dans le cas d'un régime visé au deuxième alinéa de l'article 230.0.1 de la Loi:

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a) l'actif alloué à chaque groupe de droits, établi conformément aux articles 220 à 227 et 230.0.1 de la Loi;

b) le cas échéant, l'excédent d'actif alloué à chaque groupe de droits et la proportion de l'excédent d'actif à la date de terminaison que cette somme représente;

c) la description de la méthode utilisée pour l'établissement des sommes visées aux sous-paragraphes a et b;

6° le cas échéant, les hypothèses et méthodes utilisées pour établir la valeur de l'actif et celle des droits des participants et bénéficiaires du régime;

7° les noms des participants et bénéficiaires visés par la terminaison, ventilés par employeur et selon les catégories visées à l'article 207 de la Loi, ainsi que la nature et la valeur de leurs droits à la date de la terminaison;

8° dans le cas d'un régime auquel s'applique le chapitre X de la Loi, le rapport entre la valeur de l'actif et celle du passif établies conformément à l'article 212.1 de la Loi, chacune de ces valeurs étant réduite d'un montant représentant la somme des valeurs suivantes:

a) celle des cotisations volontaires versées à la caisse de retraite, avec les intérêts accumulés;

b) celle des cotisations versées à la caisse de retraite en vertu de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles d'un régime à cotisation déterminée, avec les intérêts accumulés;

c) celle des sommes reçues par le régime par suite d'un transfert même non visé au chapitre VII de la Loi, avec les intérêts accumulés;

8.1° le cas échéant, le montant dont le paiement est requis en application de l'article 15.0.0.10;

9° dans le cas où, à l'égard d'un employeur visé par la terminaison, les cotisations versées sont inférieures aux cotisations requises, la mention de la part des cotisations non versées qui est afférente à la cotisation patronale, aux cotisations salariales et aux cotisations volontaires;

10° le cas échéant, la dette de chaque employeur visé par la terminaison établie conformément à l'article 228 de la Loi;

11° dans le cas où, à la date de la terminaison, l'actif alloué à un groupe de droits de participants et bénéficiaires visés par la terminaison est, après déduction de toute cotisation relative à ce groupe et visée à l'article 227 de la Loi, inférieur à la valeur des droits de ces participants et bénéficiaires, le montant de la réduction de droits que subirait chacun d'eux si la dette de l'employeur et les cotisations non versées n'étaient pas recouvrées;

12° la liste des modes d'acquittement offerts selon chaque catégorie de participants et bénéficiaires visés par la terminaison;

13° l'attestation de l'auteur du rapport:

a) que celui-ci a été préparé conformément aux dispositions de la Loi et du présent règlement;

b) dans le cas où le rapport doit être préparé par un actuaire, qu'il est conforme aux normes de l'Institut canadien des actuaires;

c) dans le cas où le rapport peut être préparé par le comité de retraite, qu'il est membre du comité ou qu'il est mandaté par ce dernier pour préparer le rapport;

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14° le nom de l'auteur du rapport, son titre professionnel ainsi que la date de la signature.

Dans le cas prévu au paragraphe 11 du premier alinéa, la valeur des droits des participants et bénéficiaires visés doit être ventilée selon chaque élément de l'ordre d'acquittement prévu à l'article 218 de la Loi.

D. 1158-90, a. 64; D. 173-2002, a. 57; D. 1073-2009, a. 44.

65. Le relevé prévu à l'article 207.3 de la Loi doit comporter, outre les informations prescrites par cet article, les renseignements suivants:

1° ceux visés aux paragraphes 3 à 10 de l'article 58, établis ou mis à jour à la date de la terminaison;

2° l'actif, le passif ainsi que l'excédent ou le manque d'actif du régime de retraite indiqués dans le rapport de terminaison pour l'employeur auquel se rapporte le participant ou bénéficiaire à qui le relevé est adressé;

3° en cas de manque d'actif, les moyens mis en oeuvre pour faire verser les montants dus à la caisse de retraite par l'employeur concerné;

4° les renseignements visés aux paragraphes 9 à 11 du premier alinéa de l'article 64 relatifs à ce participant ou bénéficiaire ou à l'employeur auquel il se rapporte;

5° lorsque tout ou partie de l'excédent d'actif du régime est attribué aux participants et bénéficiaires en application du deuxième ou du troisième alinéa de l'article 230.1 de la Loi, la proportion de l'excédent d'actif qui est attribuée au participant ou bénéficiaire.

D. 1158-90, a. 65; D. 1895-93, a. 4; D. 173-2002, a. 57.

66. Le complément au rapport de terminaison visé à l'article 207.5 de la Loi doit contenir les renseignements suivants:

1° le nom du régime de retraite et le numéro que Retraite Québec lui a attribué;

2° l'excédent d'actif du régime à la date de la terminaison et à la date la plus récente à laquelle sa valeur est connue;

3° la description de la méthode de répartition de l'excédent d'actif conformément à toute déclaration, entente ou sentence arbitrale visée au premier alinéa de l'article 230.1 de la Loi, ou à tout accroissement ou attribution prévu au deuxième ou troisième alinéa de l'article 230.1 ou à l'article 230.3 de la Loi;

4° le nom de chaque employeur partie au régime et, pour chacun d'eux, l'excédent d'actif alloué au groupe de droits qui s'y rapporte, la part d'excédent d'actif qui lui revient à chacune des dates visées au paragraphe 2 et la proportion que cette part représente aux mêmes dates par rapport à l'excédent d'actif total du régime;

5° dans le cas où une partie de l'excédent d'actif revient à des personnes qui demeurent ou sont réputées participants ou bénéficiaires en vertu de l'article 240.2, 308.3 ou 310.1 de la Loi, les hypothèses et méthodes actuarielles utilisées pour établir la valeur présumée de leurs droits aux fins de la détermination de la partie de l'excédent qui leur revient;

6° dans le cas où une partie de l'excédent d'actif revient à des participants ou des bénéficiaires:

a) leurs noms;

b) la part que chacun aurait obtenue si l'excédent d'actif avait été attribué à la date de la terminaison;

c) une estimation de la part que chacun recevra, établie à la plus récente des dates visées au paragraphe 2;

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d) les modes d'acquittement de l'excédent d'actif ainsi attribué;

7° l'attestation de l'auteur:

a) que le complément au rapport de terminaison a été préparé conformément aux dispositions de la Loi et du présent règlement;

b) dans le cas où le complément doit être préparé par un actuaire, qu'il est conforme aux normes de l'Institut canadien des actuaires;

c) dans le cas où le complément peut être préparé par le comité de retraite, qu'il est membre du comité ou qu'il est mandaté par ce dernier pour préparer le complément;

8° le nom de l'auteur, son titre professionnel ainsi que la date de la signature.

D. 1158-90, a. 66; D. 1895-93, a. 5; D. 173-2002, a. 57.

67. Sauf indication contraire, les droits d'un participant ou bénéficiaire qui sont visés aux articles 62 à 66 ne comprennent pas la part qu'il pourrait avoir dans l'excédent d'actif.

D. 1158-90, a. 67; D. 1895-93, a. 6; D. 173-2002, a. 57.

67.1. Le projet d'entente visé à l'article 230.2 de la Loi doit indiquer, en plus des renseignements prescrits par cet article, les renseignements suivants:

1° le nom du régime de retraite et le numéro que Retraite Québec lui a attribué;

2° la date de la terminaison du régime;

3° le nom de chaque employeur partie au projet d'entente;

4° la part de l'excédent d'actif à la date de la terminaison qui serait attribuée à chaque employeur partie au projet d'entente;

5° la part de l'excédent d'actif à la date de la terminaison qui serait attribuée à l'ensemble des participants et bénéficiaires visés par le projet d'entente;

6° s'il n'attribue pas la totalité de l'excédent d'actif sur lequel il porte à l'employeur et que des personnes demeurent ou sont réputées participants ou bénéficiaires en vertu de l'article 240.2, 308.3 ou 310.1 de la Loi, les hypothèses et méthodes actuarielles utilisées pour établir la valeur présumée des droits de ces personnes aux fins de la détermination de la partie de l'excédent qui leur revient.

Le projet d'entente qui ne vise pas la totalité des participants et des bénéficiaires du régime doit stipuler qu'il ne vise qu'une partie d'entre eux.

Lorsque le projet d'entente propose que la part de l'excédent d'actif attribuée à un participant ou bénéficiaire soit déterminée suivant une méthode qui comporte une formule de répartition spécifique à un groupe de participants ou bénéficiaires qu'il détermine, il doit indiquer la part de l'excédent d'actif à la date de la terminaison attribuée à chaque groupe.

D. 1895-93, a. 7; D. 173-2002, a. 57.

67.2. Le certificat de l'actuaire requis en vertu du troisième alinéa de l'article 230.2 de la Loi à l'appui d'une méthode particulière de répartition de l'excédent d'actif doit:

1° définir le groupe de participants ou bénéficiaires que cette méthode vise;

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2° décrire les circonstances qui justifient que ces participants ou bénéficiaires reçoivent une part de l'excédent d'actif supérieure à celle qu'ils auraient eue au prorata;

3° déterminer la partie de l'excédent d'actif qui résulte de ces circonstances;

4° être joint au projet d'entente pour en faire partie.

D. 1895-93, a. 7; D. 173-2002, a. 57.

67.3. L'avis prévu au premier alinéa de l'article 230.4 de la Loi doit indiquer, en plus de l'information prescrite par cet alinéa, les renseignements suivants:

1° le nom du régime de retraite et le numéro que Retraite Québec lui a attribué;

2° dans le cas d'un régime interentreprises, l'excédent d'actif déterminé en application de l'article 230.0.1 de la Loi à l'égard de chaque employeur partie au projet d'entente et la proportion de l'excédent d'actif à la date de terminaison que ce montant représente;

3° le nombre des participants et bénéficiaires aux fins de la répartition de l'excédent d'actif qui sont visés par le projet d'entente ainsi que la valeur de leurs droits;

4° l'actif, le passif et l'excédent d'actif du régime indiqués dans le rapport de terminaison prévu à l'article 207.2 de la Loi;

5° si le régime ne comporte aucune disposition relative à l'attribution de l'excédent d'actif déterminé lors de sa terminaison, la mention de ce fait et de la règle édictée par le deuxième alinéa de l'article 288.1 de la Loi;

6° la mention de la règle énoncée au paragraphe 1 ou 2 de l'article 230.6 de la Loi qui s'applique au projet d'entente compte tenu de la méthode de répartition proposée;

7° l'adresse du comité de retraite;

8° le nom du signataire, l'attestation qu'il est dûment autorisé par le comité pour faire cet avis ainsi que la date de la signature.

Dans le cas où le projet d'entente ne vise pas la totalité des participants et des bénéficiaires du régime, l'avis doit contenir les renseignements additionnels suivants:

1° le nombre total de participants et de bénéficiaires aux fins de la répartition de l'excédent d'actif que comporte le régime et la valeur de leurs droits;

2° si une part de l'excédent d'actif n'est pas visée par le projet d'entente mais a déjà été attribuée conformément à la Loi, la proportion de l'excédent d'actif total qui a été ainsi attribuée à tout groupe de participants et de bénéficiaires et à tout employeur.

Dans le cas où le projet d'entente propose que la part de l'excédent d'actif attribuée à un participant ou bénéficiaire soit déterminée suivant une méthode qui comporte une formule de répartition spécifique à un groupe de participants ou bénéficiaires qu'il détermine, l'avis doit indiquer, au regard de chaque groupe, le nombre de participants ou de bénéficiaires qui le constituent et la valeur de leurs droits.

D. 173-2002, a. 57.

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SECTION VIII.1**HYPOTHÈSES ACTUARIELLES**

D. 1895-93, a. 7; D. 173-2002, a. 57.

67.4. Les hypothèses visées au premier alinéa de l'article 61 de la Loi sont celles décrites aux sections 3530 et 3540 des normes de pratique de l'Institut canadien des actuaires. La table de mortalité promulguée par le Conseil des normes actuarielles de l'Institut le 9 juin 2015, dont la date d'entrée en vigueur est le 1er octobre 2015, doit être utilisée. Cette table doit être différenciée selon le sexe.

Ces hypothèses s'appliquent en tenant compte des règles énoncées aux paragraphes 3520.09 à 3520.11 de la section 3520 de ces normes de pratique.

D. 173-2002, a. 57; D. 204-2005, a. 2; L.Q. 2009, c. 1, a. 5; D. 978-2011, a. 2; D. 800-2015, a. 2.

67.5. Doivent être utilisées pour la détermination de la valeur des droits du participant aux fins de l'article 66 ou 66.1 de la Loi, dans le cas où cette valeur est déterminée plus de 90 jours après la date où le participant a reçu le relevé visé à l'article 113 de la Loi mais avant qu'une rente lui soit servie, les hypothèses visées à l'article 61 de la Loi qui sont utilisées à la date de la demande de remboursement pour établir la valeur de prestations auxquelles s'applique l'article 60 de la Loi et dont le droit s'acquiert à cette date. Cette valeur est augmentée d'intérêts calculés au taux utilisé pour sa détermination entre la date de la demande de remboursement et celle du remboursement.

D. 173-2002, a. 57.

67.6. Doivent être utilisées pour la détermination de la valeur de la rente visée au paragraphe 1 du premier alinéa de l'article 86 de la Loi les hypothèses visées à l'article 61 de la Loi qui sont utilisées à la date du décès du participant pour établir la valeur de prestations auxquelles s'applique l'article 60 de la Loi et dont le droit s'acquiert à cette date.

D. 173-2002, a. 57.

SECTION VIII.2**RENONCIATION AUX DROITS DU CONJOINT**

D. 173-2002, a. 57.

67.7. La déclaration prévue à l'article 88.1 de la Loi est faite au moyen d'un écrit signé par le conjoint renonçant et qui contient:

- 1° la date de la déclaration;
- 2° les nom et adresse du participant et du conjoint renonçant;
- 3° le nom du régime de retraite du participant et le numéro que Retraite Québec lui a attribué;
- 4° le nom de l'employeur du participant;

5° l'indication de chaque prestation à laquelle le conjoint déclare renoncer, à savoir: la prestation prévue par l'article 86 de la Loi ou la rente prévue par l'article 87 ou 88 de la Loi.

D. 173-2002, a. 57.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

SECTION VIII.3

VALEUR DE REMPLACEMENT

D. 173-2002, a. 57.

67.8. La valeur de la rente de remplacement que le participant choisit de recevoir en vertu de l'article 92.1 de la Loi doit être au moins égale à la valeur de la rente remplacée, actualisée au moment du remplacement.

D. 173-2002, a. 57.

SECTION IX

DISPOSITIONS DIVERSES ET TRANSITOIRES

68. *(Abrogé).*

D. 1158-90, a. 68; D. 658-94, a. 9; D. 1465-95, a. 3.

69. Le présent règlement remplace le Règlement général sur les régimes supplémentaires de rentes (R.R.Q., 1981, c. R-17, r. 1), sauf à l'égard:

1° des affaires pendantes visées à l'article 286 de la Loi et des affaires régies par la Loi sur les régimes supplémentaires de rentes (chapitre R-17) en vertu du premier alinéa de l'article 73, dans la mesure où cette dernière Loi s'applique à ces affaires;

2° *(paragraphe abrogé);*

3° des régimes de retraite auxquels s'applique une entente conclue avec les représentants d'un gouvernement autre que celui du Québec en vertu de l'article 74 de la Loi sur les régimes supplémentaires de rentes, pour lesquels les articles 21, 53 et 92 de ce règlement général continueront de s'appliquer, malgré toute disposition inconciliable de la Loi, jusqu'à la date du dépôt à l'Assemblée nationale d'une nouvelle entente conclue en vertu de l'article 249 de la Loi.

D. 1158-90, a. 69; D. 173-2002, a. 58.

69.1. Jusqu'à ce qu'elle soit déterminée en vertu d'une évaluation actuarielle dont la date est postérieure au 14 décembre 2009, la part de la cotisation patronale dont un employeur peut se libérer en vertu de l'article 42.1 de la Loi ne peut excéder un montant correspondant à celui obtenu en multipliant par 20% l'écart, établi à la date de la dernière évaluation actuarielle du régime de retraite, entre l'actif et le passif du régime déterminés selon l'approche de solvabilité.

D. 1073-2009, a. 45.

70. Les dispositions de l'article 87 de la Loi, tel qu'il se lit à compter du 1^{er} janvier 2001, qui sont relatives à la prestation de raccordement ne s'appliquent pas au conjoint d'un participant lorsque celui-ci a commencé à recevoir une telle prestation avant cette date.

D. 1158-90, a. 70; D. 173-2002, a. 59.

70.0.1. Dans le cas où une demande prévue à l'article 89.1 de la Loi est présentée par un participant visé à l'article 300.4 de la Loi, le montant de la rente qui résulte du nouvel établissement est déterminé conformément à la formule suivante:

$$A \times B$$

—

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C

«A» représente le montant de la rente servie au participant à la date de la demande;

«B» représente le montant de la rente qui serait servie au participant à la date de la demande s'il n'avait pas eu de conjoint à la date où a débuté le service de sa rente;

«C» représente le montant de la rente qui serait servie au participant à la date de la demande en faisant abstraction du jugement ou de la cessation de la vie maritale à la suite duquel la demande est présentée ainsi que de tout partage ou cession de droits qui a fait suite à ce jugement ou cessation.

D. 173-2002, a. 60.

70.1. Les dispositions d'un régime de retraite qui, en vigueur le 4 juin 1997, permettaient au participant ou conjoint qui a acquis droit à une rente de choisir, avant qu'elle soit servie, de la remplacer en tout ou en partie par une rente dont le montant est modifié conformément à la loi pour tenir compte d'un montant équivalent aux prestations déterminées en vertu de la Loi sur la sécurité de la vieillesse (L.R.C. 1985, c. O-9), de la Loi sur le régime de rentes du Québec (chapitre R-9) ou d'un régime équivalent au sens du paragraphe *u* de l'article 1 de cette dernière loi, continuent de s'appliquer à l'égard de toute personne qui était participant de ce régime à la date susmentionnée et au conjoint de ce participant.

D. 1681-97, a. 24.

71. (Abrogé).

D. 1158-90, a. 71; D. 173-2002, a. 61.

72. (Abrogé).

D. 1158-90, a. 72; D. 173-2002, a. 61.

73. Toute modification, scission ou fusion qui, visée aux articles 20 à 23 de la Loi ou au chapitre XII de cette Loi, a été soumise à la Régie avant le 23 mars 1989 est régie par la Loi sur les régimes supplémentaires de rentes (chapitre R-17) si la Régie avait, avant cette date, subordonné son approbation à des conditions auxquelles il a été satisfait avant le 1^{er} janvier 1990.

Ces articles et ce chapitre s'appliquent à toute autre affaire qu'ils visent et qui sont pendantes devant la Régie le 22 mars 1989.

Le présent article a effet depuis le 23 mars 1989.

D. 1158-90, a. 73; D. 173-2002, a. 62.

74. Sous réserve des dispositions de l'article 45.1 de la Loi, les cotisations patronales versées avant le 1^{er} janvier 1990 au titre d'un régime à cotisation déterminée ou en vertu de dispositions qui, dans un régime à prestations déterminées, sont identiques à celles d'un régime à cotisation déterminée, avec les intérêts accumulés le cas échéant, portent intérêt à compter de cette date au taux visé à l'article 44 ou 45 de la Loi.

D. 1158-90, a. 74; D. 173-2002, a. 63.

75. Dans le cas où le participant a cessé d'être actif avant le 1^{er} janvier 2001 et dans celui où la date de l'évaluation est antérieure à cette date, le premier alinéa de l'article 36.1 doit être appliqué à l'égard des services reconnus au participant avant le 1^{er} janvier 1990 séparément de ceux reconnus après cette date, en tenant compte des dispositions transitoires de la Loi et en supposant, pour l'application de l'article 293 de la Loi tel qu'il se lisait avant le 1^{er} janvier 2001, que la période de travail continu du participant s'est terminée à la date de l'évaluation.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

De plus, si le participant n'a pas droit à une rente à la date où il a cessé d'être actif ou à la date de l'évaluation, selon le cas, ses droits globaux correspondent à un remboursement.

D. 1158-90, a. 75; D. 173-2002, a. 64; D. 1073-2009, a. 47.

75.1. Le paragraphe 1 du deuxième alinéa de l'article 50 ne s'applique pas dans le cas où la demande de partage a été faite au comité de retraite avant le 1^{er} janvier 2010.

D. 1073-2009, a. 48.

76. *(Abrogé).*

D. 1158-90, a. 76; D. 173-2002, a. 65.

76.1. *(Abrogé).*

D. 1895-93, a. 8.

76.2. *(Abrogé).*

D. 1895-93, a. 8.

77. *(Abrogé).*

D. 1158-90, a. 77; D. 173-2002, a. 65.

78. *(Omis).*

D. 1158-90, a. 78; D. 173-2002, a. 75.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

FORMULAIRE 1

(Abrogé)

D. 1465-95, a. 5; D. 173-2002, a. 73; D. 1073-2009, a. 49.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

FORMULAIRE 2

(Abrogé)

D. 1465-95, a. 5; D. 173-2002, a. 73; D. 1073-2009, a. 49.

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

FORMULAIRE 3*(a. 15.0.0.1)*

Lettre de crédit de soutien irrévocable

Établissement financier émetteur

Nom: _____

Adresse: _____

Donneur d'ordre (employeur)

Nom: _____

Adresse: _____

Bénéficiaire (caisse de retraite)

Nom: _____

Administrateur de la caisse de retraite bénéficiaire

Adresse: _____

Lettre de crédit n°: _____

ANNÉE MOIS JOUR

Date d'émission: | | | | | | | | | | | | | | | |

ANNÉE MOIS JOUR

Date d'expiration: | | | | | | | | | | | | | | |

À la demande de _____ (*Nom du donneur d'ordre*) _____nous, _____ (*Nom de l'établissement financier émetteur*) _____délivrons, en faveur de _____ (*Nom de la caisse de retraite bénéficiaire*) _____une lettre de crédit de soutien irrévocable pour la somme de _____ (*Montant en lettres*) _____
dollars (canadiens). (_____ (*Montant en chiffres*) _____ \$)Cette somme est payable à vue, sur présentation à _____ (*Adresse du lieu, au Québec, où la demande doit être présentée*) _____

d'une demande écrite de paiement, qui mentionne le numéro et la date d'émission de la présente lettre de crédit, signée par une personne qui se déclare autorisée par l'administrateur de la caisse de retraite à présenter cette demande. Le paiement est fait à l'ordre de la caisse de retraite bénéficiaire.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.0.1

(a. 2)

DÉCLARATION ACCOMPAGNANT LA DEMANDE D'ENREGISTREMENT D'UNE MODIFICATION D'UN RÉGIME DE RETRAITE

(L'administrateur du régime de retraite visé par la demande d'enregistrement, ou son mandataire, doit:

- soit compléter la section A qui suit;
- soit faire compléter la section B par un actuaire membre de l'Institut canadien des actuaires qui a le titre de «fellow» ou un statut que cet institut reconnaît comme équivalent.)

Section AJe, _____, déclare avoir lu la demande d'enregistrement jointe à la présente, et atteste, au meilleur de ma connaissance, que: *(Une seule case doit être cochée.)*

- Le rapport relatif à l'évaluation actuarielle du régime joint à la présente déclaration tient compte de la (des) modification(s) apportée(s) au régime.
- La (Les) modification(s) apportée(s) au régime n'a (n'ont) pas pour effet de modifier les cotisations exigées de l'employeur ou des participants ou les autres sommes devant être versées à la caisse de retraite, ni de modifier les prestations ou remboursements payables par la caisse.
- Le régime tel que modifié est un régime non garanti où les droits de tous les participants et bénéficiaires ne résultent, à tout moment, que de sommes portées à leur compte.
- Le régime tel que modifié est un régime non garanti où les droits des participants et bénéficiaires ne sont constitués que de prestations et remboursements garantis à tout moment par un assureur et de droits qui ne résultent, à tout moment, que de sommes portées à leur compte.
- Le régime tel que modifié est un régime garanti à l'égard duquel l'assureur s'est engagé à assumer tous les frais et droits relatifs à sa terminaison.

 _____ (signature) _____ (date) _____

Section B

Je, _____ (actuaire «FICA»), déclare avoir lu

la demande d'enregistrement et la (les) modification (s) du régime à laquelle (auxquelles) elle se rapporte et atteste que:

(Une seule case doit être cochée.)

- L'effet de cette (ces) modification(s) a déjà été évalué dans le rapport sur l'évaluation actuarielle du régime daté du _____.
- Cette (Ces) modification(s) n'entraîne(nt) aucune modification à la cotisation patronale, à la cotisation salariale, le cas échéant, au passif ni à l'actif de ce régime tels qu'établis par le rapport daté du _____, relatif à l'évaluation actuarielle du régime au _____.

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

_____ (*signature*) _____ (*date*) _____

D. 173-2002, a. 66.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.1*(a. 15.4)*

DÉCLARATION DU PARTICIPANT OU DU CONJOINT

Je déclare que je ne reçois présentement aucun revenu temporaire en vertu d'un autre régime complémentaire de retraite régi ou établi par une loi émanant du Parlement du Québec ou d'une autre autorité législative ni en vertu d'un contrat constitutif d'une rente dont le capital provient directement ou non d'un tel régime.

Je déclare en outre qu'aucune autre demande visant à me permettre de recevoir un revenu temporaire d'un tel régime ou contrat n'a été faite ou acceptée.

_____ (Date) _____ (Signature) _____

AVIS: Est passible des sanctions prévues aux articles 257 et 262 de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1) quiconque fait une fausse déclaration dans le but d'obtenir un revenu temporaire payable par un régime ou contrat mentionné dans la déclaration.

D. 1681-97, a. 25; D. 173-2002, a. 67.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.2*(a. 16.1, 19 et 29)***DÉCLARATION DU PARTICIPANT OU DU CONSTITUANT**

Je déclare:

1° que le total des sommes immobilisées accumulées pour mon compte dans les instruments d'épargne-retraite suivants:

- a)* les régimes de retraite à cotisation déterminée;
- b)* les régimes de retraite à prestations déterminées ou à cotisation et prestations déterminées, en application de dispositions identiques à celles d'un régime à cotisation déterminée;
- c)* les fonds de revenu viager;
- d)* les comptes de retraite immobilisés;
- e)* les REER immobilisés (régimes enregistrés d'épargne-retraite dont le solde doit être converti en rente viagère);
- f)* les régimes volontaires d'épargne-retraite régis par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1),

s'élève à _____ \$;

2° que ce total est établi sur la base des informations les plus récentes dont je dispose;

3° que ces informations datent de moins de 18 mois.

_____ (Date) _____ (Signature) _____

AVIS: Est passible des sanctions prévues aux articles 257 et 262 de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1) quiconque fait une fausse déclaration dans le but d'obtenir un paiement en un seul versement payable par l'un des instruments d'épargne-retraite mentionnés dans la déclaration.

D. 1681-97, a. 25; D. 500-2014, a. 18.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.3*(a. 16.2)*

DÉCLARATION DU PARTICIPANT OU DU CONJOINT

Je déclare:

1° que je ne suis partie à aucun contrat établissant un fonds de revenu viager, à aucune convention établissant un compte de retraite immobilisé ni à aucun REER immobilisé (régime enregistré d'épargne-retraite dont le solde doit être converti en rente viagère);

2° que le total des rentes temporaires et des paiements variables temporaires que je recevrai au cours de la présente année en vertu des régimes ou contrats suivants:

a) les régimes complémentaires de retraite régis ou établis par une loi émanant du Parlement du Québec ou d'une autre autorité législative;

b) les contrats constitutifs d'une rente dont le capital provient directement ou non d'un tel régime;

c) les régimes volontaires d'épargne-retraite régis par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1) ou en vertu d'un régime volontaire d'épargne-retraite équivalent émanant d'une autorité législative autre que le Parlement du Québec,

s'élève à _____ \$.

_____ (Date) _____ (Signature) _____

AVIS: Est passible des sanctions prévues aux articles 257 et 262 de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1) quiconque fait une fausse déclaration dans le but d'obtenir un paiement en un seul versement prévu à l'article 92 de cette loi.

D. 1681-97, a. 25; D. 173-2002, a. 68; D. 500-2014, a. 19.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.4*(a. 19.1 et 20.4)*

DÉCLARATION DU CONSTITUANT

Je déclare:

1° que j'étais âgé d'au moins 54 ans mais de moins de 65 ans à la fin de l'année dernière;

2° que le total des rentes temporaires que je recevrai au cours de la présente année en vertu des régimes ou contrats suivants:

a) les régimes complémentaires de retraite régis ou établis par une loi émanant du Parlement du Québec ou d'une autre autorité législative;

b) les contrats constitutifs d'une rente dont le capital provient directement ou non d'un tel régime

s'élève à _____ \$;

3° que la somme des revenus temporaires maximum que j'ai fixés pour l'ensemble de mes fonds de revenu viager à l'exclusion de celui à l'égard duquel je produis la présente déclaration, s'élève à _____ \$;

4° que la somme des paiements variables temporaires maximums que j'ai fixés à l'égard des comptes immobilisés de mes régimes volontaires d'épargne-retraite régis par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1), à l'exclusion de celui à l'égard duquel je produis la présente déclaration, s'élève à _____ \$.

_____ (Date) _____ (Signature) _____

AVIS: Est passible des sanctions prévues aux articles 257 et 262 de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1) quiconque fait une fausse déclaration dans le but d'obtenir un revenu temporaire payable par un régime ou contrat mentionné dans la déclaration.

D. 1681-97, a. 25; D. 173-2002, a. 69; D. 500-2014, a. 20.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.5*(a. 19.2)***DÉCLARATION DU CONSTITUANT**

Je déclare:

1° que les revenus dont je dois recevoir paiement au cours des 12 prochains mois, autres que le revenu temporaire dont je demande paiement sur le fonds de revenu viager à l'égard duquel je produis la présente déclaration, s'élèvent à _____ \$.

2° que je ne suis partie à aucun autre contrat établissant un fonds de revenu viager;

3° qu'il m'a été payé au cours de la présente année, sur des fonds de revenu viager auxquels j'ai été partie autres que celui à l'égard duquel je produis la présente déclaration, un total de _____ \$, dont _____ \$ m'ont été versés à titre de revenu temporaire.

_____ (Date) _____ (Signature) _____

AVIS: Est passible des sanctions prévues aux articles 257 et 262 de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1) quiconque fait une fausse déclaration dans le but d'obtenir un revenu temporaire payable par le fonds de revenu viager mentionné dans la déclaration.

D. 1681-97, a. 25; D. 577-98, a. 5.

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.6

(a. 20 et 20.3)

Âge	Taux de référence															
	6,00%	6,50%	7,00%	7,50%	8,00%	8,50%	9,00%	9,50%	10,00%	10,50%	11,00%	11,50%	12,00%	12,50%	13,00%	13,50%
Moins de 55	0,061	0,063	0,066	0,069	0,072	0,075	0,078	0,081	0,084	0,087	0,090	0,093	0,097	0,100	0,103	0,107
55	0,064	0,067	0,070	0,073	0,076	0,079	0,082	0,085	0,088	0,091	0,094	0,097	0,101	0,104	0,107	0,111
56	0,065	0,067	0,070	0,073	0,076	0,079	0,082	0,085	0,088	0,091	0,095	0,098	0,101	0,104	0,108	0,111
57	0,065	0,068	0,071	0,074	0,077	0,080	0,083	0,086	0,089	0,092	0,095	0,098	0,102	0,105	0,108	0,112
58	0,066	0,069	0,071	0,074	0,077	0,080	0,083	0,086	0,090	0,093	0,096	0,099	0,102	0,106	0,109	0,112
59	0,067	0,069	0,072	0,075	0,078	0,081	0,084	0,087	0,090	0,093	0,097	0,100	0,103	0,106	0,110	0,113
60	0,067	0,070	0,073	0,076	0,079	0,082	0,085	0,088	0,091	0,094	0,097	0,101	0,104	0,107	0,110	0,114
61	0,068	0,071	0,074	0,077	0,079	0,082	0,086	0,089	0,092	0,095	0,098	0,101	0,105	0,108	0,111	0,115
62	0,069	0,072	0,074	0,077	0,080	0,083	0,086	0,089	0,093	0,096	0,099	0,102	0,105	0,109	0,112	0,115
63	0,070	0,073	0,075	0,078	0,081	0,084	0,087	0,090	0,094	0,097	0,100	0,103	0,106	0,110	0,113	0,116
64	0,071	0,074	0,076	0,079	0,082	0,085	0,088	0,091	0,095	0,098	0,101	0,104	0,107	0,111	0,114	0,117
65	0,072	0,075	0,077	0,080	0,083	0,086	0,089	0,093	0,096	0,099	0,102	0,105	0,108	0,112	0,115	0,118
66	0,073	0,076	0,079	0,082	0,085	0,088	0,091	0,094	0,097	0,100	0,103	0,106	0,110	0,113	0,116	0,119
67	0,074	0,077	0,080	0,083	0,086	0,089	0,092	0,095	0,098	0,101	0,104	0,108	0,111	0,114	0,117	0,121
68	0,076	0,078	0,081	0,084	0,087	0,090	0,093	0,096	0,100	0,103	0,106	0,109	0,112	0,115	0,119	0,122
69	0,077	0,080	0,083	0,086	0,089	0,092	0,095	0,098	0,101	0,104	0,107	0,111	0,114	0,117	0,120	0,123
70	0,079	0,082	0,085	0,088	0,091	0,094	0,097	0,100	0,103	0,106	0,109	0,112	0,115	0,119	0,122	0,125
71	0,081	0,084	0,087	0,089	0,092	0,095	0,098	0,102	0,105	0,108	0,111	0,114	0,117	0,120	0,123	0,127
72	0,083	0,086	0,089	0,092	0,095	0,098	0,101	0,104	0,107	0,110	0,113	0,116	0,119	0,122	0,125	0,129
73	0,085	0,088	0,091	0,094	0,097	0,100	0,103	0,106	0,109	0,112	0,115	0,118	0,121	0,124	0,127	0,131
74	0,088	0,091	0,094	0,097	0,099	0,102	0,105	0,108	0,111	0,114	0,117	0,120	0,124	0,127	0,130	0,133
75	0,091	0,094	0,097	0,100	0,102	0,105	0,108	0,111	0,114	0,117	0,120	0,123	0,126	0,129	0,132	0,135
76	0,094	0,097	0,100	0,103	0,106	0,109	0,112	0,114	0,117	0,120	0,123	0,126	0,129	0,132	0,135	0,138
77	0,098	0,101	0,104	0,107	0,110	0,112	0,115	0,118	0,121	0,124	0,127	0,130	0,133	0,136	0,139	0,142
78	0,103	0,106	0,109	0,111	0,114	0,117	0,120	0,123	0,126	0,128	0,131	0,134	0,137	0,140	0,143	0,146
79	0,108	0,111	0,114	0,117	0,119	0,122	0,125	0,128	0,131	0,134	0,137	0,139	0,142	0,145	0,148	0,151
80	0,115	0,117	0,120	0,123	0,125	0,128	0,131	0,133	0,136	0,139	0,142	0,144	0,147	0,150	0,153	0,155
81	0,121	0,124	0,127	0,129	0,132	0,135	0,137	0,140	0,143	0,145	0,148	0,151	0,153	0,156	0,159	0,161
82	0,129	0,132	0,134	0,137	0,139	0,142	0,145	0,147	0,150	0,153	0,155	0,158	0,161	0,163	0,166	0,169
83	0,138	0,140	0,143	0,146	0,148	0,151	0,154	0,156	0,159	0,161	0,164	0,167	0,169	0,172	0,175	0,177
84	0,148	0,151	0,153	0,156	0,159	0,161	0,164	0,167	0,169	0,172	0,174	0,177	0,180	0,182	0,185	0,187
85	0,160	0,163	0,165	0,168	0,171	0,173	0,176	0,179	0,181	0,184	0,187	0,189	0,192	0,194	0,197	0,200
86	0,173	0,176	0,179	0,182	0,184	0,187	0,190	0,193	0,195	0,198	0,200	0,200	0,200	0,200	0,200	0,200
87	0,189	0,191	0,194	0,197	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200
88 et plus	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

Taux référence	de						
Âge	6,00%	6,50%	7,00%	7,50%	8,00%		
8,50%	9,00%	9,50%	10,00%	10,50%	11,00%		
11,50%	12,00%	12,50%	13,00%	13,50%			
Moins de 55	0,061	0,063	0,066	0,069	0,072	0,075	
55	0,078	0,081	0,084	0,087	0,090	0,093	0,097
56	0,103	0,107					
57	0,064	0,067	0,070	0,073	0,076	0,079	0,082
58	0,088	0,091	0,094	0,097	0,101	0,104	0,107
59	0,065	0,067	0,070	0,073	0,076	0,079	0,082
60	0,088	0,091	0,095	0,098	0,101	0,104	0,108
61	0,065	0,068	0,071	0,074	0,077	0,080	0,083
62	0,089	0,092	0,095	0,098	0,102	0,105	0,108
63	0,066	0,069	0,071	0,074	0,077	0,080	0,083
64	0,090	0,093	0,096	0,099	0,102	0,106	0,109
65	0,067	0,069	0,072	0,075	0,078	0,081	0,084
66	0,090	0,093	0,097	0,100	0,103	0,106	0,110
67	0,067	0,070	0,073	0,076	0,079	0,082	0,085
68	0,091	0,094	0,097	0,101	0,104	0,107	0,110
69	0,068	0,071	0,074	0,077	0,079	0,082	0,086
70	0,092	0,095	0,098	0,101	0,105	0,108	0,111
71	0,069	0,072	0,074	0,077	0,080	0,083	0,086
72	0,093	0,096	0,099	0,102	0,105	0,109	0,112
73	0,070	0,073	0,075	0,078	0,081	0,084	0,087
74	0,094	0,097	0,100	0,103	0,106	0,110	0,113
75	0,071	0,074	0,076	0,079	0,082	0,085	0,088
76	0,095	0,098	0,101	0,104	0,107	0,111	0,114
77	0,072	0,075	0,077	0,080	0,083	0,086	0,089
78	0,096	0,099	0,102	0,105	0,108	0,112	0,115
79	0,073	0,076	0,079	0,082	0,085	0,088	0,091
80	0,097	0,100	0,103	0,106	0,110	0,113	0,116
81	0,074	0,077	0,080	0,083	0,086	0,089	0,092
82	0,098	0,101	0,104	0,108	0,111	0,114	0,117
83	0,076	0,078	0,081	0,084	0,087	0,090	0,093
84	0,100	0,103	0,106	0,109	0,112	0,115	0,119
85	0,077	0,080	0,083	0,086	0,089	0,092	0,095
86	0,101	0,104	0,107	0,111	0,114	0,117	0,120
87	0,079	0,082	0,085	0,088	0,091	0,094	0,097
88	0,103	0,106	0,109	0,112	0,115	0,119	0,122
89	0,081	0,084	0,087	0,089	0,092	0,095	0,098
90	0,105	0,108	0,111	0,114	0,117	0,120	0,123
91	0,083	0,086	0,089	0,092	0,095	0,098	0,101
92	0,107	0,110	0,113	0,116	0,119	0,122	0,125
93	0,085	0,088	0,091	0,094	0,097	0,100	0,103
94	0,109	0,112	0,115	0,118	0,121	0,124	0,127
95	0,088	0,091	0,094	0,097	0,099	0,102	0,105
96	0,111	0,114	0,117	0,120	0,124	0,127	0,130
97	0,091	0,094	0,097	0,100	0,102	0,105	0,108
98	0,114	0,117	0,120	0,123	0,126	0,129	0,132
99	0,094	0,097	0,100	0,103	0,106	0,109	0,112
100	0,117	0,120	0,123	0,126	0,129	0,132	0,135
101	0,098	0,101	0,104	0,107	0,110	0,112	0,115
102	0,121	0,124	0,127	0,130	0,133	0,136	0,139

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

78	0,103	0,106	0,109	0,111	0,114	0,117	0,120	0,123
0,126	0,128	0,131	0,134	0,137	0,140	0,143	0,146	
79	0,108	0,111	0,114	0,117	0,119	0,122	0,125	0,128
0,131	0,134	0,137	0,139	0,142	0,145	0,148	0,151	
80	0,115	0,117	0,120	0,123	0,125	0,128	0,131	0,133
0,136	0,139	0,142	0,144	0,147	0,150	0,153	0,155	
81	0,121	0,124	0,127	0,129	0,132	0,135	0,137	0,140
0,143	0,145	0,148	0,151	0,153	0,156	0,159	0,161	
82	0,129	0,132	0,134	0,137	0,139	0,142	0,145	0,147
0,150	0,153	0,155	0,158	0,161	0,163	0,166	0,169	
83	0,138	0,140	0,143	0,146	0,148	0,151	0,154	0,156
0,159	0,161	0,164	0,167	0,169	0,172	0,175	0,177	
84	0,148	0,151	0,153	0,156	0,159	0,161	0,164	0,169
0,172	0,174	0,177	0,180	0,182	0,185	0,187		
85	0,160	0,163	0,165	0,168	0,171	0,173	0,176	0,179
0,181	0,184	0,187	0,189	0,192	0,194	0,197	0,200	
86	0,173	0,176	0,179	0,182	0,184	0,187	0,190	0,193
0,195	0,198	0,200	0,200	0,200	0,200	0,200	0,200	
87	0,189	0,191	0,194	0,197	0,200	0,200	0,200	0,200
0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	
88 et plus	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200
0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200	0,200

D. 1681-97, a. 25.

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.7*(a. 20 et 20.3)***Âge**

Moins de 54 ans	1,000
54 ans	1,691
55 ans	1,706
56 ans	1,804
57 ans	1,953
58 ans	2,151
59 ans	2,379
60 ans	2,705
61 ans	3,202
62 ans	4,090
63 ans	5,811
64 ans	10,989
65 ans et plus	1,000

D. 1681-97, a. 25.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.8*(a. 20.4)*

DÉCLARATION DU CONSTITUANT

Je déclare:

1° que je ne suis partie à aucune convention établissant un compte de retraite immobilisé ni à aucun REER immobilisé (régime enregistré d'épargne-retraite dont le solde doit être converti en rente viagère);

2° que le montant que j'ai fixé ou que j'entends fixer à titre de revenu temporaire maximum pour le présent exercice financier est, pour chacun de mes fonds de revenu viager et des comptes immobilisés de mes régimes volontaires d'épargne-retraite régis par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1) et offrant des paiements variables temporaires, au moins égal au revenu temporaire de référence calculé pour ce fonds.

_____ (*Date*) _____ (*Signature*) _____

AVIS: Est passible des sanctions prévues aux articles 257 et 262 de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1) quiconque fait une fausse déclaration dans le but d'obtenir un revenu payable par le fonds de revenu viager visé par la déclaration.

D. 1681-97, a. 25; D. 173-2002, a. 70; D. 500-2014, a. 21.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.9*(a. 22.2)***DÉCLARATION DU CONSTITUANT LORS DU TRANSFERT DE SOMMES DANS UN FONDS DE REVENU VIAGER (constituant âgé de 54 ans ou plus à la fin de l'année précédant celle du transfert)**

Je déclare que, du total de _____ \$ transféré dans le fonds de revenu viager visé par la présente déclaration, une somme de _____ \$ ne provient ni directement ni indirectement d'un fonds de revenu viager établi par un contrat ou d'un compte immobilisé d'un régime volontaire d'épargne-retraite régi par la Loi sur les régimes volontaires d'épargne-retraite (chapitre R-17.0.1) et offrant des paiements variables auquel j'ai été partie au cours de la présente année.

_____ (Date) _____ (Signature) _____

AVIS: Est passible des sanctions prévues aux articles 257 et 262 de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1) quiconque fait une fausse déclaration dans le but d'obtenir un revenu payable par le fonds de revenu viager visé par la déclaration.

D. 1681-97, a. 25; D. 577-98, a. 6; D. 500-2014, a. 22.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.9.1*(a. 22.2)***DÉCLARATION DU CONSTITUANT LORS DU TRANSFERT DE SOMMES DANS UN FONDS DE REVENU VIAGER (constituant âgé de moins de 54 ans à la fin de l'année précédant celle du transfert)**

Je déclare:

1° que, depuis le début de la présente année, je n'ai reçu aucun revenu temporaire provenant d'un fonds de revenu viager autre que celui visé par la présente déclaration;

2° que, du total de _____ \$ transféré dans le fonds de revenu viager visé par la présente déclaration, une somme de _____ \$ ne provient ni directement ni indirectement d'un fonds de revenu viager établi par un contrat auquel j'ai été partie au cours de la présente année.

_____ (Date) _____ (Signature) _____

AVIS: Est passible des sanctions prévues aux articles 257 et 262 de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1) quiconque fait une fausse déclaration dans le but d'obtenir un revenu payable par le fonds de revenu viager visé par la déclaration.

D. 577-98, a. 7; D. 173-2002, a. 71.

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE 0.10*(a. 31)*

DÉCLARATION DU CONSTITUANT

Je déclare que je ne reçois présentement aucun revenu temporaire en vertu d'un régime complémentaire de retraite régi ou établi par une loi émanant du Parlement du Québec ou d'une autre autorité législative ni en vertu d'un autre contrat constitutif d'une rente dont le capital provient directement ou non d'un tel régime.

Je déclare en outre qu'aucune autre demande visant à me permettre de recevoir un revenu temporaire d'un tel régime ou contrat n'a été faite ou acceptée.

_____ (Date) _____ (Signature) _____

AVIS: Est passible des sanctions prévues aux articles 257 et 262 de la Loi sur les régimes complémentaires de retraite (chapitre R-15.1) quiconque fait une fausse déclaration dans le but d'obtenir un revenu temporaire payable par un contrat mentionné dans la déclaration.

D. 1681-97, a. 25.

 RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE I*(a. 39)*

TAUX D'INTÉRÊTS ANNUELS VISÉS À L'ARTICLE 39

	%
— Pour chacune des années antérieures à 1951	: 3,00
— Pour chacune des années 1951 à 1955	: 4,00
— Pour chacune des années 1956 à 1960	: 4,50
— Pour chacune des années 1961 à 1965	: 5,00
— Pour chacune des années 1966 et 1967	: 5,75
— Pour les années suivantes:	
	1968: 6,50
	1969: 7,50
	1970: 7,50
	1971: 6,25
	1972: 6,75
	1973: 7,75
	1974: 8,75
	1975: 8,25
	1976: 9,25
	1977: 7,75
	1978: 8,75
	1979: 10,00
	1980: 11,25
	1981: 14,75
	1982: 12,75
	1983: 8,25
	1984: 11,00
	1985: 9,50
	1986: 8,25

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

1987: 7,00

1988: 7,75

1989: 9,50

D. 1158-90, Ann. I; D. 1465-95, a. 4.

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE II

(a. 63)

DÉCLARATION DE TERMINAISON D'UN RÉGIME DE RETRAITE (APRÈS AVIS DE L'EMPLOYEUR PARTIE AU RÉGIME)

Nom du régime: _____

Numéro: _____

Je, _____, étant autorisé à agir à titre d'administrateur ou de mandataire de l'administrateur du régime susmentionné, déclare que celui-ci se termine et que la date de la terminaison est le _____.

J'atteste que:

1° cette terminaison fait suite à une décision de l'employeur partie au régime (ou, dans le cas d'un régime interentreprises, de l'ensemble des employeurs parties au régime);

2° au meilleur de ma connaissance, aucune convention n'empêche l'employeur ou les employeurs de terminer le régime;

3° l'employeur ou les employeurs ont fait part de leur décision de terminer le régime au moyen d'un avis écrit dont copie est annexée aux présentes et qui, au meilleur de ma connaissance, a été transmis à tous les participants et bénéficiaires visés (soit tous les participants et bénéficiaires du régime dont les droits n'ont pas été acquittés avant la date de la terminaison et, si la terminaison du régime est occasionnée par la division, la fusion, l'aliénation ou la fermeture de l'entreprise ou d'une partie de l'entreprise, tous les participants dont la participation active a cessé au cours de la période comprise entre la date où les participants ont été informés de l'événement en question et celle de la terminaison), à l'association accréditée qui représente des participants, au comité de retraite et, le cas échéant, à l'assureur;

4° l'avis mentionné au paragraphe 3 indique la date de la terminaison du régime ainsi que les participants et bénéficiaires visés;

5° la date de la terminaison mentionnée ci-dessus n'est pas postérieure au jour qui précède celui de l'acquittement des droits du dernier participant ou bénéficiaire du régime;

6° au meilleur de ma connaissance, la date de la terminaison (*cocher, le cas échéant, une des cases suivantes*),

n'est antérieure ni à celle de la cessation de la perception des cotisations salariales ni à celle qui précède de 30 jours la transmission de l'avis de terminaison aux participants actifs;

est antérieure à celle de la cessation de la perception des cotisations salariales ou à celle qui précède de 30 jours la transmission de l'avis de terminaison aux participants actifs, mais chacun des participants dont la participation active a pris fin à l'occasion de la terminaison ou par la suite a consenti par écrit à ce que le Régime se termine à la date susmentionnée et le comité de retraite peut produire ces consentements sur demande de Retraite Québec;

7° le comité de retraite a reçu l'avis écrit de terminaison de l'employeur (ou des employeurs) le _____.

_____ (signature) _____ (date)

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

Pièce jointe: avis de terminaison.

D. 173-2002, a. 72.

Règlement sur les régimes complémentaires de retraite, R.L.R.Q. c. R-15.1, r. 6

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

ANNEXE III

(a. 63)

DÉCLARATION DE TERMINAISON D'UN RÉGIME DE RETRAITE (APRÈS DÉCISION DE RETRAITE QUÉBEC)

Nom du régime: _____

Numéro: _____

Je, _____, étant autorisé à agir à titre d'administrateur ou de mandataire de l'administrateur du régime susmentionné, déclare avoir été avisé de la décision de Retraite Québec de terminer le régime en date du _____.

J'atteste que:

1° le comité de retraite qui administre le régime a reçu un exemplaire de la décision de Retraite Québec le _____;

2° le comité de retraite a transmis une copie de la décision de Retraite Québec à tous les participants et bénéficiaires visés par cette décision, à l'association accréditée qui représente des participants, à l'employeur et, le cas échéant, à l'assureur.

_____ (signature) _____ (date) _____

D. 173-2002, a. 72.

DISPOSITIONS TRANSITOIRES

2014

(D. 500-2014) ARTICLE 231° l'article 2 de ce règlement modifiant a effet à l'égard de l'exercice financier se terminant après le 30 décembre 2018;

2° le paragraphe 2 de l'article 3 de ce règlement modifiant s'applique à l'égard de l'exercice financier se terminant après le 30 décembre 2019.

2011

(D. 978-2011) ARTICLE 3. Les dispositions de l'article 4 de ce règlement, modifié par l'article 1, s'appliquent au rapport relatif à une évaluation actuarielle complète à une date postérieure au 30 décembre 2011. Le rapport relatif à une évaluation actuarielle complète à une date postérieure au 30 décembre 2010 mais antérieure au 31 décembre 2011 peut toutefois être fait selon ces dispositions.

ARTICLE 4. Le présent règlement entre en vigueur le 5 octobre 2011. Toutefois, les dispositions de l'article 3 ont effet depuis le 31 décembre 2010 et celles de l'article 1 prendront effet le 31 décembre 2011.

MISES À JOUR

D. 1158-90, 1990 G.O. 2, 3246

D. 1159-90, 1990 G.O. 2, 3261

D. 568-91, 1991 G.O. 2, 2209

RÉGIMES COMPLÉMENTAIRES DE RETRAITE

D. 1895-93, 1993 G.O. 2, 9170
D. 658-94, 1994 G.O. 2, 2510
D. 1465-95, 1995 G.O. 2, 4738
D. 1681-97, 1997 G.O. 2, 8155
D. 577-98, 1998 G.O. 2, 2485
D. 173-2002, 2002 G.O. 2, 1787
D. 204-2005, 2005 G.O. 2, 1011
L.Q. 2009, c. 1, a. 5
D. 1073-2009, 2009 G.O. 2, 5099
D. 978-2011, 2011 G.O. 2, 4175
D. 500-2014, 2014 G.O. 2, 2000A
D. 800-2015, 2015 G.O. 2, 3292
L.Q. 2015, c. 20, a. 61
D. 608-2016, 2016 G.O. 2, 3747



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chapter C-19

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Cities and Towns Act, C.Q.L.R., c. C-19, Section 485

CITIES AND TOWNS

they are secured by a legal hypothec on the immovables or on the movables, as the case may be. In addition to being a prior claim within the meaning of that paragraph, a property tax is secured by a legal hypothec on the immovable subject to the tax.

For the purposes of the first paragraph, any personal tax imposed by reason of an activity carried on in a place is deemed to be a tax payable by reason of the movable property of the debtor located in the place at any time throughout the period during which the tax remains payable.

1994, c. 30, s. 90; 1999, c. 40, s. 51.

482.2. Registration by the municipality of a legal movable or immovable hypothec does not prevent it from exercising its prior claim.

1994, c. 30, s. 90.

482.3. A creditor who takes procedures in execution or who, as holder of a movable or immovable hypothec, has registered a prior notice of his intention to exercise his hypothecary rights, may apply to the municipality to declare the amount of its prior claim. The application shall be registered and proof of notification shall be filed in the registry office.

Within 30 days following the notification, the municipality shall declare the amount of its claim and enter it in the appropriate register; such a declaration does not have the effect of limiting the priority of the municipality's claim to the amount entered.

An application for registration, in the land register, of the application for declaration and of the declaration shall be made in the form of a notice. In addition to the provisions of this section and the requirements of the regulation made under Book IX of the Civil Code, the notice shall indicate the legislative provision under which it is given, the name of the debtor and the name of the municipality; the notice need not be attested and a single copy only need be presented.

1994, c. 30, s. 90.

483. *(Repealed).*

1974, c. 45, s. 10; 1979, c. 51, s. 260.

484. Arrears of municipal taxes shall be prescribed by three years.

An application to the court for the recovery of a property tax filed before the tax is prescribed and served, not later than 60 days after the expiry of the prescription period, on any of the persons from whom the payment may be claimed under section 498, shall interrupt prescription with respect to all such persons.

R. S. 1964, c. 193, s. 519; 1996, c. 27, s. 30; 1999, c. 40, s. 51.

II. — *Imposition of Taxes*

485. Subject to the Act respecting municipal taxation (chapter F-2.1), the council may impose and levy annually on all taxable immovables in the territory of the municipality a tax based on their value as shown on the assessment roll.

R. S. 1964, c. 193, s. 521; 1975, c. 66, s. 21; 1979, c. 72, s. 308; 1996, c. 2, s. 210.

486. *(Repealed).*

1977, c. 52, s. 16; 1979, c. 72, s. 490; 1980, c. 34, s. 4; 1986, c. 31, s. 10; 1991, c. 29, s. 4; 1993, c. 43, s. 15; 1993, c. 78, s. 16; 1996, c. 2, s. 185; 1999, c. 40, s. 51; 2000, c. 54, s. 5; 2000, c. 56, s. 120; 2004, c. 20, s. 99.



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chapitre C-19

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483. *(Abrogé).*

1974, c. 45, a. 10; 1979, c. 51, a. 260.

484. Les arrérages de taxes municipales se prescrivent par trois ans.

Une demande en justice visant le recouvrement d'une taxe foncière, déposée avant que la taxe ne soit prescrite et signifiée, au plus tard le soixantième jour qui suit l'expiration du délai de prescription, à une des personnes de qui le paiement peut être réclamé en vertu de l'article 498, interrompt la prescription à l'égard de toutes ces personnes.

S. R. 1964, c. 193, a. 519; 1996, c. 27, a. 30.

II. — *Imposition des taxes*

485. Sous réserve de la Loi sur la fiscalité municipale (chapitre F-2.1), le conseil peut imposer et prélever annuellement sur les biens-fonds imposables sur le territoire de la municipalité une taxe basée sur leur valeur portée au rôle d'évaluation.

S. R. 1964, c. 193, a. 521; 1975 c. 66, a. 21; 1979, c. 72, a. 308; 1996, c. 2, a. 210.

486. *(Abrogé).*

1977, c. 52, a. 16; 1979, c. 72, a. 490; 1980, c. 34, a. 4; 1986, c. 31, a. 10; 1991, c. 29, a. 4; 1993, c. 43, a. 15; 1993, c. 78, a. 16; 1996, c. 2, a. 185; 2000, c. 54, a. 5; 2000, c. 56, a. 120; 2004, c. 20, a. 99.

487. Malgré toute disposition législative inconciliable avec la présente contenue dans la présente loi ou dans une charte de municipalité régie en partie par la présente loi, le conseil peut imposer la taxe spéciale pour le paiement des travaux municipaux de toute nature, y compris les travaux d'entretien, soit sur la base de l'évaluation municipale, soit sur la superficie, soit sur l'étendue en front des biens-fonds imposables assujettis à cette taxe. Lorsqu'il s'agit de lots qui sont situés à un carrefour ou qui ne sont pas rectangulaires, le conseil peut fixer l'étendue en front à des fins d'imposition, selon la formule qu'il juge appropriée.

Le conseil peut aussi mettre le coût de ces travaux à la charge:

1° de la municipalité;

2° des contribuables d'une partie du territoire de la municipalité;

3° des contribuables bénéficiant de ces travaux, lorsque ceux-ci sont effectués dans une partie du territoire de la municipalité désignée comme son «centre-ville» en vertu d'un programme particulier d'urbanisme.

Le conseil peut combiner les possibilités prévues par le deuxième alinéa dans les proportions qu'il détermine.

Dans le cas visé au paragraphe 3° du deuxième alinéa, le conseil doit identifier les immeubles des bénéficiaires des travaux ou mentionner un ou plusieurs critères permettant de les identifier.

Le présent article s'applique aux fins du paiement des honoraires professionnels liés aux travaux visés, qu'ils aient été exécutés ou non.

S. R. 1964, c. 193, a. 522; 1979, c. 36, a. 88; 1982, c. 63, a. 143; 1985, c. 27, a. 30; 1996, c. 2, a. 186.

487.1. Lorsqu'une municipalité, pour un même exercice financier, impose sur tous les immeubles imposables situés sur son territoire une taxe spéciale basée sur leur valeur imposable et fixe quant à la taxe foncière générale, en vertu de l'article 244.29 de la Loi sur la fiscalité municipale (chapitre F-2.1), des taux



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chapter F-2.1

ACT RESPECTING MUNICIPAL TAXATION

The Minister of Finance exercises the functions of the Minister of Revenue provided for in this Act. Order in Council 412-2016 dated 25 May 2016, (2016) 148 G.O. 2 (French), 2923.

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SCHEDULE A

LEGISLATIVE PROVISIONS REPEALED UNDER SECTION 487

REPEAL SCHEDULES

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In its decision declaring the recognition to have lapsed, the Commission shall fix the date on which the lapsing is to have effect, which shall not be prior to 1 January of the year in which the decision is rendered.

2000, c. 54, s. 76.

§ 7. — Procedure

2000, c. 54, s. 76.

243.23. Before granting recognition, the Commission shall consult the local municipality in whose territory the immovable concerned by the request is situated, and give the local municipality a notice in writing describing the elements of the proposed recognition, requesting its opinion in that respect and informing it of the rule set out in section 243.24.

The first paragraph applies, with the necessary modifications, in the case of a revocation not requested by the municipality and in the case of a confirmation in respect of which the Commission has received every document requested from the recognized person.

2000, c. 54, s. 76.

243.24. The municipality shall transmit its opinion to the Commission within 90 days following transmission of the notice.

If the municipality fails to transmit its opinion, the proceeding before the Commission may continue notwithstanding that failure, and the municipality is nevertheless not foreclosed from transmitting its opinion.

2000, c. 54, s. 76.

243.25. The person applying for recognition shall file its financial statements with the Commission at the request of the Commission or of the municipality. The same applies for any other person to be mentioned in the recognition as a user of the immovable.

The first paragraph applies, with the necessary modifications, where the revocation of recognition or the periodic review of recognition forms the subject of a proceeding before the Commission.

2000, c. 54, s. 76.

244. (Repealed).

1979, c. 72, s. 244; 1991, c. 32, s. 125.

DIVISION III.1

TARIFFING

1988, c. 76, s. 68.

244.1. Every municipality may, by by-law and to the extent that a regulation of the Government under paragraph 8.2 of section 262 is in force, provide that all or part of its property, services or activities shall be financed by means of a tariff.

A municipality may, in the same manner, provide that all or part of the aliquot share or of other contribution owed by it in respect of property, services or activities of another municipality, a community, an intermunicipal body or another intermunicipal public body shall be financed as in the first paragraph.

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A municipality may, in the same manner, provide that all or part of the amount it must pay in return for services provided by the Sûreté du Québec shall be financed as in the first paragraph.

1988, c. 76, s. 68; 1991, c. 32, s. 160; 1996, c. 77, s. 54; 2003, c. 19, s. 192.

244.2. Any local and independent source of revenue other than a tax based on the property value or the rental value of immovables or business establishments and the imposition of which is not in itself incompatible with the application of section 244.3 constitutes a mode of tariffing.

A mode of tariffing includes, in particular,

(1) a property tax based on a characteristic of the immovable other than its value, such as the area, the frontage or another dimension of the immovable;

(2) a compensation exigible from the owner or occupant of an immovable;

(3) a fixed amount exigible in a punctual manner or in the form of a subscription for the use of a property or a service or in respect of a benefit derived from an activity.

The only mode of tariffing that may be provided for by a regional county municipality not acting as a local municipality under section 8 of the Act respecting municipal territorial organization (chapter O-9) is a fixed amount referred to in subparagraph 3 of the second paragraph or an amount exigible in the same manner as a subscription.

1988, c. 76, s. 68; 1996, c. 77, s. 55; 1999, c. 40, s. 133.

244.3. The mode of tariffing must be related to the benefits derived by the debtor.

Benefits are derived not only when the debtor or his dependent actually uses the property or service, or benefits from the activity but also when the property or service is at his disposal or the activity is an activity from which he may benefit in the future. The rule, adapted as required, also applies in the case of a property, service or activity from which benefit may be derived not directly by the person but which may be derived in respect of the immovable of which he is the owner or occupant.

The extended meaning given to the expression “benefits derived” in the second paragraph does not apply if the mode of tariffing is a fixed amount exigible in a punctual manner for the use of a property or a service or in respect of the benefit derived from an activity. The activity of a municipality that consists in examining an application and responding to it is deemed to benefit the applicant, regardless of the response given, including cases where the subject of the application is a regulatory act or the response consists in such an act.

1988, c. 76, s. 68; 2004, c. 20, s. 172.

244.4. The mode of tariffing shall remain related to the benefit derived even if the revenue generated thereby exceeds the expenses attributable to the property, service or activity, provided that the excess amount is justified by sound management principles such as the obligation to standardize the demand, to take competition into consideration and to enable the inhabitants and ratepayers of the territory of the municipality to take precedence over other beneficiaries or, where the mode of tariffing is a fixed amount exigible in a punctual manner for the use of a property or a service, if the excess amount is justified by a more frequent use than what had been anticipated.

1988, c. 76, s. 68; 1991, c. 32, s. 160.

244.5. The by-law may provide for classes of property, services, activities, aliquot shares, contributions or beneficiaries, combine classes and prescribe different rules for each class or combination.

The by-law may, in particular, prescribe that

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- (1) tariffing shall be used in respect of one class or combination but not in respect of another;
- (2) tariffing shall be combined, in the manner it determines, with any other mode of financing prescribed by another applicable legislative provision, and may be used in respect of one class or one combination and not in respect of another or may differ according to classes or combinations;
- (3) the applicable mode of tariffing shall differ according to classes or combinations of classes;
- (4) the rule prescribed for computing the amount exigible under a mode of tariffing may differ for each of the classes of beneficiaries, whether it is the tax rate, the amount of compensation, the fixed amount exigible for the use of a property or service, or any other base of tariffing.

1988, c. 76, s. 68.

244.6. The by-law may prescribe for the use of measuring instruments to permit the computation of the amount payable, as well as rules relating to the installation, maintenance and reading of such instruments and the consequences of a breach of such rules, more particularly, as regards the determination of an amount payable by the debtor in whose respect the instruments cannot be used.

1988, c. 76, s. 68.

244.7. Any compensation required from a person under this division by reason of his being the owner of an immovable shall be regarded as a property tax imposed on the unit of assessment that includes the immovable.

That presumption, however, does not apply if the owner of the immovable is not the person in whose name the unit of assessment that includes the immovable is entered on the roll.

1988, c. 76, s. 68; 1999, c. 40, s. 133; 2004, c. 20, s. 173.

244.7.1. If the mode of tariffing is a property tax or a compensation, the by-law must clearly indicate whether or not the property tax or compensation is required from a person because that person is the owner or occupant of an immovable included in an agricultural operation registered in accordance with a regulation made under section 36.15 of the Act respecting the Ministère de l'Agriculture, des Pêcheries et de l'Alimentation (chapter M-14).

If the tax or compensation is required from a person because that person is the owner or occupant of a unit of assessment that includes, among other immovables, one or more of the type of immovable referred to in the first paragraph, the by-law must clearly indicate the part of the amount of the tax or compensation payable in respect of the unit that is attributable to the type of immovable referred to in the first paragraph. That part must be indicated separately on the request for payment of the tax or compensation.

2006, c. 31, s. 78.

244.8. Subject to section 244.7, the by-law may prescribe terms and conditions for the collection of the amount exigible under this division.

Failing such terms and conditions, the rules provided for by the Act in respect of the collection of taxes or compensations, where the mode of tariffing imposed is a tax or a compensation, apply to the amount payable under this division.

1988, c. 76, s. 68; 1994, c. 30, s. 70; 1995, c. 34, s. 79; 1999, c. 90, s. 29; 2008, c. 18, s. 80.

244.9. A mode of tariffing may be used to repay all or part of a loan or to contribute to the sinking fund constituted for such repayment.

*Act respecting Municipal Taxation, C.Q.L.R., c. F-2.1, Sections 244.1 to 244.10***MUNICIPAL TAXATION**

In that case, the loan by-law or resolution must specify the mode of tariffing, the tax base and the class of debtors.

Where the by-law or resolution provides that the repayment must be made by way of both a property tax, or a compensation regarded as a property tax, and another mode of tariffing but does not specify the proportions thereof, only the tax or compensation shall be considered for the purpose of determining if all the persons qualified to vote in the municipality or only part of them may take part in the referendum on the by-law or resolution.

1988, c. 76, s. 68; 1991, c. 32, s. 160; 1999, c. 40, s. 133.

244.10. Sections 244.1 to 244.9 apply notwithstanding any inconsistent provision of any general law or special Act.

1988, c. 76, s. 68; 1991, c. 32, s. 160; 1993, c. 78, s. 10.

DIVISION III.2

Repealed, 2004, c. 20, s. 174.

1991, c. 32, s. 128; 2004, c. 20, s. 174.

244.11. *(Repealed).*

1991, c. 32, s. 128; 1993, c. 43, s. 11; 1993, c. 78, s. 11; 1999, c. 40, s. 133; 2000, c. 54, s. 77; 2000, c. 10, s. 26; 2004, c. 20, s. 174.

244.12. *(Repealed).*

1991, c. 32, s. 128; 2004, c. 20, s. 174.

244.13. *(Repealed).*

1991, c. 32, s. 128; 1993, c. 43, s. 12; 1993, c. 78, s. 12; 1994, c. 30, s. 71; 1998, c. 43, s. 6; 2000, c. 54, s. 78; 2000, c. 56, s. 152; 2004, c. 20, s. 174.

244.14. *(Repealed).*

1991, c. 32, s. 128; 2004, c. 20, s. 174.

244.15. *(Repealed).*

1991, c. 32, s. 128; 1992, c. 53, s. 9; 1999, c. 40, s. 133; 2004, c. 20, s. 174.

244.16. *(Repealed).*

1991, c. 32, s. 128; 1992, c. 53, s. 10; 1999, c. 40, s. 133; 2004, c. 20, s. 174.

244.17. *(Repealed).*

1991, c. 32, s. 128; 2004, c. 20, s. 174.

244.18. *(Repealed).*

1991, c. 32, s. 128; 1992, c. 53, s. 11; 2004, c. 20, s. 174.

244.19. *(Repealed).*

1991, c. 32, s. 128; 1992, c. 53, s. 12; 1999, c. 40, s. 133; 2004, c. 20, s. 174.



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chapitre F-2.1

LOI SUR LA FISCALITÉ MUNICIPALE

*Le ministre des Finances exerce les fonctions du ministre du Revenu prévues à la présente loi.
Décret 412-2016 du 25 mai 2016, (2016) 148 G.O. 2, 2923.*

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Le premier alinéa s'applique, compte tenu des adaptations nécessaires, dans le cas d'une révocation qui n'a pas été demandée par la municipalité et dans celui d'une confirmation en vue de laquelle la Commission a reçu de la personne reconnue tout document demandé.

2000, c. 54, a. 76.

243.24. La municipalité doit transmettre son opinion à la Commission dans les 90 jours qui suivent la transmission de l'avis.

En cas de défaut, le déroulement de l'instance devant la Commission peut se poursuivre malgré l'absence de l'opinion de la municipalité, laquelle n'en est pas pour autant forclosée.

2000, c. 54, a. 76.

243.25. La personne qui demande d'être reconnue doit produire à la Commission, à la demande de celle-ci ou de la municipalité, ses états financiers. Il en est de même pour l'autre personne dont on demande la mention dans la reconnaissance comme utilisateur de l'immeuble.

Le premier alinéa s'applique, compte tenu des adaptations nécessaires, dans le cas où la révocation de la reconnaissance ou sa révision périodique fait l'objet d'une instance devant la Commission.

2000, c. 54, a. 76.

244. (Abrogé).

1979, c. 72, a. 244; 1991, c. 32, a. 125.

SECTION III.1

TARIFICATION

1988, c. 76, a. 68.

244.1. Dans la mesure où est en vigueur un règlement du gouvernement prévu au paragraphe 8.2° de l'article 262, toute municipalité peut, par règlement, prévoir que tout ou partie de ses biens, services ou activités sont financés au moyen d'un mode de tarification.

Elle peut, de la même façon, prévoir qu'est ainsi financée tout ou partie de la quote-part ou d'une autre contribution dont elle est débitrice pour un bien, un service ou une activité d'une autre municipalité, d'une communauté, d'une régie intermunicipale ou d'un autre organisme public intermunicipal.

Elle peut également, de la même façon, prévoir qu'est ainsi financée tout ou partie de la somme qu'elle doit verser en contrepartie de tout service que lui fournit la Sûreté du Québec.

1988, c. 76, a. 68; 1991, c. 32, a. 160; 1996, c. 77, a. 54; 2003, c. 19, a. 192.

244.2. Constitue un mode de tarification toute source locale et autonome de recettes, autre qu'une taxe basée sur la valeur foncière ou locative des immeubles ou des établissements d'entreprise, dont l'imposition n'est pas en soi incompatible avec l'application de l'article 244.3.

Sont notamment des modes de tarification:

1° une taxe foncière basée sur une autre caractéristique de l'immeuble que sa valeur, comme sa superficie, son étendue en front ou une autre de ses dimensions;

2° une compensation exigée du propriétaire ou de l'occupant d'un immeuble;

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3° un prix exigé de façon ponctuelle ou sous forme d'abonnement pour l'utilisation d'un bien ou d'un service ou pour le bénéfice retiré d'une activité.

Le seul mode de tarification que peut prévoir une municipalité régionale de comté n'agissant pas à titre de municipalité locale en vertu de l'article 8 de la Loi sur l'organisation territoriale municipale (chapitre O-9) est un prix visé au paragraphe 3° du deuxième alinéa ou exigé selon des modalités analogues à celles d'un abonnement.

1988, c. 76, a. 68; 1991, c. 32, a. 126; 1996, c. 77, a. 55; 1999, c. 40, a. 133.

244.3. Le mode de tarification doit être lié au bénéfice reçu par le débiteur.

Le bénéfice est reçu non seulement lorsque le débiteur ou une personne à sa charge utilise réellement le bien ou le service ou profite de l'activité mais aussi lorsque le bien ou le service est à sa disposition ou que l'activité est susceptible de lui profiter éventuellement. Cette règle s'applique également, compte tenu des adaptations nécessaires, dans le cas d'un bien, d'un service ou d'une activité qui profite ou est susceptible de profiter non pas à la personne en tant que telle mais à l'immeuble dont elle est propriétaire ou occupant.

L'extension donnée par le deuxième alinéa au sens de l'expression «bénéfice reçu» ne s'applique pas si le mode de tarification est un prix exigé de façon ponctuelle pour l'utilisation du bien ou du service ou pour le bénéfice retiré d'une activité. L'activité d'une municipalité qui consiste à étudier une demande et à y répondre est réputée procurer un bénéfice au demandeur, quelle que soit la réponse, y compris lorsque la demande a pour objet un acte réglementaire ou que la réponse consiste dans un tel acte.

1988, c. 76, a. 68; 1991, c. 32, a. 127; 2004, c. 20, a. 172.

244.4. Le mode de tarification demeure lié au bénéfice reçu même si les recettes qu'il produit excèdent les dépenses attribuables au bien, au service ou à l'activité, pourvu que l'excédent s'explique par des motifs de saine administration comme la nécessité de normaliser la demande, de tenir compte de la concurrence et de donner préséance aux habitants et aux contribuables du territoire de la municipalité parmi les bénéficiaires ou qu'il s'explique, dans le cas où le mode est un prix exigé de façon ponctuelle lors de l'utilisation d'un bien ou d'un service, par une utilisation plus fréquente que prévu.

1988, c. 76, a. 68; 1991, c. 32, a. 160.

244.5. Le règlement peut prévoir des catégories de biens, de services, d'activités, de quotes-parts, de contributions ou de bénéficiaires, combiner des catégories et édicter des règles différentes selon les catégories ou combinaisons.

Il peut notamment prévoir que:

1° la tarification est utilisée à l'égard d'une catégorie ou d'une combinaison et non à l'égard d'une autre;

2° la tarification est combinée, de la façon qu'il détermine, à tout autre mode de financement prévu par une autre disposition législative applicable, cette mixité pouvant être utilisée à l'égard d'une catégorie ou d'une combinaison et non à l'égard d'une autre ou pouvant être différente selon les catégories ou combinaisons;

3° le mode de tarification applicable est différent selon les catégories ou combinaisons;

4° la règle de calcul de la somme payable conformément au mode de tarification est différente selon les catégories de bénéficiaires, qu'il s'agisse du taux de la taxe, du montant de la compensation, du prix d'utilisation ou de toute autre base.

1988, c. 76, a. 68.

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244.6. Le règlement peut prévoir l'utilisation d'instruments de mesure pour permettre le calcul du montant à payer et prévoir les règles relatives à l'installation, à l'entretien et à la consultation de ces instruments et les conséquences d'un manquement à ces règles, notamment quant à l'établissement d'un montant payable par le débiteur pour lequel les instruments ne peuvent remplir leur fonction.

1988, c. 76, a. 68.

244.7. Toute compensation exigée d'une personne en vertu de la présente section, en raison du fait qu'elle est propriétaire d'un immeuble, est assimilée à une taxe foncière imposée sur l'unité d'évaluation comprenant celui-ci.

Toutefois, cette assimilation ne s'applique pas si le propriétaire de l'immeuble n'est pas la personne au nom de laquelle est inscrite l'unité d'évaluation comprenant celui-ci.

1988, c. 76, a. 68; 2004, c. 20, a. 173.

244.7.1. Lorsque le mode de tarification est une taxe foncière ou une compensation, le libellé du règlement doit être tel qu'il permette de déterminer si la taxe ou la compensation est exigée ou non d'une personne en raison du fait que celle-ci est le propriétaire ou l'occupant d'un immeuble compris dans une exploitation agricole enregistrée conformément à un règlement pris en vertu de l'article 36.15 de la Loi sur le ministère de l'Agriculture, des Pêcheries et de l'Alimentation (chapitre M-14).

Si la taxe ou la compensation est exigée d'une personne en raison du fait que celle-ci est le propriétaire ou l'occupant d'une unité d'évaluation comportant non exclusivement un ou plus d'un immeuble visé au premier alinéa, le libellé du règlement doit être tel qu'il permette de déterminer, sur le montant de taxe ou de compensation payable à l'égard de l'unité, la partie qui est attribuable à l'immeuble visé au premier alinéa ou à l'ensemble de tels immeubles. Cette partie doit apparaître distinctement sur la demande de paiement de la taxe ou de la compensation.

2006, c. 31, a. 78.

244.8. Sous réserve de l'article 244.7, le règlement peut prévoir les modalités de perception du montant payable en vertu de la présente section.

À défaut, les règles prévues par la loi quant à la perception des taxes ou des compensations, si le mode de tarification imposé en est une, s'appliquent au montant payable en vertu de la présente section.

1988, c. 76, a. 68; 1994, c. 30, a. 70; 1995, c. 34, a. 79; 1999, c. 90, a. 29; 2008, c. 18, a. 80.

244.9. Un mode de tarification peut être utilisé pour contribuer au remboursement de tout ou partie d'un emprunt et à la dotation du fonds d'amortissement constitué pour ce remboursement.

Dans un tel cas, le règlement ou la résolution d'emprunt doit mentionner le mode de tarification, la base d'imposition et la catégorie de débiteurs.

Si le règlement ou la résolution prévoit que le remboursement doit être fait au moyen à la fois d'une taxe foncière ou d'une compensation qui y est assimilée et d'un autre mode de tarification, sans préciser dans quelles proportions, seule la taxe ou la compensation est considérée aux fins de déterminer si toutes les personnes habiles à voter de la municipalité ou une partie seulement d'entre elles peuvent participer au référendum sur le règlement ou la résolution.

1988, c. 76, a. 68; 1991, c. 32, a. 160.

244.10. Les articles 244.1 à 244.9 s'appliquent malgré toute disposition inconciliable d'une loi générale ou spéciale.

1988, c. 76, a. 68; 1991, c. 32, a. 160; 1993, c. 78, a. 10.

Règlement décrétant les taxes et les compensations pour l'année 2015, Ville de Sept-Îles,
Règlement No. 2015-307

CANADA
PROVINCE DE QUÉBEC
VILLE DE SEPT-ÎLES

RÈGLEMENT N° 2015-307

RÈGLEMENT DÉCRÉTANT LES TAXES ET LES COMPENSATIONS
POUR L'ANNÉE 2015

ATTENDU QUE le conseil municipal de la Ville de Sept-Îles a adopté ses prévisions budgétaires pour l'année 2015;

ATTENDU QU'il y a lieu d'imposer et de prélever les taxes et les compensations nécessaires pour équilibrer les revenus et les dépenses pour l'année 2015;

ATTENDU QU'en vertu de la *Loi sur la fiscalité municipale*, une municipalité peut fixer et imposer différents taux de la taxe foncière générale en fonction des catégories d'immeubles;

ATTENDU QU'un avis de motion du présent règlement a été donné par le conseiller Guy Berthe lors de la séance ordinaire du 8 décembre 2014;

PAR CES MOTIFS, LE CONSEIL MUNICIPAL DE LA VILLE DE SEPT-ÎLES DÉCRÈTE CE QUI SUIT :

CHAPITRE 1

TAXES FONCIÈRES GÉNÉRALES À TAUX VARIÉS

1. Pour l'exercice financier 2015, il est imposé et il sera prélevé une taxe foncière générale sur tous les immeubles imposables, suivant le taux particulier de la catégorie à laquelle appartiennent les unités d'évaluation.

2. Catégories d'immeubles

Les catégories d'immeubles pour lesquelles le conseil municipal fixe des taux variés de la taxe foncière générale sont les suivantes :

- 1- catégorie résiduelle;
- 2- catégorie des immeubles de six logements ou plus;
- 3- catégorie des immeubles non résidentiels;
- 4- catégorie des immeubles industriels.

Une unité d'évaluation peut appartenir à plusieurs catégories.

3. Dispositions applicables

Les dispositions des articles 244.29 à 244.58 de la *Loi sur la fiscalité municipale* (LRQ, chap. F-2.1) s'appliquent intégralement.

4. Taux de base et taux particulier de la catégorie résiduelle

Pour l'année 2015, le taux de base de la taxe foncière générale est fixé à 0,5868 \$ par 100 \$ de la valeur portée au rôle d'évaluation.

Le taux de base est le taux particulier à la catégorie résiduelle.

*Règlement décrétant les taxes et les compensations pour l'année 2015, Ville de Sept-Îles,
Règlement No. 2015-307*

Règlement n° 2015-307 (suite)

5. Taux particulier à la catégorie des immeubles de six logements ou plus

Pour l'année 2015, le taux particulier à la catégorie des immeubles de six logements ou plus est fixé à 0,7034 \$ par 100 \$ de la valeur portée au rôle d'évaluation.

6. Taux particulier à la catégorie des immeubles non résidentiels

Pour l'année 2015, le taux particulier à la catégorie des immeubles non résidentiels est fixé à 2,6533 \$ par 100 \$ de la valeur portée au rôle d'évaluation.

7. Taux particulier à la catégorie des immeubles industriels

Pour l'année 2015, le taux particulier à la catégorie des immeubles industriels est fixé à 2,7054 \$ par 100 \$ de la valeur portée au rôle d'évaluation.

CHAPITRE 2

TAXES FONCIÈRES SPÉCIALES

8. Taxe foncière générale spéciale pour le service de la dette – Dette commune

Afin de pourvoir aux dépenses engagées relativement aux intérêts et aux remboursements en capital des échéances annuelles des emprunts à la charge de la nouvelle municipalité, une taxe foncière générale spéciale de 0,2074 \$ par 100 \$ de la valeur telle que portée au rôle d'évaluation est imposée et sera prélevée pour l'année sur tous les immeubles imposables en vertu de la loi et situés sur le territoire de la nouvelle Ville de Sept-Îles.

9. Taxe foncière spéciale pour le service de la dette - Secteur de Sept-Îles

Afin de pourvoir aux dépenses engagées relativement aux intérêts et aux remboursements en capital des échéances annuelles des emprunts à la charge de l'ancienne Ville de Sept-Îles, une taxe générale spéciale de 0,0596 \$ du 100 \$ de la valeur telle que portée au rôle d'évaluation est imposée et sera prélevée pour l'année sur tous les immeubles imposables en vertu de la loi et situés sur le territoire de l'ancienne Ville de Sept-Îles.

10. Taxe foncière spéciale pour le service de la dette - Secteur de Moisie

Afin de pourvoir aux dépenses engagées relativement aux intérêts et aux remboursements en capital des échéances annuelles des emprunts à la charge de l'ancienne Ville de Moisie, une taxe foncière générale spéciale de 0,0625 \$ du 100 \$ de la valeur telle que portée au rôle d'évaluation est imposée et sera prélevée pour l'année sur tous les immeubles imposables en vertu de la loi et situés sur le territoire de l'ancienne Ville de Moisie.

*Règlement décrétant les taxes et les compensations pour l'année 2015, Ville de Sept-Îles,
Règlement No. 2015-307*

Règlement n° 2015-307 (suite)

CHAPITRE 3

COMPENSATIONS ET TAXES SPÉCIALES

11. Compensation pour le secteur de Plage-Ferguson

Pour l'année 2015, la compensation prévue à l'article 10 du règlement n° 1174 de l'ancienne Ville de Sept-Îles relativement aux travaux d'assainissement au secteur Ferguson est établie à 245 \$ par immeuble imposable en vertu de ce règlement.

12. Compensation pour le réseau d'égout au secteur de Gallix

Afin de pourvoir au paiement de la quote-part de l'ancienne Municipalité de Gallix payable à la Société québécoise d'assainissement des eaux relativement aux travaux d'assainissement des eaux de cette municipalité, une compensation à la charge des immeubles desservis par le réseau d'égout de l'ancienne Municipalité de Gallix est établie à 50 \$ par immeuble imposable pour l'année et ce, conformément à l'article 28 du décret n° 106-2003.

13. Compensation pour le secteur de Moisie

Afin de pourvoir au remboursement du règlement d'emprunt n° 67-98 de l'ancienne Ville de Moisie, une compensation à la charge des usagers du réseau d'égout de l'ancienne Ville de Moisie est établie à 30 \$ par immeuble imposable pour l'année et ce, conformément à l'article 29 du décret n° 106-2003.

14. Compensation pour le puits d'eau potable du secteur de Moisie

Pour l'année 2015, la compensation prévue à l'article 9 du règlement n° 2004-43 de la Ville de Sept-Îles relativement aux travaux d'aménagement d'un nouveau puits d'alimentation en eau des citoyens de la station de villégiature de Moisie est établie à 220 \$ par immeuble imposable en vertu de ce règlement.

15. Taxe spéciale pour le secteur de Côte du Relais

Pour l'année 2015, la taxe spéciale prévue à l'article 5 du règlement n° 2008-119, relatif aux travaux de prolongation du réseau d'aqueduc à plage Lévesque, est établie à 19,7405 \$/mètre de frontage, par immeuble imposable en vertu de ce règlement.

16. Compensation pour la rue du Rond-Point, secteur Moisie

Pour l'année 2015, la compensation prévue à l'article 5 du règlement n° 2009-138, relatif aux travaux municipaux réalisés sur la rue du Rond-Point dans le secteur de Moisie est établie à 1 014,94 \$/immeuble imposable en vertu de ce règlement.

17. Taxe spéciale pour la rue de l'Église, secteur Clarke

Pour l'année 2015, la taxe spéciale prévue à l'article 6 du règlement n° 2011-230 et ses amendements, relatif à la réalisation de travaux de prolongation de services municipaux sur la rue de l'Église au secteur Clarke est établie à 45,8606 \$/mètre de frontage, par immeuble imposable en vertu de ce règlement.

Règlement décrétant les taxes et les compensations pour l'année 2015, Ville de Sept-Îles,
Règlement No. 2015-307

Règlement n° 2015-307 (suite)

CHAPITRE 4

COMPENSATIONS POUR LA FOURNITURE DE L'EAU

18. Consommation sans compteur

Pour l'année 2015, il est imposé et il sera prélevé auprès de tout propriétaire d'immeuble, une compensation annuelle pour consommation d'eau sans compteur, selon les taux suivants :

- | | | |
|----|--|--------|
| 1- | Pour chaque unité d'habitation : | 145 \$ |
| 2- | Pour chaque chambre d'une maison de chambres ou de pension : | 50 \$ |
| 3- | Pour chaque lieu d'affaires non munl d'un compteur : | 145 \$ |

19. Consommation avec compteur

Pour l'année 2015, il est imposé et il sera prélevé une compensation pour la consommation d'eau de chaque unité d'évaluation munie d'un compteur par période de consommation de quatre (4) mois et selon les taux suivants :

DIAMÈTRE (CONDUITE)	COMPENSATION POUR 4 MOIS*	POUR LES PREMIERS*
16 mm	74 \$	90 922 litres
19 mm	74 \$	90 922 litres
25 mm	137 \$	181 844 litres
38 mm	242 \$	304 589 litres
50 mm	347 \$	454 610 litres
75 mm	683 \$	909 220 litres
100 mm	1 029 \$	1 363 830 litres
150 mm	2 079 \$	2 727 660 litres
200 mm et plus	4 158 \$	5 455 320 litres
Compensation additionnelle de 0,26 \$ par 1 000 litres excédentaires.		

* Taux de conversion 1 000 litres = 219,97 gallons impériaux

20. Responsabilités du paiement de la compensation

Les compensations pour la fourniture de l'eau, telles que décrétées par le présent règlement, sont à la charge du propriétaire de l'unité d'évaluation concernée et elles sont dues, même de celui dont l'unité d'habitation, la chambre, le bureau, le local, le commerce ou tout autre établissement quelconque, est vacant.

21. Modalités de paiement

Les compensations relatives à la consommation d'eau sans compteur, sont payables selon les mêmes modalités que le compte de taxes foncières de l'immeuble concerné suivant les dispositions du chapitre 6 du présent règlement.

Règlement décrétant les taxes et les compensations pour l'année 2015, Ville de Sept-Îles,
Règlement No. 2015-307

Règlement n° 2015-307 (suite)

Les compensations pour la fourniture de l'eau mesurée au compteur sont payables au plus tard le 30^e jour qui suit l'expédition du compte.

CHAPITRE 5

COMPENSATIONS POUR LA CUEILLETTE ET L'ÉLIMINATION DES MATIÈRES
RÉSIDUELLES

22. Immeubles résidentiels

Il est imposé et il sera prélevé pour l'année financière 2015, une compensation pour la cueillette et la disposition des matières résiduelles des immeubles résidentiels selon les taux annuels suivants :

1-	Pour chaque unité d'habitation :	145 \$
2-	Par chambre d'une maison de chambres ou de pension :	50 \$
3-	Par emplacement d'un terrain de camping :	10 \$

23. Immeubles non résidentiels

Il est imposé et il sera prélevé pour l'année financière 2015, une compensation pour la cueillette des matières résiduelles des immeubles non résidentiels desservis par conteneurs d'acier, selon les taux suivants :

<u>Type de conteneur</u>	<u>Service de base (1 cueillette hebdomadaire)</u>
2 verges cubes	650 \$ annuel
4 verges cubes	1 300 \$ annuel
6 verges cubes	1 950 \$ annuel

Pour les immeubles non résidentiels bénéficiant de plus d'une cueillette hebdomadaire, la compensation annuelle applicable s'établit comme suit : compensation annuelle pour le service de base multipliée par le nombre de cueillettes hebdomadaires.

Lorsqu'un conteneur d'acier est utilisé au bénéfice de plus d'un immeuble, la compensation applicable est divisée par le nombre d'immeubles concernés et facturée aux propriétaires de ceux-ci dans la même proportion.

24. Immeubles non résidentiels non desservis par conteneur d'acier

Il est imposé et il sera prélevé pour l'année financière 2015, une compensation pour la cueillette et la disposition des matières résiduelles des immeubles non résidentiels non desservis par conteneurs d'acier, au taux de 0,15 \$ par 100 \$ de la valeur assujettie à la taxe foncière générale applicable à la catégorie des immeubles non résidentiels, telle que portée au rôle pour l'immeuble concerné, sujet à une taxe annuelle minimale de 145 \$.

25. Responsabilité du paiement de la compensation

Les compensations pour la cueillette et la disposition des matières résiduelles, telles que décrétées par le présent règlement, sont à la charge du propriétaire de l'unité d'évaluation concernée et elles sont dues, même de celui dont l'unité d'habitation, la chambre, le bureau, le local, le commerce ou tout autre établissement est vacant.

Règlement décrétant les taxes et les compensations pour l'année 2015, Ville de Sept-Îles,
Règlement No. 2015-307

Règlement n° 2015-307 (suite)

26. Modalités de paiement

La compensation pour la cueillette et la disposition des matières résiduelles prévue par le présent chapitre est payable selon les mêmes modalités que le compte de taxes foncières de l'immeuble concerné prévues au chapitre 6 du présent règlement.

CHAPITRE 6

DISPOSITIONS FINALES

27. Un seul compte de taxes

Le compte de taxes transmis par le trésorier à chaque propriétaire comprend la taxe foncière générale, les taxes foncières spéciales et les compensations telles que décrétées par le présent règlement.

28. Compte de taxes de 2 \$ et moins

Dans l'optique d'une saine administration, les comptes de taxes totalisant 2 \$ et moins de même que les notes de crédit de 2 \$ et moins ne seront pas acheminés aux propriétaires des immeubles. Suivant la préparation du rôle de perception, un ajustement sera effectué et autorisé par le trésorier de la municipalité afin que les comptes de taxes de \pm 2 \$ soient immédiatement radiés des livres de la municipalité.

29. Taux de taxe foncière combiné

Aux fins de présentation du compte de taxes, la municipalité est autorisée à utiliser, si elle le désire, un taux de taxe foncière combiné qui est composé du taux de taxe foncière générale et du taux de taxe foncière spéciale pour chaque immeuble imposable.

30. Modalités de paiement

Les modalités de versement applicables au paiement des taxes foncières, compensations et autres tarifications prévues au présent règlement sont établies comme suit :

- a) lorsque le montant total du compte de taxes pour l'année en cours est inférieur à 300 \$, le compte de taxes est payable en un seul versement dans les 30 jours de la date d'envoi du compte;
- b) lorsque le montant total du compte de taxes est égal ou supérieur à 300 \$, le contribuable peut le payer en trois versements égaux dont le premier est exigé dans les 30 jours de la date d'envoi du compte, les deux autres versements étant exigibles 90 jours après la date où le versement précédent devient exigible.

31. Exigibilité

Lorsqu'un versement n'est pas fait dans le délai prévu, seul le montant du versement échu est alors exigible immédiatement.

32. Immeubles exemptés de la taxe foncière

Conformément à l'article 205 de la *Loi sur la fiscalité municipale*, tout immeuble exempté du paiement des taxes foncières est toutefois assujéti au paiement des compensations prévues aux chapitres 4 et 5 du présent règlement.

Règlement décrétant les taxes et les compensations pour l'année 2015, Ville de Sept-Îles,
Règlement No. 2015-307

Règlement n° 2015-307 (suite)

33. Créances prioritaires

Les taxes municipales, compensations et autres tarifications décrétées et imposées par le présent règlement et leurs intérêts constituent une créance prioritaire au sens du Code civil du Québec.

34. Entrée en vigueur et effet

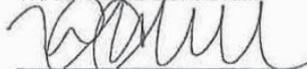
Le présent règlement entre en vigueur conformément à la loi et aura effet à compter du 1^{er} janvier 2015.

- **AVIS DE MOTION DONNÉ** le 8 décembre 2014
- **ADOPTÉ PAR LE CONSEIL** le 13 janvier 2015
- **AVIS PUBLIC DONNÉ** le 21 janvier 2015
- **ENTRÉE EN VIGUEUR DU RÈGLEMENT** le 1^{er} janvier 2015

(signé) Réjean Porlier, maire

(signé) Valérie Halncé, greffière

VRAIE COPIE CONFORME



Greffière

Règlement décrétant les taxes et les compensations pour l'année 2016, Ville de Sept-Îles,
Règlement No. 2016-339

CANADA
PROVINCE DE QUÉBEC
VILLE DE SEPT-ÎLES

RÈGLEMENT N° 2016-339

**RÈGLEMENT DÉCRÉTANT LES TAXES ET LES COMPENSATIONS
POUR L'ANNÉE 2016**

ATTENDU QUE le conseil municipal de la Ville de Sept-Îles a adopté ses prévisions budgétaires pour l'année 2016;

ATTENDU QU'il y a lieu d'imposer et de prélever les taxes et les compensations nécessaires pour équilibrer les revenus et les dépenses pour l'année 2016;

ATTENDU QU'en vertu de la *Loi sur la fiscalité municipale*, une municipalité peut fixer et imposer différents taux de la taxe foncière générale en fonction des catégories d'immeubles;

ATTENDU QU'un avis de motion du présent règlement a été donné par le conseiller Michel Bellavance lors de la séance spéciale du 15 décembre 2015;

PAR CES MOTIFS, LE CONSEIL MUNICIPAL DE LA VILLE DE SEPT-ÎLES DÉCRÈTE CE QUI SUIT :

CHAPITRE 1

TAXES FONCIÈRES GÉNÉRALES À TAUX VARIÉS

1. Pour l'exercice financier 2016, il est imposé et il sera prélevé une taxe foncière générale sur tous les immeubles imposables, suivant le taux particulier de la catégorie à laquelle appartiennent les unités d'évaluation.

2. **Catégories d'immeubles**

Les catégories d'immeubles pour lesquelles le conseil municipal fixe des taux variés de la taxe foncière générale sont les suivantes :

- 1- catégorie résiduelle;
- 2- catégorie des immeubles de six logements ou plus;
- 3- catégorie des immeubles non résidentiels;
- 4- catégorie des immeubles industriels.

Une unité d'évaluation peut appartenir à plusieurs catégories.

3. **Dispositions applicables**

Les dispositions des articles 244.29 à 244.58 de la *Loi sur la fiscalité municipale* (LRQ, chap. F-2.1) s'appliquent intégralement.

4. **Taux de base et taux particulier de la catégorie résiduelle**

Pour l'année 2016, le taux de base de la taxe foncière générale est fixé à 0,5309 \$ par 100 \$ de la valeur portée au rôle d'évaluation.

Le taux de base est le taux particulier à la catégorie résiduelle.

Règlement décrétant les taxes et les compensations pour l'année 2016, Ville de Sept-Îles,
Règlement No. 2016-339

Règlement n° 2016-339 (suite)

5. **Taux particulier à la catégorie des immeubles de six logements ou plus**

Pour l'année 2016, le taux particulier à la catégorie des immeubles de six logements ou plus est fixé à 0,5430 \$ par 100 \$ de la valeur portée au rôle d'évaluation.

6. **Taux particulier à la catégorie des immeubles non résidentiels**

Pour l'année 2016, le taux particulier à la catégorie des immeubles non résidentiels est fixé à 2,6500 \$ par 100 \$ de la valeur portée au rôle d'évaluation.

7. **Taux particulier à la catégorie des immeubles industriels**

Pour l'année 2016, le taux particulier à la catégorie des immeubles industriels est fixé à 2,8500 \$ par 100 \$ de la valeur portée au rôle d'évaluation.

CHAPITRE 2

TAXES FONCIÈRES SPÉCIALES

8. **Taxe foncière générale spéciale pour le service de la dette – Dette commune**

Afin de pourvoir aux dépenses engagées relativement aux intérêts et aux remboursements en capital des échéances annuelles des emprunts à la charge de la nouvelle municipalité, une taxe foncière générale spéciale de 0,2311 \$ par 100 \$ de la valeur telle que portée au rôle d'évaluation est imposée et sera prélevée pour l'année sur tous les immeubles imposables en vertu de la loi et situés sur le territoire de la nouvelle Ville de Sept-Îles.

9. **Taxe foncière spéciale pour le service de la dette - Secteur de Sept-Îles**

Afin de pourvoir aux dépenses engagées relativement aux intérêts et aux remboursements en capital des échéances annuelles des emprunts à la charge de l'ancienne Ville de Sept-Îles, une taxe générale spéciale de 0,0550 \$ du 100 \$ de la valeur telle que portée au rôle d'évaluation est imposée et sera prélevée pour l'année sur tous les immeubles imposables en vertu de la loi et situés sur le territoire de l'ancienne Ville de Sept-Îles.

10. **Taxe foncière spéciale pour le service de la dette - Secteur de Moisie**

Afin de pourvoir aux dépenses engagées relativement aux intérêts et aux remboursements en capital des échéances annuelles des emprunts à la charge de l'ancienne Ville de Moisie, une taxe foncière générale spéciale de 0,0553 \$ du 100 \$ de la valeur telle que portée au rôle d'évaluation est imposée et sera prélevée pour l'année sur tous les immeubles imposables en vertu de la loi et situés sur le territoire de l'ancienne Ville de Moisie.

Règlement décrétant les taxes et les compensations pour l'année 2016, Ville de Sept-Îles,
Règlement No. 2016-339

Règlement n° 2016-339 (suite)

CHAPITRE 3

COMPENSATIONS ET TAXES SPÉCIALES

11. Compensation pour le secteur de Plage-Ferguson

Pour l'année 2016, la compensation prévue à l'article 10 du règlement n° 1174 de l'ancienne Ville de Sept-Îles relativement aux travaux d'assainissement au secteur Ferguson est établie à 245 \$ par immeuble imposable en vertu de ce règlement.

12. Compensation pour le réseau d'égout au secteur de Gallix

Afin de pourvoir au paiement de la quote-part de l'ancienne Municipalité de Gallix payable à la Société québécoise d'assainissement des eaux relativement aux travaux d'assainissement des eaux de cette municipalité, une compensation à la charge des immeubles desservis par le réseau d'égout de l'ancienne Municipalité de Gallix est établie à 50 \$ par immeuble imposable pour l'année et ce, conformément à l'article 28 du décret n° 106-2003.

13. Compensation pour le secteur de Moisie

Afin de pourvoir au remboursement du règlement d'emprunt n° 67-98 de l'ancienne Ville de Moisie, une compensation à la charge des usagers du réseau d'égout de l'ancienne Ville de Moisie est établie à 30 \$ par immeuble imposable pour l'année et ce, conformément à l'article 29 du décret n° 106-2003.

14. Compensation pour le puits d'eau potable du secteur de Moisie

Pour l'année 2016, la compensation prévue à l'article 9 du règlement n° 2004-43 de la Ville de Sept-Îles relativement aux travaux d'aménagement d'un nouveau puits d'alimentation en eau des citoyens de la station de villégiature de Moisie est établie à 220 \$ par immeuble imposable en vertu de ce règlement.

15. Taxe spéciale pour le secteur de Côte du Relais

Pour l'année 2016, la taxe spéciale prévue à l'article 5 du règlement n° 2008-119, relatif aux travaux de prolongation du réseau d'aqueduc à plage Lévesque, est établie à 19,7405 \$/mètre de frontage, par immeuble imposable en vertu de ce règlement.

16. Compensation pour la rue du Rond-Point, secteur Moisie

Pour l'année 2016, la compensation prévue à l'article 5 du règlement n° 2009-138, relatif aux travaux municipaux réalisés sur la rue du Rond-Point dans le secteur de Moisie est établie à 1 014,94 \$/immeuble imposable en vertu de ce règlement.

17. Taxe spéciale pour la rue de l'Église, secteur Clarke

Pour l'année 2016, la taxe spéciale prévue à l'article 6 du règlement n° 2011-230 et ses amendements, relatif à la réalisation de travaux de prolongation de services municipaux sur la rue de l'Église au secteur Clarke est établie à 45,2182 \$/mètre de frontage, par immeuble imposable en vertu de ce règlement.

Règlement décrétant les taxes et les compensations pour l'année 2016, Ville de Sept-Îles,
Règlement No. 2016-339

Règlement n° 2016-339 (suite)

CHAPITRE 4

COMPENSATIONS POUR LA FOURNITURE DE L'EAU

18. Consommation sans compteur

Pour l'année 2016, il est imposé et il sera prélevé auprès de tout propriétaire d'immeuble, une compensation annuelle pour consommation d'eau sans compteur, selon les taux suivants :

- | | | |
|----|--|--------|
| 1- | Pour chaque unité d'habitation : | 155 \$ |
| 2- | Pour chaque chambre d'une maison de chambres ou de pension : | 55 \$ |
| 3- | Pour chaque lieu d'affaires non muni d'un compteur : | 155 \$ |

19. Consommation avec compteur

Pour l'année 2016, il est imposé et il sera prélevé une compensation pour la consommation d'eau de chaque unité d'évaluation munie d'un compteur par période de consommation de quatre (4) mois et selon les taux suivants :

DIAMÈTRE (CONDUITE)	COMPENSATION POUR 4 MOIS*	POUR LES PREMIERS*
16 mm	74 \$	90 922 litres
19 mm	74 \$	90 922 litres
25 mm	137 \$	181 844 litres
38 mm	242 \$	304 589 litres
50 mm	347 \$	454 610 litres
75 mm	683 \$	909 220 litres
100 mm	1 029 \$	1 363 830 litres
150 mm	2 079 \$	2 727 660 litres
200 mm et plus	4 158 \$	5 455 320 litres
Compensation additionnelle de 0,46 \$ par 1 000 litres excédentaires.		

* Taux de conversion 1 000 litres = 219,97 gallons impériaux

20. Responsabilités du paiement de la compensation

Les compensations pour la fourniture de l'eau, telles que décrétées par le présent règlement, sont à la charge du propriétaire de l'unité d'évaluation concernée et elles sont dues, même de celui dont l'unité d'habitation, la chambre, le bureau, le local, le commerce ou tout autre établissement quelconque, est vacant.

21. Modalités de paiement

Les compensations relatives à la consommation d'eau sans compteur, sont payables selon les mêmes modalités que le compte de taxes foncières de l'immeuble concerné suivant les dispositions du chapitre 6 du présent règlement.

Règlement décrétant les taxes et les compensations pour l'année 2016, Ville de Sept-Îles,
Règlement No. 2016-339

Règlement n° 2016-339 (suite)

Les compensations pour la fourniture de l'eau mesurée au compteur sont payables au plus tard le 30^e jour qui suit l'expédition du compte.

CHAPITRE 5

**COMPENSATIONS POUR LA CUEILLETTE ET L'ÉLIMINATION DES MATIÈRES
RÉSIDUELLES**

22. Immeubles résidentiels

Il est imposé et il sera prélevé pour l'année financière 2016, une compensation pour la cueillette et la disposition des matières résiduelles des immeubles résidentiels selon les taux annuels suivants :

1-	Pour chaque unité d'habitation :	155 \$
2-	Par chambre d'une maison de chambres ou de pension :	55 \$
3-	Par emplacement d'un terrain de camping :	15 \$

23. Immeubles non résidentiels

Il est imposé et il sera prélevé pour l'année financière 2016, une compensation pour la cueillette des matières résiduelles des immeubles non résidentiels desservis par conteneurs d'acier, selon les taux suivants :

<u>Type de conteneur</u>	<u>Service de base (1 cueillette hebdomadaire)</u>
2 verges cubes	690 \$ annuel
4 verges cubes	1 380 \$ annuel
6 verges cubes	2 070 \$ annuel

Pour les immeubles non résidentiels bénéficiant de plus d'une cueillette hebdomadaire, la compensation annuelle applicable s'établit comme suit : compensation annuelle pour le service de base multipliée par le nombre de cueillettes hebdomadaires.

Lorsqu'un conteneur d'acier est utilisé au bénéfice de plus d'un immeuble, la compensation applicable est divisée par le nombre d'immeubles concernés et facturée aux propriétaires de ceux-ci dans la même proportion.

24. Immeubles non résidentiels non desservis par conteneur d'acier

Il est imposé et il sera prélevé pour l'année financière 2016, une compensation pour la cueillette et la disposition des matières résiduelles des immeubles non résidentiels non desservis par conteneurs d'acier, au taux de 0,15 \$ par 100 \$ de la valeur assujettie à la taxe foncière générale applicable à la catégorie des immeubles non résidentiels, telle que portée au rôle pour l'immeuble concerné, sujet à une taxe annuelle minimale de 155 \$.

25. Responsabilité du paiement de la compensation

Les compensations pour la cueillette et la disposition des matières résiduelles, telles que décrétées par le présent règlement, sont à la charge du propriétaire de l'unité d'évaluation concernée et elles sont dues, même de celui dont l'unité d'habitation, la chambre, le bureau, le local, le commerce ou tout autre établissement est vacant.

Règlement décrétant les taxes et les compensations pour l'année 2016, Ville de Sept-Îles,
Règlement No. 2016-339

Règlement n° 2016-339 (suite)

26. Modalités de paiement

La compensation pour la cueillette et la disposition des matières résiduelles prévue par le présent chapitre est payable selon les mêmes modalités que le compte de taxes foncières de l'immeuble concerné prévues au chapitre 6 du présent règlement.

CHAPITRE 6

DISPOSITIONS FINALES

27. Un seul compte de taxes

Le compte de taxes transmis par le trésorier à chaque propriétaire comprend la taxe foncière générale, les taxes foncières spéciales et les compensations telles que décrétées par le présent règlement.

28. Compte de taxes de 2 \$ et moins

Dans l'optique d'une saine administration, les comptes de taxes totalisant 2 \$ et moins de même que les notes de crédit de 2 \$ et moins ne seront pas acheminés aux propriétaires des immeubles. Suivant la préparation du rôle de perception, un ajustement sera effectué et autorisé par le trésorier de la municipalité afin que les comptes de taxes de ± 2 \$ soient immédiatement radiés des livres de la municipalité.

29. Taux de taxe foncière combiné

Aux fins de présentation du compte de taxes, la municipalité est autorisée à utiliser, si elle le désire, un taux de taxe foncière combiné qui est composé du taux de taxe foncière générale et du taux de taxe foncière spéciale pour chaque immeuble imposable.

30. Modalités de paiement

Les modalités de versement applicables au paiement des taxes foncières, compensations et autres tarifications prévues au présent règlement sont établies comme suit :

- a) lorsque le montant total du compte de taxes pour l'année en cours est inférieur à 300 \$, le compte de taxes est payable en un seul versement dans les 30 jours de la date d'envoi du compte;
- b) lorsque le montant total du compte de taxes est égal ou supérieur à 300 \$, le contribuable peut le payer en trois versements égaux dont le premier est exigé dans les 30 jours de la date d'envoi du compte, les deux autres versements étant exigibles 90 jours après la date où le versement précédent devient exigible.

31. Exigibilité

Lorsqu'un versement n'est pas fait dans le délai prévu, seul le montant du versement échu est alors exigible immédiatement.

32. Immeubles exemptés de la taxe foncière

Conformément à l'article 205 de la *Loi sur la fiscalité municipale*, tout immeuble exempté du paiement des taxes foncières est toutefois assujéti au paiement des compensations prévues aux chapitres 4 et 5 du présent règlement.

Règlement décrétant les taxes et les compensations pour l'année 2016, Ville de Sept-Îles,
Règlement No. 2016-339

Règlement n° 2016-339 (suite)

33. Créances prioritaires

Les taxes municipales, compensations et autres tarifications décrétées et imposées par le présent règlement et leurs intérêts constituent une créance prioritaire au sens du Code civil du Québec.

34. Entrée en vigueur et effet

Le présent règlement entre en vigueur conformément à la loi et aura effet à compter du 1^{er} janvier 2016.

- **AVIS DE MOTION DONNÉ** le 15 décembre 2015
- **ADOPTÉ PAR LE CONSEIL** le 11 janvier 2016
- **AVIS PUBLIC DONNÉ** le 20 janvier 2016
- **ENTRÉE EN VIGUEUR DU RÈGLEMENT** le 1^{er} janvier 2016

(signé) Réjean Porlier, maire

(signé) Valérie Haince, greffière

VRAIE COPIE CONFORME



Greffière



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Updated to October 1 2017
This document has official status.

chapter I-16

INTERPRETATION ACT

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SCHEDULE A

REPEAL SCHEDULE

Interpretation Act, C.Q.L.R., c. I-16, Section 61

INTERPRETATION

The resignation of any civil servant or employee may be validly accepted by the Minister who presides over the Department to which the said civil servant or employee belongs.

R. S. 1964, c. 1, s. 55; 1968, c. 8, s. 13; 1999, c. 40, s. 161.

55.1. The fact that a person exercising adjudicative functions is appointed to a court or body in which no concurrent functions may be exercised shall not operate to cause that person, by that sole fact, to lose jurisdiction over the cases of which the person was seized at the time of the appointment. The person may then conclude those cases without remuneration therefor and without it being necessary to obtain authorization.

2002, c. 32, s. 3.

56. (1) When anything is ordered to be done by or before a judge, magistrate, functionary or public officer, one is understood whose powers or jurisdiction extend to the place where such thing is to be done.

(2) The duties imposed, and the powers conferred, upon an officer or public functionary in his official capacity, shall pass to his successor and belong to his deputy, in so far as they are compatible with the office of the latter.

R. S. 1964, c. 1, s. 56.

57. The authority given to do a thing shall carry with it all the powers necessary for that purpose.

R. S. 1964, c. 1, s. 57.

58. That which is expressed by an oath may be expressed by way of a solemn affirmation; any form of oath prescribed by an Act or a regulation shall be adapted accordingly.

Unless otherwise specially provided, whenever an oath is ordered to be taken or administered, such oath shall be administered and the certificate of its having been taken shall be given by any judge, magistrate or commissioner authorized for that purpose, having jurisdiction in the place where the oath is taken, or by any notary.

R. S. 1964, c. 1, s. 58; 1986, c. 95, s. 172.

59. When an act is to be performed by more than two persons, it may be validly done by the majority of them, unless otherwise specially provided.

R. S. 1964, c. 1, s. 59.

60. A body constituted under an Act of Parliament, whether constituted as a legal person or not, and consisting of a determined number of members, shall not be dissolved on account of one or more vacancies occurring among its members through death, resignation or otherwise.

R. S. 1964, c. 1, s. 60; 1982, c. 62, s. 156; 1999, c. 40, s. 161.

61. In any statute, unless otherwise specially provided,

(1) the words “His Majesty”, “Her Majesty”, “the King”, “the Sovereign”, “the Queen”, “the Crown”, mean the Sovereign of the United Kingdom, Canada and His or Her other Realms and Territories, and Head of the Commonwealth;

(2) the words “Governor-General” mean the Governor-General of Canada, or the person administering the Government of Canada; and the words “Lieutenant-Governor”, the Lieutenant-Governor of Québec, or the person administering the Gouvernement du Québec;

Interpretation Act, C.Q.L.R., c. I-16, Section 61

INTERPRETATION

(3) the words “Governor-General in Council” mean the Governor-General or person administering the Government, acting with the advice of the Queen’s Privy Council for Canada; and the words “Lieutenant-Governor in Council” , the Lieutenant-Governor or person administering the Government, acting with the advice of the Conseil exécutif du Québec;

(4) the words “United Kingdom” mean the United Kingdom of Great Britain and Ireland; the words “United States” , the United States of America; the words “Dominion” and “Canada” , the Dominion of Canada;

(5) the words “the Union” mean the union of the Provinces effected under the British North America Act, 1867, and subsequent Acts;

(6) the words “Lower Canada” mean that part of Canada which heretofore constituted the Province of Lower Canada, and mean now the Province of Québec;

(7) the word “Province” , when used alone, means the Province of Québec; and the qualification “provincial” , added to the word “Act” , “statute” or “law” means an Act, statute or law of Québec;

(8) the words “Federal Parliament” mean the Parliament of Canada; the word “Legislature” or “Parliament” means the Parliament of Québec;

(9) the word “session” means a session of the Parliament, and includes both the day of its opening and the day of its prorogation;

(10) the words “Federal Acts” or “Federal statutes” mean the laws passed by the Parliament of Canada; the words “Act” , “statute” and “law” , whenever used without qualification, mean the Acts, statutes or laws of Parliament;

(11) *(paragraph repealed)*;

(12) the words “Government” or “Executive Government” mean the Lieutenant-Governor and the Conseil exécutif du Québec;

(13) the words “the law officer” or “the law officer of the Crown” mean the Minister of Justice of Québec;

(14) words designating a department or public officer refer to the department or officer of like name for Québec;

(15) *(paragraph repealed)*;

(16) the word “person” includes natural or legal persons, their heirs or legal representatives, unless inconsistent with the statute or with special circumstances of the case;

(17) the name commonly given to a country, place, body, legal person, partnership, officer, functionary, person, party or thing designates and means the country, place, body, legal person, partnership, officer, functionary, person, party or thing thus named, without further description being necessary;

(18) the words “Great Seal” mean the Great Seal of Québec;

(19) the word “commission” , whenever it refers to a commission issued by the Lieutenant-Governor under any statute or order in council, means a commission under the Great Seal, running in the Queen’s name;

(20) the word “proclamation” means a proclamation under the Great Seal;

(21) *(paragraph repealed)*;

Interpretation Act, C.Q.L.R., c. I-16, Section 61

INTERPRETATION

(22) (*paragraph repealed*);

(23) by holidays are understood the following days:

(a) Sundays;

(b) 1 January;

(c) Good Friday;

(d) Easter Monday;

(e) 24 June, the National Holiday;

(f) 1 July, the anniversary of Confederation, or 2 July when 1 July is a Sunday;

(g) the first Monday of September, Labour Day;

(g.1) the second Monday of October;

(h) 25 December;

(i) the day fixed by proclamation of the Governor-General for the celebration of the birthday of the Sovereign;

(j) any other day fixed by proclamation or order of the Government as a public holiday or as a day of thanksgiving;

(24) the word “month” means a calendar month;

(25) the words “now” and “next” apply to the time when the Act becomes executory;

(26) (*paragraph repealed*);

(27) “bankruptcy” means the condition of a trader who has discontinued his payments;

(28) the word “*centin*”, used in the French version of the laws of Québec, means the coin called “cent” in the laws of Canada and in the English version of the laws of Québec;

(29) (*paragraph repealed*).

R. S. 1964, c. 1, s. 61 (*part*); 1965 (1st sess.), c. 16, s. 21; 1966-67, c. 14, s. 1; 1977, c. 5, s. 14; 1978, c. 5, s. 12; 1980, c. 39, s. 62; 1981, c. 14, s. 33; 1981, c. 23, s. 19; 1982, c. 62, s. 157; 1984, c. 46, s. 20; 1986, c. 95, s. 173; 1990, c. 4, s. 527; 1992, c. 57, s. 605; 2001, c. 32, s. 100; 2004, c. 12, s. 24.

61.1. The word “spouse” means a married or civil union spouse.

The word “spouse” includes a *de facto* spouse unless the context indicates otherwise. Two persons of opposite sex or the same sex who live together and represent themselves publicly as a couple are *de facto* spouses regardless, except where otherwise provided, of how long they have been living together. If, in the absence of a legal criterion for the recognition of a *de facto* union, a controversy arises as to whether persons are living together, that fact is presumed when they have been cohabiting for at least one year or from the time they together become the parents of a child.

2002, c. 6, s. 143.

62. Any reference to an Act of Parliament assented to from and after 1 January 1969 shall be sufficient if it indicates the calendar year during which such Act was assented to and the number of the bill which introduced it or the chapter number assigned to it in the annual compilation of the statutes.

Any reference to an Act of Parliament assented to before 1 January 1969 shall be sufficient if it indicates, in addition to the chapter number assigned to it in the volume of statutes published for each session by the



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chapitre I-16

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ANNEXE A

ANNEXE ABROGATIVE

*Loi d'interprétation, R.L.R.Q., c. I-16, Article 61***INTERPRÉTATION**

La démission de tout fonctionnaire ou employé peut valablement être acceptée par le ministre qui préside le ministère dont relève ce fonctionnaire ou employé.

S. R. 1964, c. 1, a. 55; 1968, c. 8, a. 13; 1999, c. 40, a. 161.

55.1. Le fait qu'une personne exerçant des fonctions juridictionnelles soit nommée dans un tribunal ou dans un organisme dans lequel elle est tenue à l'exercice exclusif de ses fonctions n'a pas pour effet de lui faire perdre, de ce seul fait, compétence sur les affaires dont elle était saisie au moment de cette nomination. Elle peut dès lors terminer ces affaires, sans rémunération à ce titre et sans qu'il soit nécessaire d'obtenir une autorisation.

2002, c. 32, a. 3.

56. 1. Lorsqu'il est ordonné qu'une chose doit être faite par ou devant un juge, magistrat, fonctionnaire ou officier public, on doit entendre celui dont les pouvoirs ou la compétence s'étendent au lieu où cette chose doit être faite.

2. Les devoirs imposés et les pouvoirs conférés à un officier ou fonctionnaire public, sous son nom officiel, passent à son successeur et s'étendent à son adjoint, en tant qu'ils sont compatibles avec la charge de ce dernier.

S. R. 1964, c. 1, a. 56; 1974, c. 11, a. 49; 1999, c. 40, a. 161.

57. L'autorisation de faire une chose comporte tous les pouvoirs nécessaires à cette fin.

S. R. 1964, c. 1, a. 57.

58. L'expression du serment peut se faire au moyen de toute affirmation solennelle; toute formule de prestation de serment prévue par une loi ou un règlement est adaptée pour en permettre l'expression.

À moins de dispositions spéciales, lorsqu'il est prescrit de prêter ou de recevoir un serment, ce serment est reçu, et le certificat de sa prestation est donné par tout juge, tout magistrat, ou tout commissaire autorisé à cet effet, ayant compétence dans le lieu où le serment est prêté, ou par un notaire.

S. R. 1964, c. 1, a. 58; 1986, c. 95, a. 172; 1999, c. 40, a. 161.

59. Lorsqu'un acte doit être accompli par plus de deux personnes, il peut l'être valablement par la majorité de ces personnes, sauf les cas particuliers d'exception.

S. R. 1964, c. 1, a. 59.

60. Un organisme constitué en vertu d'une loi du Parlement, avec ou sans le statut d'une personne morale, et composé d'un nombre déterminé de membres, n'est pas dissout par suite d'une ou de plusieurs vacances survenues parmi ses membres par décès, démission ou autrement.

S. R. 1964, c. 1, a. 60; 1982, c. 62, a. 156; 1999, c. 40, a. 161.

61. Dans toute loi, à moins qu'il n'existe des dispositions particulières à ce contraire:

1° les mots «Sa Majesté», «roi», «souverain», «reine», «couronne», signifient le souverain du Royaume-Uni, du Canada et de ses autres royaumes et territoires, et chef du Commonwealth;

2° les mots «gouverneur général» signifient le gouverneur général du Canada, ou la personne administrant le gouvernement du Canada; et les mots «lieutenant-gouverneur», le lieutenant-gouverneur du Québec, ou la personne administrant le gouvernement du Québec;

3° les mots «gouverneur général en conseil» signifient le gouverneur général ou la personne administrant le gouvernement, agissant de l'avis du Conseil privé de la reine pour le Canada; et les mots «lieutenant-

Loi d'interprétation, R.L.R.Q., c. I-16, Article 61

INTERPRÉTATION

gouverneur en conseil», le lieutenant-gouverneur ou la personne administrant le gouvernement, agissant de l'avis du Conseil exécutif du Québec;

4° les mots «Royaume-Uni» signifient le Royaume-Uni de la Grande-Bretagne et d'Irlande; les mots «États-Unis», les États-Unis d'Amérique; les mots «la Puissance» et «Canada», signifient la Puissance du Canada;

5° les mots «l'Union» signifient l'union des provinces effectuée en vertu de l'Acte de l'Amérique Britannique du Nord, 1867, et des lois subséquentes;

6° les mots «Bas-Canada» signifient cette partie du Canada qui formait ci-devant la province du Bas-Canada, et signifient maintenant le Québec;

7° le mot «province», employé seul, signifie la province de Québec; et le qualificatif «provincial» ajouté aux mots «acte», «statut» ou «loi», signifie un acte, un statut ou une loi du Québec;

8° les mots «Parlement fédéral» signifient le Parlement du Canada; les mots «Législature» ou «Parlement» signifient le Parlement du Québec;

9° le mot «session» signifie une session du Parlement et comprend le jour de son ouverture et celui de sa prorogation;

10° les mots «actes fédéraux» ou «statuts fédéraux» signifient les lois passées par le Parlement du Canada; les mots «acte», «statut» ou «loi», partout où ils sont employés sans qualificatif, s'entendent des actes, statuts et lois du Parlement;

11° (*paragraphe abrogé*);

12° les mots «gouvernement» ou «gouvernement exécutif» signifient le lieutenant-gouverneur et le Conseil exécutif du Québec;

13° les mots «officier en loi» ou «officier en loi de la couronne» signifient le ministre de la Justice du Québec;

14° les mots désignant un ministère ou un officier public se rapportent au ministère ou à l'officier de la même dénomination pour le Québec;

15° (*paragraphe abrogé*);

16° le mot «personne» comprend les personnes physiques ou morales, leurs héritiers ou représentants légaux, à moins que la loi ou les circonstances particulières du cas ne s'y opposent;

17° le nom communément donné à un pays, un lieu, un organisme, une personne morale, une société, un officier, un fonctionnaire, une personne, une partie ou une chose, désigne et signifie le pays, le lieu, l'organisme, la personne morale, la société, l'officier, le fonctionnaire, la personne, la partie ou la chose même, ainsi dénommé, sans qu'il soit besoin de plus ample description;

18° les mots «grand sceau» signifient le grand sceau du Québec;

19° le mot «commission», chaque fois qu'il se rapporte à une commission émise par le lieutenant-gouverneur en vertu d'une loi ou d'un décret, signifie une commission sous le grand sceau, formulée au nom de la reine;

20° le mot «proclamation» signifie proclamation sous le grand sceau;

21° (*paragraphe abrogé*);

Loi d'interprétation, R.L.R.Q., c. I-16, Article 61

INTERPRÉTATION

- 22° (*paragraphe abrogé*);
- 23° les mots «jour de fête» et «jour férié» désignent:
- a) les dimanches;
 - b) le 1^{er} janvier;
 - c) le Vendredi saint;
 - d) le lundi de Pâques;
 - e) le 24 juin, jour de la fête nationale;
 - f) le 1^{er} juillet, anniversaire de la Confédération, ou le 2 juillet si le 1^{er} tombe un dimanche;
 - g) le premier lundi de septembre, fête du Travail;
 - g.1) le deuxième lundi d'octobre;
 - h) le 25 décembre;
 - i) le jour fixé par proclamation du gouverneur général pour marquer l'anniversaire du Souverain;
 - j) tout autre jour fixé par proclamation ou décret du gouvernement comme jour de fête publique ou d'action de grâces;
- 24° le mot «mois» signifie un mois de calendrier;
- 25° les mots «maintenant» et «prochain» se rapportent au temps de la mise en vigueur de la loi;
- 26° (*paragraphe abrogé*);
- 27° la «faillite» est l'état d'un commerçant qui a cessé ses paiements;
- 28° le mot «centin» employé dans la version française des lois du Québec signifie la pièce de monnaie appelée «cent» dans les lois du Canada et dans la version anglaise des lois du Québec;
- 29° (*paragraphe abrogé*).

S. R. 1964, c. 1, a. 61 (*partie*); 1965 (1^{re} sess.), c. 16, a. 21; 1966-67, c. 14, a. 1; 1968, c. 9, a. 90; 1978, c. 5, a. 12; 1980, c. 39, a. 62; 1981, c. 23, a. 19; 1982, c. 62, a. 157; 1984, c. 46, a. 20; 1986, c. 95, a. 173; 1990, c. 4, a. 527; 1992, c. 57, a. 605; 2001, c. 32, a. 100; 2004, c. 12, a. 24.

61.1. Sont des conjoints les personnes liées par un mariage ou une union civile.

Sont assimilés à des conjoints, à moins que le contexte ne s'y oppose, les conjoints de fait. Sont des conjoints de fait deux personnes, de sexe différent ou de même sexe, qui font vie commune et se présentent publiquement comme un couple, sans égard, sauf disposition contraire, à la durée de leur vie commune. Si, en l'absence de critère légal de reconnaissance de l'union de fait, une controverse survient relativement à l'existence de la communauté de vie, celle-ci est présumée dès lors que les personnes cohabitent depuis au moins un an ou dès le moment où elles deviennent parents d'un même enfant.

2002, c. 6, a. 143.

62. Un renvoi à une loi du Parlement sanctionnée à compter du 1^{er} janvier 1969 est suffisant s'il indique l'année civile au cours de laquelle la loi est sanctionnée ainsi que le numéro du projet de loi qui l'a introduite ou le numéro du chapitre qui lui est attribué dans le recueil annuel des lois.

Un renvoi à une loi du Parlement sanctionnée avant le 1^{er} janvier 1969 est suffisant s'il indique, outre le numéro de chapitre qui lui est attribué dans le volume des lois qui a été publié pour chaque session par l'Éditeur officiel du Québec, l'année ou les années civiles au cours desquelles s'est tenue la session du

SCHEDULE III

EVIDENCE

SUPERIOR COURT
(Commercial Division)

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N^o: 500-11-048114-157

DATE: _____, 2016

PRESIDING: THE HONOURABLE STEPHEN W. HAMILTON J.S.C.

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

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUEBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

**HER MAJESTY IN RIGHT OF NEWFOUNDLAND & LABRADOR,
AS REPRESENTED BY THE SUPERINTENDANT OF PENSIONS**

**THE ATTORNEY GENERAL OF CANADA, ACTING ON BEHALF
OF THE OFFICE OF THE SUPERINTENDANT OF FINANCIAL INSTITUTIONS**

**MICHAEL KEEPER, TERENCE WATT, DAMIEN LABEL
AND NEIL JOHNSON**

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UNITED STEEL WORKERS, LOCALS 6254 AND 6285**RÉGIE DES RENTES DU QUÉBEC****MORNEAU SHEPELL, IN THEIR CAPACITY AS REPLACEMENT PENSION PLAN ADMINISTRATOR**

Mis-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

ORDER

- [1] **THE COURT**, upon reading the *Motion by the Monitor for Directions with Respect to Pension Claims* (the "**Motion**") and having examined the affidavit in support thereof;
- [2] **SEEING** the notification of the Motion to the Service List;
- [3] **CONSIDERING** the submissions of counsel for the Monitor and the CCAA Parties;
- [4] **GIVEN** the terms of the Initial Order of this Court dated January 27, 2015 (as subsequently amended, rectified and/or restated), the Initial Order of this Court dated May 20, 2015 (as subsequently amended, rectified and/or restated), and the Order of this Court with respect to the claims process, dated November 5, 2015 (as amended on November 16, 2015, and as may be subsequently amended from time to time, the "**Claims Procedure Order**");
- [5] **GIVEN** the provisions of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended;

FOR THESE REASONS, THE COURT HEREBY:

- [6] **GRANTS** the Motion.
- [7] **DECLARES** that the Monitor has given sufficient prior notice of the presentation of the Motion to interested parties.
- [8] **DECLARES** that the capitalized terms not otherwise defined herein shall have the meaning ascribed thereto in the Claims Procedure Order.
- [9] **DECLARES** that:
- a) normal costs and special payments outstanding as at the date of the Wabush Initial Order are subject to a deemed trust;

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- b) normal costs and special payments payable after the date of the Wabush Initial Order, including additional special payments and catch up payments established on the basis of actuarial reports issued after the Wabush Initial Order to constitute unsecured Claims;
 - c) the wind-up deficiencies to constitute unsecured Claims; and
 - d) any deemed trust created pursuant to the *Newfoundland & Labrador Pension Benefit Act*, S.N.L. 1996, c. P-401 may only charge property located in Newfoundland & Labrador.
- [10] **ORDERS** the provisional execution of the present Order notwithstanding any appeal and without the necessity to furnish any security.
- [11] **WITHOUT COSTS.**

Date of hearing: _____, 2016

STEPHEN W. HAMILTON J.S.C.

Mtre Sylvain Rigaud and Mtre Chrystal Ashby
Norton Rose Fulbright Canada LLP
Attorneys for the Monitor

EXECUTION COPY

CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.
ARNAUD RAILWAY COMPANY
- and -
INVESTISSEMENT QUÉBEC

ASSET PURCHASE AGREEMENT

DATED AS OF DECEMBER 23, 2015

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R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (*cont'd*)**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement dated as of December 23, 2015 is made by and between:

CLIFFS QUÉBEC IRON MINING ULC**WABUSH IRON CO. LIMITED****WABUSH RESOURCES INC.****ARNAUD RAILWAY COMPANY**(collectively, the "**Vendors**")

- and -

INVESTISSEMENT QUÉBEC (the "**Purchaser**")

RECITALS:

A. Pursuant to an initial order of the Québec Superior Court [Commercial Division] (the "**Court**") dated January 27, 2015 (as the same may be amended and restated from time to time) in the proceedings bearing Court File No. 500-11-048114-157 (the "**CCAA Proceedings**"), Cliffs Québec Iron Mining ULC ("**CQIM**"), Quinto Mining Corporation, 8568391 Canada Limited, The Bloom Lake General Partner Limited ("**Bloom Lake GP**"), the Bloom Lake Railway Company Limited (the "**Bloom Lake Railway Company**") and The Bloom Lake Iron Ore Mine Limited Partnership ("**Bloom Lake LP**", collectively, the "**Bloom Lake CCAA Parties**") obtained protection from their creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") and FTI Consulting Canada Inc. was appointed as monitor in the CCAA Proceedings (in such capacity and not in its personal or corporate capacity, the "**Monitor**").

B. By Order of the Court dated May 20, 2015 in the CCAA Proceedings, Wabush Iron Co. Limited ("**Wabush Iron**"), Wabush Resources Inc. ("**Wabush Resources**"), Arnaud Railway Company ("**Arnaud**"), Wabush Lake Railway Company Limited ("**Wabush Lake Railway Company**") and Wabush Mines (collectively, the "**Wabush CCAA Parties**") were added to the CCAA Proceedings and obtained protection from their creditors under the CCAA.

C. Pursuant to Orders of the Court dated April 17, 2015 and June 9, 2015 (as each may be amended, restated, supplemented or modified from time to time, the "**SISP Orders**"), the Vendors, were authorized to conduct the sale and investor solicitation process for the property and business of, among others, each of the Vendors, in accordance with the sale and investor solicitation procedures approved by the Court in the SISP Orders (the "**SISP**").

D. The Vendors used to operate the following businesses (collectively, the "**Businesses**" and each a "**Business**") of (a) the pellet production facility (the "**Pellet Plant**") located in Pointe-Noire, Québec, and (b) the port facility located in Pointe-Noire, Québec in the Bay of Sept-Iles, together with the Arnaud Railway (collectively, the "**Pointe-Noire Port Facility**").

E. The Vendors therefore desire to sell, transfer and assign to the Purchaser, and the Purchaser desires to acquire and assume from the Vendors, all of the Vendors' right, title and interest in and to the Purchased Assets and the Assumed Liabilities, on the terms and subject to the conditions contained in this Agreement.

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F. The transactions contemplated by this Agreement are subject to the approval of the Court and will be consummated pursuant to the Approval and Vesting Order to be entered by the Court in the CCAA Proceedings.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions. In this Agreement:

"1097 Property" means such portion of the Purchased Assets owned by Wabush Iron that consists of "taxable Québec property" other than: (a) property described in section 1102.1 of the TAQ and (b) "excluded property" as defined for purposes of sections 1097, 1102 and 1102.1 of the TAQ.

"1102.1 Property" means such portion of the Purchased Assets owned by Wabush Iron that consists of property that is described in section 1102.1 of the TAQ.

"116(2) Property" means such portion of the Purchased Assets owned by Wabush Iron that consists of "taxable Canadian property" as defined for purposes of section 116 of the ITA (other than property described in subsection (5.2) "and excluded property", as defined for purposes of section 116 of the ITA).

"116(5.2) Property" means such portion of the Purchased Assets owned by Wabush Iron that consists of property that is described in subsection 116(5.2) of the ITA.

"Access Agreement" means an agreement substantially in the form attached hereto as Exhibit "A".

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity and by or before a Governmental Authority.

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to **"control"** another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term **"controlled"** shall have a similar meaning.

"Agreement" means this Asset Purchase Agreement and all the Schedules attached hereto, as they may be amended, restated or supplemented from time to time in accordance with the terms hereof.

"Applicable Law" means, with respect to any Person, property, transaction, event or other matter, (a) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other requirement having the force of law, (b) any policy, practice, protocol, standard or

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guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively, in the foregoing clauses (a) and (b), "**Law**"), in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

"Approval and Vesting Order" means a Final Order of the Court issued in the CCAA Proceedings, substantially in the form of Schedule "A", (i) approving the transactions contemplated by this Agreement; and (ii) vesting in the Purchaser all of the Vendors' right, title and interest in and to the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances).

"Arnaud" has the meaning set out in Recital B.

"Arnaud Railway" means the federally regulated railway, the tracks of which are shown in yellow on Schedule "B", which runs from the junction where the Arnaud Railway meets the railway operated by the Québec North Shore & Labrador Company, Limited north of the Town of Sept-Îles, Québec to the Port of Sept-Îles, used for, among other things, the transportation of iron ore concentrate to the Pointe-Noire Port Facility in the Port of Sept-Îles.

"Arnaud Railway Assets" means the assets of the Arnaud Railway comprised of (a) all rail track comprising the Arnaud Railway; (b) all real property rights of the Vendors in any real property over which any of the rail track runs and all fixtures attached to such real property; and (c) all related equipment, in each case all as more particularly described in Schedule "C".

"Assigned Contracts" means, subject to Section 2.3(5) of this Agreement, the Critical Contracts, the Real Property Leases and the other Contracts listed on Schedule "D".

"Assignment and Assumption Agreement" means an assignment and assumption agreement, in form and substance satisfactory to the Parties, acting reasonably, evidencing the assignment to the Purchaser of the Vendors' rights, benefits and interests in, to and under the Assigned Contracts and the assumption by the Purchaser of all of the Assumed Liabilities under or in respect of the Assigned Contracts.

"Assignment Order" means a Final Order of the Court issued in the CCAA Proceedings, in form and substance satisfactory to the Parties, acting reasonably, assigning the Vendors' right, benefit and interest in and to the Critical Contracts to the Purchaser pursuant to section 11.3 of the CCAA, which order may form part of the Approval and Vesting Order.

"Assumed Employee Plans" has the meaning set out in Section 5.8(1).

"Assumed Liabilities" means only the Liabilities of the Vendors listed on Schedule "E".

"Block Z Lands" has the meaning set out in Schedule "J".

"Block Z Option" means the option of the Vendors herein to sell the Block Z Lands to the Port Authority of Sept-Îles, which option must be exercised prior to the date of the Court motion seeking the issuance of the Approval and Vesting Order.

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"Bloom Lake CCAA Parties" has the meaning set out in Recital A.

"Bloom Lake GP" has the meaning set out in Recital A.

"Bloom Lake LP" has the meaning set out in Recital A.

"Books and Records" means all books, records, files, papers, books of account and other financial data related to the Purchased Assets in the possession of and reasonably available to the Vendors, including drawings, engineering information, geologic data, production records, technical reports and environmental studies and reports, manuals and data, sales and advertising materials, sales and purchase data, trade association files, research and development records, lists of present and former customers and suppliers, personnel, employment and other records, and all records, data and information stored electronically, digitally or on computer-related media.

"Bunker C Fuel" means certain "Bunker C" heavy fuel oil owned by the Vendors or other third parties and stored in one or more tanks located on the port facility located in Pointe-Noire, Québec in the Bay of Sept-Îles.

"Businesses" has the meaning set out in Recital D.

"Business Day" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Montréal, Québec, the City of Toronto, Ontario, or the City of Cleveland, Ohio.

"Cash Purchase Price" has the meaning set out in Section 3.1(1).

"CCAA" has the meaning set out in Recital A.

"CCAA Parties" means collectively the Bloom Lake CCAA Parties and the Wabush CCAA Parties.

"CCAA Proceedings" has the meaning set out in Recital A.

"Certificate of Compliance" has the meaning set out in Section 3.6(1).

"Closing" means the completion of the purchase and sale of the Vendors' right, title and interest in and to the Purchased Assets and the assignment and assumption of the Assumed Liabilities by the Purchaser in accordance with the provisions of this Agreement, and for greater certainty, the Closing cannot occur before the Approval and Vesting Order has been obtained.

"Closing Date" means the date on which Closing occurs, which date shall be the Target Closing Date or such other date as may be agreed to in writing by the Parties.

"Closing Time" has the meaning set out in Section 7.1.

"Closure Plan" means any reclamation, rehabilitation, remediation, restoration, waste disposal, water management, post-closure control measures, monitoring and ongoing maintenance and management programs for environmental impacts or other similar obligations required by Applicable Law, the terms and conditions of applicable licenses or by Governmental Authorities.

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"Collective Bargaining Agreements" means the collective bargaining agreements in respect of the Vendors' Employees as set out in Schedule "F" and **"Collective Bargaining Agreement"** means any one of them.

"Conditions Certificates" has the meaning set out in Section 8.3.

"Contracts" means all pending and executory contracts, agreements, leases, understandings and arrangements (whether oral or written) Related to the Businesses to which any one or more of the Vendors are a party or by which any one or more Vendors or any of the Purchased Assets is bound or under which any one or more of the Vendors have rights, including any Personal Property Leases and any Real Property Leases.

"Court" has the meaning set out in Recital A.

"CQIM" has the meaning set out in Recital A.

"CRA" means the Canada Revenue Agency or any successor agency.

"Critical Contracts" means those Contracts that are, in the opinion of the Purchaser, necessary and critical to the operation of the Businesses and the Purchased Assets as listed on Schedule "G".

"Cure Costs" means all amounts, costs and expenses required to be paid to remedy all of the Vendors' monetary defaults in relation to the Assigned Contracts or otherwise required to secure a counterparty's or any other necessary Person's consent to the assignment of an Assigned Contract or as may be required pursuant to the Assignment Order, and includes any other fees and expenses required to be paid to a counterparty or any other Person in connection with the assignment of an Assigned Contract.

"Damages" means any loss, cost, Liability, claim, interest, fine, penalty, assessment, Taxes, damages available at law or in equity (including incidental, consequential, special, aggravated, exemplary or punitive damages), expense (including consultant's and expert's fees and expenses and reasonable costs, fees and expenses of legal counsel on a full indemnity basis, without reduction for tariff rates or similar reductions and reasonable costs, fees and expenses of investigation, defense or settlement) or diminution in value.

"Deed of Sale" means a deed of sale, in form and substance satisfactory to the Parties, acting reasonably, evidencing the conveyance to the Purchaser of the Vendors' right, title and interest in and to the Owned Real Property located in the Province of Québec, and **"Deeds of Sale"** shall mean more than one of them.

"Deposit" has the meaning set out in Section 3.3(1).

"Employees" means all individuals who, as of the Closing Date, are employed by any Vendor in the Businesses, whether on a full-time or part-time basis, whether unionized or non-unionized, including all individuals who are on an approved and unexpired leave of absence, all individuals who have been placed on temporary lay-off which has not expired, and all individuals who have recall rights which have not expired under a Collective Bargaining Agreement and **"Employee"** means any one of them.

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"Employee Plans" means all written or oral employee benefit, welfare, supplemental unemployment benefit, bonus, pension, profit sharing, executive compensation, current or deferred compensation, incentive compensation, stock compensation, stock purchase, stock option, stock appreciation, phantom stock option, savings, vacation pay, severance or termination pay, retirement, supplementary retirement, hospitalization insurance, salary continuation, legal, health or other medical, dental, life, disability or other insurance (whether insured or self-insured) plan, program, agreement or arrangement, including post-retirement health and life insurance benefit plans, and every other written or oral benefit plan, program, agreement or arrangement sponsored, maintained or contributed to or required to be contributed to by the Vendors or any Affiliate of the Vendor for the benefit of the Employees and their dependents or beneficiaries by which the Vendors are bound or with respect to which the Vendors participate or have any actual or potential Liability, other than Statutory Plans, as set out in Schedule "H".

"Encumbrances" means all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, liens, security interests, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights), encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

"Environmental Claim" means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom by or from any Person alleging Liability of whatever kind or nature (including Liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources Damages, property Damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"Environmental Law" means any applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the investigation or cleanup thereof), the management or protection of natural resources, endangered or threatened species, human health or safety, or the protection or quality of the environment (including ambient air, soil, surface water or groundwater, or subsurface strata); or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

"Environmental Liabilities" means all past, present and future obligations and Liabilities of whatsoever nature or kind arising from or relating to, directly or indirectly:

- (i) any Environmental Matter; or
- (ii) any Environmental Claim, Environmental Notice or Environmental Permit applicable to or otherwise involving the Purchased Assets or any past, present or future non-compliance with, violation of or Liability under Environmental Laws or any Environmental Permit applicable to or otherwise involving the Purchased Assets,

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whenever occurring or arising.

"Environmental Matters" means any activity, event or circumstance in respect of or relating to:

- (i) the storage, use, holding, collection, containment, transfer, recycling, reclamation, remediation, accumulation, assessment, generation, manufacture, construction, processing, treatment, stabilization, disposition, handling, transportation, management, presence, exposure to or Release of Hazardous Materials;
- (ii) the protection, condition or quality of the environment; or
- (iii) pollution, reclamation, remediation or restoration of the environment,

in each case relating to the Purchased Assets or the Businesses or that has or have arisen or hereafter arise from or in respect of past, present or future operations, activities or omissions in or on the Purchased Assets or in respect of or otherwise involving the Purchased Assets or the Businesses, including obligations to compensate third Persons for any Liabilities.

"Environmental Notice" means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit, in each case, issued by a Governmental Authority.

"Environmental Obligations" has the meaning set forth in Section 6.9.

"Environmental Permit" means any Permit and License, letter, clearance, consent, waiver, Closure Plan, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

"Excluded Assets" means any and all of the properties and assets of the Vendors (i) not Related to the Businesses, or (ii) listed on Schedule "I".

"Excluded Contracts" means all Contracts other than the Assigned Contracts.

"Excluded Liabilities" means all Liabilities of the Vendors other than the Assumed Liabilities and the Environmental Obligations.

"Excluded Railcars" means all railcars of the Vendors, other than the Wabush Railcars, including the railcars set out in Schedule "P".

"Final Order" means an order of the Court that has not been vacated, stayed, amended, reversed or modified, as to which no appeal or application for leave to appeal therefrom has been filed and the applicable appeal period with respect thereto shall have expired without the filing of any appeal or application for leave to appeal, or if any appeal(s) or application(s) for leave to appeal therefrom have been filed, any (and all) such appeal(s) or application(s) have been dismissed, quashed, determined, withdrawn or disposed of with no further right of appeal.

"General Conveyance" means a general conveyance and assumption of liabilities, in form and substance satisfactory to the Parties, acting reasonably, evidencing the

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conveyance to the Purchaser of the Vendors' right, title and interest in and to the Purchased Assets and the assumption by the Purchaser of the Assumed Liabilities.

"Governmental Authority" means:

- (1) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
- (2) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;
- (3) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (4) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"GST/HST" means all goods and services tax and harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada).

"Hardware" has the meaning set out in Section 6.12.

"Hazardous Materials" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the natural environment, injure or damage property or animal life or harm or impair the health of any individual and includes any contaminant, waste or substance or material defined, prohibited, regulated or reportable pursuant to any Environmental Law in each case, whether naturally occurring or manmade; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

"ICA" means the *Investment Canada Act*, R.S.C. 1985, c. 28 (1st Supp.).

"Intellectual Property" means all intellectual property and industrial property Related to the Businesses, throughout the world, whether or not registerable, patentable or otherwise formally protectable, and whether or not registered, patented, otherwise formally protected or the subject of a pending application for registration, patent or any other formal protection, including all (a) trade-marks, corporate names and business names, (b) inventions, (c) works and subject matter in which copyright, neighbouring rights or moral rights subsist, (d) industrial designs, (e) know-how, trade secrets, proprietary information, confidential information and information of a sensitive nature that have value to the Businesses or relate to business opportunities for the Businesses, in whatever form communicated, maintained or stored, (f) telephone numbers and facsimile

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numbers, (g) registered domain names, and (h) social media usernames and other internet identities and all account information relating thereto.

"Intercompany Claims" means all present and future claims of any nature or kind whatsoever of any of the Vendors against an Affiliate of such Vendor, whether such Affiliate is a party to this Agreement or otherwise.

"Interim Period" means the period from the date that this Agreement is entered into by the Parties to the Closing Time.

"ITA" means the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Supplement).

"Law" has the meaning set out in the definition of **"Applicable Law"**.

"Legal Proceeding" means any litigation, Action, application, demand, suit, investigation, hearing, claim, complaint, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any court or other tribunal or Governmental Authority and includes any appeal or review thereof and any application for leave for appeal or review.

"Liability" means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Monitor" has the meaning set out in Recital A.

"Monitor's Certificate" means the certificate, substantially in the form attached as Schedule "A" to the Approval and Vesting Order, to be delivered by the Monitor to the Vendors and the Purchaser on Closing and thereafter filed by the Monitor with the Court certifying that it has received the Conditions Certificates.

"Newfoundland Non-Unionized Employees" means all Non-Unionized Employees whose employment is governed by the laws of Newfoundland and Labrador.

"Non-Unionized Employees" means all Employees other than the Unionized Employees.

"Off-Site Vehicles and Equipment" means the following vehicles and equipment located at the iron ore mine and processing facility located approximately 13 km north of Fermont, Québec, in the Labrador Trough, known as the Bloom Lake Mine:

- (a) 2013 Ford Escape with SN 1FMCU9G98DUA68695;
- (b) 2013 Ford Escape with SN 1FMCU9G96DUA68694;
- (c) 2012 Ford F250 with SN 1FT7W2B63CEC78697;
- (d) 2012 Ford F250 with SN 1FT7W2B63CEC74035;
- (e) 2012 Ford Explorer LTD with SN 1FMHK8F89CGB03837;

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

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- (f) 2012 Ford Explorer LTD with SN 1FMHK8F86CGA00410;
- (g) 2012 Ford Explorer XLT with SN 1FMHK8D80CGA22051;
- (h) 2010 Grue Broderson IC 80-3G with Unit# 608-2148;
- (i) 2007 Chargeur Cat 988H with Unit# 627-3839;
- (j) 1999 Camion Sableur GM 15T with Unit# 698-2794;
- (k) 2011 BoomTruck International 4700 with Unit# 682-2582; and
- (l) 2011 BoomTruck International 4700 with Unit# 682-2586.

“**Order**” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“**Outside Date**” means March 11, 2016.

“**Owned Real Property**” has the meaning set out in Schedule “J”.

“**Party**” means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and “**Parties**” means more than one of them.

“**Pellet Plant**” has the meaning set out in Recital D.

“**Pension Plans**” means, collectively, (a) Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent with registration numbers 021314-000 (Newfoundland and Labrador) and 0343558 (Canada Revenue Agency) and (b) Contributory Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent with registration numbers 024699-000 (Newfoundland and Labrador) and 0555201 (Canada Revenue Agency).

“**Permits and Licenses**” means the permits, licenses, authorizations, approvals or other evidence of authority Related to the Businesses issued to, granted to, conferred upon, or otherwise created for, the Vendors and listed on Schedule “K”.

“**Permitted Encumbrances**” means the Encumbrances related to the Purchased Assets listed on Schedule “L”.

“**Person**” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity.

“**Personal Information**” means information about an identifiable individual as defined in Privacy Law.

“**Personal Property**” means all machinery, equipment, furniture, motor vehicles and other chattels Related to the Businesses, wherever located (including those in possession of suppliers, customers and other third parties).

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"Personal Property Lease" means a chattel lease, equipment lease, financing lease, conditional sales contract and other similar agreement relating to Personal Property to which a Vendor is a party or under which a Vendor has rights to use Personal Property.

"Pointe-Noire Port Facility" has the meaning set out in Recital D.

"Privacy Law" means the *Personal Information Protection and Electronic Documents Act* (Canada), the *Personal Information Protection Act* (British Columbia), the *Act respecting the protection of personal information in the private sector* (Québec) and any comparable Law of any other province or territory of Canada.

"Proprietary Marks" has the meaning set out in Section 6.13.

"Purchase Price" has the meaning set out in Section 3.1.

"Purchased Assets" means those assets Related to the Businesses in respect of the Pointe-Noire Port Facility and the Pellet Plant, as set out in Schedule "N", but, for greater certainty, does not include the Excluded Assets.

"Purchaser" has the meaning set out in the preamble hereto, and includes any successor or permitted assignee thereof in accordance with Section 10.16.

"QST" means all Québec sales tax imposed pursuant to *An Act respecting the Québec sales tax*, R.S.Q. c. T-0.1, as amended.

"Québec Certificate of Compliance" has the meaning set out in Section 3.6(1).

"Québec Non-Unionized Employees" means all Non-Unionized Employees whose employment is governed by the laws of the Province of Québec.

"Real Property Leases" means the leases in respect of real property listed on Schedule "M".

"Related to the Businesses" means primarily (i) used in, (ii) arising from or (iii) otherwise related to the Businesses or any part thereof.

"Release" includes any actual or potential release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

"Remittance Date" has the meaning set out in Section 3.6(4).

"Replacement Permit and License" means a new permit, license, authorization, approval or other similar item providing substantially equivalent rights to the Purchaser as a Vendor is entitled to as of the Closing Date pursuant to the applicable Permit and License.

"Representative" when used with respect to a Person means each director, officer, employee, consultant, financial adviser, legal counsel, accountant and other agent, adviser or representative of that Person.

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“**Sale Advisor**” means Moelis & Company LLC.

“**SISP**” has the meaning set out in Recital C.

“**SISP Order**” has the meaning set out in Recital C.

“**SISP Team**” means the CCAA Parties, the Sale Advisor and the Monitor.

“**Suspended Benefits Payments**” means the premiums and other payments in respect of the post-retirement benefits plan to retirees that were suspended pursuant to the Order of the Court dated June 9, 2015.

“**Statutory Plans**” means statutory benefit plans which the Vendor is required to participate in or comply with, including the Canada and Québec pension plans and plans administered pursuant to applicable health tax, workplace safety insurance and employment insurance legislation.

“**TAQ**” means the *Taxation Act* (Québec), C.Q.L.R. c. I-3.

“**Target Closing Date**” means the day that is 22 days following the issuance of the Approval and Vesting Order.

“**Taxes**” means all supranational, national, federal, provincial, state, local or other taxes, including income taxes, mining taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, license taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, social security premiums, workers' compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, QST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties.

“**Tax Returns**” means all returns, reports, declarations, elections, notices, filings, information returns, and statements in respect of Taxes that are required to be filed with any applicable Governmental Authority, including all amendments, schedules, attachments or supplements thereto and whether in tangible or electronic form.

“**Transaction Personal Information**” means any Personal Information in the possession, custody or control of the Vendors at the Closing Time, including Personal Information about Employees, suppliers, customers, directors, officers or shareholders that is:

- (1) disclosed to the Purchaser or any Representative of the Purchaser prior to the Closing Time by any member of the SISP Team or any of the SISP Team's Representatives or otherwise; or
- (2) collected by the Purchaser or any Representative of the Purchaser prior to the Closing Time from any member of the SISP Team or any of the SISP Team's Representatives or otherwise,

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in either case in connection with the transactions contemplated by the Agreement.

"Transfer Taxes" means all applicable transfer, land transfer, value-added, excise, sales, use, consumption, GST/HST, retail sales or other similar taxes, payable upon or in connection with the transactions contemplated by this Agreement and any filing, registration, recording, notary fees for preparation, transfer and recording, or transfer fees payable in connection with the instruments of transfer provided for in this Agreement.

"Transferred Employees" means (i) all Unionized Employees Related to the Businesses specifically including those with recall rights or on temporary layoff, and (ii) all Non-Unionized Employees Related to the Businesses not terminated prior to Closing in accordance with Section 5.1.

"Union" means as to the Wabush CCAA Parties, United Steelworkers, Local 6254.

"Unionized Employees" means all Employees who have rights under a Collective Bargaining Agreement.

"Vendors" has the meaning set out in the preamble hereto.

"Wabush CCAA Parties" has the meaning set out in Recital B.

"Wabush Iron" has the meaning set out in Recital B.

"Wabush Mines" means an unincorporated contractual joint venture called "Wabush Mines" pursuant to which Wabush Resources and Wabush Iron have, respectively, undivided 73.17% and 26.83% co-ownership interests in the underlying assets and Liabilities of the joint venture.

"Wabush Railcars" means all Wabush style fully enclosed bottom dumper railcars owned by the Vendors, wherever such railcars are located, that were used by Wabush Mines in its operation of the iron ore mine and processing facility located near the Town of Wabush and Labrador City, Newfoundland and Labrador known as the "Scully Mine" or "Wabush Mine".

"Wabush Resources" has the meaning set out in Recital B.

1.2 Actions on Non-Business Days. If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day.

1.3 Currency and Payment Obligations. Except as otherwise expressly provided in this Agreement: (a) all dollar amounts referred to in this Agreement are stated in the lawful currency of Canada; and (b) any payment contemplated by this Agreement shall be made by wire transfer of immediately available funds to an account of the Monitor specified by the payee, by cash, by certified cheque or by any other method that provides immediately available funds as agreed to between the Parties, with the consent of the Monitor.

1.4 Calculation of Time. In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. Eastern on

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the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. Eastern on the next succeeding Business Day.

1.5 Tender. Any tender of documents or money hereunder may be made upon the Parties or, if so indicated, the Monitor, or their respective counsel.

1.6 Additional Rules of Interpretation.

(1) *Gender and Number.* In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.

(2) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.

(3) *Section References.* Unless the context requires otherwise, references in this Agreement to Articles, Sections or Schedules are to Articles or Sections of this Agreement, and Schedules to this Agreement.

(4) *Words of Inclusion.* Wherever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation" and the words following "include", "includes" or "including" shall not be considered to set forth an exhaustive list.

(5) *References to this Agreement.* The words "hereof", "herein", "hereto", "hereunder", "hereby" and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.

(6) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision and also include, unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.

(7) *Document References.* All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules attached thereto.

1.7 Exhibits and Schedules. The following are the Exhibits and Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

Exhibits

Exhibit "A" Access Agreement

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SCHEDULES

<u>Schedule "A"</u>	Form of Approval and Vesting Order
<u>Schedule "B"</u>	Map Showing Arnaud Railway
<u>Schedule "C"</u>	Arnaud Railway Assets
<u>Schedule "D"</u>	Other Assigned Contracts
<u>Schedule "E"</u>	Assumed Liabilities
<u>Schedule "F"</u>	Collective Bargaining Agreement
<u>Schedule "G"</u>	Critical Contracts
<u>Schedule "H"</u>	Employee Plans
<u>Schedule "I"</u>	Excluded Assets
<u>Schedule "J"</u>	Owned Real Property
<u>Schedule "K"</u>	Permits and Licenses
<u>Schedule "L"</u>	Permitted Encumbrances
<u>Schedule "M"</u>	Real Property Leases and Deeds of Servitude
<u>Schedule "N"</u>	Purchased Assets
<u>Schedule "O"</u>	Allocation of Purchase Price
<u>Schedule "P"</u>	Excluded Railcars

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

ARTICLE 2
PURCHASE OF ASSETS AND ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Purchased Assets. At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, the Vendors shall sell to the Purchaser, and the Purchaser shall purchase from the Vendors, all of the Vendors' right, title and interest in and to the Purchased Assets, which shall be free and clear of all Encumbrances other than Permitted Encumbrances, to the extent and as provided for in the Approval and Vesting Order. For greater certainty, notwithstanding any other provision of this Agreement, this Agreement does not constitute an agreement by the Purchaser to purchase, or by the Vendors to sell, any Excluded Asset.

2.2 Assumed Liabilities. At the Closing Time, on and subject to the terms and conditions of this Agreement, the Purchaser shall assume and agree to pay when due and perform and discharge in accordance with their terms, the Assumed Liabilities. Notwithstanding any other provision of this Agreement, the Purchaser shall not assume any Excluded Liability.

2.3 Assignment of Contracts.

(1) *Obtaining Consents.* Prior to Closing, at the written request of the Purchaser, the Vendors, with the assistance of the Purchaser, shall use commercially reasonable efforts to obtain all consents required to assign the Assigned Contracts to the Purchaser.

(2) *Assignment Order.* To the extent that any Critical Contract is not assignable without the consent of the counterparty or any other Person and such consent has not been obtained prior to the Closing Date, (i) the Vendors' rights, benefits and interests in, to and under the Critical Contract may be conveyed to the Purchaser pursuant to an Assignment

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Order, (ii) the Vendors will use commercially reasonable efforts to obtain an Assignment Order in respect of such Critical Contract on or prior to the Closing Date, and (iii) if an Assignment Order is obtained in respect of such Critical Contract, the Purchaser shall accept the assignment of such Critical Contract on such terms.

(3) *Cure Costs.* To the extent that any Cure Costs are payable with respect to any Assigned Contract, the Purchaser shall pay all such Cure Costs, which shall be paid either directly to the applicable counterparty or to the Monitor at or prior to Closing, which Cure Costs shall be in addition to the Purchase Price received by the Vendors for the Purchased Assets.

(4) *Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement (including paragraph (5) below) and the Approval and Vesting Order, all of the Vendors' rights, benefits and interests in, to and under the Assigned Contracts shall be assigned to the Purchaser, the consideration for which is included in the Purchase Price.

(5) *Where Consent Required.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Assigned Contract to the extent such Assigned Contract is not assignable under Applicable Law, or the terms of the applicable Assigned Contract provide that it is not assignable without the consent of another Person, unless such consent has been obtained or the assignment is subject to an Assignment Order.

(6) *No Adjustment.* For greater certainty, in respect of any Assigned Contract other than the Critical Contracts, if the consent of any Person is required to assign such Contract but such consent is not obtained prior to Closing, such Contract shall not form part of the Purchased Assets and (i) neither Party shall be considered to be in breach of this Agreement, (ii) the failure to assign or otherwise transfer such Assigned Contract shall not be a condition to Closing, (iii) the Purchase Price shall not be subject to any adjustment, and (iv) the Closing shall not be delayed.

(7) *Intercompany Corporate Services.* Any corporate support, treasury, legal, human resources, risk management, commercial, marketing, accounting, payroll and technical support services Related to the Businesses provided by any of the Vendors to any Affiliate or by any Affiliate to any of the Vendors prior to Closing will be terminated as of the Closing, and the Purchaser acknowledges and agrees that it shall be responsible for providing its own corporate support, treasury, legal, human resources, risk management, commercial, marketing, accounting, payroll and technical support services in respect of the Purchased Assets following Closing.

2.4 Transfer and Assignment of Permits and Licenses.

(1) *Obtaining Consents.* Prior to Closing, to the extent that a Permit and License is assignable or otherwise transferable by any Vendor to the Purchaser, such Vendor, with the assistance of the Purchaser, shall use commercially reasonable efforts to obtain all necessary consents or approvals to assign or otherwise transfer such Permits and Licenses to the Purchaser. The Purchaser shall pay all costs required in connection with the assignment or transfer of any Permit and License (which costs shall be in addition to the Purchase Price but shall exclude all salaries, fees and costs of any and all consultants, employees, counsel or other representatives of the Vendors related to such assignment and transfer).

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(2) *Transfer and Assignment.* At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, all of the Vendors' rights, benefits and interests in, to and under the Permits and Licenses, to the extent assignable, shall be assigned to the Purchaser, the consideration for which is included in the Purchase Price.

(3) *Where Consent Required.* Notwithstanding anything in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or otherwise transfer any Permit and License to the extent such Permit and License is not assignable or transferable under Applicable Law or the terms of the applicable Permit and License provide that it is not assignable without the consent of another Person, unless such consent has been obtained.

(4) *Post-Closing Assignment.* Notwithstanding anything in this Agreement to the contrary, if the consent or approval of any Person is required to assign or otherwise transfer a Permit and License but such consent or approval is not obtained prior to Closing, (i) the Vendors and the Purchaser shall use their commercially reasonable efforts to obtain the necessary consents or approvals to the assignment or transfer of such Permit and License to the Purchaser as soon as practicable following Closing, (ii) no Party shall be considered to be in breach of this Agreement, (iii) the failure to assign or otherwise transfer such Permit and License shall not be a condition to Closing, (iv) the Purchase Price shall not be subject to adjustment, and (v) the Closing shall not be delayed.

(5) *Obtaining Replacement Permits and Licenses.* To the extent that a Permit and License is not assignable or otherwise transferrable by the Vendors to the Purchaser, the Purchaser shall use commercially reasonable efforts to obtain a Replacement Permit and License. The Purchaser shall pay all costs required in connection with obtaining any Replacement Permit and License (which shall be in addition to the Purchase Price).

ARTICLE 3 PURCHASE PRICE & TAXES

3.1 Purchase Price. The consideration payable by the Purchaser to the Vendors for the Vendors' right, title and interest in and to the Purchased Assets (the "**Purchase Price**") shall be the aggregate of:

- (1) \$68,000,000.00 as may be adjusted pursuant to Section 3.2 (the "**Cash Purchase Price**"); and
- (2) the value of the Assumed Liabilities.

3.2 Adjustment to Purchase Price. The Purchase Price shall be reduced by \$1,250,000 if the Block Z Option is exercised by the Vendors.

3.3 Satisfaction of Purchase Price. The Purchase Price shall be paid and satisfied at Closing as follows:

- (1) the deposit in the amount of \$4,000,000, which was paid by the Purchaser to the Monitor, in trust, in accordance with the SISP (the "**Deposit**"), shall be applied against the Cash Purchase Price. The Purchaser agrees that notwithstanding the terms of the SISP, it waives any accrued interest earned on the Deposit from the date the Deposit was remitted to the Monitor until the Closing Date;

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- (2) the balance of the Cash Purchase Price shall be paid by the Purchaser to the Monitor; and
- (3) an amount equal to the value of the Assumed Liabilities shall be satisfied by the assumption by the Purchaser of the Assumed Liabilities by the execution and delivery of the Assignment and Assumption Agreement.

3.4 Allocation of Purchase Price. The Parties shall report the transaction described herein in a manner entirely consistent with Schedule "O", and shall not take any position inconsistent therewith, in the filing of their Tax Returns or in the course of any audit by any Governmental Authority, Tax review or Tax proceeding relating to such Tax Returns. For the avoidance of doubt and without restricting the generality of the foregoing, the aggregate cost to be reported by the Purchaser in computing the cost amounts of the Purchased Assets for purposes of the ITA resulting solely from the acquisition of the Purchased Assets for the Purchase Price hereunder, and the aggregate proceeds of disposition to be reported by the Vendors for the purposes of the ITA from the sale of the Purchased Assets hereunder, shall be equal to the total amount reflected on Schedule "O". The Parties shall, no later than fourteen (14) days prior to the date scheduled for the Court hearing for the Approval and Vesting Order, (a) in the event that any Transfer Taxes are payable in respect of the sale of the Purchased Assets hereunder, agree on an allocation by province and asset class of the consideration payable in respect of the Purchased Assets, to be used for calculating the amount(s) of Transfer Taxes to be collected by the Monitor on behalf of the Vendors or self-assessed and remitted by the Purchaser to the relevant Governmental Authorities in accordance with subsection 221(2) and 228(4) of the *Excise Tax Act* (Canada) and subsections 423(2) and 438(1) of an Act respecting the Québec sales tax, and (b) agree on an allocation with respect to each Purchased Asset or group of Purchased Assets in respect of which an Encumbrance has been registered.

3.5 Taxes. In addition to the Purchase Price, the Purchaser shall be liable for and shall pay all applicable Transfer Taxes.

3.6 Section 116 of ITA.

(1) Wabush Iron shall take all reasonable steps to obtain and deliver to the Purchaser on or before Closing a certificate of compliance issued by the Minister of National Revenue (Canada) under subsection 116(2) or 116(4) of the *ITA* in respect of its disposition of the 116(2) Property and a certificate of compliance issued by the Minister of National Revenue (Canada) under subsection 116(5.2) of the *ITA* in respect of its disposition of the 116(5.2) Property. A certificate issued by the Minister of National Revenue (Canada) under subsection 116(2) or 116(4) of the *ITA* in respect of the 116(2) Property or under subsection 116(5.2) of the *ITA* in respect of the 116(5.2) Property is hereinafter referred to as a "**Certificate of Compliance**".

(2) If a Certificate of Compliance in respect of the 116(2) Property is delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 116(2) Property and payable to Wabush Iron at Closing twenty-five percent (25%) of the amount, if any, by which such portion of the Purchase Price exceeds the certificate limit specified in such certificate. If a Certificate of Compliance in respect of the 116(2) Property is not delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 116(2) Property and payable to Wabush Iron at Closing twenty-five percent (25%) of such portion of the Purchase Price.

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(3) If a Certificate of Compliance in respect of the 116(5.2) Property is delivered to the Purchaser on or before the Closing, Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 116(5.2) Property and payable to Wabush Iron at Closing fifty percent (50%) of the amount, if any, by which such portion of the Purchase Price exceeds the certificate limit specified in such certificate. If a Certificate of Compliance in respect of the 116(5.2) Property is not delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 116(5.2) Property and payable to Wabush Iron at Closing fifty percent (50%) of such portion of the Purchase Price.

(4) Where the Purchaser has withheld any amount under Section 3.6(2) or (3) and Wabush Iron delivers a Certificate of Compliance to the Purchaser after Closing and on or before the twenty-eighth day of the calendar month following the calendar month in which the Closing occurs (the "**Remittance Date**"), the Purchaser shall:

- (a) where the certificate is delivered under subsection 116(2) or (4) of the *ITA*, remit forthwith to the Receiver General for Canada for the account of Wabush Iron twenty-five percent (25%) of the amount, if any, by which the portion of the Purchase Price allocable to the 116(2) Property and payable to Wabush Iron exceeds the certificate limit fixed in such certificate and pay forthwith to Wabush Iron any amount that the Purchaser has withheld in respect of the 116(2) Property in excess of such amount; and
- (b) where the certificate is delivered under subsection 116(5.2) of the *ITA*, remit forthwith to the Receiver General for Canada for the account of Wabush Iron fifty percent (50%) of the amount, if any, by which the portion of the Purchase Price allocable to the 116(5.2) Property and payable to Wabush Iron exceeds the certificate limit fixed in such certificate and pay forthwith to Wabush Iron any amount that the Purchaser has withheld in respect of the 116(5.2) Property in excess of such amount.

(5) Where the Purchaser has withheld any amount under Section 3.6(2) and no Certificate of Compliance has been delivered to the Purchaser in respect of the 116(2) Property on or prior to the Remittance Date, or where the Purchaser has withheld any amount under Section 3.6(3) and no Certificate of Compliance has been delivered to the Purchaser in respect of the 116(5.2) Property on or prior to the Remittance Date, such amount shall be remitted by the Purchaser to the Receiver General for Canada for the account of Wabush Iron in accordance with section 116 of the *ITA*.

(6) For the avoidance of doubt, the Purchaser shall not remit any amount referred to in Section 3.6(5) to the Receiver General for Canada before the Remittance Date, as such date may be extended pursuant to Section 3.6(6).

(7) Notwithstanding anything to the contrary in this Section 3.6, if prior to the Remittance Date, the Purchaser has received a comfort letter issued by the CRA in form and substance satisfactory to the Purchaser, acting reasonably, extending the time period under which the Purchaser is required to remit an amount in respect of the Purchase Price for the account of Wabush Iron without being subject to interest or penalties, the Purchaser shall not make any remittance to the Receiver General for Canada on the date that would otherwise be the Remittance Date and the Remittance Date shall be extended indefinitely, or until the Purchaser receives notification from the CRA that such comfort letter is no longer in effect.

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(8) Where the Purchaser has withheld any amount under Section 3.6(2) or (3), such amount shall be paid to and held by the Monitor, in trust and invested by the Monitor for the benefit of Wabush Iron in Canadian dollar-denominated interest bearing deposit account with a Canadian chartered bank listed in Schedule 1 to the *Bank Act* (Canada) until paid out of trust to the Monitor on behalf of Wabush Iron, or remitted to the Receiver General for Canada for the account of Wabush Iron in accordance with this Section 3.6.

(9) A copy of any Certificate of Compliance, other certificates, notices, comfort letters, correspondence or any other document sent by any Vendor or the Purchaser, or received by any Vendor or the Purchaser, pursuant to this Section 3.6 shall be sent promptly to the Monitor by the applicable Vendor or the Purchaser.

3.7 Taxable Québec Property

(1) Wabush Iron shall take all reasonable steps to obtain and deliver to the Purchaser on or before Closing a certificate of compliance issued by the Ministère du Revenu (Québec) under section 1098 or 1100 of the TAQ in respect of its disposition of the 1097 Property and a certificate of compliance issued by the Ministère du Revenu (Québec) under section 1102.1 of the TAQ in respect of its disposition of the 1102.1 Property. A certificate issued by the Ministère du Revenu (Québec) under section 1098 or 1100 of the TAQ in respect of the 1097 Property or under section 1102.1 of the TAQ in respect of the 1102.1 Property is hereinafter referred to as a "**Québec Certificate of Compliance**".

(2) If a Québec Certificate of Compliance in respect of the 1097 Property is delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 1097 Property and payable to Wabush Iron at Closing twelve percent (12%) of the amount, if any, by which such portion of the Purchase Price exceeds the certificate limit specified in such certificate. If a Québec Certificate of Compliance in respect of the 1097 Property is not delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 1097 Property and payable to Wabush Iron at Closing twelve percent (12%) of such portion of the Purchase Price.

(3) If a Québec Certificate of Compliance in respect of the 1102.1 Property is delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 1102.1 Property and payable to Wabush Iron at Closing thirty percent (30%) of the amount, if any, by which such portion of the Purchase Price exceeds the certificate limit specified in such certificate. If a Québec Certificate of Compliance in respect of the 1102.1 Property is not delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 1102.1 Property and payable to Wabush Iron at Closing thirty percent (30%) of such portion of the Purchase Price.

(4) Where the Purchaser has withheld any amount under Section 3.7(2) or (3) and Wabush Iron delivers a Québec Certificate of Compliance to the Purchaser after Closing and on or before the Remittance Date, the Purchaser shall:

- (a) where the Québec Certificate of Compliance is delivered under section 1098 or 1100 of the TAQ, remit forthwith to the Ministère du Revenu (Québec) for the account of Wabush Iron twelve percent (12%) of the amount, if any, by which the portion of the Purchase Price allocable to the 1097 Property and payable to Wabush Iron exceeds the certificate limit fixed in such certificate and pay

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forthwith to Wabush Iron any amount that the Purchaser has withheld in respect of the 1097 Property in excess of such amount; and

- (b) where the Québec Certificate of Compliance is delivered under subsection 1102.1 of the TAQ, remit forthwith to the Ministère du Revenu (Québec) for the account of Wabush Iron thirty percent (30%) of the amount, if any, by which the portion of the Purchase Price allocable to the 1102.1 Property and payable to Wabush Iron exceeds the certificate limit fixed in such certificate and pay forthwith to Wabush Iron any amount that the Purchaser has withheld in respect of the 1102.1 Property in excess of such amount.

(5) Where the Purchaser has withheld any amount under Section 3.7(2) and no Québec Certificate of Compliance has been delivered to the Purchaser in respect of the 1097 Property on or prior to the Remittance Date, or where the Purchaser has withheld any amount under Section 3.7(3) and no Québec Certificate of Compliance has been delivered to the Purchaser in respect of the 1102.1 Property on or prior to the Remittance Date, such amount shall be remitted by the Purchaser to the Ministère du Revenu (Québec) for the account of Wabush Iron in accordance with section 1101 or 1102.2 as the case may be of the TAQ.

(6) For the avoidance of doubt, the Purchaser shall not remit any amount referred to in Section 3.7(5) to the Ministère du Revenu (Québec) before the Remittance Date, as such date may be extended pursuant to Section 3.7(7).

(7) Notwithstanding anything to the contrary in this Section 3.7, if prior to the Remittance Date, the Purchaser has received a comfort letter issued by the Ministère du Revenu (Québec) in form and substance satisfactory to the Purchaser, acting reasonably, extending the time period under which the Purchaser is required to remit an amount in respect of the Purchase Price for the account of Wabush Iron without being subject to interest or penalties, the Purchaser shall not make any remittance to the Ministère du Revenu (Québec) on the date that would otherwise be the Remittance Date and the Remittance Date shall be extended indefinitely, or until the Purchaser receives notification from the Ministère du Revenu (Québec) that such comfort letter is no longer in effect.

(8) Where the Purchaser has withheld any amount under Section 3.7(2) or (3), such amount shall be paid to and held by the Monitor, in trust and invested by the Monitor for the benefit of Wabush Iron in Canadian dollar-denominated interest bearing deposit account with a Canadian chartered bank listed in Schedule 1 to the *Bank Act* (Canada) until released from trust to the Monitor on behalf of Wabush Iron or remitted to the Ministère du Revenu (Québec) for the account of Wabush Iron in accordance with this Section 3.7.

(9) A copy of any Québec Certificate of Compliance, other certificates, notices, comfort letters, correspondence or any other document sent by any Vendor or the Purchaser, or received by any Vendor or the Purchaser, pursuant to this Section 3.7 shall promptly be sent to the Monitor by the applicable Vendor or the Purchaser.

3.8 Tax Elections. To the extent possible under the Applicable Law, and if so requested by the Purchaser, at the Closing, each Vendor and the Purchaser shall execute jointly an election under section 167 of the *Excise Tax Act* (Canada) and, if applicable, pursuant to section 75 of *An Act respecting the Québec sales tax* to have the sale of the Purchased Assets take place on a GST/HST-free basis under Part IX of the *Excise Tax Act* (Canada) and on a QST-free basis pursuant to *An Act respecting the Québec sales tax*. The Purchaser shall file the elections in the manner and within the time prescribed by the relevant legislation.

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ARTICLE 4
REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Purchaser. As a material inducement to the Vendors entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendors are entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 4.1, the Purchaser represents and warrants to the Vendors as follows:

(1) *Incorporation and Corporate Power.* The Purchaser is a corporation incorporated, organized and subsisting under the laws of the jurisdiction of its incorporation. The Purchaser has the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform its obligations under this Agreement and under all such other agreements and instruments.

(2) *Authorization by Purchaser.* The execution and delivery of this Agreement and all other agreements and instruments to be executed by it as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser.

(3) *Approvals.* No consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement or all other agreements and instruments to be executed by the Purchaser or the performance by the Purchaser of its obligations hereunder or thereunder.

(4) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms. There is no Legal Proceeding in progress, pending, or threatened against or affecting the Purchaser, and there are no grounds on which any such Legal Proceeding might be commenced and there is no Order outstanding against or affecting the Purchaser which, in any such case, affects adversely or might affect adversely the ability of the Purchaser to enter into this Agreement or to perform its obligations hereunder.

(5) *ICA.* The Purchaser is not a "non-Canadian" within the meaning of the *ICA*.

(6) *Excise Tax Act.* The Purchaser is, or upon Closing shall be, registered for GST/HST purposes under Part IX of the *Excise Tax Act* (Canada) and for QST purposes pursuant to the *Act respecting the Québec sales tax*, and shall provide its registration numbers to the Vendors at or prior to Closing.

(7) *Commissions.* The Vendors will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Purchaser.

(8) *Sufficient Funds.* The Purchaser has sufficient financial resources or has arranged sufficient financing for it to pay on Closing the Cash Purchase Price, the Transfer Taxes, the Cure Costs and any and all other amounts payable by the Purchaser hereunder.

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4.2 Representations and Warranties of the Vendors. As a material inducement to the Purchaser's entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendors set out in this Section 4.2, the Vendors severally represent and warrant to the Purchaser as follows:

(1) *Incorporation and Corporate Power.* CQIM is a corporation incorporated, organized and subsisting under the laws of British Columbia. Wabush Iron is a corporation incorporated, organized and subsisting under the laws of the State of Ohio. Wabush Resources is a corporation incorporated, organized and subsisting under the federal laws of Canada. Arnaud is a corporation incorporated, organized and subsisting under the laws of Québec. Subject to the granting of the Approval and Vesting Order, the Vendors have the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform their other obligations under this Agreement and under all such other agreements and instruments.

(2) *Authorization by Vendors.* Subject to the granting of the Approval and Vesting Order, the execution and delivery of this Agreement and all other agreements and instruments to be executed by it as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Vendors.

(3) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Vendors enforceable against the Vendors in accordance with its terms.

(4) *ITA and TAQ.* The Vendors (other than Wabush Iron) are not non-residents of Canada for purposes of the ITA and the TAQ.

(5) *Excise Tax Act.* The Vendors are registered for GST/HST purposes under Part IX of the *Excise Tax Act* (Canada) and for QST purposes pursuant to the *Act respecting the Québec sales tax* and their GST/HST and QST numbers are:

CQIM	GST number: 12262 6575 QST number: 1003852071
Wabush Iron	GST number: 10556 6251 QST number: 1000549114
Wabush Resources	GST number: 88149 8307 QST number: 1205018022
Arnaud	GST number: 122617368 QST number: 1000742755

(6) *Commissions.* The Purchaser will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Vendors. The Vendors will be responsible for payment of any fees and other amounts charged by the Sale Advisor at the complete and full exoneration of the Purchaser.

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(7) *Good Title.* The Vendors have good record title to, or a valid leasehold interest in, as applicable, all the Purchased Assets, in each case free and clear of all Encumbrances and interests of any kind whatsoever, except for (i) Permitted Encumbrances and (ii) those Encumbrances, remedies and interest that will be released pursuant to the Approval and Vesting Order.

4.3 As is, Where is. Notwithstanding any other provision of this Agreement, the Purchaser acknowledges, agrees and confirms that:

(1) except for the representations and warranties of the Vendors set forth in Section 4.2, it is entering into this Agreement, acquiring the Purchased Assets, assuming the Assumed Liabilities and agreeing to be responsible for the Environmental Obligations on an "as is, where is" basis as they exist as of the Closing Time and will accept the Purchased Assets in their state, condition and location as of the Closing Time except as expressly set forth in this Agreement and the sale of the Purchased Assets is made without legal warranty and at the risk and peril of the Purchaser;

(2) it has conducted to its satisfaction such independent searches, investigations and inspections of the Purchased Assets, the Businesses, the Assumed Liabilities and the Environmental Obligations as it deemed appropriate, and based solely thereon, has determined to proceed with the transactions contemplated by this Agreement;

(3) except as expressly stated in Section 4.2, neither the Vendors nor any other Person is making, and the Purchaser is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Purchased Assets, the Vendors' right, title or interest in or to the Purchased Assets, the Businesses, the Assumed Liabilities or the Environmental Obligations, including with respect to merchantability, physical or financial condition, description, fitness for a particular purpose, suitability for development, title, description, use or zoning, environmental condition, existence of latent defects, quality, quantity or any other thing affecting any of the Purchased Assets, the Assumed Liabilities or the Environmental Obligations or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any Applicable Law in any jurisdiction, which the Purchaser confirms do not apply to this Agreement and are hereby waived in their entirety by the Purchaser;

(4) without limiting the generality of the foregoing, no representation, warranty or covenant is given by any member of the SISP Team or any of the SISP Team's Representatives that the Purchased Assets are or can be made operational within a specified time frame or will achieve any particular level of service, use, production capacity or actual production if made operational;

(5) without limiting the generality of the foregoing, except as expressly stated in Section 4.2, the Vendors have made no representation or warranty as to any regulatory approvals, Permits and Licenses, consents or authorizations that may be needed to complete the transactions contemplated by this Agreement or to operate or carry on the Businesses or any portion thereof, and the Purchaser is relying entirely on its own investigation, due diligence and inquiries in connection with such matters;

(6) all written and oral information obtained from any member of the SISP Team or any of the SISP Team's Representatives, including in any teaser letter, asset listing, confidential information memorandum or other document made available to the Purchaser (including in certain "data rooms", management presentations, site visits and diligence

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meetings or telephone calls), with respect to the Purchased Assets, the Businesses, the Assumed Liabilities and the Environmental Obligations has been obtained for the convenience of the Purchaser only, and no member of the SISP Team nor any of the SISP Team's Representatives have made any representation or warranty, express or implied, statutory or otherwise as to the accuracy or completeness of any such information;

(7) any information regarding or describing the Purchased Assets, the Businesses, the Assumed Liabilities or the Environmental Obligations in this Agreement (including the Schedules hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchaser, and no representation, warranty or condition, express or implied, has or will be given by any member of the SISP Team or any of the SISP Team's Representatives, or any other Person concerning the completeness or accuracy of such information or descriptions;

(8) except as otherwise expressly provided in this Agreement, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or claims the Purchaser might have against the Vendors, any member of the SISP Team or any of the SISP Team's Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties expressly set forth in Section 4.2. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties contained in the *Civil Code of Québec*, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict Liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product Liability claims, or similar claims, and all other claims that may be later created or conceived in strict Liability or as strict Liability type claims and rights; and

(9) except as expressly set out in Section 10.1, none of representations and warranties contained in this Agreement shall survive Closing and, subject to Section 9.1, the Purchaser's sole recourse for any breach of representation or warranty shall be for the Purchaser to not complete the transactions as contemplated in this Agreement.

For greater certainty and without limiting the generality of the foregoing, the Parties hereby agree to exclude altogether the effect of the legal warranty provided for by article 1716 of the *Civil Code of Québec* and the Purchaser is purchasing the Purchased Assets at its own risk within the meaning of article 1733 of the *Civil Code of Québec*. This Section 4.3 shall not merge on Closing and is deemed incorporated by reference in all closing documents and deliveries.

ARTICLE 5 EMPLOYEES AND EMPLOYEE BENEFITS

5.1 Unionized Employees. The Vendors shall, immediately prior to the Closing and subject to the terms of any Collective Bargaining Agreement, lay off those Unionized Employees Related to the Businesses as designated in writing by the Purchaser not later than 14 Business Days prior to the Closing Date, and the Vendors retain all liabilities for salary, wages, bonuses, vacation pay, commissions and other compensation accruing or due prior to the Closing Date including severance payments, damages for wrongful dismissal and all related costs in respect of the lay off of any such Unionized Employees, the whole in accordance with Applicable Law, any Collective Bargaining Agreement and any relevant Order, including of the Court. Effective as of the Closing Date, the Purchaser shall be the employer of all Unionized Employees Related to the Businesses, in accordance with Applicable Law and the terms of any Collective Bargaining Agreement. The Purchaser shall assume all obligations of the Vendors under the

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Collective Bargaining Agreements relating to the Unionized Employees Related to the Businesses from the Closing Date (except for the Pension Plans as set forth in Sections 5.8 and 5.9, and subject to the other provisions of this Article 5) and will take the necessary measures to effect the transfer and modification of the relevant bargaining certificates or other documents in relation to the Businesses, such assumption to be without recourse to the Vendors.

5.2 Continuation of Employment of Québec Non-Unionized Employees. The Vendors shall, immediately prior to the Closing, terminate those Non-Unionized Employees Related to the Businesses as designated in writing by the Purchaser not later than 5 Business Days prior to the Closing Date, all designated in accordance with Applicable Law, and the Vendors retain all liabilities for salary, wages, bonuses, vacation pay, commissions and other compensation accruing or due prior to the Closing Date including contractual or statutory severance payments, damages for wrongful dismissal and all related costs in respect of the termination of the employment of any Non-Unionized Employee terminated before the Closing Date, the whole in accordance with Applicable Law and any relevant Order, including of the Court. Effective as of the Closing Date, the Purchaser shall only continue the employment of those Non-Unionized Employees Related to the Businesses who were not terminated pursuant to this Section 5.2, in accordance with Applicable Law, on terms and conditions which are no less favourable in the aggregate to those under which such Non-Unionized Employee are currently employed by the applicable Vendor, it being understood that the Purchaser shall only assume obligations towards such Non-Unionized Employees arising and related to the period on and after the Closing Date subject, however, to the other provisions of this Article 5.

5.3 No Offers of Employment to Newfoundland Non-Unionized Employees. The Purchaser will not offer any employment to any Newfoundland Non-Unionized Employees as it is not buying assets or business located in Newfoundland, and therefore shall not assume any obligation whatsoever towards the Newfoundland Non-Unionized Employees.

5.4 Past Service & Ongoing Terms. The Purchaser shall recognize the past service of Transferred Employees with the Vendors for all purposes, including any required notice of termination, termination or severance pay (contractual, statutory, at common-law or otherwise under Applicable Law). The Purchaser shall ensure that the terms and conditions of employment for Transferred Employees shall not be changed except in accordance with Applicable Law, including any Law requiring that notice of such changes be given. The Purchaser agrees that following the Closing Date it will comply with all Applicable Laws with respect to severance of any Transferred Employee.

5.5 Vendors to Pay Pre-Closing Wages. The Vendors shall pay all wages (for greater certainty, excluding any severance or termination pay or indemnity in lieu of notice not previously paid by the Vendors) owed to Transferred Employees in respect of the period prior to the Closing Date, including any such amounts that have accrued prior to the Closing Date but have not become due and payable until on or after the Closing Date.

5.6 Provision of Information. The Vendors shall provide the Purchaser with any and all employment information relating to the Transferred Employees in the possession of and reasonably available to the Vendors, *inter alia*, to establish a record of earnings for each Transferred Employee.

5.7 Other Benefit Matters. The Transferred Employees shall cease to accrue benefits under all Employee Plans of the Vendors effective as of the Closing Date, except as otherwise required under any Collective Bargaining Agreement.

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5.8 Service Credit and Pre-existing Conditions.

(1) *Employee Plans.* The Purchaser shall (i) assume all obligations of the Vendors with respect to the Employee Plans (other than the Pension Plans) related to Transferred Employees, participation in which is required under the Collective Bargaining Agreements effective as at the Closing Date, or (ii) provide replacement Employee Plans in compliance with the Collective Bargaining Agreements (the "**Assumed Employee Plans**"). The Vendors shall retain Liability for all premiums accrued, due or payable prior to the Closing Date in respect of such Assumed Employee Plans other than in respect of the Suspended Benefits Payments; it being further agreed that the Purchaser does not assume any obligation whatsoever with respect to the Suspended Benefits Payments.

(2) *Service Recognition.* For greater certainty, the Purchaser shall also recognize all service of the Transferred Employees with the Vendors for the purposes of those employee plans in which the Transferred Employees are enrolled by the Purchaser immediately after the Closing Date.

(3) *Pre-Existing Conditions.* The Purchaser shall use commercially reasonable efforts to arrange for the waiver of any and all pre-existing limitation restrictions under its employee plans, but only to the extent that such limitation restrictions are waived or otherwise do not apply under the applicable corresponding Employee Plans of the Vendors. With respect to Transferred Employees who are subject, on the Closing Date, to pre-existing limitation provisions under the Employee Plans of the Vendors, pre-existing limitation provisions under the applicable corresponding employee plans of the Purchaser shall lapse on the date such limitations would have lapsed under the Employee Plans of the Vendors as if the Transferred Employee had remained in the employ of the Vendors.

5.9 Pension Plans. The Purchaser shall not assume any Liability under or in respect of any Pension Plan, including without limitation any deficit thereunder related to the Transferred Employees or otherwise.

**ARTICLE 6
COVENANTS**

6.1 Target Closing Date. The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing on the Target Closing Date.

6.2 Motion for Approval and Vesting Order. Pursuant to and subject to the terms of the SISF, the Vendors shall file with the Court, as soon as practicable after its execution and delivery of this Agreement, a motion seeking the Court's issuance of the Approval and Vesting Order and of the Assignment Order. The Vendors shall diligently use their commercially reasonable efforts to seek the issuance and entry of the Approval and Vesting Order and of the Assignment Order. The Purchaser shall cooperate with the Vendors in their efforts to obtain the issuance and entry of the Approval and Vesting Order and of the Assignment Order. The Purchaser, at its own expense, will promptly provide to the Vendors and the Monitor all such information within its possession or under its control as the Vendors or the Monitor may reasonably require to obtain the Approval and Vesting Order and the Assignment Order.

6.3 Access During Interim Period. During the Interim Period, the Vendors shall, subject to any confidentiality or safety restrictions, give, or cause to be given, to the Purchaser and its Representatives reasonable access during normal business hours to the Purchased Assets, including the Books and Records, to conduct such investigations, inspections, surveys

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or tests thereof and of the financial and legal condition of the Businesses and the Purchased Assets as the Purchaser deems reasonably necessary or desirable to further familiarize itself with the Businesses and the Purchased Assets. Without limiting the generality of the foregoing, the Purchaser shall be permitted reasonable access during normal business hours to all documents relating to information scheduled or required to be disclosed under this Agreement and to the Employees. Such investigations, inspections, surveys and tests shall be carried out at the Purchaser's sole and exclusive risk, during normal business hours, and without undue interference with the operations of the care and maintenance activities being conducted and the Vendors shall co-operate reasonably in facilitating such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser.

6.4 Transaction Personal Information. Each Party shall comply with Privacy Law in the course of collecting, using and disclosing Transaction Personal Information. The Purchaser shall collect Transaction Personal Information prior to Closing only for purposes related to the transactions contemplated by this Agreement. Following the Closing, the Purchaser shall not, without the consent of the individuals to whom such Personal Information relates or as permitted or required by Applicable Law, use or disclose Transaction Personal Information:

- (1) for purposes other than those for which such Transaction Personal Information was collected by the Vendors prior to the Closing; and
- (2) which does not relate directly to the carrying on of the Businesses or to the carrying out of the purposes for which the transactions contemplated by this Agreement were implemented.

The Purchaser shall protect and safeguard the Transaction Personal Information against unauthorized collection, use or disclosure, as provided by Privacy Law. The Purchaser shall cause its Representatives to observe the terms of this Section 6.4 and to protect and safeguard Transaction Personal Information in their possession in accordance with Privacy Law.

6.5 Risk of Loss. The Purchased Assets shall be at the risk of the Vendors until Closing. If before the Closing all or substantially all of the Purchased Assets are lost, damaged or destroyed or are expropriated or seized by any Governmental Authority or any other Person in accordance with Applicable Law or if notice of any such expropriation or seizure shall have been given in accordance with Applicable Law, the Purchaser, in its discretion, acting reasonably, shall have the option, exercisable by notice to the Vendors given prior to the Closing Time to terminate this Agreement, as provided in Section 9.1.

6.6 Care and Maintenance During Interim Period. During the Interim Period, the Vendors shall continue to maintain the Pointe-Noire Port Facility and the Pellet Plant, in substantially the same manner as conducted on the date of this Agreement.

6.7 Indemnity. The Purchaser hereby indemnifies the Vendors, the Vendors' Affiliates, the Monitor and their respective Representatives, and saves them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatsoever to:

- (1) any Transfer Taxes (including penalties and interest) which may be assessed against any Vendor, including any Taxes which may be assessed against any Vendor in the event that any election made pursuant to Section 3.8 is challenged

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by the relevant Tax authority as being inapplicable to the transactions under this Agreement, or as a result of the Purchaser's failure to file such elections within the prescribed time;

- (2) the Purchaser's access in accordance with Section 6.3;
- (3) any Environmental Obligation; and
- (4) the Purchaser's failure to pay when due and perform and discharge the Assumed Liabilities in accordance with their terms.

For greater certainty, if any Transfer Taxes (including interest and penalties) are assessed against one or more of the Vendors by a tax authority, such Vendor(s) shall forthwith send the Purchaser a copy of any written notice or documentation from such tax authority indicating the amount of Transfer Taxes that were assessed. The Purchaser shall indemnify the Vendor(s) for the assessed amounts pursuant to Section 6.7(1), and the Purchaser shall have the sole and exclusive right, at its own expenses, to assume or direct a challenge of such assessment, including the pursuit of the compromise or settlement of the challenge and the conduct of any related legal, administrative or other similar proceedings. The Vendors shall use commercially reasonable efforts to cooperate with the Purchaser in relation to the challenge. Any refunds obtained from the tax authorities in connection with such challenge shall belong solely to the Purchaser.

6.8 Books and Records. The Purchaser shall preserve and keep the Books and Records acquired by it pursuant to this Agreement for a period of six (6) years after Closing, or for any longer periods as may be required by any Laws applicable to such Books and Records. The Purchaser shall make such Books and Records, as well as electronic copies of such books and records (to the extent reasonably feasible), available to the Monitor and the Vendors, its successors, and any trustee in bankruptcy or receiver of the Vendors, and shall, at such party's expense, permit any of the foregoing persons to take copies of such Books and Records as they may require.

6.9 Environmental Liabilities. The Purchaser acknowledges that upon Closing, the Purchaser shall become responsible for the payment, performance and discharge of all Environmental Liabilities related to the Purchased Assets in accordance with all applicable industry standards and Applicable Law, including, as applicable, all obligations of any kind whatsoever under Environmental Laws relating to the Purchased Assets and/or the Businesses (collectively the "**Environmental Obligations**").

6.10 Transfer of Assumed Employee Plans. The Purchaser and the Vendors shall cooperate in order to complete all necessary steps to ensure the transfer, in accordance with the provisions of Article 5, of all Liabilities with respect to any Assumed Employee Plan to the Purchaser effective as at the Closing Date and it is agreed that the Purchaser shall assume all costs of any nature whatsoever arising out of or with respect to the transfer of the Assumed Employee Plans to the Purchaser effective as at the Closing Date.

6.11 Pension Plan for Unionized Employees. The Purchaser shall take all necessary steps to make a replacement pension plan available for Unionized Transferred Employees, including, if necessary, obtaining the consent of the Union, in which the Transferred Unionized Employees will participate, and which will comply with the requirements set forth in the relevant Collective Bargaining Agreement except that the Purchaser will not assume any Liability for any existing Pension Plan deficit solely as a result of entering into this Agreement.

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6.12 Certain Information Technology Assets. With respect to any information technology assets Relating to the Businesses to be acquired by the Purchaser hereunder (such as desktops, laptops, mobile phones, servers and related hardware) (collectively, "**Hardware**"), the Purchaser will co-operate with the Vendors, at the Vendors' cost and expense, in causing data contained or stored in such Hardware not relating primarily to the Businesses, the Purchased Assets, the Assumed Liabilities or the Environmental Obligations to be removed from such Hardware in a manner reasonably satisfactory to the Vendors prior to the Closing Date or within a reasonable period of time thereafter, provided that such removal shall be carried out in a manner that does not damage or otherwise interfere with any data contained or stored in such Hardware Relating to the Businesses or primarily relating to the Purchased Assets. Any third party provider selected by the Purchaser and the Vendors to provide such services shall be agreed upon by the Purchaser and the Vendors, acting reasonably.

6.13 Trademarked and Branded Assets. With respect to any Purchased Assets to be acquired by the Purchaser hereunder bearing any trademarks, business names, logos or other branding of Cliffs Natural Resources Inc., Bloom Lake or Wabush (collectively, "**Proprietary Marks**"), such Proprietary Marks do not form part of the Purchased Assets. The Purchaser will co-operate with the Vendors, at the Vendors' cost and expense, in removing, dismantling and/or destroying such Proprietary Marks on or contained in any of the Purchased Assets, to the satisfaction of the Vendors, and nothing in this Agreement shall be construed as a license by the Vendors to the Purchaser of any Intellectual Property that does not form a part of the Purchased Assets.

6.14 Cooperation and Consultation with Governmental Authorities. All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of any Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the consummation of the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Vendors or the Purchaser with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Parties hereunder in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Parties with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other Parties with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

ARTICLE 7 CLOSING ARRANGEMENTS

7.1 Closing. The Closing shall take place at 10:00 a.m. Eastern time (the "**Closing Time**") on the Closing Date at the offices of the Vendors' counsel in Toronto, Ontario, or at such other time on the Closing Date or such other place as may be agreed orally or in writing by the Vendors and the Purchaser.

7.2 Vendors' Closing Deliveries. At the Closing, the Vendors shall deliver or cause to be delivered to the Purchaser the following:

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- (1) the Purchased Assets, provided that delivery shall occur *in situ* wheresoever such Purchased Assets are located at the Closing Time;
- (2) a true copy of the Approval and Vesting Order;
- (3) the General Conveyance, duly executed by the Vendors;
- (4) all consents to the assignment of the Assigned Contracts and Permits and Licenses, to the extent obtained by the Vendors prior to Closing;
- (5) a true copy of any Assignment Order granted by the Court, if any, in respect of any consents required under the Critical Contracts;
- (6) the Assignment and Assumption Agreement, duly executed by the Vendors;
- (7) the Deed(s) of Sale, duly executed by the applicable Vendors;
- (8) a bring-down certificate executed by a senior officer of the Vendors dated as of the Closing Date, in form and substance satisfactory to the Purchaser, acting reasonably, certifying that (i) all of the representations and warranties of the Vendors hereunder remain true and correct in all material respects as of the Closing Date, and (ii) all of the terms and conditions set out in this Agreement to be complied with or performed by the Vendors at or prior to Closing have been complied with or performed by the Vendors in all material respects;
- (9) the Access Agreement, duly executed by the Vendors;
- (10) the documents or elections referred to in Section 3.8; and
- (11) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

7.3 Purchaser's Closing Deliveries. At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendors (or to the Monitor, if so indicated below), the following:

- (1) the payment referred to in Section 3.3(2), which shall be made to the Monitor;
- (2) the payment of all Transfer Taxes (if any) required to be paid on Closing shall be made to the Monitor;
- (3) the General Conveyance, duly executed by the Purchaser;
- (4) the Assignment and Assumption Agreement, duly executed by the Purchaser;
- (5) a bring-down certificate executed by a senior officer of the Purchaser dated as of the Closing Date, in form and substance satisfactory to the Vendors, acting reasonably, certifying that (a) all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing Date, and (b) all of the terms and conditions set out in this Agreement to be complied with or performed by the Purchaser at or prior to Closing have been complied with or performed by the Purchaser in all material respects;

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- (6) the Access Agreement, duly executed by the Purchaser;
- (7) the elections referred to in Section 3.8;
- (8) the Deed(s) of Sale, duly executed by the Purchaser;
- (9) the amount of the Cure Costs to be paid by the Purchaser pursuant to section 2.3(3) hereof shall be delivered to the Monitor, or evidence that such Cure Costs has been paid directly to the applicable counterparty shall be delivered; and
- (10) such other agreements, documents and instruments and Deeds of Sale as may be reasonably required by the Vendors to complete the transactions provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

ARTICLE 8 CONDITIONS OF CLOSING

8.1 Purchaser's Conditions. The Purchaser shall not be obligated to complete the transactions contemplated by this Agreement, unless, at or before the Closing Time, each of the conditions listed below in this Section 8.1 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchaser, and may be waived by the Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. The Vendors shall take all such actions, steps and proceedings as are reasonably within their control as may be necessary to ensure that the conditions listed below in this Section 8.1 are fulfilled at or before the Closing Time.

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court.

(2) *Critical Contracts.* All consents necessary to assign the Critical Contracts to the Purchaser shall have been obtained, or an Assignment Order shall have been issued and entered by the Court in respect of such Critical Contracts;

(3) *Vendors' Deliverables.* The Vendors shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 7.2.

(4) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of (a) making any of the transactions contemplated by this Agreement illegal, or (b) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(5) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.2 shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

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(6) *No Breach of Covenants.* The Vendors shall each have performed in all material respects all material covenants, obligations and agreements contained in this Agreement required to be performed by the Vendors on or before the Closing.

8.2 Vendors' Conditions. The Vendors shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 8.2 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Vendors, and may be waived by the Vendors in whole or in part, without prejudice to any of their rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing. The Purchaser shall take all such actions, steps and proceedings as are reasonably within the Purchaser's control as may be necessary to ensure that the conditions listed below in this Section 8.2 are fulfilled at or before the Closing Time.

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court and shall not have been vacated, set aside or stayed.

(2) *Purchaser's Deliverables.* The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendors at the Closing all the documents and payments contemplated in Section 7.3.

(3) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of (a) making any of the transactions contemplated by this Agreement illegal, or (b) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(4) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.1, shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

(5) *No Breach of Covenants.* The Purchaser shall have performed in all material respects all material covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser on or before the Closing.

8.3 Monitor's Certificate. When the conditions to Closing set out in Section 8.1 and Section 8.2, have been satisfied and/or waived by the Vendors or the Purchaser, as applicable, the Vendors and the Purchaser will each deliver to the Monitor written confirmation (a) that such conditions of Closing, as applicable, have been satisfied and/or waived, (b) the amount of the Transfer Taxes (if any is payable) and Cure Costs to be paid on Closing (the "**Conditions Certificates**"). Upon receipt of payment in full of the Cash Purchase Price and the applicable Transfer Taxes and Cure Costs to be paid on Closing (or evidence that such Cure Costs have been paid by the Purchaser or Vendors, as applicable), directly to the counterparty) and of each of the Conditions Certificates, the Monitor shall (i) issue forthwith its Monitor's Certificate concurrently to the Vendors and the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the Court (and shall provide a true copy of such filed certificate to the Vendors and the Purchaser). In the case of (i) and (ii), above, the Monitor will be relying exclusively on the basis of the Conditions Certificates and without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions.

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**ARTICLE 9
TERMINATION**

9.1 Grounds for Termination. This Agreement may be terminated on or prior to the Closing Date:

- (1) by the mutual written agreement of the Vendors and the Purchaser, provided however that if this Agreement has been approved by the Court, any such termination shall require either the consent of the Monitor, or approval of the Court;
- (2) by written notice from the Purchaser to the Vendors in accordance with Section 6.5;
- (3) by the Purchaser, on the one hand, or by the Vendors, on the other hand, upon written notice to the other Parties if (i) the Approval and Vesting Order has not been obtained by February 15, 2016, or (ii) the Court declines at any time to grant the Approval and Vesting Order, in each case for reasons other than a breach of this Agreement by either the Purchaser, on the one hand, or the Vendors, on the other hand;
- (4) by written notice from the Purchaser to the Vendors if there has been a material breach by the Vendors of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser, and (i) such breach is not curable and has rendered the satisfaction of any condition in Section 8.1 impossible by the Outside Date, or (ii) if such breach is curable, the Purchaser has provided prior written notice of such breach to the Vendors, and such breach has not been cured within ten (10) days following the date upon which the Vendors received such notice;
- (5) by written notice from the Purchaser to the Vendors any time after the Outside Date, if the Closing has not occurred by the Outside Date for reasons other than as set out in Section 9.1(3)(i) and (ii), and such failure to close was not caused by or as a result of the Purchaser's breach of this Agreement;
- (6) by written notice from the Vendors to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendors, and (i) such breach is not curable and has rendered the satisfaction of any condition in Section 8.2 impossible by the Outside Date, or (ii) if such breach is curable, the Vendors have provided prior written notice of such breach to the Purchaser, and such breach has not been cured within ten (10) days following the date upon which the Purchaser received such notice; or
- (7) by written notice from the Vendors to the Purchaser any time after the Outside Date, if the Closing has not occurred by the Outside Date for reasons other than as set out in Section 9.1(3)(i) and (ii), and such failure to close was not caused by or as a result of the Vendors' breach of this Agreement.

9.2 Effect of Termination. If this Agreement is terminated pursuant to Section 9.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder, except as contemplated in Sections, 6.4

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(*Transaction Personal Information*), 9.3 (*Treatment of Deposit*), 10.2 (*Expenses*), 10.3 (*Public Announcements*), 10.4 (*Notices*), 10.8 (*Amendment*), 10.12 (*Governing Law*), 10.13 (*Dispute Resolution*), 10.14 (*Attornment*), 10.15 (*Successors and Assigns*), 10.16 (*Assignment*), 10.17 (*Monitor's Capacity*), 10.18 (*Third Party Beneficiaries*) and 10.20 (*Language*), which shall survive such termination. For the avoidance of doubt, any Liability incurred by a Party prior to the termination of this Agreement shall survive such termination.

9.3 Treatment of Deposit.

(1) *Retention of Deposit.* In the event that this Agreement is terminated by the Vendors pursuant to Section 9.1(6) or 9.1(7), the Deposit shall be forfeited by the Purchaser and retained by the Monitor on behalf of the Vendors as a genuine estimate of liquidated damages, and not as a penalty.

(2) *Return of Deposit.* In the event that this Agreement is terminated pursuant to Section 9.1(1), 9.1(2), 9.1(3) (other than in the case of a termination by the Vendors under such subsection in the event that the Purchaser has breached this Agreement), 9.1(4) or 9.1(5) the Deposit shall be returned to the Purchaser. Except in case of termination pursuant to Section 9.1(4), the return of the Deposit shall be the Purchaser's sole and exclusive remedy.

(3) *GST/HST Gross Up.* In the event that any payment or forfeiture under this Agreement is deemed by the *Excise Tax Act* (Canada) to include GST/HST, or is deemed by any applicable provincial or territorial legislation to include a similar value added or multi-staged tax, the amount of such payment or forfeiture shall be increased accordingly.

ARTICLE 10 GENERAL

10.1 Survival. All representations, warranties, covenants and agreements of the Vendors or the Purchaser made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall not survive the Closing except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or obligations extending after the Closing, or as otherwise expressly provided in this Agreement. For greater certainty, Sections 2.3(7) (*Intercompany Corporate Services*), 2.4(4) (*Post-Closing Assignment of Permits and Licenses*), 3.4 (*Allocation of Purchase Price*), 3.5 (*Taxes*), 4.2(4) (*ITA and TAQ*), 4.2(5) (*Excise Tax Act*), 4.2(6) (*Commissions*), 4.3 (*As is, Where is*), 5.4 (*Past Service & Ongoing Terms*), 5.8 (*Service Credit & Pre-existing Conditions*), 5.9 (*Pension Plans*), 6.4 (*Transaction Personal Information*), 6.7 (*Indemnity*), 6.8 (*Books and Records*), 6.9 (*Environmental Liabilities*), 6.10 (*Transfer of Assumed Employee Plans*), 6.11 (*Certain Information Technology Assets*), 6.13 (*Trademarked and Branded Assets*), 10.1 (*Survival*), 10.2 (*Expenses*), 10.3 (*Public Announcements*), 10.4 (*Notices*), 10.8 (*Amendment*), 10.12 (*Governing Law*), 10.13 (*Dispute Resolution*), 10.14 (*Attornment*), 10.15 (*Successors and Assigns*), 10.16 (*Assignment*), 10.17 (*Monitor's Capacity*), 10.18 (*Third Party Beneficiaries*) and 10.20 (*Language*), shall survive Closing.

10.2 Expenses. Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses (including any Taxes imposed on such expenses) incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisers). Notwithstanding the forgoing, the cost of retaining a notary and a land surveyor, if necessary, in connection with the preparation of the legal descriptions of the

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Owned Real Property, and the real property subject to the Real Property Leases shall be borne by the Purchaser.

10.3 Public Announcements. The Purchaser acknowledges that in connection with Vendors' motion seeking the Approval and Vesting Order:

- (a) a copy of this Agreement (with the Purchase Price, Cash Purchase Price and Deposit and purchase price allocations in Schedule "O" being redacted) will be (i) provided to those Persons on the service list in the CCAA Proceedings and to such other Persons as the Purchaser may reasonably request, and (ii) be posted on the Monitor's website maintained in connection with the CCAA Proceedings, and
- (b) the Vendors shall provide an unredacted copy of this Agreement (i) to the Court and will use commercially reasonable efforts to seek an order sealing that unredacted copy until Closing, and (ii) to any creditor of the Vendors or any other interested Person that executes a non-disclosure agreement satisfactory to the Vendors and the Purchaser, acting reasonably.

Other than as provided in the preceding sentence or statements made in Court (or in pleadings filed therein), the Vendors and the Purchaser shall not issue (prior to the Closing) any press release or make any public statement or public communication with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, provided, however, that a Party may, without the prior consent of the other Party, issue such press release, make such public statement and/or provide an unredacted copy of this Agreement to Persons as may, upon the advice of counsel, be required by Applicable Law, Court Order or by any Governmental Authority with competent jurisdiction including any applicable securities Laws.

10.4 Notices.

(1) *Mode of Giving Notice.* Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service, (iii) sent by e-mail or other similar means of electronic communication or (iv) otherwise pursuant to a court approved process, in each case to the applicable address set out below:

- (1) if to the Vendors, to:

c/o Cliffs Québec Iron Mining ULC.
 1155 Robert Bourassa Boul (formerly University Street)
 Suite 508, Montréal, QC H3B 3A7
 Attention: James Graham, Executive Vice President
 General Counsel and Secretary AND
 Clifford T. Smith, Executive Vice President
 Email: James.Graham@CliffsNR.com / Clifford.Smith@CliffsNR.com

with a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
 199 Bay Street, Suite 4000, Commerce Court West

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (*cont'd*)

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Toronto, ON M5L 1A9
 Attention: Thomas A. McKee/ Milly Chow
 Email: tom.mckee@blakes.com / milly.chow@blakes.com

- (2) if to the Purchaser, to:

Investissement Québec
 600, de La Gauchetière West, Suite 1500
 Montreal, Québec H3B 4L8
 Attention: Iya Touré
 Email: iya.toure@invest-quebec.com

with a copy (which shall not constitute notice) to:

Gowling Lafleur Henderson LLP
 1 Place Ville Marie, 37th Floor
 Montreal, Québec H3B 3P4
 Attention: Paule Tardif / Patrice Benoit
 Email: paule.tardif@gowlings.com / patrice.benoit@gowlings.com

- (3) and in either case, with a copy to the Monitor, to:

FTI Consulting Canada Inc.
 TD South Tower, 790 Wellington Street West
 Toronto Dominion Centre, Suite 2010, P.O. Box 104
 Toronto, ON M5K 1G8
 Attention: Nigel Meakin
 Email: nigel.meakin@fticonsulting.com

and

Norton Rose Fullbright Canada LLP
 1 Place Ville Marie, Suite 2500
 Montréal, QC H3B1R1
 Attention: Sylvain Rigaud
 Email: sylvain.rigaud@nortonrosefulbright.com

(2) *Deemed Delivery of Notice.* Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of e-mailing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, e-mailed or sent before 5:00 p.m. Eastern on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

(3) *Change of Address.* Any Party may from time to time change its address under this Section 10.4 by notice to the other Parties given in the manner provided by this Section 10.4.

10.5 Time of Essence. Time shall be of the essence of this Agreement in all respects.

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10.6 Further Assurances. The Vendors and the Purchaser shall, at the sole expense of the requesting Party, from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Parties may reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

10.7 Entire Agreement. Other than any confidentiality agreement, non-disclosure agreement or similar undertaking or agreement signed by the Purchaser in favour of the CCAA Parties, or any of them, which remain in full force and effect, unamended by this Agreement, this Agreement and the agreements contemplated hereby constitute the entire agreement between the Parties or any of them pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, (including the letter of intent submitted by the Purchaser pursuant to the SISP dated May 19, 2015). There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement.

10.8 Amendment. No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

10.9 Waiver. A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

10.10 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

10.11 Remedies Cumulative. The rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

10.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Québec and the laws of Canada applicable therein.

10.13 Dispute Resolution. If any dispute arises with respect to the interpretation or enforcement of this Agreement, including as to what constitutes a breach or material breach of this Agreement for the purposes of Article 9, such dispute shall be determined by the Court within the CCAA Proceedings, or by such other Person or in such other manner as the Court may direct. Without prejudice to the ability of the Vendors to enforce this Agreement in any other proper jurisdiction, the Purchaser and the Vendors irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of Québec.

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10.14 Attornment. Each Party agrees (a) that any Legal Proceeding relating to this Agreement may (but need not) be brought in the Court, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of the Court; (b) that it irrevocably waives any right to, and shall not, oppose any such Legal Proceeding in the Court on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other jurisdiction of any Order duly obtained from the Court as contemplated by this Section 10.14. Each Party agrees that service of process on such Party as provided in Section 10.4 shall be deemed effective service of process on such Party.

10.15 Successors and Assigns. This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

10.16 Assignment. Prior to the issuance of the Approval and Vesting Order, the Purchaser may assign all of its rights and obligations under this Agreement to an Affiliate, provided that (a) the Purchaser shall remain liable to perform all of its obligations hereunder, and (b) the Purchaser and its assignee execute and deliver to the Vendors an assignment and assumption agreement, in form and substance satisfactory to the Vendors, acting reasonably, evidencing such assignment. Other than in accordance with the preceding sentence, neither the Purchaser nor the Vendors may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement.

10.17 Monitor's Capacity. The Purchaser acknowledges and agrees that the Monitor, acting in its capacity as the Monitor of the Vendors and the other CCAA Parties in the CCAA Proceedings, will have no Liability in connection with this Agreement whatsoever in its capacity as Monitor, in its personal capacity or otherwise.

10.18 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

10.19 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Parties by e-mail in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

10.20 Language. The Parties have required that this Agreement and all deeds, documents and notices relating to this Agreement be drawn up in the English language. Les parties aux présentes ont exigé que le présent contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue anglaise.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

CLIFFS QUÉBEC IRON MINING ULC

By: Clifford T. Smith
Name: Clifford T. Smith
Title: Executive Vice President

I have authority to bind the corporation

WABUSH IRON CO. LIMITED

By: Clifford T. Smith
Name: Clifford T. Smith
Title: President

I have authority to bind the corporation

WABUSH RESOURCES INC.

By: Clifford T. Smith
Name: Clifford T. Smith
Title: President

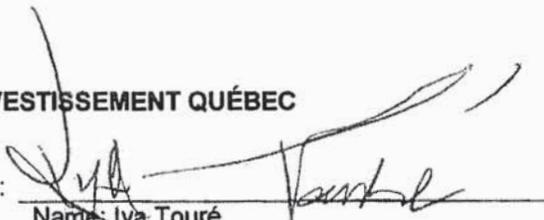
I have authority to bind the corporation

ARNAUD RAILWAY COMPANY

By: Clifford T. Smith
Name: Clifford T. Smith
Title: Vice President

I have authority to bind the corporation

INVESTISSEMENT QUÉBEC

By: 

Name: Iya Touré

Title: Vice President, Business Development,
Major Accounts

I have authority to bind the corporation.

EXHIBIT "A"

ACCESS AGREEMENT

(attached)

ACCESS AGREEMENT

THIS ACCESS AGREEMENT dated as of the [●] day of _____, 2016
(the “**Effective Date**”)

BETWEEN:

CLIFFS QUÉBEC IRON MINING ULC

BLOOM LAKE GENERAL PARTNER LIMITED

BLOOM LAKE RAILWAY COMPANY LIMITED

ARNAUD RAILWAY COMPANY

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

-and-

INVESTISSEMENT QUÉBEC

WHEREAS pursuant to an initial order of the Québec Superior Court [Commercial Division] (the “**Court**”) dated January 27, 2015 (as the same may be amended and restated from time to time), in the proceedings bearing Court File No. 500-11-048114-157 (the “**CCAA Proceedings**”), Cliffs Québec Iron Mining ULC, Quinto Mining Corporation, 8568391 Canada Limited, Bloom Lake General Partner Limited, the Bloom Lake Railway Company Limited and the Bloom Lake Iron Ore Mine Limited Partnership (collectively, the “**Bloom Lake CCAA Parties**”), obtained protection from their creditors under the Companies’ Creditors Arrangement Act (Canada) (the “**CCAA**”) and FTI Consulting Canada Inc. was appointed as monitor in the CCAA Proceedings (in such capacity and not in its personal or corporate capacity, the “**Monitor**”).

WHEREAS pursuant to an Order of the Court dated May 20, 2015 in the CCAA Proceedings, Wabush Iron Co. Limited, Wabush Resources Inc., Arnaud Railway Company, Wabush Lake Railway Company Limited and Wabush Mines (collectively, the “**Wabush CCAA Parties**”) were added to the CCAA Proceedings and obtained protection from their creditors under the CCAA.

WHEREAS pursuant to Orders of the Court dated April 17, 2015 and June 9, 2015, the CCAA Parties were authorized to conduct a sale and investor solicitation process for the property and business of, among others, each of the Vendors.

WHEREAS pursuant to the Asset Purchase Agreement (as it may be amended, restated or supplemented from time to time, the “**Asset Purchase Agreement**”) between the Vendors, as vendors, and Investissement Québec., as purchaser (the “**Purchaser**”), the Purchaser purchased, among other things, all of the Vendors’ right, title and interest in and to the Premises (defined

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below).

WHEREAS pursuant to the Asset Purchase Agreement, the “Bunker C” heavy oil stored in one or more tanks located at or about the Premises and all Excluded Railcars are excluded from, or otherwise do not form any part of, the assets being acquired by the Purchaser (together with any additional assets and equipment which may be included from time to time with the consent of the Purchaser, such consent not to be unreasonably withheld, collectively, the “**Excluded Assets**”).

WHEREAS the Purchaser and certain of the CCAA Parties have agreed that the Excluded Assets may remain on the Premises in accordance with the terms and conditions of this Access Agreement.

WHEREAS pursuant to Section 7.3(6) of the Asset Purchase Agreement, this Access Agreement, duly executed by the Purchaser, is required to be delivered by the Purchaser to the Vendors on the closing thereof.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties hereto, it is agreed as follows:

1. **Definitions**

Whenever used in this Access Agreement, the following words and terms have the meanings set out below:

“**Access Agreement**” means this agreement and all Schedules attached hereto, as they may be amended, restated or supplemented from time to time in accordance with the terms hereof.

“**Access Parties**” means collectively (i) the CCAA Parties who are Parties to this Agreement, (ii) any trustee in bankruptcy of any of the CCAA Parties who are Parties to this Agreement, (iii) any purchaser of Excluded Assets, or (iv) any Person that holds a hypothec, lien or other security or leasehold interest over any Excluded Asset, in each case, that becomes a party to this Access Agreement by execution and delivery of the Acknowledgment.

“**Access Party Indemnified Parties**” has the meaning set out in Section 3.1.

“**Acknowledgment**” means an acknowledgment in substantially the form of Schedule “A” hereto.

“**Activities**” means collectively, (i) dismantling any of the Excluded Assets, (ii) transferring, transporting, removing or disposing any of the Excluded Assets, (iii) inspecting, quality testing (in the case of the Bunker “C” oil) or gathering information with respect to any of the Excluded Assets, (iv) safely storing any of the Excluded Assets, (v) repairing any of the Excluded Assets or maintaining any of the Excluded Assets in marketable condition, (vi) advertising and marketing in relation to any of the Excluded Assets, including showing and/or demonstrating any of the Excluded Assets to potential purchasers interested in purchasing any such Excluded Assets from any Access

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Party, (vii) preparing any of the Excluded Assets for auction or sale and carrying out such auction or sale, (viii) removing the heavy oil from the “Bunker C” fuel tanks and cleaning such tanks and tank lines where the fuel was stored, and (viii) any activities reasonably related to the foregoing.

“**Agents**” means any employee, representative or agent of any of the Access Parties and includes any Person or Persons retained by any of the Access Parties for the purposes of carrying out any of the Activities (including, for greater certainty, any direct or indirect subcontractors retained to conduct any Sale Activities).

“**Arnaud Railway**” has the meaning ascribed to such term in the Asset Purchase Agreement.

“**Asset Purchase Agreement**” has the meaning set out in the recitals hereto.

“**Bloom Lake CCAA Parties**” has the meaning set out in the recitals hereto.

“**Business Day**” means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Montréal, Québec, the City of St. John’s, Newfoundland and Labrador, the City of Toronto, Ontario, or the City of Cleveland, Ohio.

“**CCAA**” has the meaning set out in the recitals hereto.

“**CCAA Parties**” means collectively, the Bloom Lake CCAA Parties and the Wabush CCAA Parties.

“**CCAA Proceedings**” has the meanings set out in the recitals hereto.

“**Court**” has the meaning set out in the recitals hereto.

“**Early Removal Assets**” has the meaning set out in Section 4.2(b).

“**Early Removal Date**” has the meaning set out in Section 4.2(c).

“**Early Removal Notice**” has the meaning set out in Section 4.2(c).

“**Excluded Assets**” has the meaning set out in the recitals hereto.

“**Excluded Railcars**” means the Excluded Railcars as defined in the Asset Purchase Agreement.

“**Effective Date**” means the Closing Date as defined in the Asset Purchase Agreement.

“**Governmental Authority**” means:

- (a) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
- (b) any agency, authority, ministry, department, regulatory body, court, central

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bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;

- (c) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (d) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

“**Losses**”, in respect of any matter, means all losses, claims, demands, proceedings, damages, liabilities, deficiencies, costs and expenses (including, without limitation, all reasonable legal and other professional fees and disbursements, interest, penalties and amounts paid in settlement) arising directly or indirectly as a consequence of such matter.

“**Monitor**” has the meaning set out in the recitals hereto.

“**Order**” means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

“**Party**” means a party to this Access Agreement and any reference to a Party includes its successors and permitted assigns, and “**Parties**” means more than one of them.

“**Person**” is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity

“**Premises**” means collectively, the port facility located in Pointe-Noire, Québec in the Bay of Sept-Iles, together with the Arnaud Railway.

“**Purchaser**” has the meaning set out in the preamble hereto, and includes any successor or permitted assignee thereof.

“**Purchaser Indemnified Parties**” has the meaning set out in Section 3.2.

“**Representatives**” means any employee, agent, contractor, sub-contractor or other representative of the Purchaser.

“**Term**” has the meaning set out in Section 4.1.

“**Vendors**” means collectively, Cliffs Québec Iron Mining ULC, Wabush Iron Co. Limited, Wabush Resources Inc. and Arnaud Railway Company.

“**Wabush CCAA Parties**” has the meaning set out in the recitals hereto.

“**Wabush Mine**” means the iron ore mine and processing facility located near the Town of Wabush and Labrador City, Newfoundland and Labrador known as the “Scully Mine” or “Wabush Mine”.

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“**Wabush Railcars**” means all Wabush style fully enclosed bottom dumper railcars owned by the Vendors, wherever such railcars are located, that were used by Wabush Mines in its operation of the Wabush Mine.

2. **Access Rights**

2.1 **Access Parties**

The Purchaser acknowledges and agrees that from and after the Effective Date and during the Term, the Excluded Assets shall be entitled to remain on the Premises and each of the Access Parties and their respective Agents and any potential purchasers of Excluded Assets accompanying any Access Parties or their respective Agents shall be permitted access to and across the Premises and shall have the right to use the Premises for the purpose of preparing for and undertaking the Activities, in the case of each of the foregoing, other than as set out in Section 2.1(f), without any costs or charges of any kind to the Access Parties, including, without limitation, any cost or charge in respect of rent or property taxes. The grant of such access rights is subject to the following terms:

- (a) Each Access Party acknowledges and agrees that such Access Parties' access to the Premises will be at its sole risk and expense and that the Purchaser shall not have any responsibility or liability in connection with the Excluded Assets or the Activities other than in connection with any Loss to any Excluded Asset caused by the gross negligence or intentional fault of the Purchaser or any of its Representatives.
- (b) Each Access Party agrees that it will, and it will cause its Agents to access and use the Premises and conduct the Sale Activities in accordance with and subject to:
 - i. all applicable industry standards and laws, including applicable environmental, health and safety and workers compensation laws and regulations, and permits and authorizations necessary, if any, to conduct the Sale Activities; and
 - ii. reasonable security measures imposed by the Purchaser.
- (c) Prior to conducting any Activity, the applicable Access Parties will provide to the Purchaser, or cause its Agents to provide to the Purchaser a description of the proposed Activity, including the nature of such Activity, the expected duration of such Activity and the identity of all Access Parties and Agents, if applicable, that will require access to the Premises in connection with such Activity.
- (d) Each Access Party will not, and will cause any potential purchaser of Excluded Assets accompanying such Access Party and their respective Agents not to, interfere with the work and operation activities of the Purchaser on the Premises and subject to and in accordance with Section 2.3, the Purchaser is entitled to move the Excluded Assets on the Premises if they interfere with the work and operation activities of the Purchaser.
- (e) Each Access Party and its respective Agents will only use their own equipment to conduct the Sale Activities and may not use the Purchaser's equipment or assets

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unless agreed upon by the Purchaser.

- (f) Each Access Party agrees to reimburse the Purchaser for any expenses reasonably incurred and paid by the Purchaser (i) to any third party, arising out, directly or indirectly, of such Access Party's Activities no later than 30 days after the Purchaser has submitted the invoice or any documentation in support of such expenses to such Access Party, and (ii) in respect of any additional salary for employees of the Purchaser whose presence on the Premises or other involvement is determined by the Purchaser, acting reasonably, are necessary solely as a result of the Activities being conducted by an Access Party; provided, that in both cases, any such expenses shall be approved in writing in advance by such Access Party prior to such Access Party conducting such Activities.
- (g) Without limiting the obligations of the Access Parties in Section 3, each Access Party shall, prior to conducting any Activity which may pose a risk of damage to the Premises or to any asset of the Purchaser on the Premises, obtain and maintain liability insurance from an insurance company and such insurance shall be in an amount and with such coverage as is commercially reasonable, taking into account the nature of the Activities to be conducted by such Access Party, the whole to the satisfaction of the Purchaser, acting reasonably.

2.2 Monitor

The Purchaser acknowledges and agrees that from and after the Effective Date, the Monitor and any potential purchasers of Excluded Assets accompanying the Monitor shall be permitted access to the Premises and the Excluded Assets for the purpose of (i) inspecting the Excluded Assets or gathering information with respect to any of the Excluded Assets, (ii) advertising and marketing in relation to any of the Excluded Assets, including showing any of the Excluded Assets to potential purchasers interested in purchasing any such Excluded Assets, and (iii) any activity reasonably ancillary to the foregoing, in each case, without any costs or charge of any kind, including any cost or charge in respect of rent or property taxes. The Monitor acknowledges and agrees that the grant of such access will be at its sole risk and expense.

2.3 Designated Area

At any time during the Term, the Purchaser shall be entitled to transport the Excluded Assets to a designated area of the Premises at its own risk and peril, costs and expenses provided that prior to carrying out such transportation, the Purchaser will provide to all Access Parties and the Monitor, a description of the designated area of the Premises that the Excluded Asset will be transported to, the whole to the satisfaction of the applicable Access Party, acting reasonably.

In carrying out any of its rights in this Section 2.3, the Purchaser shall (i) exercise reasonable care and diligence in transporting such Excluded Assets as if such Excluded Assets were assets of the Purchaser, (ii) comply, and cause its Representatives to comply, with all applicable industry standards and laws, including applicable environmental, health and safety and workers compensation laws and regulations, (iii) obtain any necessary permits and authorizations, and (iv) be responsible for any Losses to any of the Excluded Assets in accordance with Section 3.2.

3. Indemnifications

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3.1 Indemnification in favour of the Purchaser

Each of the Access Parties severally, and not jointly or jointly and severally or jointly and solidarily, indemnifies and holds the Purchaser and its officers, directors and Representatives (collectively, the “**Access Party Indemnified Parties**”) harmless against and in respect of any and all Losses which may be suffered by the Access Party Indemnified Parties or which the Access Party Indemnified Parties may sustain, pay or incur arising out of or otherwise in connection with such Access Party’s use and/or access to the Premises or conduct of the Activities; provided, however, that the indemnification in this Section 3 shall not in any way delay any distribution to creditors of the applicable indemnifying CCAA Party unless at the time of the proposed distribution an actual claim seeking indemnification under this Section 3 has been made by an Indemnified Party and an adequate cash or other reserve is not available in respect of such claim if such claim were to be finally determined at a later date to be valid. For greater certainty and the avoidance of doubt, no Access Party will be required to indemnify any other Access Party Indemnified Party against and in respect of any Losses which were the result of actions of such other Access Parties or their respective Agents.

3.2 Indemnification in favour of the Access Parties

The Purchaser indemnifies and holds each Access Party and its officers, directors, and Representatives (collectively, the “**Purchaser Indemnified Parties**”) harmless against and in respect of any and all Losses (i) which the Purchaser Indemnified Parties may suffer, sustain, pay or incur as a result of the gross negligence or intentional fault of the Purchaser or any of its Representatives, and (ii) caused by the Purchaser or its Representatives to the Excluded Assets during the transportation of Excluded Assets in accordance with Section 2.3.

4. Term and Termination

4.1 Term

Subject to Section 4.2, this Access Agreement shall continue for a term (as may be extended below, the “**Term**”) beginning on the Effective Date and ending on the earlier of (i) November 30, 2016 or such later date as may be agreed to in writing by the Purchaser and any Access Party, and (ii) the date upon which counsel to the CCAA Parties and the Monitor confirm in writing that the Activities have been completed. The Parties agree that the obligations of the Purchaser and the Access Parties pursuant to Section 3 will survive any termination of this Access Agreement.

4.2 Early Removal Notice.

Notwithstanding Section 4.1, if the Purchaser is required by Court order to remove the Wabush Railcars from its present location at the Wabush Mine, the Purchaser shall:

- (a) forthwith provide written notice to the Access Parties of such Court order;
- (b) forthwith identify those Excluded Assets, the removal of which is reasonably necessary to accommodate the storage of the Wabush Railcars on the Premises (the “**Early Removal Assets**”); and
- (c) forthwith provide written notice (the “**Early Removal Notice**”) to the applicable Access Parties of the requirement to remove the Early Removal Assets by the date

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(the “**Early Removal Date**”) that is the later of (i) the date required for removal of the Wabush Railcars from the Wabush Mine in such Court order, and (ii) the date upon which the removal of such Excluded Assets from the Premises is reasonably necessary to accommodate the storage of the Wabush Railcars on the Premises.

For greater certainty, Excluded Assets other than the Early Removal Assets are entitled to remain on the Premises until the end of the Term and all rights of Access Parties in respect of such Excluded Assets under this Access Agreement continue unamended.

4.3 Removal of Assets at the End of the Term or Deemed Transfer

In the event that (a) at the end of the Term any Excluded Asset remains on the Premises or (b) an Access Party is provided with an Early Removal Notice, the applicable Access Party hereby agrees and undertakes, at its discretion, to either (i) transport, remove or dispose of such Excluded Asset or Early Removal Asset, as applicable, of such Access Party out of the Premises within 30 days from the end of the Term or the Early Removal Date, as applicable, or (ii) transfer to the Purchaser all of its rights, title and interests in such Excluded Asset or Early Removal Asset, as applicable, of such Access Party on an “as is, where is” basis and in consideration for the payment by the Purchaser of an amount of \$1.00.

In the event an Access Party elects to remove any Excluded Asset or Early Removal Asset out of the Premises in accordance with the foregoing paragraph, the Term shall be deemed, in respect of such Excluded Asset or Early Removal Asset, only, to be extended until the earlier of (a) the complete removal of such Excluded Asset or Early Removal Asset from the Premises, and (b) the date that is 30 days from the end of the Term or the Early Removal Date, as applicable. If such Access Party fails to remove such Excluded Asset or Early Removal Asset by such time, the applicable Access Party shall be deemed to have transferred all of its right, title and interests in such Excluded Asset or Early Removal Asset to the Purchaser on an “as is, where is” basis for \$1.00 and such Access Party shall execute any such transfer documents as may be required to evidence such transfer.

5. General

5.1 Interpretation Not Affected by Headings, etc.

The division of this Access Agreement into sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Access Agreement. The terms “this Access Agreement”, “hereof”, “herein” and “hereunder” and similar expressions refer to this Access Agreement and not any particular section hereof.

5.2 Extended Meanings

In this Access Agreement, words importing the singular include the plural and vice versa, words importing gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations, and Governmental Authorities. The term “including” means “including, without limitation,” and such terms as “includes” have similar meanings.

5.3 Schedules

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The Schedules attached to this Access Agreement form an integral part of this Access Agreement for all purposes. Without limiting the generality of the foregoing, any terms, conditions, provisions, agreements or covenants set out in the Schedules are terms, conditions, provisions, agreements and covenants of this Access Agreement, binding on the Parties hereto.

5.4 Entire Agreement

This Access Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Access Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. Other than as set out herein, there are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Access Agreement (whether oral or written, express or implied, statutory or otherwise). Notwithstanding the foregoing, as it relates to the Vendors and the Purchaser, in the event of any inconsistency between the provisions of this Access Agreement and the provisions of the Asset Purchase Agreement, the provisions of the Asset Purchase Agreement shall prevail.

5.5 Disputes

If any dispute arises with respect to this Access Agreement that cannot be resolved as between the Parties, such dispute will be determined by the Court and the Parties hereto irrevocably submit and attorn to the non-exclusive jurisdiction of the Court.

5.6 Notice

Any notice, consent, waiver, direction or other communication required or permitted to be given under this Access Agreement by a Party shall be in writing and shall be sent by email to the email address set out below or to such other address or email address as shall be specified by a Party by like notice. Any notice, consent, waiver, direction or other communication aforesaid shall be deemed to have been given and received at the time of receipt (if a Business Day or, if not, then the next succeeding Business Day) unless actually received after 4:00 p.m. (Toronto time) in which case it shall be deemed to have been given and received on the next Business Day.

The address for service of each of the Parties shall be as follows:

(i) if to the CCAA Parties, to:

Cliffs Québec Iron Mining ULC

Attention: **James Graham**
General Counsel & Secretary
 E-mail: James.Graham@CliffsNR.com

- and -

Attention: **Clifford T. Smith**
Executive Vice President
 E-mail: Clifford.Smith@CliffsNR.com

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with a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP

Attention: **Thomas A. McKee**
E-mail: tom.mckee@blakes.com

- and -

Attention: **Milly Chow**
E-mail: milly.chow@blakes.com

(ii) if to the Purchaser, to:

Investissement Québec

Attention: **Iya Touré**
Email: iya.toure@invest-quebec.com

with a copy (which shall not constitute notice) to:

Gowling Lafleur Henderson LLP

Attention: **Paule Tardif**
E-mail: paule.tardif@gowlings.com

- and -

Attention: **Patrice Benoit**
E-mail: patrice.benoit@gowlings.com

and in either case, with a copy to the Monitor, to:

FTI Consulting Canada Inc.

Attention: **Nigel Meakin**
E-mail: nigel.meakin@fticonsulting.com

- and -

Norton Rose Fulbright Canada LLP

Attention: **Sylvain Rigaud**
E-mail: sylvain.rigaud@nortonrosefulbright.com

5.7 Assignment and Enurement

Each of the Parties covenants and agrees that it will not assign or transfer this Access Agreement or any rights hereunder without the written consent of the other Parties, such consent not to be unreasonably withheld. Notwithstanding the aforementioned, the Purchaser may sell, assign, transfer, sublet or otherwise dispose of the Premises in whole or in part without obtaining the

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consent of the Parties, provided that (i) this Access Agreement is assigned and assumed by such assignee, transferee, purchaser or Person acquiring such portion of the Premises, and (ii) such assignee, transferee, purchaser or person acquiring such portion of the Premises executes an acknowledgment agreeing to be bound by the terms of this Agreement as though it were a party hereto and the Purchaser hereunder. Subject to the foregoing, this Access Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns.

5.8 Further Assurances and Relationship

Each of the Parties hereto covenants and agrees to execute and deliver such further documents and assurances and do such further things within its power as may be necessary or desirable in performance of its obligations hereunder. No Party shall be obliged to enter into any further agreement with the other. Nothing herein shall comprise a partnership, joint venture, or the relationship of principal and agent.

5.9 Time

Time shall, in all respects, be of the essence hereof, provided that the time for doing or completing any matter provided for herein may be extended or abridged by an agreement in writing between the Parties hereto or by their respective solicitors.

5.10 Governing Law

This Access Agreement shall be governed and construed and enforced in accordance with the internal laws of the Province of Québec and the laws of Canada applicable therein.

5.11 Amendments

No term or provision of this Access Agreement may be changed, waived or modified except with the consent of the Monitor and by instrument in writing signed by all Parties to this Access Agreement.

5.12 Execution in Counterparts

This Access Agreement may be executed in one or more counterparts, each of which shall conclusively be deemed to be an original and all such counterparts collectively shall be conclusively deemed to be one and the same. Delivery of an executed counterpart of the signature page to this Access Agreement by pdf email scan shall be effective as delivery of a manually executed counterpart of this Access Agreement.

5.13 Survival

Sections 2.1(a) and 3 of this Access Agreement shall survive expiry or early termination hereof.

5.14 Waiver

No waiver or release by a Party shall be effective unless in writing and executed by the Party granting such waiver or release and any waiver or release shall affect only the matter, and the occurrence thereof, specifically identified and shall not extend to any other matter or occurrence.

5.15 Monitor's Capacity

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The Purchaser acknowledges and agrees that the Monitor, acting in its capacity as the Monitor of the CCAA Parties in the CCAA Proceedings, will have no liability in connection with this Agreement whatsoever in its capacity as Monitor, in its personal capacity or otherwise. Further, the Monitor shall not be deemed to be an agent of any of the Access Parties.

5.16 **Language**

The Parties hereto acknowledge and confirm that they have requested that the present Access Agreement and all notices and communications contemplated hereby be drafted in the English language. Les Parties aux présentes reconnaissent et confirment qu'ils ont exigé que la présente Convention ainsi que tout avis et communications projetés par la présente soient rédigés dans la langue anglaise.

[Remainder of Page Intentionally Left Blank]

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IN WITNESS WHEREOF the Parties have executed this Access Agreement as of the date first above written.

CLIFFS QUÉBEC IRON MINING ULC

By: _____

Name:

Title:

Authorized Signatory

BLOOM LAKE GENERAL PARTNER LIMITED

By: _____

Name:

Title:

Authorized Signatory

BLOOM LAKE RAILWAY COMPANY LIMITED

By: _____

Name:

Title:

Authorized Signatory

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP by its General Partner, Bloom Lake General Partner Limited

By: _____

Name:

Title:

Authorized Signatory

WABUSH IRON CO. LIMITED

By: _____

Name:

Title:

Authorized Signatory

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WABUSH RESOURCES INC.

By: _____

Name:

Title:

Authorized Signatory

ARNAUD RAILWAY COMPANY

By: _____

Name:

Title:

Authorized Signatory

INVESTISSEMENT QUÉBEC

By: _____

Name:

Title:

Authorized Signatory

**FTI CONSULTING CANADA INC., in its
capacity as Monitor of the CCAA Parties, and
not in its personal capacity**

Name:

Title:

SCHEDULE "A"
ACKNOWLEDGEMENT

TO: Investissement Québec

AND TO: The CCAA Parties (as defined in the Access Agreement)

AND TO: FTI Consulting Canada Inc. as monitor of the CCAA Parties (as defined in the Access Agreement)

FROM: **[NAME OF ACCESS PARTY]**

RE: Access Agreement dated as of _____, 2016 (as it may be amended, restated or supplemented from time to time, the "Access Agreement")

The undersigned hereby confirms and acknowledges that **[he/she/it]** has reviewed the terms of the attached Access Agreement and agrees to be bound by its terms in respect of the Excluded Assets set out in the attached Exhibit A as though **[he/she/it]** were a party thereto and an Access Party thereunder.

The undersigned's address for service for the purposes of Section 5.6 of the Access Agreement shall be as follows:

[email address of Access Party]

All initially capitalized terms not herein defined have the meaning ascribed to them in the Access Agreement.

Dated this ____ day of _____, 2016.

Witness (in the case of an individual): **[NAME OF ACCESS PARTY]**

Name:

By: _____
Name:
Title:

SCHEDULE "A"

FORM OF APPROVAL AND VESTING ORDER

(ATTACHED)

SUPERIOR COURT
(Commercial Division)

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

DATE: January ____, 2016

PRESIDING: [THE HONOURABLE STEPHEN W. HAMILTON J.S.C.]

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED:

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

INVESTISSEMENT QUÉBEC

Mise-en-cause

-and-

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THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION DIVISION
OF [INSERT DIVISION]

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

APPROVAL AND VESTING ORDER

- [1] **ON READING** the Petitioners' *Motion for the Issuance of an Approval and Vesting Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the [NUMBER] Report of the Monitor dated <*>, 2016 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of the Petitioners' and the Monitor's attorneys and the submissions of <*>;
- [4] **SEEING** that it is appropriate to issue an order approving the transaction (the "**Transaction**") contemplated by the agreement entitled Asset Purchase Agreement (the "**Purchase Agreement**") dated as of December 23, 2015 by and among the Petitioners Cliffs Québec Iron Mining ULC ("**CQIM**"), Wabush Iron Co. Limited and Wabush Resources Inc., and the Mise-en-cause, Arnaud Railway Company, as vendors (collectively, the "**Vendors**"), and Investissement Québec, as purchaser (the "**Purchaser**"), a redacted copy of which was filed as Exhibit R-[●] to the Motion, and vesting in the Purchaser all of the Vendors' right, title and interest in and to all of the Purchased Assets (as defined in the Purchase Agreement).

FOR THESE REASONS, THE COURT HEREBY:

- [5] **GRANTS** the Motion.
- [6] **ORDERS** that all capitalized terms in this Order shall have the meaning given to them in the Purchase Agreement unless otherwise indicated herein.

SERVICE

- [7] **ORDERS** that any prior time period for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
- [8] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

- [9] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Vendors is hereby authorized and approved, *nunc pro tunc*.
- [10] **AUTHORIZES AND DIRECTS** the Monitor to hold the Deposit, *nunc pro tunc*, and to apply, disburse and/or deliver the Deposit or the applicable portions thereof in accordance with the provisions of the Purchase Agreement and this Order.

EXECUTION OF DOCUMENTATION

- [11] **AUTHORIZES AND DIRECTS** the Vendors, the Purchaser and the Monitor to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in or contemplated by the Purchase Agreement (Exhibit R-[●]), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Monitor, and any other ancillary document which could be required or useful to give full and complete effect thereto.

AUTHORIZATION

- [12] **ORDERS and DECLARES** that this Order shall constitute the only authorization required by the Vendors to proceed with the Transaction and that no shareholder approval, if applicable, shall be required in connection therewith.

VESTING OF THE PURCHASED ASSETS

- [13] **ORDERS and DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest absolutely and exclusively in and with the Purchaser, free and clear from any and all right, title, benefits, priorities, claims (including claims provable in bankruptcy in the event that the Vendors should be adjudged bankrupt), liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, trusts, deemed trusts (whether contractual, statutory, or otherwise), assignments, judgments, executions, writs of seizure or execution, notices of sale, options, agreements, rights of distress, legal, equitable or contractual setoff, adverse claims, levies, taxes, disputes, debts, charges, options to purchase, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, the permitted encumbrances, easements and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted

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Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.

- [14] **ORDERS and DECLARES** that upon the issuance of the Certificate, the rights, benefits, interests, and obligations of the Vendors under the Agreements listed on **Schedule "C"** hereto (the "**Assigned Agreements**") are assigned to the Purchaser and **ORDERS** that all monetary defaults of the Vendors in relation to the Assigned Contracts - other than those arising by reason only of the insolvency of the Vendors, the commencement of proceedings under the CCAA or the failure to perform non-monetary obligations - shall be remedied on or before Closing (as defined in the Purchase Agreement).
- [15] **ORDERS and DIRECTS** the Vendors to serve a copy of this Order to every party to the Assigned Agreements.
- [16] **ORDERS and DIRECTS** the Monitor, upon receipt of payment in full of the Cash Purchase Price, applicable Transfer Taxes payable by the Purchaser on Closing and the Cure Costs payable by the Purchaser on Closing or evidence that such Cure Costs have been paid directly to the applicable counterparty, and of each of the Conditions Certificates, to (i) issue forthwith its Certificate concurrently to the Vendors and the Purchaser; and (ii) file forthwith after issuance thereof a copy of the Certificate with the Court.
- [17] **DECLARES** that the Monitor shall be at liberty to rely exclusively on the Conditions Certificates in issuing the Certificate, without any obligation to independently confirm or verify the waiver or satisfaction of the applicable conditions.
- [18] **AUTHORIZES and DIRECTS** the Monitor to receive and hold the Cash Purchase Price and to remit the Cash Purchase Price in accordance with the provisions of this Order.

CANCELLATION OF SECURITY REGISTRATIONS

- [19] **ORDERS** the Registrar of the Registry Office for the Registration Division of [**Insert Division**], upon presentation of the Certificate in the form appended as Schedule "A" and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the immovable property identified in **Schedule "C"** hereto (the "**Immovable Property**") and (ii) to cancel any and all Encumbrances on the Immovable Property (other than Permitted Encumbrances), including, without limitation, the registrations published at the said Registry Office listed on **Schedule "D"** hereto.

NET PROCEEDS

- [20] **ORDERS** that any amounts payable to the Vendors in accordance with the Purchase Agreement (the "**Proceeds**") shall be remitted to the Monitor and shall, subject to the provisions of this Order, be held by the Monitor on behalf of the Vendors pending further order of the Court.
- [21] **AUTHORIZES AND DIRECTS** the Monitor, as soon as practicable after Closing, to remit (i) to the applicable counterparty(ies) to each Assigned Contract, the Cure Costs received by the Monitor from the Purchaser on Closing, and (ii) to the Vendors for

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remittance to the applicable taxing authorities in accordance with Applicable Law, the Transfer Taxes received by the Monitor from the Purchaser on Closing, in the case of clause (i), in the amounts and to the persons as directed by the Purchaser and Vendor in writing to the Monitor on Closing.

- [22] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the balance of the Proceeds remaining following deduction for applicable Cure Costs (if any) and Transfer Taxes (if any is payable) that are remitted by the Monitor pursuant to Paragraph 21 of this Order (the "**Net Proceeds**") shall stand in the place and stead of the Purchased Assets, and that upon the issuance of the Certificate, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Closing.
- [23] **ORDERS** that the Purchaser shall have no recourse or claim of any kind against the Net Proceeds.

INTERIM DISTRIBUTION FROM NET PROCEEDS

- [24] **AUTHORIZES and DIRECTS** the Monitor, as soon as practicable after the Closing of the Transaction, to remit from the Net Proceeds attributable to the Wabush CCAA Parties to Cliffs Mining Company (the "**Interim Lender**") on behalf of the Wabush CCAA Parties the amount necessary to repay the Interim Lender in full the total amount outstanding under the Interim Financing Documents, including the Interim Lender Expenses (as each term is defined in the order of this Court dated May 20, 2015) (collectively, the "**Interim Lender Repayment**"), as such amounts were approved by the order of this Court granted on May 20, 2015 and as rectified by an order granted on May 28, 2015.

REMITTANCE OF SALE ADVISOR FEE

- [25] **AUTHORIZES and DIRECTS** the Monitor as soon as practicable after the Closing of the Transaction, to remit from the applicable Net Proceeds of each of the CCAA Parties to Moelis & Company LLC (the "**Sales Advisor**") amounts owing by each of the CCAA Parties, if any, in respect of the Transaction Fees (as that term is defined in the Engagement Letter) due and payable in accordance with the engagement letter (the "**Engagement Letter**") dated March 23, 2015 and secured by the Sale Advisor Charge (the "**Sale Advisor Fee**"), both as approved by the Order of this Court on April 17, 2015.

RELEASE OF FUNDS TO FUND COSTS AND EXPENSES OF THE WABUSH CCAA PARTIES

- [26] **AUTHORIZES and DIRECTS** the Monitor to fund the costs and expenses of the Wabush CCAA Parties (the "**Expense Payments**") out of the Net Proceeds (after the Interim Lender Repayment and payment of Sale Advisor Fee in accordance with this Order) by way of bi-weekly draws against cash flow projections to be prepared by the Wabush CCAA Parties from time to time and as approved by the Monitor.
- [27] **ORDERS** that notwithstanding:

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- a) the pendency of these proceedings;
- b) any petition for a receivership order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (the "BIA") and any order issued pursuant to any such petition; or
- c) the provisions of any federal or provincial legislation;

The remittance of the Interim Lender Repayment and the Sales Advisor Fee and the Expense Payments in accordance with this Order is to be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendors, the Purchaser or the Monitor, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- [28] **AUTHORIZES** the Monitor to take any and all steps which the Monitor, in its sole discretion and in consultation with the Vendors, may deem necessary in order to give effect to the above orders for the Interim Lender Repayment, the Sales Advisor Fee or the Expense Payments. Any such payments made by the Monitor will be made without prejudice to any arguments concerning the allocation of such payments amongst the CCAA Parties and the CCAA Parties will subsequently bring a motion on notice to the service list for an order allocating the payments amongst the CCAA Parties.

PROTECTION OF PERSONAL INFORMATION

- [29] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Vendors are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendors' records pertaining to the Vendors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendors.

VALIDITY OF THE TRANSACTION

- [30] **ORDERS** that notwithstanding:
- a) the pendency of these proceedings;
 - b) any petition for a receiving order now or hereafter issued pursuant to the BIA and any order issued pursuant to any such petition; or
 - c) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance,

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transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendors, the Purchaser or the Monitor, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

LIMITATION OF LIABILITY

- [31] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to take control, or to otherwise manage all or any part of the Purchased Assets. The Monitor shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [32] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.

CONFIDENTIALITY

- [33] **ORDERS** that, subject to further Order of the Court, until the Closing of the Transaction, the un-redacted Purchase Agreement filed with the Court shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened prior to the Closing of the Transaction on further Order of the Court.

GENERAL

- [34] **DECLARES** that the Vendors and the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [35] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [36] **DECLARES** that the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order. All courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.
- [37] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.
- [38] **ORDERS** the provisional execution of the present Order, including without limiting the general application of the foregoing, the Interim Lender Repayment and the Sales

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Advisor Fee, notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS, save in case of contestation.

[STEPHEN W. HAMILTON J.S.C.]

**SCHEDULE "A" TO THE APPROVAL AND VESTING ORDER
FORM OF CERTIFICATE OF THE MONITOR**

**SUPERIOR COURT
(Commercial Division)**

C A N A D A

**PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL**

File: No: 500-11-048114-157

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED:**

BLOOM LAKE GENERAL PARTNER LIMITED

QUINTO MINING CORPORATION

8568391 CANADA LIMITED

CLIFFS QUÉBEC IRON MINING ULC

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP

BLOOM LAKE RAILWAY COMPANY LIMITED

WABUSH MINES

ARNAUD RAILWAY COMPANY

WABUSH LAKE RAILWAY COMPANY LIMITED

Mises-en-cause

-and-

INVESTISSEMENT QUÉBEC

Mise-en-cause

-and-

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THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION DIVISION
OF [INSERT DIVISION]

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

CERTIFICATE OF THE MONITOR

RECITALS

- A. Pursuant to an initial order rendered by the Honourable Mr. Justice Martin Catonguay, J.S.C., of the Superior Court of Québec, [Commercial Division] (the "**Court**") on January 27, 2015 (as amended on February 20, 2015 and as may be further amended from time to time, the "**Initial Order**"), FTI Consulting Canada Inc. (the "**Monitor**") was appointed to monitor the business and financial affairs of Cliffs Québec Iron Mining ULC, Quinto Mining Corporation, 8568391 Canada Limited, Bloom Lake General Partner Limited, the Bloom Lake Railway Company Limited and The Bloom Lake Iron Ore Mine Limited Partnership (collectively, the "**Bloom Lake CCAA Parties**").
- B. Pursuant to an order of the Court granted May 20, 2015, the Monitor was appointed to monitor the business and financial affairs of Wabush Iron Co. Limited, Wabush Resources Inc., Arnaud Railway Company, Wabush Lake Railway Company Limited and Wabush Mines (collectively, the "**Wabush CCAA Parties**"). The Wabush CCAA Parties and the Bloom Lake CCAA parties are referred to herein collectively as the "**CCAA Parties**".
- C. Pursuant to an order (the "**Approval and Vesting Order**") rendered by the Court on January <*>, 2016, the transaction contemplated by the Asset Purchase Agreement dated as of December 23, 2015 (the "**Purchase Agreement**") by and among the Petitioners Cliffs Québec Iron Mining ULC, Wabush Iron Co. Limited and Wabush Resources Inc., and the Mise-en-cause Arnaud Railway Company, as vendors (the "**Vendors**"), and Investissement Québec, as purchaser (the "**Purchaser**"), was authorized and approved, with a view, *inter alia*, to vest in and to the Purchaser, all of the Vendors' right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement).
- D. Each capitalized term used and not defined herein has the meaning given to such term in the Purchase Agreement.
- E. The Approval and Vesting Order provides for the vesting of all of the Vendors' right, title and interest in and to the Purchased Assets in the Purchaser, in accordance with the terms of the Approval and Vesting Order and upon the delivery of a certificate (the

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"Certificate") issued by the Monitor confirming that the Vendors and the Purchaser have each delivered Conditions Certificates to the Monitor.

- F. In accordance with the Approval and Vesting Order, the Monitor has the power to authorize, execute and deliver this Certificate.
- G. The Approval and Vesting Order also directed the Monitor to file with the Court, a copy of this Certificate forthwith after issuance thereof.

THEREFORE, IN RELIANCE UPON THE CONDITIONS CERTIFICATES ADDRESSED AND DELIVERED TO THE MONITOR BY EACH OF THE VENDORS AND THE PURCHASER, THE MONITOR CERTIFIES THE FOLLOWING:

- 1. The Monitor has received payment in full of the Cash Purchase Price, applicable Transfer Taxes payable by the Purchaser on Closing and the Cure Costs payable by the Purchaser on Closing or evidence that such Cure Costs have been paid directly to the applicable counterparty, in accordance with the Purchase Agreement.
- 2. The Vendors and the Purchaser have each delivered to the Monitor the Conditions Certificates evidencing that all applicable conditions under the Purchase Agreement have been satisfied and/or waived, as applicable.
- 3. The Closing Time is deemed to have occurred on at <TIME> on <*>, 2016.

THIS CERTIFICATE was issued by the Monitor at <TIME> on <*>, 2016.

FTI Consulting Canada Inc., in its capacity as Monitor of the CCAA Parties, and not in its personal or corporate capacity.

By: _____
Name: Nigel Meakin

SCHEDULE "B" TO APPROVAL AND VESTING ORDER**PERMITTED ENCUMBRANCES**

1. Servitudes or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Owned Real Property, provided such servitudes or rights-of-way are registered on title to the Owned Real Property;
2. Servitudes for the supply of utilities to the Owned Real Property and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, provided such servitudes are registered on title to the Owned Real Property;
3. Any unregistered servitudes or rights of way by Hydro-Québec to occupy a part of the Owned Real Property to install any circuits, poles and necessary equipment required for the connection or the network, in accordance to its by-law number 634 relating to the supply of electricity and any servitudes granted prior to January 1, 1917 which affect the Owned Real Property;
4. Restrictive covenants, private deed restrictions and other similar land use control agreements, provided they are registered on title to the Owned Real Property;
5. Any minor encroachments by any structure located on the Owned Real Property onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Owned Real Property;
6. Any title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Owned Real Property;
7. The provisions of Applicable Laws, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning; and
8. Any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

SCHEDULE "C" TO APPROVAL AND VESTING ORDER

IMMOVABLE PROPERTY

**1) CLIFFS QUÉBEC IRON MINING ULC / CLIFFS QUÉBEC MINE DE FER ULC
formerly known as CONSOLIDATED THOMPSON IRON MINES LIMITED
("Consolidated")**

(a) Superficies created under the terms of the unregistered lease agreement number 474-109 between Administration Portuaire de Sept-Iles (the "**Lessor**") and Consolidated (the "**Lessee**") executed on October 29, 2009, with respect to all structures, buildings, work, infrastructure or equipment used to handle, transport and store, erected or placed by the Lessee on the leased premises which are composed of the following lots:

Lot FOUR MILLION SEVEN HUNDRED EIGHTY-SEVEN THOUSAND ONE HUNDRED AND FIFTY-SIX (4 787 156) of the Cadastre of Québec, in the Land Registration Division of Sept-Iles;

**2) WABUSH IRON CO. LIMITED (for an undivided interest of 26.83%) and WABUSH
RESOURCES INC., (for an undivided interest of 73.17%)**

(a) LAND ADJACENT TO THE PORT OF SEPT-ÎLES: All rights, title and interest in the following immovable properties known and designated as:

i) Lot number THREE MILLION SIX HUNDRED AND SIXTY-NINE THOUSAND AND FIFTY-EIGHT (3 669 058) of the Cadastre of Québec, Registration Division of Sept-Îles;

ii) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND THIRTY-FOUR (3 708 334) of the Cadastre of Québec, Registration Division of Sept-Îles;

iii) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND TWELVE (3 931 512) of the Cadastre of Québec, Registration Division of Sept-Îles;

iv) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND EIGHT (3 931 508) of the Cadastre of Québec, Registration Division of Sept-Îles;

v) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-THREE (3 708 383) of the Cadastre of Québec, Registration Division of Sept-Îles;

vi) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-FOUR (3 708 384) of the Cadastre of Québec, Registration Division of Sept-Îles;

vii) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-FIVE (3 708 385) of the Cadastre of Québec, Registration Division of Sept-Îles;

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viii) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND THIRTY-FIVE (3 931 535) of the Cadastre of Québec, Registration Division of Sept-Îles;

ix) A part of lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND FORTY-ONE (3 931 541) of the Cadastre of Québec, Registration Division of Sept-Îles, excluding the following:

Une partie du lot 3 931 541, de figure irrégulière, bornée vers le nord-est et le nord par les lots 3 708 360 et 3 708 361, chemin de la Pointe-Noire, vers le nord-est, l'est, le nord, l'ouest et le sud-ouest par le lot 3 931 533, vers le nord et l'est par le lot 3 708 360, chemin de la Pointe-Noire, vers le nord par la partie restante du lot 3 931 541, vers le nord est par le lot 3 708 376, vers le sud et le sud-est par un territoire non cadastré, vers le sud-ouest et le sud par la limite des hautes eaux (marées) de la Baie-des-Sept-Îles (Territoire non cadastré), vers l'ouest par le lot 3 669 046, par un territoire non cadastré et par les lots 3 669 047 et 4 711 908, vers le sud-ouest par le lot 4 711 908 et vers le nord-ouest par le lot 3 708 359, rue Alband-Blanchard; mesurant successivement 505,92 mètres, 30,04 mètres, 150,00 mètres, 50,02 mètres, 657,10 mètres, 7,87 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 94,78 mètres, 49,86 mètres, 49,98 mètres, 148,10 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 394,80 mètres et 338,91 mètres de long d'une courbe ayant un rayon de 815,00 mètres vers le nord-est, 104,06 mètres, 60,01 mètres, 90,00 mètres, 30,33 mètres, 51,32 mètres; 92,25 mètres d'arc le long d'une courbe ayant un rayon de 615,00 mètres, 35,95 mètres, 25,76 mètres, 21,05 mètres, 31,26 et 25,82 mètres vers le nord, 6,83 mètres vers le nord-ouest, 20,63 mètres, 51,45 mètres et 29,29 mètres vers le nord, 48,07 mètres, 5,39 mètres et 430,00 mètres vers le nord-ouest, 7,07 mètres vers le nord-est, 67,89 mètres vers l'est, 51,05 mètres d'arc le long d'une courbe ayant un rayon de 45,00 mètres vers le nord-est, 32,02 mètres vers le nord, 37,34 mètres vers l'est, 22,02 mètres vers le sud, 77,00 mètres vers l'est, 57,00 mètres vers le nord, 44,00 mètres vers l'ouest, 55,00 mètres vers le nord, 25,00 mètres vers l'ouest, 41,82 mètres et 25,72 mètres d'arc le long d'une courbe ayant un rayon de 40,00 mètres vers le sud-ouest, 40,70 mètres vers le sud, 98,10 mètres vers l'ouest, 35,21 mètres et 38,89 mètres d'arc le long d'une courbe ayant un rayon de 782,00 mètres vers le nord, 14,99 mètres vers le nord-ouest, 29,76 mètres vers le nord, 24,96 mètres vers le nord-ouest, 19,63 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 24,55 mètres, 34,28 mètres d'arc le long d'une courbe ayant un rayon de 783,50 mètres, 29,45 mètres, 107,02 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 180,94 mètres, 50,00 mètres, 35,00 mètres et 15,04 mètres vers le nord, 35,33 mètres vers l'est, 20,00 mètres, 70,46 mètres, 25,96 mètres, 63,00 mètres, 64,57 mètres, 61,30 mètres, 81,51 mètres d'arc le long d'une courbe ayant un rayon de 917,00 mètres vers le nord, 5,47 mètres vers le nord-ouest, 159,48 mètres d'arc le long d'une courbe ayant un rayon de 915,00 mètres, 193,99 mètres et 313,53 mètres vers le nord, 617,36 mètres vers le nord-est, 2111,36 mètres, 936,11 mètres et 232,24 mètres vers le sud, 265,84 mètres vers le sud-est, 1694,70 mètres mesurée en suivant une ligne sinueuse vers le sud-ouest et le sud, 135,90 mètres mesurée en suivant une ligne sinueuse vers le sud, 94,29 mètres, 1056,76 mètres et 389,82 mètres vers l'ouest, 78,00 mètres vers le sud-ouest et 89,56 mètres d'arc le long d'une courbe ayant un rayon de

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522,92 mètres, 22,33 mètres d'arc le long d'une courbe ayant un rayon de 50,53 mètres et 30,67 mètres vers le nord-ouest; contenant une superficie de 3 321 872 mètres carrés.

- i) A part of lot number THREE MILLION SIX HUNDRED AND SIXTY-NINE THOUSAND TWO HUNDRED FOURTEEN (3 669 214) of the Cadastre of Québec, Registration Division of Sept-Îles, excluding the following:

De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés.;

- xi) Lot number FOUR MILLION EIGHT HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED AND EIGHTY-ONE (4 873 981) of the Cadastre of Québec, Registration Division of Sept-Îles.

- xii) Lot number FOUR MILLION EIGHT HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED AND EIGHTY-THREE (4 873 983) of the Cadastre of Québec, Registration Division of Sept-Îles.

With all constructions erected thereon, including the building bearing civic number 1505 Chemin de la Pointe-Noire, in the City of Sept-Îles, Province of Québec.

It is understood that the following immovable property (the "**Block Z Lands**") will only be included as owned real property if the Block Z Option is not exercised by the Vendors:

The immovable known and described as being composed of a part of lot 3 931 541, lot 3 931 539 and a part of lot 3 669 214, all of the cadastre of Québec, registration division of Sept-Îles, such lot and parts of lots being for purposes hereof particularly described as follows:

- a) Une partie du lot 3 931 541 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

Une partie du lot 3 931 541, de figure irrégulière, bornée vers le nord-est et le nord par les lots 3 708 360 et 3 708 361, chemin de la Pointe-Noire, vers le nord-est, l'est, le nord, l'ouest et le sud-ouest par le lot 3 931 533, vers le nord et l'est par le lot 3 708 360, chemin de la Pointe-Noire, vers le nord par la partie restante du lot 3 931 541, vers le nord est par le lot 3

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708 376, vers le sud et le sud-est par un territoire non cadastré, vers le sud-ouest et le sud par la limite des hautes eaux (marées) de la Baie-des-Sept-Îles (Territoire non cadastré), vers l'ouest par le lot 3 669 046, par un territoire non cadastré et par les lots 3 669 047 et 4 711 908, vers le sud-ouest par le lot 4 711 908 et vers le nord-ouest par le lot 3 708 359, rue Alband-Blanchard; mesurant successivement 505,92 mètres, 30,04 mètres, 150,00 mètres, 50,02 mètres, 657,10 mètres, 7,87 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 94,78 mètres, 49,86 mètres, 49,98 mètres, 148,10 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 394,80 mètres et 338,91 mètres de long d'une courbe ayant un rayon de 815,00 mètres vers le nord-est, 104,06 mètres, 60,01 mètres, 90,00 mètres, 30,33 mètres, 51,32 mètres; 92,25 mètres d'arc le long d'une courbe ayant un rayon de 615,00 mètres, 35,95 mètres, 25,76 mètres, 21,05 mètres, 31,26 et 25,82 mètres vers le nord, 6,83 mètres vers le nord-ouest, 20,63 mètres, 51,45 mètres et 29,29 mètres vers le nord, 48,07 mètres, 5,39 mètres et 430,00 mètres vers le nord-ouest, 7,07 mètres vers le nord-est, 67,89 mètres vers l'est, 51,05 mètres d'arc le long d'une courbe ayant un rayon de 45,00 mètres vers le nord-est, 32,02 mètres vers le nord, 37,34 mètres vers l'est, 22,02 mètres vers le sud, 77,00 mètres vers l'est, 57,00 mètres vers le nord, 44,00 mètres vers l'ouest, 55,00 mètres vers le nord, 25,00 mètres vers l'ouest, 41,82 mètres et 25,72 mètres d'arc le long d'une courbe ayant un rayon de 40,00 mètres vers le sud-ouest, 40,70 mètres vers le sud, 98,10 mètres vers l'ouest, 35,21 mètres et 38,89 mètres d'arc le long d'une courbe ayant un rayon de 782,00 mètres vers le nord, 14,99 mètres vers le nord-ouest, 29,76 mètres vers le nord, 24,96 mètres vers le nord-ouest, 19,63 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 24,55 mètres, 34,28 mètres d'arc le long d'une courbe ayant un rayon de 783,50 mètres, 29,45 mètres, 107,02 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 180,94 mètres, 50,00 mètres, 35,00 mètres et 15,04 mètres vers le nord, 35,33 mètres vers l'est, 20,00 mètres, 70,46 mètres, 25,96 mètres, 63,00 mètres, 64,57 mètres, 61,30 mètres, 81,51 mètres d'arc le long d'une courbe ayant un rayon de 917,00 mètres vers le nord, 5,47 mètres vers le nord-ouest, 159,48 mètres d'arc le long d'une courbe ayant un rayon de 915,00 mètres, 193,99 mètres et 313,53 mètres vers le nord, 617,36 mètres vers le nord-est, 2111,36 mètres, 936,11 mètres et 232,24 mètres vers le sud, 265,84 mètres vers le sud-est, 1694,70 mètres mesurée en suivant une ligne sinueuse vers le sud-ouest et le sud, 135,90 mètres mesurée en suivant une ligne sinueuse vers le sud, 94,29 mètres, 1056,76 mètres et 389,82 mètres vers l'ouest, 78,00 mètres vers le sud-ouest et 89,56 mètres d'arc le long d'une courbe ayant un rayon de 522,92 mètres, 22,33 mètres d'arc le long d'une courbe ayant un rayon de 50,53 mètres et 30,67 mètres vers le nord-ouest; contenant une superficie de 3 321 872 mètres carrés.

- b) Le lot 3 931 539 du cadastre du Québec, circonscription foncière de Sept-Îles.
- c) Une partie du lot 3 669 214 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

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De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés,

and all rights including real rights granted under a Deed executed on December 6, 1977 and registered at the Registry Office of Sept-Îles under number 32 490 by Canada Ports Corporation, as purchaser, and Wabush Iron, Stelco Inc. (previously the Steel Company of Canada Limited) and Dofasco Inc. (previously Dominion Foundries and Steel, Limited), as vendors, against, among others, lots 4 787 155 and 4 787 156 and 3 708 370 of the Cadastre of Québec.

3) ARNAUD RAILWAY COMPANY/COMPAGNIE DE CHEMIN DE FER ARNAUD

(a) All rights, title and interest in the immovable properties located in the City of Sept-Îles forming a railway known and designated as being composed of the following lots:

i) Lot number THREE MILLION SIX HUNDRED SIXTY-NINE THOUSAND TWO HUNDRED AND EIGHTY-NINE (3 669 289) of the Cadastre of Québec, Registration Division of Sept-Îles.

ii) Lot number THREE MILLION SIX HUNDRED SIXTY-NINE THOUSAND THREE HUNDRED AND TEN (3 669 310) of the Cadastre of Québec, Registration Division of Sept-Îles.

iii) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND TWO HUNDRED AND TWENTY-THREE (3 708 223) of the Cadastre of Québec, Registration Division of Sept-Îles.

iv) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND THIRTEEN (3 708 313) of the Cadastre of Québec, Registration division of Sept-Îles.

v) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND SIXTEEN (3 708 316) of the Cadastre of Québec, Registration division of Sept-Îles.

vi) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND EIGHTEEN (3 708 318) of the Cadastre of Québec, Registration division of Sept-Îles.

vii) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND NINETEEN (3 708 319) of the Cadastre of Québec, Registration division of Sept-Îles.

viii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED TWO (3 931 502) of the Cadastre of Québec, Registration division of Sept-Îles.

ix) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FOUR (3 931 504) of the Cadastre of Québec, Registration division of Sept-Îles.

x) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED AND FIVE (3 931 505) of the Cadastre of Québec, Registration Division of Sept-Îles.

xi) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SIX (3 931 506) of the Cadastre of Québec, Registration division of Sept-Îles.

xii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SEVEN (3 931 507) of the Cadastre of Québec, Registration division of Sept-Îles.

xiii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED NINE (3 931 509) of the Cadastre of Québec, Registration division of Sept-Îles.

xiv) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED AND THIRTY (3 931 530) of the Cadastre of Québec, Registration Division of Sept-Îles.

xv) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY (3 931 540) of the Cadastre of Québec, Registration division of Sept-Îles.

xvi) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY-TWO (3 931 542) of the Cadastre of Québec, Registration division of Sept-Îles.

xvii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY-FOUR (3 931 544) of the Cadastre of Québec, Registration division of Sept-Îles.

xviii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FIFTY-TWO (3 931 552) of the Cadastre of Québec, Registration division of Sept-Îles.

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xix) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND SIX HUNDRED AND TWENTY-THREE (3 931 623) of the Cadastre of Québec, Registration Division of Sept-Îles.

xx) Lot number THREE MILLION NINE HUNDRED FORTY THOUSAND NINE HUNDRED EIGHTY-ONE (3 940 981) of the Cadastre of Québec, Registration division of Sept-Îles.

xxi) Lot number FOUR MILLION EIGHTY-FIVE THOUSAND SEVEN HUNDRED NINETY-FOUR (4 085 794) of the Cadastre of Québec, Registration division of Sept-Îles.

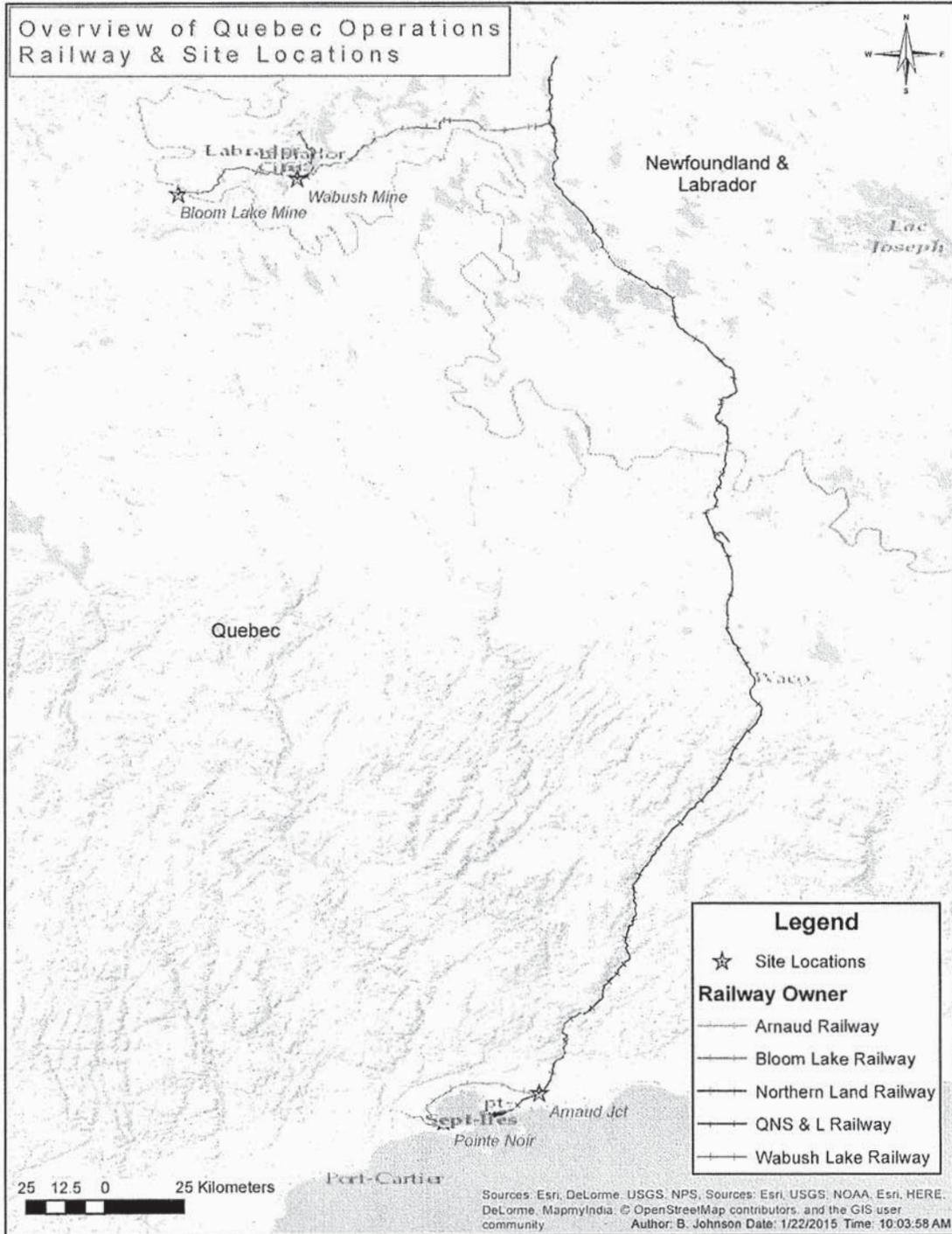
(b) Superficies created under the terms of the unregistered lease agreement (File 919352 00 000) between Le Ministre des Ressources Naturelles et de la Faune (the "**Lessor**") and Consolidated and subsequently transferred to Arnaud Railway Company (the "**Lessee**") executed by the Lessor on March 18, 2010 and by the Lessee on March 22, 2010, with respect to all constructions to be erected or installed by the Lessee on the leased premises being four (4) parcels of land situated in a territory without a cadastral survey, in the Township of Letellier, containing 115 hectares, without being more fully described.

SCHEDULE "D" TO APPROVAL AND VESTING ORDER
ENCUMBRANCES ON IMMOVABLE PROPERTY TO BE DISCHARGED

1. Legal hypothec against Wabush Resources in favour of 3887952 Canada Inc. registered at the Land Registry, registration division of Sept-Îles under registration number 21 269 941 and related notice of exercise of hypothecary rights registered at the Land Registry, registration division of Sept-Îles under registration number 21 503 424;
2. Legal hypothec against Wabush Resources in favour of AXOR Experts-Conseil Inc. registered at the Land Registry, registration division of Sept-Îles under registration number 21 306 859;
3. Legal hypothec against Wabush Resources in favour of Kilotech Contrôle (1995) Inc. registered at the Land Registry, registration division of Sept-Îles under registration number 21 231 333 and related notice of exercise of hypothecary rights registered at the Land Registry, registration division of Sept-Îles under registration number 21 540 648;
4. Legal hypothec against Wabush Resources in favour of Kilotech Contrôle (1995) Inc. registered at the Land Registry, registration division of Sept-Îles under registration number 21 231 351 and related notice of exercise of hypothecary rights registered at the Land Registry, registration division of Sept-Îles under registration number 21 540 654;
5. Legal hypothec against Wabush Resources in favour of Kilotech Contrôle (1995) Inc. registered at the Land Registry under registration numbers 21 231 345 and 21 231 306 and related notice of exercise of hypothecary rights respectively registered at the Land Registry, registration division of Sept-Îles under registration number 21 540 646 and 21 540 652; and
6. Legal hypothec against Cliffs Québec Mine de Fer Ltée in favour of Kilotech Contrôle (1995) Inc. registered at the Land Registry, registration division of Sept Îles under registration number 21 231 484 and related notice of exercise of hypothecary rights registered at the Land Registry, registration division of Sept Îles under registration number 21 540 644.

SCHEDULE "B"

MAP SHOWING ARNAUD RAILWAY



SCHEDULE "C"**ARNAUD RAILWAY ASSETS**

- The 35km of railway owned by Arnaud, as common carrier, which connects at Arnaud Junction and includes such junction and terminates at the port facility owned by the Wabush CCAA Parties at Pointe-Noire including the land owned by the Wabush CCAA Parties related to the Arnaud Railway, including without limitation:

All tracking, yard track, terminals, stations, branches, extensions, sidings, spur, bridges, tunnel and any other equipment whether moveable or fixed, connected to and/or necessary for the operation of the Arnaud Railway including any land, leased or owned and any rights-of-way on which the railway is situated, railway operator certificate, OTL license:

- All spare parts
- All sidings
- All tools, fixed and portable equipment
- Electrical installations and other utilities, including power switches
- Offices and working space
- Rail management, communication system and signalling systems
- Rail service equipment, cranes
- Arnaud Junction
- 6 yard track (three with a capacity of 130 cars and three with 240 cars capacity)
- 3 storage tracks
- 1 bad order track (with a capacity of 10 cars)
- 1 Wye

SCHEDULE "D"

OTHER ASSIGNED CONTRACTS

NIL

SCHEDULE "E"**ASSUMED LIABILITIES**

1. All Liabilities relating to the Purchased Assets arising on or after the Closing Date;
2. All Liabilities under the Assigned Contracts and Permits and Licenses (in each case to the extent such Assigned Contract or Permit and License is effectively assigned to the Purchaser) arising on or after the Closing Date;
3. All Liabilities owing to Transferred Employees in connection with their employment by the Purchaser in accordance with this Agreement and all Liabilities otherwise owing by the Purchaser to any Transferred Employees in accordance with Applicable Law, if any; and
4. All Liabilities owing to Transferred Employees under the Assumed Employee Plans effective as at the Closing Date.

SCHEDULE "F"**COLLECTIVE BARGAINING AGREEMENTS**

1. Collective agreement entered into between Arnaud and United Steelworkers, local 6254, dated April 15, 2014.
2. Collective agreement between Wabush Mines, Cliffs Mining Company inc. as Managing Agent, Arnaud and United Steelworkers, local 6254 dated March 1, 2009.

SCHEDULE "G"**CRITICAL CONTRACTS**

1. Deed of servitude signed on June 22, 1990 by the Government of Québec and the City of Sept-Îles whereby a servitude is created in favour of Compagnie Minière Cliffs Inc. to access, erect and maintain an aqueduct system, which deed is registered at the Land Registry of the registration division of Sept-Îles under number 76 921.

SCHEDULE "H"
EMPLOYEE PLANS

Pointe-Noire Pellet Plant and Arnaud Railway

- A. Vacation
 - (a) Annual Vacation (hourly and Salaried)
 - (b) Service bonus (salaried employees)
 - (c) Optional vacation (hourly & Salaried employees)
 - (d) Out of season bonus (hourly and salaried employees)
- B. 10 Holidays
- C. Short and Long-Term Disability plans (barg). Employer paid
- D. Salary continuance for Salaried employees (100% of base pay for 6 months). Employer paid
- E. Base Long-term disability plans (salaried). Employer paid
- F. Life, AD&D and health insurance (including hospitalization, medical supplies, prescription drugs and vision care) for active Bargaining employees. Employer paid
- G. Life, AD&D and health insurance (including hospitalization, medical supplies, prescription drugs and vision care) for bargaining & salaried. Employer paid
- H. Dental care for active Bargaining. Employer paid
- I. Flex Dental care for active Salaried employees. Employer paid
- J. Operational Performance Incentive Plan
- K. Management Performance Incentive Plan. Salary band C and above
- L. EAP program
- M. Service award program. At every 5 year increment of service, employees receive a gift from the Company
- N. Work clothing
 - (a) Regular work clothing
 - (b) Safety boots
- O. Arc flash clothing

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (*cont'd*)

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- P. Welder fire retardant coveralls
- Q. Glove exchange program
- R. Safety glasses (prescription and non-prescription)
- S. Union paid leave
- T. Tool replacement
- U. Training reimbursement program
- V. Sporting activity reimbursement program

SCHEDULE "I"**EXCLUDED ASSETS**

1. All minute books and other corporate records of the Vendors, and any Books and Records that the Vendors is required by Applicable Law to retain in its possession;
2. The rights of the Vendors under this Agreement or any other agreement, certificate or instrument executed and delivered pursuant to this Agreement;
3. All Excluded Contracts;
4. All accounts receivable, bills receivable, trade accounts, book debts and insurance claims Related to the Businesses, together with any unpaid interest accrued on such items and any security or collateral for such items, including recoverable deposits;
5. All cash, cash equivalents and short-term investments, including the Deposit and any amounts held in escrow;
6. All bank accounts of the Vendors;
7. All rights to receive a refund of and/or credit in respect of, Taxes paid by or on behalf of a Vendor;
8. All Tax Returns of the Vendors;
9. All Tax installments paid by or on behalf of a Vendor;
10. All Intercompany Claims;
11. All causes of action which arise from loss, damage or facts occurring prior to Closing and any insurance proceeds or claims payable for losses or damages incurred prior to Closing, other than insurance proceeds or rights thereto assigned to the Purchaser in accordance with Section 6.5 (Risk of Loss)
12. Global alliance, purchasing, supply, consignment, distribution and logistics Contracts entered into from time to time by any of the Vendors and/or its Affiliate(s) that benefit other businesses of Vendors and/or its Affiliate(s) as well as the Businesses.
13. All software assets and Contracts, whether relating to enterprise-wide information technology applications or otherwise, except for (i) software assets and Contracts primarily relating to Vendors site-specific process control or process monitoring systems; and (ii) basic operating system software remaining on the Hardware after the removal of Vendors' information and licensors' proprietary software applications, in each case of clauses (i) and (ii), only to the extent that the same are transferable without the applicable licensor's consent.
14. All Proprietary Marks;
15. Any amounts payable by Mason Graphite Corp. to Quinto Mining Corporation in accordance with the Purchase Agreement between them dated April 5, 2012;

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (*cont'd*)

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16. 3% Net Smelter Returns Royalty held by CQIM pursuant to a Purchase Agreement with Queenston Mining Inc. dated April 11, 2012 and arising from property located in the Kirkland Lake Belt;
17. Any and all choses in Action, claims or proceedings of the Vendors, including any and all proceedings between Beumer Kansas City, LLC and Bloom Lake LP;
18. All Bunker C Fuel;
19. All assets of the Vendors (other than the Wabush Railcars and the Off-Site Vehicles and Equipment) not located at the Pointe-Noire Port Facility or Pellet Plant.
20. The Excluded Railcars;
21. The Block Z Lands, if the Block Z Option is exercised by the Vendors; and
22. All dolomite owned by the Vendors and stored on or about the Pointe-Noire Port Facility.

SCHEDULE "J"

OWNED REAL PROPERTY

**1) CLIFFS QUÉBEC IRON MINING ULC / CLIFFS QUÉBEC MINE DE FER ULC
formerly known as CONSOLIDATED THOMPSON IRON MINES LIMITED
("Consolidated")**

(a) Superficies created under the terms of the unregistered lease agreement number 474-109 between Administration Portuaire de Sept-Iles (the "**Lessor**") and Consolidated (the "**Lessee**") executed on October 29, 2009, with respect to all structures, buildings, work, infrastructure or equipment used to handle, transport and store, erected or placed by the Lessee on the leased premises which are composed of the following lots:

Lot FOUR MILLION SEVEN HUNDRED EIGHTY-SEVEN THOUSAND ONE HUNDRED AND FIFTY-SIX (4 787 156) of the Cadastre of Québec, in the Land Registration Division of Sept-Iles;

2) WABUSH IRON CO. LIMITED (for an undivided interest of 26.83%) and **WABUSH RESOURCES INC.**, (for an undivided interest of 73.17%)

(a) LAND ADJACENT TO THE PORT OF SEPT-ÎLES: All rights, title and interest in the following immovable properties known and designated as:

i) Lot number THREE MILLION SIX HUNDRED AND SIXTY-NINE THOUSAND AND FIFTY-EIGHT (3 669 058) of the Cadastre of Québec, Registration Division of Sept-Îles;

ii) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND THIRTY-FOUR (3 708 334) of the Cadastre of Québec, Registration Division of Sept-Îles;

iii) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND TWELVE (3 931 512) of the Cadastre of Québec, Registration Division of Sept-Îles;

iv) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND EIGHT (3 931 508) of the Cadastre of Québec, Registration Division of Sept-Îles;

v) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-THREE (3 708 383) of the Cadastre of Québec, Registration Division of Sept-Îles;

vi) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-FOUR (3 708 384) of the Cadastre of Québec, Registration Division of Sept-Îles;

vii) Lot number THREE MILLION SEVEN HUNDRED AND EIGHT THOUSAND THREE HUNDRED AND EIGHTY-FIVE (3 708 385) of the Cadastre of Québec, Registration Division of Sept-Îles;

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viii) Lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND THIRTY-FIVE (3 931 535) of the Cadastre of Québec, Registration Division of Sept-Îles;

ix) A part of lot number THREE MILLION NINE HUNDRED AND THIRTY-ONE THOUSAND FIVE HUNDRED AND FORTY-ONE (3 931 541) of the Cadastre of Québec, Registration Division of Sept-Îles, excluding the following:

Une partie du lot 3 931 541, de figure irrégulière, bornée vers le nord-est et le nord par les lots 3 708 360 et 3 708 361, chemin de la Pointe-Noire, vers le nord-est, l'est, le nord, l'ouest et le sud-ouest par le lot 3 931 533, vers le nord et l'est par le lot 3 708 360, chemin de la Pointe-Noire, vers le nord par la partie restante du lot 3 931 541, vers le nord est par le lot 3 708 376, vers le sud et le sud-est par un territoire non cadastré, vers le sud-ouest et le sud par la limite des hautes eaux (marées) de la Baie-des-Sept-Îles (Territoire non cadastré), vers l'ouest par le lot 3 669 046, par un territoire non cadastré et par les lots 3 669 047 et 4 711 908, vers le sud-ouest par le lot 4 711 908 et vers le nord-ouest par le lot 3 708 359, rue Alband-Blanchard; mesurant successivement 505,92 mètres, 30,04 mètres, 150,00 mètres, 50,02 mètres, 657,10 mètres, 7,87 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 94,78 mètres, 49,86 mètres, 49,98 mètres, 148,10 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 394,80 mètres et 338,91 mètres de long d'une courbe ayant un rayon de 815,00 mètres vers le nord-est, 104,06 mètres, 60,01 mètres, 90,00 mètres, 30,33 mètres, 51,32 mètres; 92,25 mètres d'arc le long d'une courbe ayant un rayon de 615,00 mètres, 35,95 mètres, 25,76 mètres, 21,05 mètres, 31,26 et 25,82 mètres vers le nord, 6,83 mètres vers le nord-ouest, 20,63 mètres, 51,45 mètres et 29,29 mètres vers le nord, 48,07 mètres, 5,39 mètres et 430,00 mètres vers le nord-ouest, 7,07 mètres vers le nord-est, 67,89 mètres vers l'est, 51,05 mètres d'arc le long d'une courbe ayant un rayon de 45,00 mètres vers le nord-est, 32,02 mètres vers le nord, 37,34 mètres vers l'est, 22,02 mètres vers le sud, 77,00 mètres vers l'est, 57,00 mètres vers le nord, 44,00 mètres vers l'ouest, 55,00 mètres vers le nord, 25,00 mètres vers l'ouest, 41,82 mètres et 25,72 mètres d'arc le long d'une courbe ayant un rayon de 40,00 mètres vers le sud-ouest, 40,70 mètres vers le sud, 98,10 mètres vers l'ouest, 35,21 mètres et 38,89 mètres d'arc le long d'une courbe ayant un rayon de 782,00 mètres vers le nord, 14,99 mètres vers le nord-ouest, 29,76 mètres vers le nord, 24,96 mètres vers le nord-ouest, 19,63 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 24,55 mètres, 34,28 mètres d'arc le long d'une courbe ayant un rayon de 783,50 mètres, 29,45 mètres, 107,02 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 180,94 mètres, 50,00 mètres, 35,00 mètres et 15,04 mètres vers le nord, 35,33 mètres vers l'est, 20,00 mètres, 70,46 mètres, 25,96 mètres, 63,00 mètres, 64,57 mètres, 61,30 mètres, 81,51 mètres d'arc le long d'une courbe ayant un rayon de 917,00 mètres vers le nord, 5,47 mètres vers le nord-ouest, 159,48 mètres d'arc le long d'une courbe ayant un rayon de 915,00 mètres, 193,99 mètres et 313,53 mètres vers le nord, 617,36 mètres vers le nord-est, 2111,36 mètres, 936,11 mètres et 232,24 mètres vers le sud, 265,84 mètres vers le sud-est, 1694,70 mètres mesurée en suivant une ligne sinueuse vers le sud-ouest et le sud, 135,90 mètres mesurée en suivant une ligne sinueuse vers le sud, 94,29 mètres, 1056,76 mètres et 389,82 mètres vers l'ouest, 78,00 mètres vers le sud-ouest et 89,56 mètres d'arc le long d'une courbe ayant un rayon de

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522,92 mètres, 22,33 mètres d'arc le long d'une courbe ayant un rayon de 50,53 mètres et 30,67 mètres vers le nord-ouest; contenant une superficie de 3 321 872 mètres carrés.

i) A part of lot number THREE MILLION SIX HUNDRED AND SIXTY-NINE THOUSAND TWO HUNDRED FOURTEEN (3 669 214) of the Cadastre of Québec, Registration Division of Sept-Îles, excluding the following:

De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés.;

xi) Lot number FOUR MILLION EIGHT HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED AND EIGHTY-ONE (4 873 981) of the Cadastre of Québec, Registration Division of Sept-Îles.

xii) Lot number FOUR MILLION EIGHT HUNDRED SEVENTY-THREE THOUSAND NINE HUNDRED AND EIGHTY-THREE (4 873 983) of the Cadastre of Québec, Registration Division of Sept-Îles.

With all constructions erected thereon, including the building bearing civic number 1505 Chemin de la Pointe-Noire, in the City of Sept-Îles, Province of Québec.

It is understood that the following immovable property (the "**Block Z Lands**") will only be included as owned real property if the Block Z Option is not exercised by the Vendors:

The immovable known and described as being composed of a part of lot 3 931 541, lot 3 931 539 and a part of lot 3 669 214, all of the cadastre of Québec, registration division of Sept-Îles, such lot and parts of lots being for purposes hereof particularly described as follows:

a) Une partie du lot 3 931 541 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

Une partie du lot 3 931 541, de figure irrégulière, bornée vers le nord-est et le nord par les lots 3 708 360 et 3 708 361, chemin de la Pointe-Noire, vers le nord-est, l'est, le nord, l'ouest et le sud-ouest par le lot 3 931 533, vers le nord et l'est par le lot 3 708 360, chemin de la Pointe-Noire, vers le nord par la partie restante du lot 3 931 541, vers le nord est par le lot 3

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708 376, vers le sud et le sud-est par un territoire non cadastré, vers le sud-ouest et le sud par la limite des hautes eaux (marées) de la Baie-des-Sept-Îles (Territoire non cadastré), vers l'ouest par le lot 3 669 046, par un territoire non cadastré et par les lots 3 669 047 et 4 711 908, vers le sud-ouest par le lot 4 711 908 et vers le nord-ouest par le lot 3 708 359, rue Alband-Blanchard; mesurant successivement 505,92 mètres, 30,04 mètres, 150,00 mètres, 50,02 mètres, 657,10 mètres, 7,87 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 94,78 mètres, 49,86 mètres, 49,98 mètres, 148,10 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 394,80 mètres et 338,91 mètres de long d'une courbe ayant un rayon de 815,00 mètres vers le nord-est, 104,06 mètres, 60,01 mètres, 90,00 mètres, 30,33 mètres, 51,32 mètres; 92,25 mètres d'arc le long d'une courbe ayant un rayon de 615,00 mètres, 35,95 mètres, 25,76 mètres, 21,05 mètres, 31,26 et 25,82 mètres vers le nord, 6,83 mètres vers le nord-ouest, 20,63 mètres, 51,45 mètres et 29,29 mètres vers le nord, 48,07 mètres, 5,39 mètres et 430,00 mètres vers le nord-ouest, 7,07 mètres vers le nord-est, 67,89 mètres vers l'est, 51,05 mètres d'arc le long d'une courbe ayant un rayon de 45,00 mètres vers le nord-est, 32,02 mètres vers le nord, 37,34 mètres vers l'est, 22,02 mètres vers le sud, 77,00 mètres vers l'est, 57,00 mètres vers le nord, 44,00 mètres vers l'ouest, 55,00 mètres vers le nord, 25,00 mètres vers l'ouest, 41,82 mètres et 25,72 mètres d'arc le long d'une courbe ayant un rayon de 40,00 mètres vers le sud-ouest, 40,70 mètres vers le sud, 98,10 mètres vers l'ouest, 35,21 mètres et 38,89 mètres d'arc le long d'une courbe ayant un rayon de 782,00 mètres vers le nord, 14,99 mètres vers le nord-ouest, 29,76 mètres vers le nord, 24,96 mètres vers le nord-ouest, 19,63 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 24,55 mètres, 34,28 mètres d'arc le long d'une courbe ayant un rayon de 783,50 mètres, 29,45 mètres, 107,02 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 180,94 mètres, 50,00 mètres, 35,00 mètres et 15,04 mètres vers le nord, 35,33 mètres vers l'est, 20,00 mètres, 70,46 mètres, 25,96 mètres, 63,00 mètres, 64,57 mètres, 61,30 mètres, 81,51 mètres d'arc le long d'une courbe ayant un rayon de 917,00 mètres vers le nord, 5,47 mètres vers le nord-ouest, 159,48 mètres d'arc le long d'une courbe ayant un rayon de 915,00 mètres, 193,99 mètres et 313,53 mètres vers le nord, 617,36 mètres vers le nord-est, 2111,36 mètres, 936,11 mètres et 232,24 mètres vers le sud, 265,84 mètres vers le sud-est, 1694,70 mètres mesurée en suivant une ligne sinueuse vers le sud-ouest et le sud, 135,90 mètres mesurée en suivant une ligne sinueuse vers le sud, 94,29 mètres, 1056,76 mètres et 389,82 mètres vers l'ouest, 78,00 mètres vers le sud-ouest et 89,56 mètres d'arc le long d'une courbe ayant un rayon de 522,92 mètres, 22,33 mètres d'arc le long d'une courbe ayant un rayon de 50,53 mètres et 30,67 mètres vers le nord-ouest; contenant une superficie de 3 321 872 mètres carrés.

- b) Le lot 3 931 539 du cadastre du Québec, circonscription foncière de Sept-Îles.
- c) Une partie du lot 3 669 214 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

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De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés,

and all rights including real rights granted under a Deed executed on December 6, 1977 and registered at the Registry Office of Sept-Îles under number 32 490 by Canada Ports Corporation, as purchaser, and Wabush Iron, Stelco Inc. (previously the Steel Company of Canada Limited) and Dofasco Inc. (previously Dominion Foundries and Steel, Limited), as vendors, against, among others, lots 4 787 155 and 4 787 156 and 3 708 370 of the Cadastre of Québec.

3) ARNAUD RAILWAY COMPANY/COMPAGNIE DE CHEMIN DE FER ARNAUD

(a) All rights, title and interest in the immovable properties located in the City of Sept-Îles forming a railway known and designated as being composed of the following lots:

i) Lot number THREE MILLION SIX HUNDRED SIXTY-NINE THOUSAND TWO HUNDRED AND EIGHTY-NINE (3 669 289) of the Cadastre of Québec, Registration Division of Sept-Îles.

ii) Lot number THREE MILLION SIX HUNDRED SIXTY-NINE THOUSAND THREE HUNDRED AND TEN (3 669 310) of the Cadastre of Québec, Registration Division of Sept-Îles.

iii) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND TWO HUNDRED AND TWENTY-THREE (3 708 223) of the Cadastre of Québec, Registration Division of Sept-Îles.

iv) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND THIRTEEN (3 708 313) of the Cadastre of Québec, Registration division of Sept-Îles.

v) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND SIXTEEN (3 708 316) of the Cadastre of Québec, Registration division of Sept-Îles.

vi) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND EIGHTEEN (3 708 318) of the Cadastre of Québec, Registration division of Sept-Îles.

vii) Lot number THREE MILLION SEVEN HUNDRED EIGHT THOUSAND THREE HUNDRED AND NINETEEN (3 708 319) of the Cadastre of Québec, Registration division of Sept-Îles.

viii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED TWO (3 931 502) of the Cadastre of Québec, Registration division of Sept-Îles.

ix) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FOUR (3 931 504) of the Cadastre of Québec, Registration division of Sept-Îles.

x) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED AND FIVE (3 931 505) of the Cadastre of Québec, Registration Division of Sept-Îles.

xi) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SIX (3 931 506) of the Cadastre of Québec, Registration division of Sept-Îles.

xii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED SEVEN (3 931 507) of the Cadastre of Québec, Registration division of Sept-Îles.

xiii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED NINE (3 931 509) of the Cadastre of Québec, Registration division of Sept-Îles.

xiv) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED AND THIRTY (3 931 530) of the Cadastre of Québec, Registration Division of Sept-Îles.

xv) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY (3 931 540) of the Cadastre of Québec, Registration division of Sept-Îles.

xvi) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY-TWO (3 931 542) of the Cadastre of Québec, Registration division of Sept-Îles.

xvii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FORTY-FOUR (3 931 544) of the Cadastre of Québec, Registration division of Sept-Îles.

xviii) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND FIVE HUNDRED FIFTY-TWO (3 931 552) of the Cadastre of Québec, Registration division of Sept-Îles.

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xix) Lot number THREE MILLION NINE HUNDRED THIRTY-ONE THOUSAND SIX HUNDRED AND TWENTY-THREE (3 931 623) of the Cadastre of Québec, Registration Division of Sept-Îles.

xx) Lot number THREE MILLION NINE HUNDRED FORTY THOUSAND NINE HUNDRED EIGHTY-ONE (3 940 981) of the Cadastre of Québec, Registration division of Sept-Îles.

xxi) Lot number FOUR MILLION EIGHTY-FIVE THOUSAND SEVEN HUNDRED NINETY-FOUR (4 085 794) of the Cadastre of Québec, Registration division of Sept-Îles.

(b) Superficies created under the terms of the unregistered lease agreement (File 919352 00 000) between Le Ministre des Ressources Naturelles et de la Faune (the "**Lessor**") and Consolidated and subsequently transferred to Arnaud Railway Company (the "**Lessee**") executed by the Lessor on March 18, 2010 and by the Lessee on March 22, 2010, with respect to all constructions to be erected or installed by the Lessee on the leased premises being four (4) parcels of land situated in a territory without a cadastral survey, in the Township of Letellier, containing 115 hectares, without being more fully described.

SCHEDULE "K"**PERMITS AND LICENSES**

1. Certificate of Authorization issued to Consolidated Thompson Iron Ore Limited ("**CLM**") by the Ministry of Sustainable Development, Environment and Parks (Québec) ("**MSDEP**") on February 11, 2010 pursuant to section 22 of the *Environment Quality Act* (Québec) ("**EQA**") (Ref. no. 7610-09-01-0190501/400679164) in connection with the development of installations for stocking, handling and stevedoring activities in the Port of Sept-Îles, in the Pointe-Noire sector;
2. Certificate of authorization issued to Wabush Mines by the MSDEP on December 11, 2006 pursuant to section 22 EQA (Ref. no. 7610-09-01-0012639/400366790) in connection with the development and use of an iron paint workshop at the Wabush Mines diesel workshop (railway sector), Sept-Îles;
3. Certificate of Authorization issued to CLM by the MSDEP on April 20, 2010 pursuant to section 22 EQA (Ref. no. 7610-09-01-0191101/400700869) in connection with the development of a railway segment at the Arnaud-Sept-Îles Junction;
4. Municipal certificate of conformity issued to Cliffs Natural Resources Inc./Wabush Mines by the Town of Sept-Îles on June 5, 2012 (Ref. no. 2113-00-11) in connection with the non-contravention of a transfer conveyor;
5. Certificate of Authorization issued to Wabush Mines by the MDDELCC on June 27, 2012 pursuant to section 22 EQA (Ref. no. 7610-09-01-0012651/400939142) in connection with the installation and operation of mobile sifting/screening (valid for 5 years) and a municipal certificate of conformity dated April 12, 2012;
6. Certificate of Authorization issued to Wabush Mines by the MDDELCC on July 5, 2013 pursuant to section 22 EQA (Ref. no. 7610-09-01-0012655/401046327) in connection with the operation of a sandpit at Pointe-Noire (valid for 10 years);
7. Certificate of Authorization issued to Wabush Mines by the MSDEP on December 9, 2013 pursuant to section 22 EQA (Ref. no. 7610 09 01 0012656/401093514) in connection with the operation of mobile crushing and screening equipment on lots 3 669 214, 3 708 334 and 3 931 512 (valid for 5 years) and municipal certificate of conformity dated November 29, 2013;
8. Certificate of authorization issued to Cliffs Mining Company by the MSDEP on January 13, 2015 pursuant to section 22 EQA (Ref. no. 7610-09-01-0204002/401213147) in connection with the configuration of a snow disposal site on Wabush Mine property at Pointe-Noire.

SCHEDULE "L"**PERMITTED ENCUMBRANCES**

1. Servitudes or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Owned Real Property, provided such servitudes or rights-of-way are registered on title to the Owned Real Property;
2. Servitudes for the supply of utilities to the Owned Real Property and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, provided such servitudes are registered on title to the Owned Real Property;
3. Any unregistered servitudes or rights of way by Hydro-Québec to occupy a part of the Owned Real Property to install any circuits, poles and necessary equipment required for the connection or the network, in accordance to its by-law number 634 relating to the supply of electricity and any servitudes granted prior to January 1, 1917 which affect the Owned Real Property;
4. Restrictive covenants, private deed restrictions and other similar land use control agreements, provided they are registered on title to the Owned Real Property;
5. Any minor encroachments by any structure located on the Owned Real Property onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Owned Real Property;
6. Any title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Owned Real Property;
7. The provisions of Applicable Laws, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning; and
8. Any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent.

SCHEDULE "M"**REAL PROPERTY LEASES AND DEEDS OF SERVITUDE**

1. Unregistered Lease Agreement (File 919352 00 000) between Le Ministre des Ressources Naturelles et de la Faune, as lessor (the "Lessor"), and Consolidated Thompson Iron Mines Limited and subsequently transferred to Arnaud Railway Company as lessee (the "Lessee"), executed by the Lessor on March 18, 2010 and by the Lessee on March 22, 2010, on the Leased Premises being four (4) parcels of land situated in a territory without a cadastral survey, in the Township of Letellier, containing 115 hectares, without being more fully described.
2. Unregistered Lease Agreement for the purpose of maintaining a dam (Lease no. 80 881), between The Minister of Natural Resources, The Minister of the Environment and Faunae, as lessor, and Compagnie Minière Cliffs Inc. (Cliffs Mining Company), as lessee, executed on April 13, 1995, on the Leased Premises being lot 3 668 974 Cadastre of Québec.
3. Deed of servitude signed on June 22, 1990 by the Government of Québec and the City of Sept-Îles whereby a servitude is created in favour of Compagnie Minière Cliffs Inc. to access, erect and maintain an aqueduct system, which deed is registered at the Land Registry of the registration division of Sept-Îles under number 76 921.

SCHEDULE "N"

PURCHASED ASSETS

1. The Arnaud Railway Assets;
2. The Pointe-Noire Port Facility including without limitation:
 - (a) **All of the equipment owned by CQIM and located on the land leased from Port de Sept-Îles including but not limited to the assets noted below:**
 - Rotary dumper
 - Stacker-reclaimer
 - Car dumpers
 - Bumping posts
 - Flangers
 - Conveyor system from rotary to stacker reclaimer and ship loader
 - All rail assets to the junction including the Arnaud Railway, with associated equipment
 - Spare parts
 - All tools, fixed and portable equipment
 - Electrical installations and other utilities, including power switches
 - Offices and working space
 - Shiploader installed on dock 31
 - Railway garage (maintenance facility for railcars and locomotives) and maintenance systems including fixed and portable equipment
 - Workshop
 - Shelters
 - All electrical systems and utilities
 - 7 yard tracks (one with a capacity of 130 cars and three with a capacity of 164 cars)
 - 1 run-around track (with a capacity of 60 cars and 2 locomotives)
 - 5 storage tracks
 - 2 bad order tracks (one with a capacity of 26 cars and one with a capacity of 20 cars)
 - 1 reservoir track
 - All sidings
 - 2 way loading ramp for heavy fuel oil
 - 1 Wye
 - Access to car unloading facilities
 - Bunker C oil tanks
 - (b) All of the equipment owned by the Wabush CCAA Parties Related to the Businesses and located in the Pointe-Noire Port Facility including, without limitation, stacker-reclaimer, conveyor systems from rotary to stacker reclaimer and ship loader.

All assets including:

- Building with dumper

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- Railways and tracks
 - Land with stockpiling
 - Freshwater treatment plant
 - Water source and aqueducts
 - Silos
 - Reservoir
 - All spare parts
 - All sidings
 - All tools, fixed and portable equipment
 - Electrical installations and other utilities, including power switches
3. The Owned Real Property;
 4. All inventories of stock-in-trade and merchandise including materials, supplies, work-in-progress, finished goods, tooling, service parts, any and all iron ore concentrate and purchased finished goods Related to the Businesses and located at the Pointe-Noire Port Facility (including those in possession of suppliers, customers and other third parties);
 5. All rights and interests under or pursuant to all warranties, representations and guarantees, express, implied or otherwise, of or made by suppliers or others in connection with the Purchased Assets or the Assumed Liabilities or otherwise arising from the operation of the Businesses;
 6. All equipment Related to the Businesses, including the Off-Site Vehicles and Equipment;
 7. All Wabush Railcars;
 8. All Intellectual Property;
 9. The Assigned Contracts;
 10. The Permits and Licenses;
 11. The Books and Records Related to the Businesses;
 12. The Real Property Leases;
 13. All prepayments, prepaid charges, deposits, sums and fees Related to the Businesses or held in respect of the Purchased Assets;
 14. All goodwill Related to the Businesses; and
 15. All proceeds of any or all of the foregoing received or receivable after the Closing Time.

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

SCHEDULE "O"
ALLOCATION OF PURCHASE PRICE

Allocation Without Exercise of Block Z Option

	<u>LAND</u>	<u>DEPRECIABLE PROPERTY</u>
Arnaud Railway, including all lands owned by Arnaud:	\$765,600	\$33,846,400
Port facility located at Pointe-Noire, including all lands and equipment owned by the Wabush CCAA Parties:	\$7,084,000	\$4,000,000
Port facility located at Pointe-Noire, including all lands and equipment owned by CQIM:	\$0	\$22,304,000
Purchase Price	\$68,000,000 (total of all above items)	

Allocation With Exercise of Block Z Option

	<u>LAND</u>	<u>DEPRECIABLE PROPERTY</u>
Arnaud Railway, including all lands owned by Arnaud:	\$765,600	\$33,846,400
Port facility located at Pointe-Noire, including all lands and equipment owned by the Wabush CCAA Parties:	\$5,834,000	\$4,000,000
Port facility located at Pointe-Noire, including all lands and equipment owned by CQIM:	\$0	\$22,304,000
Purchase Price	\$66,750,000 (total of all above items)	

SCHEDULE "P"
EXCLUDED RAILCARS
(ATTACHED)

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10001	Marche		Sept-Iles	CLMX 10047	Marche		Sept-Iles
CLMX 10002	Marche		Sept-Iles	CLMX 10048	Marche		Sept-Iles
CLMX 10003	Marche		Sept-Iles	CLMX 10049	Marche		Sept-Iles
CLMX 10004	Marche		Sept-Iles	CLMX 10050	Marche		Sept-Iles
CLMX 10005	Marche		Sept-Iles	CLMX 10051	Marche		Sept-Iles
CLMX 10006	Marche		Sept-Iles	CLMX 10052	Marche		Sept-Iles
CLMX 10007	Marche		Sept-Iles	CLMX 10053	Marche		Sept-Iles
CLMX 10008	Marche		Sept-Iles	CLMX 10054	Marche		Sept-Iles
CLMX 10009	Marche		Sept-Iles	CLMX 10055	Marche		Sept-Iles
CLMX 10010	Marche		Sept-Iles	CLMX 10056	Marche		Sept-Iles
CLMX 10011	Marche		Sept-Iles	CLMX 10057	Marche		Sept-Iles
CLMX 10012	Marche		Sept-Iles	CLMX 10058	Marche		Sept-Iles
CLMX 10013	Marche		Sept-Iles	CLMX 10059	Marche		Sept-Iles
CLMX 10014	Marche		Sept-Iles	CLMX 10060	Marche		Sept-Iles
CLMX 10015	Marche		Sept-Iles	CLMX 10061	Marche		Sept-Iles
CLMX 10016	Marche		Sept-Iles	CLMX 10062	Marche		Sept-Iles
CLMX 10017	Marche		Sept-Iles	CLMX 10063	Marche		Sept-Iles
CLMX 10018	Marche		Sept-Iles	CLMX 10064	Marche		Sept-Iles
CLMX 10019	Marche		Sept-Iles	CLMX 10065	SCRAP		Sept-Iles
CLMX 10020	Marche		Sept-Iles	CLMX 10066	Marche		Sept-Iles
CLMX 10021	Marche		Sept-Iles	CLMX 10067	Marche		Sept-Iles
CLMX 10022	Marche		Sept-Iles	CLMX 10068	Marche		Sept-Iles
CLMX 10023	Marche		Sept-Iles	CLMX 10069	Marche		Sept-Iles
CLMX 10024	Marche		Sept-Iles	CLMX 10070	Marche		Sept-Iles
CLMX 10025	Marche		Sept-Iles	CLMX 10071	Marche		Sept-Iles
CLMX 10026	Marche		Sept-Iles	CLMX 10072	Marche		Sept-Iles
CLMX 10027	Marche		Sept-Iles	CLMX 10073	Marche		Sept-Iles
CLMX 10028	Marche		Sept-Iles	CLMX 10074	Marche		Sept-Iles
CLMX 10029	Marche		Sept-Iles	CLMX 10075	Marche		Sept-Iles
CLMX 10030	Marche		Sept-Iles	CLMX 10076	SCRAP		Sept-Iles
CLMX 10031	Marche		Sept-Iles	CLMX 10077	SCRAP		Sept-Iles
CLMX 10032	Marche		Sept-Iles	CLMX 10078	Marche		Sept-Iles
CLMX 10033	Marche		Sept-Iles	CLMX 10079	Marche		Sept-Iles
CLMX 10034	Marche		Sept-Iles	CLMX 10080	Marche		Sept-Iles
CLMX 10035	Marche		Sept-Iles	CLMX 10081	Marche		Sept-Iles
CLMX 10036	Marche		Sept-Iles	CLMX 10082	Marche		Sept-Iles
CLMX 10037	Marche		Sept-Iles	CLMX 10083	Marche		Sept-Iles
CLMX 10038	Marche		Sept-Iles	CLMX 10084	Marche		Sept-Iles
CLMX 10039	Marche		Sept-Iles	CLMX 10085	Marche		Sept-Iles
CLMX 10040	Marche		Sept-Iles	CLMX 10086	Marche		Sept-Iles
CLMX 10041	Marche		Sept-Iles	CLMX 10087	Marche		Sept-Iles
CLMX 10042	Marche		Sept-Iles	CLMX 10088	Marche		Sept-Iles
CLMX 10043	SCRAP		Sept-Iles	CLMX 10089	Marche		Sept-Iles
CLMX 10044	Marche		Sept-Iles	CLMX 10090	Marche		Sept-Iles
CLMX 10045	Marche		Sept-Iles	CLMX 10091	Marche		Sept-Iles
CLMX 10046	Marche		Sept-Iles	CLMX 10092	Marche		Sept-Iles

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

Rail Car List - page 2 of 17

# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10093	Marche		Sept-Iles	CLMX 10139	Marche	prêt	Sept-Iles
CLMX 10094	Marche		Sept-Iles	CLMX 10140	Marche		Sept-Iles
CLMX 10095	Marche		Sept-Iles	CLMX 10141	SCRAP		Sept-Iles
CLMX 10096	Marche		Sept-Iles	CLMX 10142	Marche		Sept-Iles
CLMX 10097	Marche		Sept-Iles	CLMX 10143	Marche		Sept-Iles
CLMX 10098	Marche		Sept-Iles	CLMX 10144	Marche		Sept-Iles
CLMX 10099	Marche		Sept-Iles	CLMX 10145	SCRAP		Sept-Iles
CLMX 10100	Marche		Sept-Iles	CLMX 10146	Marche		Sept-Iles
CLMX 10101	Marche		Sept-Iles	CLMX 10147	Marche		Sept-Iles
CLMX 10102	Marche		Sept-Iles	CLMX 10148	Marche		Sept-Iles
CLMX 10103	Marche		Sept-Iles	CLMX 10149	Marche		Sept-Iles
CLMX 10104	Marche		Sept-Iles	CLMX 10150	Marche		Sept-Iles
CLMX 10105	Marche		Sept-Iles	CLMX 10151	Marche		Sept-Iles
CLMX 10106	Marche		Sept-Iles	CLMX 10152	Marche		Sept-Iles
CLMX 10107	Marche		Sept-Iles	CLMX 10153	Marche		Sept-Iles
CLMX 10108	Marche		Sept-Iles	CLMX 10154	Marche		Sept-Iles
CLMX 10109	Marche		Sept-Iles	CLMX 10155	Marche		Sept-Iles
CLMX 10110	Marche		Sept-Iles	CLMX 10156	Marche		Sept-Iles
CLMX 10111	Marche		Sept-Iles	CLMX 10157	Marche		Sept-Iles
CLMX 10112	Marche		Sept-Iles	CLMX 10158	Marche		Sept-Iles
CLMX 10113	Marche		Sept-Iles	CLMX 10159	Marche		Sept-Iles
CLMX 10114	Marche		Sept-Iles	CLMX 10160	Marche		Sept-Iles
CLMX 10115	Marche		Sept-Iles	CLMX 10161	Marche		Sept-Iles
CLMX 10116	Marche		Sept-Iles	CLMX 10162	BO		Sept-Iles
CLMX 10117	Marche		Sept-Iles	CLMX 10163	Marche		Sept-Iles
CLMX 10118	Marche		Sept-Iles	CLMX 10164	Marche		Sept-Iles
CLMX 10119	Marche		Sept-Iles	CLMX 10165	Marche		Sept-Iles
CLMX 10120	Marche		Sept-Iles	CLMX 10166	Marche		Sept-Iles
CLMX 10121	Marche		Sept-Iles	CLMX 10167	Marche		Sept-Iles
CLMX 10122	Marche		Sept-Iles	CLMX 10168	Marche		Sept-Iles
CLMX 10123	Marche		Sept-Iles	CLMX 10169	Marche		Sept-Iles
CLMX 10124	Marche		Sept-Iles	CLMX 10170	Marche		Sept-Iles
CLMX 10125	Marche		Sept-Iles	CLMX 10171	Marche		Sept-Iles
CLMX 10126	Marche		Sept-Iles	CLMX 10172	Marche		Sept-Iles
CLMX 10127	Marche		Sept-Iles	CLMX 10173	Marche		Sept-Iles
CLMX 10128	Marche		Sept-Iles	CLMX 10174	Marche		Sept-Iles
CLMX 10129	Marche		Sept-Iles	CLMX 10175	Marche		Sept-Iles
CLMX 10130	Marche		Sept-Iles	CLMX 10176	Marche		Sept-Iles
CLMX 10131	Marche		Sept-Iles	CLMX 10177	Marche		Sept-Iles
CLMX 10132	Marche		Sept-Iles	CLMX 10178	Marche		Sept-Iles
CLMX 10133	SCRAP		Sept-Iles	CLMX 10179	Marche		Sept-Iles
CLMX 10134	Marche		Sept-Iles	CLMX 10180	Marche		Sept-Iles
CLMX 10135	Marche		Sept-Iles	CLMX 10181	Marche		Sept-Iles
CLMX 10136	Marche		Sept-Iles	CLMX 10182	Marche		Sept-Iles
CLMX 10137	Marche		Sept-Iles	CLMX 10183	Marche		Sept-Iles
CLMX 10138	Marche		Sept-Iles	CLMX 10184	Marche		Sept-Iles

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10185	Marche		Sept-Iles	CLMX 10231	Marche		Sept-Iles
CLMX 10186	Marche		Sept-Iles	CLMX 10232	Marche		Sept-Iles
CLMX 10187	Marche		Sept-Iles	CLMX 10233	Marche		Sept-Iles
CLMX 10188	Marche		Sept-Iles	CLMX 10234	Marche		Sept-Iles
CLMX 10189	SCRAP		Sept-Iles	CLMX 10235	Marche		Sept-Iles
CLMX 10190	Marche		Sept-Iles	CLMX 10236	Marche		Sept-Iles
CLMX 10191	Marche		Sept-Iles	CLMX 10237	Marche		Sept-Iles
CLMX 10192	Marche		Sept-Iles	CLMX 10238	Marche		Sept-Iles
CLMX 10193	Marche		Sept-Iles	CLMX 10239	Marche		Sept-Iles
CLMX 10194	Marche		Sept-Iles	CLMX 10240	Marche		Sept-Iles
CLMX 10195	Marche		Sept-Iles	CLMX 10241	Marche		Sept-Iles
CLMX 10196	Marche		Sept-Iles	CLMX 10242	Marche		Sept-Iles
CLMX 10197	Marche		Sept-Iles	CLMX 10243	Marche		Sept-Iles
CLMX 10198	Marche		Sept-Iles	CLMX 10244	Marche		Sept-Iles
CLMX 10199	Marche		Sept-Iles	CLMX 10245	Marche		Sept-Iles
CLMX 10200	Marche		Sept-Iles	CLMX 10246	Marche		Sept-Iles
CLMX 10201	Marche		Sept-Iles	CLMX 10247	Marche		Sept-Iles
CLMX 10202	Marche		Sept-Iles	CLMX 10248	Marche		Sept-Iles
CLMX 10203	Marche		Sept-Iles	CLMX 10249	Marche		Sept-Iles
CLMX 10204	Marche		Sept-Iles	CLMX 10250	Marche		Sept-Iles
CLMX 10205	Marche		Sept-Iles	CLMX 10251	Marche		Sept-Iles
CLMX 10206	Marche		Sept-Iles	CLMX 10252	Marche		Sept-Iles
CLMX 10207	Marche		Sept-Iles	CLMX 10253	Marche		Sept-Iles
CLMX 10208	Marche		Sept-Iles	CLMX 10254	Marche		Sept-Iles
CLMX 10209	Marche		Sept-Iles	CLMX 10255	Marche		Sept-Iles
CLMX 10210	Marche		Sept-Iles	CLMX 10256	Marche		Sept-Iles
CLMX 10211	Marche		Sept-Iles	CLMX 10257	Marche		Sept-Iles
CLMX 10212	Marche		Sept-Iles	CLMX 10258	Marche		Sept-Iles
CLMX 10213	Marche		Sept-Iles	CLMX 10259	Marche		Sept-Iles
CLMX 10214	Marche		Sept-Iles	CLMX 10260	Marche		Sept-Iles
CLMX 10215	Marche		Sept-Iles	CLMX 10261	Marche		Sept-Iles
CLMX 10216	Marche		Sept-Iles	CLMX 10262	Marche		Sept-Iles
CLMX 10217	Marche		Sept-Iles	CLMX 10263	Marche		Sept-Iles
CLMX 10218	Marche		Sept-Iles	CLMX 10264	Marche		Sept-Iles
CLMX 10219	Marche		Sept-Iles	CLMX 10265	Marche		Sept-Iles
CLMX 10220	Marche		Sept-Iles	CLMX 10266	Marche		Sept-Iles
CLMX 10221	Marche		Sept-Iles	CLMX 10267	Marche		Sept-Iles
CLMX 10222	Marche		Sept-Iles	CLMX 10268	Marche		Sept-Iles
CLMX 10223	Marche		Sept-Iles	CLMX 10269	Marche		Sept-Iles
CLMX 10224	Marche		Sept-Iles	CLMX 10270	Marche		Sept-Iles
CLMX 10225	Marche		Sept-Iles	CLMX 10271	Marche		Sept-Iles
CLMX 10226	Marche		Sept-Iles	CLMX 10272	Marche		Sept-Iles
CLMX 10227	Marche		Sept-Iles	CLMX 10273	Marche		Sept-Iles
CLMX 10228	Marche		Sept-Iles	CLMX 10274	Marche		Sept-Iles
CLMX 10229	Marche		Sept-Iles	CLMX 10275	Marche		Sept-Iles
CLMX 10230	Marche		Sept-Iles	CLMX 10276	Marche		Sept-Iles

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10277	Marche		Sept-Iles	CLMX 10323	Marche		Sept-Iles
CLMX 10278	Marche		Sept-Iles	CLMX 10324	Marche		Sept-Iles
CLMX 10279	Marche		Sept-Iles	CLMX 10325	Marche		Sept-Iles
CLMX 10280	Marche		Sept-Iles	CLMX 10326	Marche		Sept-Iles
CLMX 10281	Marche		Sept-Iles	CLMX 10327	Marche		Sept-Iles
CLMX 10282	Marche		Sept-Iles	CLMX 10328	Derail		Sept-Iles
CLMX 10283	Marche		Sept-Iles	CLMX 10329	Marche		Sept-Iles
CLMX 10284	Marche		Sept-Iles	CLMX 10330	Marche		Sept-Iles
CLMX 10285	Marche		Sept-Iles	CLMX 10331	Marche		Sept-Iles
CLMX 10286	Marche		Sept-Iles	CLMX 10332	Marche		Sept-Iles
CLMX 10287	Marche		Sept-Iles	CLMX 10333	Marche		Sept-Iles
CLMX 10288	Marche		Sept-Iles	CLMX 10334	Marche		Sept-Iles
CLMX 10289	Marche		Sept-Iles	CLMX 10335	Marche		Sept-Iles
CLMX 10290	Marche		Sept-Iles	CLMX 10336	Marche		Sept-Iles
CLMX 10291	Marche		Sept-Iles	CLMX 10337	Marche		Sept-Iles
CLMX 10292	Marche		Sept-Iles	CLMX 10338	Marche		Sept-Iles
CLMX 10293	Marche		Sept-Iles	CLMX 10339	Marche		Sept-Iles
CLMX 10294	Marche		Sept-Iles	CLMX 10340	Marche		Sept-Iles
CLMX 10295	Marche		Sept-Iles	CLMX 10341	Marche		Sept-Iles
CLMX 10296	Marche		Sept-Iles	CLMX 10342	Marche		Sept-Iles
CLMX 10297	Marche		Sept-Iles	CLMX 10343	Marche		Sept-Iles
CLMX 10298	Marche		Sept-Iles	CLMX 10344	Derail		Sept-Iles
CLMX 10299	Marche		Sept-Iles	CLMX 10345	Marche		Sept-Iles
CLMX 10300	Marche		Sept-Iles	CLMX 10346	Marche		Sept-Iles
CLMX 10301	Marche		Sept-Iles	CLMX 10347	Marche		Sept-Iles
CLMX 10302	Marche		Sept-Iles	CLMX 10348	Marche		Sept-Iles
CLMX 10303	Marche		Sept-Iles	CLMX 10349	Marche		Sept-Iles
CLMX 10304	Marche		Sept-Iles	CLMX 10350	Marche		Sept-Iles
CLMX 10305	Marche		Sept-Iles	CLMX 10351	BO	Ressort, wedge	Sept-Iles
CLMX 10306	Marche		Sept-Iles	CLMX 10352	Marche		Sept-Iles
CLMX 10307	Marche		Sept-Iles	CLMX 10353	Marche		Sept-Iles
CLMX 10308	Marche		Sept-Iles	CLMX 10354	Marche		Sept-Iles
CLMX 10309	Marche		Sept-Iles	CLMX 10355	Marche		Sept-Iles
CLMX 10310	Marche		Sept-Iles	CLMX 10356	Marche		Sept-Iles
CLMX 10311	Marche		Sept-Iles	CLMX 10357	Marche		Sept-Iles
CLMX 10312	Marche		Sept-Iles	CLMX 10358	Marche		Sept-Iles
CLMX 10313	Marche		Sept-Iles	CLMX 10359	Marche		Sept-Iles
CLMX 10314	Marche		Sept-Iles	CLMX 10360	Marche		Sept-Iles
CLMX 10315	Marche		Sept-Iles	CLMX 10361	Marche		Sept-Iles
CLMX 10316	Marche		Sept-Iles	CLMX 10362	Marche		Sept-Iles
CLMX 10317	Marche		Sept-Iles	CLMX 10363	Marche		Sept-Iles
CLMX 10318	Marche		Sept-Iles	CLMX 10364	Marche		Sept-Iles
CLMX 10319	Marche		Sept-Iles	CLMX 10365	Marche		Sept-Iles
CLMX 10320	Marche		Sept-Iles	CLMX 10366	Marche		Sept-Iles
CLMX 10321	Marche		Sept-Iles	CLMX 10367	Marche		Sept-Iles
CLMX 10322	Marche		Sept-Iles	CLMX 10368	Marche		Sept-Iles

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10369	Marche		Sept-Iles	CLMX 10415	Marche		Sept-Iles
CLMX 10370	Marche		Sept-Iles	CLMX 10416	Marche		Sept-Iles
CLMX 10371	Marche		Sept-Iles	CLMX 10417	Marche		Sept-Iles
CLMX 10372	Marche		Sept-Iles	CLMX 10418	Marche		Sept-Iles
CLMX 10373	Marche		Sept-Iles	CLMX 10419	Marche		Sept-Iles
CLMX 10374	Marche		Sept-Iles	CLMX 10420	Marche		Sept-Iles
CLMX 10375	Marche		Sept-Iles	CLMX 10421	Marche		Sept-Iles
CLMX 10376	Marche		Sept-Iles	CLMX 10422	Marche		Sept-Iles
CLMX 10377	Marche		Sept-Iles	CLMX 10423	Marche		Sept-Iles
CLMX 10378	Marche		Sept-Iles	CLMX 10424	Marche		Sept-Iles
CLMX 10379	Marche		Sept-Iles	CLMX 10425	Marche		Sept-Iles
CLMX 10380	Marche		Sept-Iles	CLMX 10426	Marche		Sept-Iles
CLMX 10381	Marche		Sept-Iles	CLMX 10427	Marche		Sept-Iles
CLMX 10382	Marche		Sept-Iles	CLMX 10428	Marche		Sept-Iles
CLMX 10383	Marche		Sept-Iles	CLMX 10429	Marche		Sept-Iles
CLMX 10384	Marche		Sept-Iles	CLMX 10430	Marche		Sept-Iles
CLMX 10385	Marche		Sept-Iles	CLMX 10431	Marche		Sept-Iles
CLMX 10386	Marche		Sept-Iles	CLMX 10432	Marche		Sept-Iles
CLMX 10387	Marche		Sept-Iles	CLMX 10433	Marche		Sept-Iles
CLMX 10388	Marche		Sept-Iles	CLMX 10434	Marche		Sept-Iles
CLMX 10389	Marche		Sept-Iles	CLMX 10435	Marche		Sept-Iles
CLMX 10390	Marche		Sept-Iles	CLMX 10436	Marche		Sept-Iles
CLMX 10391	Marche		Sept-Iles	CLMX 10437	Marche		Sept-Iles
CLMX 10392	Marche		Sept-Iles	CLMX 10438	Marche		Sept-Iles
CLMX 10393	Marche		Sept-Iles	CLMX 10439	Marche		Sept-Iles
CLMX 10394	Marche		Sept-Iles	CLMX 10440	Marche		Sept-Iles
CLMX 10395	Marche		Sept-Iles	CLMX 10441	Marche		Sept-Iles
CLMX 10396	Marche		Sept-Iles	CLMX 10442	Marche		Sept-Iles
CLMX 10397	Marche		Sept-Iles	CLMX 10443	Marche		Sept-Iles
CLMX 10398	Marche		Sept-Iles	CLMX 10444	Marche		Sept-Iles
CLMX 10399	Marche		Sept-Iles	CLMX 10445	Marche		Sept-Iles
CLMX 10400	Marche		Sept-Iles	CLMX 10446	Marche		Sept-Iles
CLMX 10401	Marche		Sept-Iles	CLMX 10447	Marche		Sept-Iles
CLMX 10402	Marche		Sept-Iles	CLMX 10448	Marche		Sept-Iles
CLMX 10403	Marche		Sept-Iles	CLMX 10449	Marche		Sept-Iles
CLMX 10404	Marche		Sept-Iles	CLMX 10450	Marche		Sept-Iles
CLMX 10405	Marche		Sept-Iles	CLMX 10451	Marche		Sept-Iles
CLMX 10406	Marche		Sept-Iles	CLMX 10452	Marche		Sept-Iles
CLMX 10407	Marche		Sept-Iles	CLMX 10453	Marche		Sept-Iles
CLMX 10408	Marche		Sept-Iles	CLMX 10454	Marche		Sept-Iles
CLMX 10409	Marche		Sept-Iles	CLMX 10455	Marche		Sept-Iles
CLMX 10410	Marche		Sept-Iles	CLMX 10456	Marche		Sept-Iles
CLMX 10411	Marche		Sept-Iles	CLMX 10457	Marche		Sept-Iles
CLMX 10412	Marche		Sept-Iles	CLMX 10458	Marche		Sept-Iles
CLMX 10413	Marche		Sept-Iles	CLMX 10459	Marche		Sept-Iles
CLMX 10414	Marche		Sept-Iles	CLMX 10460	Marche		Sept-Iles

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10461	Marche		Sept-Iles	CLMX 10507	Marche		Sept-Iles
CLMX 10462	Marche		Sept-Iles	CLMX 10508	Marche		Sept-Iles
CLMX 10463	Marche		Sept-Iles	CLMX 10509	Marche		Sept-Iles
CLMX 10464	Marche		Sept-Iles	CLMX 10510	Marche		Sept-Iles
CLMX 10465	Marche		Sept-Iles	CLMX 10511	Marche		Sept-Iles
CLMX 10466	Marche		Sept-Iles	CLMX 10512	Marche		Sept-Iles
CLMX 10467	Marche		Sept-Iles	CLMX 10513	Marche		Sept-Iles
CLMX 10468	Marche		Sept-Iles	CLMX 10514	Marche		Sept-Iles
CLMX 10469	Marche		Sept-Iles	CLMX 10515	Marche		Sept-Iles
CLMX 10470	Marche		Sept-Iles	CLMX 10516	Marche		Sept-Iles
CLMX 10471	Marche		Sept-Iles	CLMX 10517	Marche		Sept-Iles
CLMX 10472	Marche		Sept-Iles	CLMX 10518	Marche		Sept-Iles
CLMX 10473	Marche		Sept-Iles	CLMX 10519	Marche		Sept-Iles
CLMX 10474	Marche		Sept-Iles	CLMX 10520	Marche		Sept-Iles
CLMX 10475	Marche		Sept-Iles	CLMX 10521	Marche		Sept-Iles
CLMX 10476	Marche		Sept-Iles	CLMX 10522	Marche		Sept-Iles
CLMX 10477	Marche		Sept-Iles	CLMX 10523	Marche		Sept-Iles
CLMX 10478	Marche		Sept-Iles	CLMX 10524	Marche		Sept-Iles
CLMX 10479	Marche		Sept-Iles	CLMX 10525	Marche		Sept-Iles
CLMX 10480	Marche		Sept-Iles	CLMX 10526	Marche		Sept-Iles
CLMX 10481	Marche		Sept-Iles	CLMX 10527	Marche		Sept-Iles
CLMX 10482	Marche		Sept-Iles	CLMX 10528	Marche		Sept-Iles
CLMX 10483	Marche		Sept-Iles	CLMX 10529	Marche		Sept-Iles
CLMX 10484	Marche		Sept-Iles	CLMX 10530	Marche		Sept-Iles
CLMX 10485	Marche		Sept-Iles	CLMX 10531	Marche		Sept-Iles
CLMX 10486	Marche		Sept-Iles	CLMX 10532	Marche		Sept-Iles
CLMX 10487	Marche		Sept-Iles	CLMX 10533	Marche		Sept-Iles
CLMX 10488	Marche		Sept-Iles	CLMX 10534	Marche		Sept-Iles
CLMX 10489	Marche		Sept-Iles	CLMX 10535	Marche		Sept-Iles
CLMX 10490	Marche		Sept-Iles	CLMX 10536	Marche		Sept-Iles
CLMX 10491	Marche		Sept-Iles	CLMX 10537	Marche		Sept-Iles
CLMX 10492	Marche		Sept-Iles	CLMX 10538	Marche		Sept-Iles
CLMX 10493	Marche		Sept-Iles	CLMX 10539	Marche		Sept-Iles
CLMX 10494	Marche		Sept-Iles	CLMX 10540	Marche		Sept-Iles
CLMX 10495	Marche		Sept-Iles	CLMX 10541	Marche		Sept-Iles
CLMX 10496	Marche		Sept-Iles	CLMX 10542	Marche		Sept-Iles
CLMX 10497	Marche		Sept-Iles	CLMX 10543	Marche		Sept-Iles
CLMX 10498	Marche		Sept-Iles	CLMX 10544	SCRAP		Sept-Iles
CLMX 10499	Marche		Sept-Iles	CLMX 10545	Marche		Sept-Iles
CLMX 10500	Marche		Sept-Iles	CLMX 10546	Marche		Sept-Iles
CLMX 10501	Marche		Sept-Iles	CLMX 10547	Marche		Sept-Iles
CLMX 10502	Marche		Sept-Iles	CLMX 10548	Marche		Sept-Iles
CLMX 10503	Marche		Sept-Iles	CLMX 10549	Marche		Sept-Iles
CLMX 10504	Marche		Sept-Iles	CLMX 10550	Marche		Sept-Iles
CLMX 10505	Marche		Sept-Iles	CLMX 10551	Marche		Sept-Iles
CLMX 10506	Marche		Sept-Iles	CLMX 10552	Marche		Sept-Iles

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10553	Marche		Sept-Iles	CLMX 10599	Marche		Sept-Iles
CLMX 10554	Marche		Sept-Iles	CLMX 10600	Marche		Sept-Iles
CLMX 10555	Marche		Sept-Iles	CLMX 10601	Marche		Sept-Iles
CLMX 10556	Marche		Sept-Iles	CLMX 10602	Marche		Sept-Iles
CLMX 10557	Marche		Sept-Iles	CLMX 10603	Marche		Sept-Iles
CLMX 10558	Marche		Sept-Iles	CLMX 10604	Marche		Sept-Iles
CLMX 10559	Marche		Sept-Iles	CLMX 10605	Marche		Sept-Iles
CLMX 10560	Marche		Sept-Iles	CLMX 10606	Marche		Sept-Iles
CLMX 10561	Marche		Sept-Iles	CLMX 10607	Marche		Sept-Iles
CLMX 10562	Marche		Sept-Iles	CLMX 10608	Marche		Sept-Iles
CLMX 10563	Marche		Sept-Iles	CLMX 10609	Marche		Sept-Iles
CLMX 10564	Marche		Sept-Iles	CLMX 10610	Marche		Sept-Iles
CLMX 10565	Marche		Sept-Iles	CLMX 10611	Marche		Sept-Iles
CLMX 10566	Marche		Sept-Iles	CLMX 10612	Marche		Sept-Iles
CLMX 10567	Marche		Sept-Iles	CLMX 10613	Marche		Sept-Iles
CLMX 10568	Marche		Sept-Iles	CLMX 10614	Marche		Sept-Iles
CLMX 10569	Marche		Sept-Iles	CLMX 10615	Marche		Sept-Iles
CLMX 10570	Marche		Sept-Iles	CLMX 10616	Marche		Sept-Iles
CLMX 10571	Marche		Sept-Iles	CLMX 10617	Marche		Sept-Iles
CLMX 10572	Marche		Sept-Iles	CLMX 10618	Marche		Sept-Iles
CLMX 10573	Marche		Sept-Iles	CLMX 10619	Marche		Sept-Iles
CLMX 10574	Marche		Sept-Iles	CLMX 10620	Marche		Sept-Iles
CLMX 10575	Marche		Sept-Iles	CLMX 10621	Marche		Sept-Iles
CLMX 10576	SCRAP		Sept-Iles	CLMX 10622	Marche		Sept-Iles
CLMX 10577	Marche		Sept-Iles	CLMX 10623	Marche		Sept-Iles
CLMX 10578	Marche		Sept-Iles	CLMX 10624	Marche		Sept-Iles
CLMX 10579	Marche		Sept-Iles	CLMX 10625	Marche		Sept-Iles
CLMX 10580	Marche		Sept-Iles	CLMX 10626	Marche		Sept-Iles
CLMX 10581	Marche		Sept-Iles	CLMX 10627	Marche		Sept-Iles
CLMX 10582	Marche		Sept-Iles	CLMX 10628	Marche		Sept-Iles
CLMX 10583	Marche		Sept-Iles	CLMX 10629	Marche		Sept-Iles
CLMX 10584	Marche		Sept-Iles	CLMX 10630	Marche		Sept-Iles
CLMX 10585	Marche		Sept-Iles	CLMX 10631	Marche		Sept-Iles
CLMX 10586	Marche		Sept-Iles	CLMX 10632	Marche		Sept-Iles
CLMX 10587	Marche		Sept-Iles	CLMX 10633	Marche		Sept-Iles
CLMX 10588	Marche		Sept-Iles	CLMX 10634	Marche		Sept-Iles
CLMX 10589	Marche		Sept-Iles	CLMX 10635	Marche		Sept-Iles
CLMX 10590	Marche		Sept-Iles	CLMX 10636	Marche		Sept-Iles
CLMX 10591	Marche		Sept-Iles	CLMX 10637	Marche		Sept-Iles
CLMX 10592	Marche		Sept-Iles	CLMX 10638	Marche		Sept-Iles
CLMX 10593	Marche		Sept-Iles	CLMX 10639	Marche		Sept-Iles
CLMX 10594	Marche		Sept-Iles	CLMX 10640	Marche		Sept-Iles
CLMX 10595	Marche		Sept-Iles	CLMX 10641	Marche		Sept-Iles
CLMX 10596	Marche		Sept-Iles	CLMX 10642	Marche		Sept-Iles
CLMX 10597	Marche		Sept-Iles	CLMX 10643	Marche		Sept-Iles
CLMX 10598	Marche		Sept-Iles	CLMX 10644	Marche		Sept-Iles

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10645	Marche		Sept-Iles	CLMX 10691	Marche		Sept-Iles
CLMX 10646	Marche		Sept-Iles	CLMX 10692	Marche		Sept-Iles
CLMX 10647	Marche		Sept-Iles	CLMX 10693	Marche		Sept-Iles
CLMX 10648	Marche		Sept-Iles	CLMX 10694	Marche		Sept-Iles
CLMX 10649	Marche		Sept-Iles	CLMX 10695	Marche		Sept-Iles
CLMX 10650	Marche		Sept-Iles	CLMX 10696	Marche		Sept-Iles
CLMX 10651	Marche		Sept-Iles	CLMX 10697	Marche		Sept-Iles
CLMX 10652	Marche		Sept-Iles	CLMX 10698	Marche		Sept-Iles
CLMX 10653	Marche		Sept-Iles	CLMX 10699	Marche		Sept-Iles
CLMX 10654	Marche		Sept-Iles	CLMX 10700	Marche		Sept-Iles
CLMX 10655	Marche		Sept-Iles	CLMX 10701	Marche		Sept-Iles
CLMX 10656	Marche		Sept-Iles	CLMX 10702	Marche		Sept-Iles
CLMX 10657	Marche		Sept-Iles	CLMX 10703	Marche		Sept-Iles
CLMX 10658	Marche		Sept-Iles	CLMX 10704	Marche		Sept-Iles
CLMX 10659	Marche		Sept-Iles	CLMX 10705	Marche		Sept-Iles
CLMX 10660	Marche		Sept-Iles	CLMX 10706	Marche		Sept-Iles
CLMX 10661	Marche		Sept-Iles	CLMX 10707	Marche		Sept-Iles
CLMX 10662	Marche		Sept-Iles	CLMX 10708	Marche		Sept-Iles
CLMX 10663	Marche		Sept-Iles	CLMX 10709	Marche		Sept-Iles
CLMX 10664	Marche		Sept-Iles	CLMX 10710	Marche		Sept-Iles
CLMX 10665	Marche		Sept-Iles	CLMX 10711	Marche		Sept-Iles
CLMX 10666	Marche		Sept-Iles	CLMX 10712	Marche		Sept-Iles
CLMX 10667	Marche		Sept-Iles	CLMX 10713	Marche		Sept-Iles
CLMX 10668	Marche		Sept-Iles	CLMX 10714	Marche		Sept-Iles
CLMX 10669	Marche		Sept-Iles	CLMX 10715	Marche		Sept-Iles
CLMX 10670	Marche		Sept-Iles	CLMX 10716	Marche		Sept-Iles
CLMX 10671	Marche		Sept-Iles	CLMX 10717	Marche		Sept-Iles
CLMX 10672	Marche		Sept-Iles	CLMX 10718	SCRAP		Sept-Iles
CLMX 10673	Marche		Sept-Iles	CLMX 10719	Marche		Sept-Iles
CLMX 10674	Marche		Sept-Iles	CLMX 10720	Marche		Sept-Iles
CLMX 10675	Marche		Sept-Iles	CLMX 10721	Marche		Sept-Iles
CLMX 10676	Marche		Sept-Iles	CLMX 10722	Marche		Sept-Iles
CLMX 10677	Marche		Sept-Iles	CLMX 10723	Marche		Sept-Iles
CLMX 10678	Marche		Sept-Iles	CLMX 10724	Marche		Sept-Iles
CLMX 10679	Marche		Sept-Iles	CLMX 10725	Marche		Sept-Iles
CLMX 10680	Marche		Sept-Iles	CLMX 10726	Marche		Sept-Iles
CLMX 10681	SCRAP		Sept-Iles	CLMX 10727	Marche		Sept-Iles
CLMX 10682	Marche		Sept-Iles	CLMX 10728	Marche		Sept-Iles
CLMX 10683	Marche		Sept-Iles	CLMX 10729	Marche		Sept-Iles
CLMX 10684	Marche		Sept-Iles	CLMX 10730	Marche		Sept-Iles
CLMX 10685	Marche		Sept-Iles	CLMX 10731	Marche		Sept-Iles
CLMX 10686	Marche		Sept-Iles	CLMX 10732	Marche		Sept-Iles
CLMX 10687	Marche		Sept-Iles	CLMX 10733	Marche		Sept-Iles
CLMX 10688	Marche		Sept-Iles	CLMX 10734	SCRAP		Sept-Iles
CLMX 10689	Marche		Sept-Iles	CLMX 10735	Marche		Sept-Iles
CLMX 10690	Marche		Sept-Iles	CLMX 10736	Marche		Sept-Iles

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10737	Marche		Sept-Iles	CLMX 10783			Sept-Iles
CLMX 10738	Marche		Sept-Iles	CLMX 10784			Sept-Iles
CLMX 10739	Marche		Sept-Iles	CLMX 10785			Sept-Iles
CLMX 10740	Marche		Sept-Iles	CLMX 10786			Sept-Iles
CLMX 10741	Marche		Sept-Iles	CLMX 10787			Sept-Iles
CLMX 10742	Marche		Sept-Iles	CLMX 10788			Sept-Iles
CLMX 10743	Marche		Sept-Iles	CLMX 10789			Sept-Iles
CLMX 10744	Marche		Sept-Iles	CLMX 10790			Sept-Iles
CLMX 10745	Marche		Sept-Iles	CLMX 10791			Sept-Iles
CLMX 10746	Marche		Sept-Iles	CLMX 10792			Sept-Iles
CLMX 10747	Marche		Sept-Iles	CLMX 10793			Sept-Iles
CLMX 10748	Marche		Sept-Iles	CLMX 10794			Sept-Iles
CLMX 10749	Marche		Sept-Iles	CLMX 10795			Sept-Iles
CLMX 10750	Marche		Sept-Iles	CLMX 10796			Sept-Iles
CLMX 10751			Sept-Iles	CLMX 10797	Marche		Sept-Iles
CLMX 10752			Sept-Iles	CLMX 10798	Marche		Sept-Iles
CLMX 10753			Sept-Iles	CLMX 10799			Sept-Iles
CLMX 10754			Sept-Iles	CLMX 10800			Sept-Iles
CLMX 10755			Sept-Iles	CLMX 10801	Marche		Sept-Iles
CLMX 10756			Sept-Iles	CLMX 10802			Sept-Iles
CLMX 10757			Sept-Iles	CLMX 10803			Sept-Iles
CLMX 10758			Sept-Iles	CLMX 10804			Sept-Iles
CLMX 10759			Sept-Iles	CLMX 10805			Sept-Iles
CLMX 10760			Sept-Iles	CLMX 10806	STO		Québec
CLMX 10761			Sept-Iles	CLMX 10807			Sept-Iles
CLMX 10762			Sept-Iles	CLMX 10808			Sept-Iles
CLMX 10763			Sept-Iles	CLMX 10809			Sept-Iles
CLMX 10764	Marche		Sept-Iles	CLMX 10810			Sept-Iles
CLMX 10765			Sept-Iles	CLMX 10811			Sept-Iles
CLMX 10766			Sept-Iles	CLMX 10812			Sept-Iles
CLMX 10767			Sept-Iles	CLMX 10813			Sept-Iles
CLMX 10768	Marche		Sept-Iles	CLMX 10814			Sept-Iles
CLMX 10769			Sept-Iles	CLMX 10815			Sept-Iles
CLMX 10770	Marche		Sept-Iles	CLMX 10816			Sept-Iles
CLMX 10771			Sept-Iles	CLMX 10817			Sept-Iles
CLMX 10772			Sept-Iles	CLMX 10818			Sept-Iles
CLMX 10773			Sept-Iles	CLMX 10819			Sept-Iles
CLMX 10774			Sept-Iles	CLMX 10820			Sept-Iles
CLMX 10775			Sept-Iles	CLMX 10821	Marche		Sept-Iles
CLMX 10776			Sept-Iles	CLMX 10822	Marche		Sept-Iles
CLMX 10777			Sept-Iles	CLMX 10823	Marche		Sept-Iles
CLMX 10778			Sept-Iles	CLMX 10824	Marche		Sept-Iles
CLMX 10779			Sept-Iles	CLMX 10825			Sept-Iles
CLMX 10780			Sept-Iles	CLMX 10826			Sept-Iles
CLMX 10781			Sept-Iles	CLMX 10827	Marche		Sept-Iles
CLMX 10782			Sept-Iles	CLMX 10828	Marche		Sept-Iles

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10829			Sept-Iles	CLMX 10875	STO		Québec
CLMX 10830			Sept-Iles	CLMX 10876	STO		Québec
CLMX 10831			Sept-Iles	CLMX 10877			Québec
CLMX 10832	Marche		Sept-Iles	CLMX 10878	STO		Québec
CLMX 10833			Sept-Iles	CLMX 10879	STO		Québec
CLMX 10834	Marche		Sept-Iles	CLMX 10880	STO		Québec
CLMX 10835	STO		Québec	CLMX 10881	STO		Québec
CLMX 10836			Québec	CLMX 10882	STO		Québec
CLMX 10837	STO		Québec	CLMX 10883	STO		Québec
CLMX 10838	STO		Québec	CLMX 10884	STO		Québec
CLMX 10839	STO		Québec	CLMX 10885	STO		Québec
CLMX 10840			Sept-Iles	CLMX 10886	STO		Québec
CLMX 10841	STO		Québec	CLMX 10887	STO		Québec
CLMX 10842	STO		Québec	CLMX 10888	STO		Québec
CLMX 10843	STO		Québec	CLMX 10889	STO		Québec
CLMX 10844			Québec	CLMX 10890	STO		Québec
CLMX 10845			Québec	CLMX 10891	STO		Québec
CLMX 10846	STO		Québec	CLMX 10892	STO		Québec
CLMX 10847	STO		Québec	CLMX 10893	STO		Québec
CLMX 10848	STO		Québec	CLMX 10894	STO		Québec
CLMX 10849	STO		Québec	CLMX 10895	STO		Québec
CLMX 10850	STO		Québec	CLMX 10896	STO		Québec
CLMX 10851	STO		Québec	CLMX 10897	STO		Québec
CLMX 10852	STO		Québec	CLMX 10898	STO		Québec
CLMX 10853	STO		Québec	CLMX 10899	STO		Québec
CLMX 10854	STO		Québec	CLMX 10900	STO		Québec
CLMX 10855	STO		Québec	CLMX 10901	STO		Québec
CLMX 10856	STO		Québec	CLMX 10902	STO		Québec
CLMX 10857			Québec	CLMX 10903	STO		Québec
CLMX 10858			Québec	CLMX 10904	STO		Québec
CLMX 10859	STO		Québec	CLMX 10905			Québec
CLMX 10860	STO		Québec	CLMX 10906			Québec
CLMX 10861	STO		Québec	CLMX 10907			Québec
CLMX 10862	STO		Québec	CLMX 10908	STO		Québec
CLMX 10863			Québec	CLMX 10909			Québec
CLMX 10864	STO		Québec	CLMX 10910	STO		Québec
CLMX 10865	STO		Québec	CLMX 10911	STO		Québec
CLMX 10866	STO		Québec	CLMX 10912			Québec
CLMX 10867	STO		Québec	CLMX 10913	STO		Québec
CLMX 10868	STO		Québec	CLMX 10914			Québec
CLMX 10869	STO		Québec	CLMX 10915			Québec
CLMX 10870	STO		Québec	CLMX 10916			Québec
CLMX 10871	STO		Québec	CLMX 10917			Québec
CLMX 10872	STO		Québec	CLMX 10918			Québec
CLMX 10873	STO		Québec	CLMX 10919			Québec
CLMX 10874	STO		Québec	CLMX 10920			Québec

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 10921			Québec	CLMX 10967			Québec
CLMX 10922			Québec	CLMX 10968			Québec
CLMX 10923			Québec	CLMX 10969			Québec
CLMX 10924			Québec	CLMX 10970			Sept-Iles
CLMX 10925			Québec	CLMX 10971			Québec
CLMX 10926			Québec	CLMX 10972			Québec
CLMX 10927			Québec	CLMX 10973			Québec
CLMX 10928			Québec	CLMX 10974			Québec
CLMX 10929			Québec	CLMX 10975			Québec
CLMX 10930			Sept-Iles	CLMX 10976			Québec
CLMX 10931			Québec	CLMX 10977			Québec
CLMX 10932			Québec	CLMX 10978			Québec
CLMX 10933			Québec	CLMX 10979			Québec
CLMX 10934			Québec	CLMX 10980			Québec
CLMX 10935			Québec	CLMX 10981			Québec
CLMX 10936			Québec	CLMX 10982			Québec
CLMX 10937			Québec	CLMX 10983			Québec
CLMX 10938			Québec	CLMX 10984			Québec
CLMX 10939			Québec	CLMX 10985			Québec
CLMX 10940			Québec	CLMX 10986			Québec
CLMX 10941			Québec	CLMX 10987			Québec
CLMX 10942			Québec	CLMX 10988			Québec
CLMX 10943			Québec	CLMX 10989			Québec
CLMX 10944			Québec	CLMX 10990			Québec
CLMX 10945			Québec	CLMX 10991			Québec
CLMX 10946			Québec	CLMX 10992			Québec
CLMX 10947			Québec	CLMX 10993			Québec
CLMX 10948			Québec	CLMX 10994			Québec
CLMX 10949			Québec	CLMX 10995			Québec
CLMX 10950			Québec	CLMX 10996			Québec
CLMX 10951			Québec	CLMX 10997			Québec
CLMX 10952			Québec	CLMX 10998			Québec
CLMX 10953			Québec	CLMX 10999			Québec
CLMX 10954			Québec	CLMX 11000			Québec
CLMX 10955			Québec	CLMX 11001			Québec
CLMX 10956			Québec	CLMX 11002			Québec
CLMX 10957			Québec	CLMX 11003			Québec
CLMX 10958			Québec	CLMX 11004			Québec
CLMX 10959			Québec	CLMX 11005			Québec
CLMX 10960			Québec	CLMX 11006			Sept-Iles
CLMX 10961			Québec	CLMX 11007			Québec
CLMX 10962			Québec	CLMX 11008			Sept-Iles
CLMX 10963			Québec	CLMX 11009	Marche		Sept-Iles
CLMX 10964			Québec	CLMX 11010			Sept-Iles
CLMX 10965			Québec	CLMX 11011			Sept-Iles
CLMX 10966			Québec	CLMX 11012			Sept-Iles

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 11013			Sept-Iles	CLMX 11059			Sept-Iles
CLMX 11014			Sept-Iles	CLMX 11060			Sept-Iles
CLMX 11015			Sept-Iles	CLMX 11061			Sept-Iles
CLMX 11016			Sept-Iles	CLMX 11062			Sept-Iles
CLMX 11017			Sept-Iles	CLMX 11063			Sept-Iles
CLMX 11018			Sept-Iles	CLMX 11064			Sept-Iles
CLMX 11019			Sept-Iles	CLMX 11065			Sept-Iles
CLMX 11020			Sept-Iles	CLMX 11066			Sept-Iles
CLMX 11021			Sept-Iles	CLMX 11067			Sept-Iles
CLMX 11022			Sept-Iles	CLMX 11068			Sept-Iles
CLMX 11023			Sept-Iles	CLMX 11069			Sept-Iles
CLMX 11024			Sept-Iles	CLMX 11070			Sept-Iles
CLMX 11025			Sept-Iles	CLMX 11071			Sept-Iles
CLMX 11026			Sept-Iles	CLMX 11072			Sept-Iles
CLMX 11027			Sept-Iles	CLMX 11073			Sept-Iles
CLMX 11028			Sept-Iles	CLMX 11074			Sept-Iles
CLMX 11029			Sept-Iles	CLMX 11075			Sept-Iles
CLMX 11030			Sept-Iles	CLMX 11076			Sept-Iles
CLMX 11031			Sept-Iles	CLMX 11077			Sept-Iles
CLMX 11032			Sept-Iles	CLMX 11078			Sept-Iles
CLMX 11033	Marche	prêt	Sept-Iles	CLMX 11079			Sept-Iles
CLMX 11034			Sept-Iles	CLMX 11080			Sept-Iles
CLMX 11035			Sept-Iles	CLMX 11081			Sept-Iles
CLMX 11036			Sept-Iles	CLMX 11082			Québec
CLMX 11037			Sept-Iles	CLMX 11083			Québec
CLMX 11038			Sept-Iles	CLMX 11084			Québec
CLMX 11039			Sept-Iles	CLMX 11085			Québec
CLMX 11040			Sept-Iles	CLMX 11086			Québec
CLMX 11041			Sept-Iles	CLMX 11087			Québec
CLMX 11042			Sept-Iles	CLMX 11088			Québec
CLMX 11043			Sept-Iles	CLMX 11089			Québec
CLMX 11044			Sept-Iles	CLMX 11090			Québec
CLMX 11045			Sept-Iles	CLMX 11091			Québec
CLMX 11046			Sept-Iles	CLMX 11092			Québec
CLMX 11047			Sept-Iles	CLMX 11093			Québec
CLMX 11048			Sept-Iles	CLMX 11094			Québec
CLMX 11049			Sept-Iles	CLMX 11095			Québec
CLMX 11050			Sept-Iles	CLMX 11096			Québec
CLMX 11051			Sept-Iles	CLMX 11097			Québec
CLMX 11052			Sept-Iles	CLMX 11098			Québec
CLMX 11053			Sept-Iles	CLMX 11099			Québec
CLMX 11054			Sept-Iles	CLMX 11100			Québec
CLMX 11055			Sept-Iles	CLMX 11101			Québec
CLMX 11056			Sept-Iles	CLMX 11102			Québec
CLMX 11057			Sept-Iles	CLMX 11103			Québec
CLMX 11058			Sept-Iles	CLMX 11104			Québec

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 11105			Québec	CLMX 11151			Québec
CLMX 11106			Québec	CLMX 11152			Québec
CLMX 11107			Québec	CLMX 11153			Québec
CLMX 11108			Québec	CLMX 11154			Québec
CLMX 11109			Québec	CLMX 11155			Québec
CLMX 11110			Québec	CLMX 11156			Québec
CLMX 11111			Québec	CLMX 11157			Québec
CLMX 11112			Québec	CLMX 11158			Québec
CLMX 11113			Québec	CLMX 11159			Québec
CLMX 11114			Québec	CLMX 11160			Québec
CLMX 11115			Québec	CLMX 11161			Québec
CLMX 11116			Québec	CLMX 11162			Québec
CLMX 11117			Québec	CLMX 11163			Québec
CLMX 11118			Québec	CLMX 11164			Québec
CLMX 11119			Québec	CLMX 11165			Québec
CLMX 11120			Québec	CLMX 11166			Québec
CLMX 11121			Québec	CLMX 11167			Québec
CLMX 11122			Québec	CLMX 11168			Québec
CLMX 11123			Québec	CLMX 11169			Québec
CLMX 11124			Québec	CLMX 11170			Québec
CLMX 11125			Québec	CLMX 11171			Québec
CLMX 11126			Québec	CLMX 11172			Québec
CLMX 11127			Québec	CLMX 11173			Québec
CLMX 11128			Québec	CLMX 11174			Québec
CLMX 11129			Québec	CLMX 11175			Québec
CLMX 11130			Québec	CLMX 11176			Québec
CLMX 11131			Québec	CLMX 11177			Québec
CLMX 11132			Québec	CLMX 11178			Québec
CLMX 11133			Québec	CLMX 11179			Québec
CLMX 11134			Québec	CLMX 11180			Québec
CLMX 11135			Québec	CLMX 11181			Québec
CLMX 11136			Québec	CLMX 11182			Québec
CLMX 11137			Québec	CLMX 11183			Québec
CLMX 11138			Québec	CLMX 11184			Québec
CLMX 11139			Québec	CLMX 11185			Québec
CLMX 11140			Québec	CLMX 11186			Québec
CLMX 11141			Québec	CLMX 11187			Québec
CLMX 11142			Québec	CLMX 11188			Québec
CLMX 11143			Québec	CLMX 11189			Québec
CLMX 11144			Québec	CLMX 11190			Québec
CLMX 11145			Québec	CLMX 11191			Québec
CLMX 11146			Québec	CLMX 11192			Québec
CLMX 11147			Québec	CLMX 11193			Québec
CLMX 11148			Québec	CLMX 11194			Québec
CLMX 11149			Québec	CLMX 11195			Québec
CLMX 11150			Québec	CLMX 11196			Québec

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 11197			Québec	CLMX 11243			Québec
CLMX 11198			Québec	CLMX 11244			Québec
CLMX 11199			Québec	CLMX 11245			Québec
CLMX 11200			Québec	CLMX 11246			Québec
CLMX 11201			Québec	CLMX 11247			Québec
CLMX 11202			Québec	CLMX 11248			Québec
CLMX 11203			Québec	CLMX 11249			Québec
CLMX 11204			Québec	CLMX 11250			Québec
CLMX 11205			Québec	CLMX 11251			Québec
CLMX 11206			Québec	CLMX 11252			Québec
CLMX 11207			Québec	CLMX 11253			Québec
CLMX 11208			Québec	CLMX 11254			Québec
CLMX 11209			Québec	CLMX 11255			Québec
CLMX 11210			Québec	CLMX 11256			Québec
CLMX 11211			Québec	CLMX 11257			Québec
CLMX 11212			Québec	CLMX 11258			Québec
CLMX 11213			Québec	CLMX 11259			Québec
CLMX 11214			Québec	CLMX 11260			Québec
CLMX 11215			Québec	CLMX 11261			Québec
CLMX 11216			Québec	CLMX 11262			Québec
CLMX 11217			Québec	CLMX 11263			Québec
CLMX 11218			Québec	CLMX 11264			Québec
CLMX 11219			Québec	CLMX 11265			Québec
CLMX 11220			Québec	CLMX 11266			Québec
CLMX 11221			Québec	CLMX 11267			Québec
CLMX 11222			Québec	CLMX 11268			Québec
CLMX 11223			Québec	CLMX 11269			Québec
CLMX 11224			Québec	CLMX 11270			Québec
CLMX 11225			Québec	CLMX 11271			Québec
CLMX 11226			Québec	CLMX 11272			Québec
CLMX 11227			Québec	CLMX 11273			Québec
CLMX 11228			Québec	CLMX 11274			Québec
CLMX 11229			Québec	CLMX 11275			Québec
CLMX 11230			Québec	CLMX 11276			Québec
CLMX 11231			Québec	CLMX 11277			Québec
CLMX 11232			Québec	CLMX 11278			Québec
CLMX 11233			Québec	CLMX 11279			Québec
CLMX 11234			Québec	CLMX 11280			Québec
CLMX 11235			Québec	CLMX 11281			Québec
CLMX 11236			Québec	CLMX 11282			Québec
CLMX 11237			Québec	CLMX 11283			Québec
CLMX 11238			Québec	CLMX 11284			Québec
CLMX 11239			Québec	CLMX 11285			Québec
CLMX 11240			Québec	CLMX 11286			Québec
CLMX 11241			Québec	CLMX 11287			Québec
CLMX 11242			Québec	CLMX 11288			Québec

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

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# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 11289			Québec	CLMX 11335			North Bay
CLMX 11290			Québec	CLMX 11336			North Bay
CLMX 11291			Québec	CLMX 11337			North Bay
CLMX 11292			Québec	CLMX 11338			North Bay
CLMX 11293			Québec	CLMX 11339			North Bay
CLMX 11294			Québec	CLMX 11340			North Bay
CLMX 11295			North Bay	CLMX 11341			North Bay
CLMX 11296			Québec	CLMX 11342			North Bay
CLMX 11297			Québec	CLMX 11343			North Bay
CLMX 11298			Québec	CLMX 11344			North Bay
CLMX 11299			Québec	CLMX 11345			North Bay
CLMX 11300			Québec	CLMX 11346			North Bay
CLMX 11301			Québec	CLMX 11347			North Bay
CLMX 11302			Québec	CLMX 11348			North Bay
CLMX 11303			Québec	CLMX 11349			North Bay
CLMX 11304			Québec	CLMX 11350			North Bay
CLMX 11305			Québec	CLMX 11351			North Bay
CLMX 11306			Québec	CLMX 11352			North Bay
CLMX 11307			Québec	CLMX 11353			North Bay
CLMX 11308			North Bay	CLMX 11354			North Bay
CLMX 11309			North Bay	CLMX 11355			North Bay
CLMX 11310			North Bay	CLMX 11356			North Bay
CLMX 11311			Québec	CLMX 11357			North Bay
CLMX 11312			North Bay	CLMX 11358			North Bay
CLMX 11313			North Bay	CLMX 11359			North Bay
CLMX 11314			North Bay	CLMX 11360			North Bay
CLMX 11315			Québec	CLMX 11361			North Bay
CLMX 11316			Québec	CLMX 11362			North Bay
CLMX 11317			Québec	CLMX 11363			North Bay
CLMX 11318			North Bay	CLMX 11364			North Bay
CLMX 11319			North Bay	CLMX 11365			North Bay
CLMX 11320			North Bay	CLMX 11366			North Bay
CLMX 11321			North Bay	CLMX 11367			North Bay
CLMX 11322			North Bay	CLMX 11368			North Bay
CLMX 11323			North Bay	CLMX 11369			North Bay
CLMX 11324			North Bay	CLMX 11370			North Bay
CLMX 11325			North Bay	CLMX 11371			North Bay
CLMX 11326			North Bay	CLMX 11372			North Bay
CLMX 11327			North Bay	CLMX 11373			North Bay
CLMX 11328			North Bay	CLMX 11374			North Bay
CLMX 11329			North Bay	CLMX 11375			North Bay
CLMX 11330			North Bay	CLMX 11376			North Bay
CLMX 11331			North Bay	CLMX 11377			North Bay
CLMX 11332			North Bay	CLMX 11378			North Bay
CLMX 11333			North Bay	CLMX 11379			North Bay
CLMX 11334			North Bay	CLMX 11380			North Bay

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

Rail Car List - page 16 of 17

# Du Wagon	État	Travaux à effectuer	Endroit	# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 11381			North Bay	CLMX 11427			North Bay
CLMX 11382			North Bay	CLMX 11428			North Bay
CLMX 11383			North Bay	CLMX 11429			North Bay
CLMX 11384			North Bay	CLMX 11430			North Bay
CLMX 11385			North Bay	CLMX 11431			North Bay
CLMX 11386			North Bay	CLMX 11432			North Bay
CLMX 11387			North Bay	CLMX 11433			North Bay
CLMX 11388			North Bay	CLMX 11434			North Bay
CLMX 11389			North Bay	CLMX 11435			North Bay
CLMX 11390			North Bay	CLMX 11436			North Bay
CLMX 11391			North Bay	CLMX 11437			North Bay
CLMX 11392			North Bay	CLMX 11438			North Bay
CLMX 11393			North Bay	CLMX 11439			North Bay
CLMX 11394			North Bay	CLMX 11440			North Bay
CLMX 11395			North Bay	CLMX 11441			North Bay
CLMX 11396			North Bay	CLMX 11442			North Bay
CLMX 11397			North Bay	CLMX 11443			North Bay
CLMX 11398			North Bay	CLMX 11444			North Bay
CLMX 11399			North Bay	CLMX 11445			North Bay
CLMX 11400			North Bay	CLMX 11446			North Bay
CLMX 11401			North Bay	CLMX 11447			North Bay
CLMX 11402			North Bay	CLMX 11448			North Bay
CLMX 11403			North Bay	CLMX 11449			North Bay
CLMX 11404			North Bay	CLMX 11450			North Bay
CLMX 11405			North Bay	CLMX 11451			North Bay
CLMX 11406			North Bay	CLMX 11452			North Bay
CLMX 11407			North Bay	CLMX 11453			North Bay
CLMX 11408			North Bay	CLMX 11454			North Bay
CLMX 11409			North Bay	CLMX 11455			North Bay
CLMX 11410			North Bay	CLMX 11456			North Bay
CLMX 11411			North Bay	CLMX 11457			North Bay
CLMX 11412			North Bay	CLMX 11458			North Bay
CLMX 11413			North Bay	CLMX 11459			North Bay
CLMX 11414			North Bay	CLMX 11460			North Bay
CLMX 11415			North Bay	CLMX 11461			North Bay
CLMX 11416			North Bay	CLMX 11462			North Bay
CLMX 11417			North Bay	CLMX 11463			North Bay
CLMX 11418			North Bay	CLMX 11464			North Bay
CLMX 11419			North Bay	CLMX 11465			North Bay
CLMX 11420			North Bay	CLMX 11466			North Bay
CLMX 11421			North Bay	CLMX 11467			North Bay
CLMX 11422			North Bay	CLMX 11468			North Bay
CLMX 11423			North Bay	CLMX 11469			North Bay
CLMX 11424			North Bay	CLMX 11470			North Bay
CLMX 11425			North Bay	CLMX 11471			North Bay
CLMX 11426			North Bay	CLMX 11472			North Bay

R-9 Asset Purchase Agreement (Port Assets), December 23, 2015 (cont'd)

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# Du Wagon	État	Travaux à effectuer	Endroit
CLMX 11473			North Bay
CLMX 11474			North Bay
CLMX 11475			North Bay
CLMX 11476			North Bay
CLMX 11477			North Bay
CLMX 11478			North Bay
CLMX 11479			North Bay
CLMX 11480			North Bay
CLMX 11481			North Bay
CLMX 11482			North Bay
CLMX 11483			North Bay
CLMX 11484			North Bay
CLMX 11485			North Bay
CLMX 11486			North Bay
CLMX 11487			North Bay
CLMX 11488			North Bay
CLMX 11489			North Bay
CLMX 11490			North Bay
CLMX 11491			North Bay
CLMX 11492			North Bay
CLMX 11493			North Bay
CLMX 11494			North Bay
CLMX 11495			North Bay
CLMX 11496			North Bay
CLMX 11497			North Bay
CLMX 11498			North Bay
CLMX 11499			North Bay
CLMX 11500			North Bay

EXECUTION COPY

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

- and -

ADMINISTRATION PORTUAIRE DE SEPT-ÎLES / SEPT-ÎLES PORT AUTHORITY

ASSET PURCHASE AGREEMENT

DATED AS OF JANUARY 26, 2016

R-11 Asset Purchase Agreement (Block Z), January 26, 2016 (cont'd)

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement dated as of January 26, 2016 is made by and between:

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

(collectively, the "Vendors")

- and -

ADMINISTRATION PORTUAIRE DE SEPT-ÎLES / SEPT-ÎLES PORT AUTHORITY

(the "Purchaser")

RECITALS:

A. Pursuant to an initial order of the Québec Superior Court [Commercial Division] (the "Court") dated January 27, 2015 (as the same may be amended and restated from time to time) in the proceedings bearing Court File No. 500-11-048114-157 (the "CCAA Proceedings"), Cliffs Québec Iron Mining ULC, Quinto Mining Corporation, 8568391 Canada Limited, The Bloom Lake General Partner Limited, the Bloom Lake Railway Company Limited and the Bloom Lake Iron Ore Mine Limited Partnership (collectively, the "Bloom Lake CCAA Parties") obtained protection from their creditors under the *Companies' Creditors Arrangement Act* (Canada) (the "CCAA") and FTI Consulting Canada Inc. was appointed as monitor in the CCAA Proceedings (in such capacity and not in its personal or corporate capacity, the "Monitor").

B. By Order of the Court dated May 20, 2015 in the CCAA Proceedings, Wabush Iron Co. Limited ("Wabush Iron") and Wabush Resources Inc. ("Wabush Resources"), Arnaud Railway Company ("Arnaud"), Wabush Lake Railway Company Limited and Wabush Mines, (collectively, the "Wabush CCAA Parties") were added to the CCAA Proceedings and obtained protection from their creditors under the CCAA.

C. Pursuant to Orders of the Court dated April 17, 2015 and June 9, 2015 (as each may be amended, restated, supplemented or modified from time to time, the "SISP Orders"), the Vendors, were authorized to conduct the sale and investor solicitation process for the property and business of, among others, each of the Vendors, in accordance with the sale and investor solicitation procedures approved by the Court in the SISP Orders (the "SISP").

D. The Vendors therefore desire to sell, transfer and assign to the Purchaser, and the Purchaser desires to acquire and assume from the Vendors, all of the Vendors' right, title and interest in and to the Purchased Assets, on the terms and subject to the conditions contained in this Agreement.

E. The transactions contemplated by this Agreement are subject to the approval of the Court and will be consummated pursuant to the Approval and Vesting Order to be entered by the Court in the CCAA Proceedings.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties agree as follows:

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**ARTICLE 1
INTERPRETATION****1.1 Definitions.** In this Agreement:

"1097 Property" means such portion of the Purchased Assets owned by Wabush Iron that consists of "taxable Québec property" other than (a) property described in section 1102.1 of the TAQ and (b) "excluded property" as defined for purposes of sections 1097, 1102 and 1102.1 of the TAQ.

"116(2) Property" means such portion of the Purchased Assets owned by Wabush Iron that consists of "taxable Canadian property (other than property described in subsection (5.2) and excluded property)" as defined for purposes of section 116 of the ITA.

"Action" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity and by or before a Governmental Authority.

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly controls, is controlled by, or is under direct or indirect common control with, such Person, and includes any Person in like relation to an Affiliate. A Person shall be deemed to **"control"** another Person if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, whether through the ownership of voting securities, by contract or otherwise; and the term **"controlled"** shall have a similar meaning.

"Agreement" means this Asset Purchase Agreement and all the Schedules attached hereto, as they may be amended, restated or supplemented from time to time in accordance with the terms hereof.

"Applicable Law" means, with respect to any Person, property, transaction, event or other matter, (a) any foreign or domestic constitution, treaty, law, statute, regulation, code, ordinance, principle of common law or equity, rule, municipal by-law, Order or other requirement having the force of law, (b) any policy, practice, protocol, standard or guideline of any Governmental Authority which, although not necessarily having the force of law, is regarded by such Governmental Authority as requiring compliance as if it had the force of law (collectively, in the foregoing clauses (a) and (b), **"Law"**), in each case relating or applicable to such Person, property, transaction, event or other matter and also includes, where appropriate, any interpretation of Law (or any part thereof) by any Person having jurisdiction over it, or charged with its administration or interpretation.

"Approval and Vesting Order" means an order of the Court Issued in the CCAA Proceedings, substantially in the form of Schedule "A", approving the transactions contemplated by this Agreement and vesting in the Purchaser all of the Vendors' right, title and interest in and to the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances).

"Bloom Lake CCAA Parties" has the meaning set out in Recital A.

"Books and Records" means all books, records, files, papers, books of account and other financial data related to the Purchased Assets in the possession of and reasonably

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available to the Vendors, including drawings, engineering information, geologic data, production records, technical reports and environmental studies and reports including (in each case, if applicable), research and development records, and all records, data and information stored electronically, digitally or on computer-related media.

"Business Day" means any day except Saturday, Sunday or any day on which banks are generally not open for business in the City of Montréal, Québec, the City of St. John's, Newfoundland and Labrador, the City of Toronto, Ontario, or the City of Cleveland, Ohio.

"CAA" has the meaning set out in Recital A.

"CAA Parties" means collectively the Bloom Lake CAA Parties and the Wabush CAA Parties.

"CAA Proceedings" has the meaning set out in Recital A.

"Certificate of Compliance" has the meaning set out in Section 3.4(1).

"Closing" means the completion of the purchase and sale of the Vendors' right, title and interest in and to the Purchased Assets by the Purchaser in accordance with the provisions of this Agreement.

"Closing Date" means the date on which Closing occurs, which date is intended to be the Target Closing Date.

"Closing Time" has the meaning set out in Section 6.1.

"Conditions Certificates" has the meaning set out in Section 7.3.

"Contracts" means all pending and executory contracts, agreements, leases, understandings and arrangements (whether oral or written) related to the Purchased Assets.

"Court" has the meaning set out in Recital A.

"CRA" means the Canada Revenue Agency or any successor agency.

"Damages" means any loss, cost, liability, claim, interest, fine, penalty, assessment, Taxes, damages available at law or in equity (including incidental, consequential, special, aggravated, exemplary or punitive damages), expense (including consultant's and expert's fees and expenses and reasonable costs, fees and expenses of legal counsel on a full indemnity basis, without reduction for tariff rates or similar reductions and reasonable costs, fees and expenses of investigation, defense or settlement) or diminution in value.

"Deed of Sale" means a deed of sale, in form and substance satisfactory to the Parties, acting reasonably, evidencing the conveyance to the Purchaser of the Vendors' right, title and interest in and to the Purchased Assets.

"Deposit" has the meaning set out in Section 3.2(1).

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"Encumbrances" means all claims, liabilities (direct, indirect, absolute or contingent), obligations, prior claims, right of retention, liens, security interests, charges, hypothecs, trusts, deemed trusts (statutory or otherwise), judgments, writs of seizure or execution, notices of sale, contractual rights (including purchase options, rights of first refusal, rights of first offer or any other pre-emptive contractual rights), encumbrances, whether or not they have been registered, published or filed and whether secured, unsecured or otherwise.

"Environment" means any of the following: the water (whether surface or groundwater), atmosphere and soil or generally the ambient milieu with which living species have dynamic relations, and includes, "water", "atmosphere" and "soil" as such terms are defined pursuant to Environmental Laws.

"Environmental Claim" means any Action, Governmental Order, lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom whether incurred or arising before or after Closing by or from any Person alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources Damages, property Damages, personal injuries, medical monitoring, penalties, contribution, indemnification and Injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"Environmental Law" means any Applicable Law, and any Governmental Order or binding agreement with any Governmental Authority: (a) relating to pollution (or the investigation or cleanup thereof), the management or protection of natural resources, endangered or threatened species, human health or safety, or the protection or quality of the Environment; or (b) concerning the presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

"Environmental Liabilities" means all past, all present and all future obligations and Liabilities of whatsoever nature or kind arising from or relating to, directly or indirectly:

- (i) any Environmental Matter; or
- (ii) any Environmental Claim, Environmental Notice or Environmental Permit applicable to (or otherwise involving) the Purchased Assets or any past, any present or any future non-compliance with, violation of or Liability under Environmental Laws or any Environmental Permit applicable to (or otherwise involving) the Purchased Assets,

whenever occurring or arising.

"Environmental Matters" means any activity, event or circumstance in respect of or relating to:

- (i) the storage, use, holding, collection, containment, recycling, reclamation, remediation, accumulation, assessment, generation, manufacture, processing, treatment, stabilization, disposition, handling, transportation, management, presence, exposure to or Release of Hazardous Materials;

R-11 Asset Purchase Agreement (Block Z), January 26, 2016 (cont'd)

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- (ii) the protection, condition or quality of the Environment;
- (iii) pollution, reclamation, remediation or restoration of the Environment; or
- (iv) any Reclamation Obligation,

In each case relating to the Purchased Assets or the Business or that has or have arisen or hereafter arise from or in respect of past, present or future operations, activities or omissions in or on the Purchased Assets or in respect of or otherwise involving the Purchased Assets, including obligations to compensate third Persons for any Environmental Liabilities.

"Environmental Notice" means any written directive, notice of violation, notice of non-compliance or notice of infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law issued by a Governmental Authority or any term or condition of any Environmental Permit.

"Environmental Permit" means any permit, license, authorization, approval, letter, clearance, consent, waiver, exemption, decision, evidence of authority or action required under or issued, granted, given or authorized by a Governmental Authority pursuant to any Environmental Law.

"Excluded Assets" means the properties and assets of the Vendors not forming part of the Purchased Assets, including, for greater certainty, any equipment or vehicles located upon the Purchased Assets.

"Filing Date" means January 27, 2015 for the Bloom Lake CCAA Parties, and May 20, 2015 for the Wabush CCAA Parties.

"Governmental Authority" means:

- (1) any domestic or foreign government, whether national, federal, provincial, state, territorial, municipal or local (whether administrative, legislative, executive or otherwise);
- (2) any agency, authority, ministry, department, regulatory body, court, central bank, bureau, board or other instrumentality having legislative, judicial, taxing, regulatory, prosecutorial or administrative powers or functions of, or pertaining to, government;
- (3) any court, tribunal, commission, individual, arbitrator, arbitration panel or other body having adjudicative, regulatory, judicial, quasi-judicial, administrative or similar functions; and
- (4) any other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange or professional association.

"Governmental Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"GST/HST" means the goods and services tax and the harmonized sales tax imposed under Part IX of the *Excise Tax Act* (Canada).

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"Hazardous Materials" means: (a) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral, gas, odour, heat, sound, vibration, radiation or combination of them that may impair the Environment, injure or damage property or animal life or harm or impair the health of any individual and includes any contaminant, waste or substance or material defined, prohibited, regulated or reportable pursuant to any Environmental Law in each case, whether naturally occurring or manmade; and (b) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

"ICA" means the *Investment Canada Act, R.S.C. 1985, c. 28 (1st Supp.)*

"Intercompany Claims" means all present and future claims of any nature or kind whatsoever of any of the Vendors against an Affiliate of such Vendor, whether such Affiliate is a party to this Agreement or otherwise.

"Interim Period" means the period from the date that this Agreement is entered into by the Parties to the Closing Time.

"ITA" means the *Income Tax Act, R.S.C., 1985, c. 1 (5th Supplement)*.

"Law" has the meaning set out in the definition of **"Applicable Law"**.

"Legal Proceeding" means any litigation, Action, application, suit, investigation, hearing, claim, complaint, deemed complaint, grievance, civil, administrative, regulatory or criminal, arbitration proceeding or other similar proceeding, before or by any court or other tribunal or Governmental Authority and includes any appeal or review thereof and any application for leave for appeal or review.

"Liability" means, with respect to any Person, any liability or obligation of such Person of any kind, character or description, including any monetary default, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

"Monitor" has the meaning set out in Recital A.

"Monitor's Certificate" means the certificate, substantially in the form attached as Schedule "A" to the Approval and Vesting Order, to be delivered by the Monitor to the Vendors and the Purchaser on Closing and thereafter filed by the Monitor with the Court certifying that it has received the Conditions Certificates.

"Order" means any order, directive, judgment, decree, injunction, decision, ruling, award or writ of any Governmental Authority.

"Outside Date" means March 11, 2016.

"Party" means a party to this Agreement and any reference to a Party includes its successors and permitted assigns and **"Parties"** means more than one of them.

"Permitted Encumbrances" means the Encumbrances related to the Purchased Assets listed on Schedule "B".

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"Person" is to be broadly interpreted and includes an individual, a corporation, a partnership, a trust, an unincorporated organization, a Governmental Authority, and the executors, administrators or other legal representatives of an individual in such capacity.

"Personal Information" means information about an identifiable individual as defined in Privacy Law.

"Privacy Law" means the *Personal Information Protection and Electronic Documents Act* (Canada), the *Personal Information Protection Act* (British Columbia), the *Act respecting the protection of personal information in the private sector* (Québec) and any comparable Law of any other province or territory of Canada.

"Purchase Price" has the meaning set out in Section 3.1.

"Purchased Assets" means the immovable property known as "Block Z" as further described in Schedule "C", which the Parties agree consists of vacant land only. For greater certainty, Purchased Assets does not include the Excluded Assets.

"Purchaser" has the meaning set out in the preamble hereto, and includes any successor or permitted assignee thereof in accordance with Section 10.16.

"QST" means the Québec sales tax imposed pursuant to the *Act respecting the Québec sales tax*, R.S.Q. c. T-0.1, as amended.

"Québec Certificate of Compliance" has the meaning set out in Section 3.5(1).

"Reclamation Obligation" means the obligations and commitments of any Vendor of any nature whatsoever under Applicable Law whether asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise for the reclamation, rehabilitation, restoration or remediation of the Purchased Assets.

"Release" includes any actual or potential release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the Environment, including, indoor air or within any building, structure, facility or fixture.

"Remittance Date" has the meaning set out in Section 3.4(3).

"Representative" when used with respect to a Person means each director, officer, employee, consultant, financial adviser, legal counsel, accountant and other agent, adviser or representative of that Person.

"Sale Advisor" means Moelis & Company LLC.

"SISP" has the meaning set out in Recital C.

"SISP Order" has the meaning set out in Recital C.

"SISP Team" means the CCAA Parties, the Sale Advisor and the Monitor.

"TAQ" means the *Taxation Act* (Québec), C.Q.L.R. c. I-3.

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"Target Closing Date" means the date that is thirty (30) days following the date of this Agreement.

"Taxes" means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, mining taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, license taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, social security premiums, workers' compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST/HST, QST, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties.

"Tax Returns" means all returns, reports, declarations, elections, notices, filings, information returns, and statements in respect of Taxes that are required to be filed with any applicable Governmental Authority, including all amendments, schedules, attachments or supplements thereto and whether in tangible or electronic form.

"Transaction Personal Information" means any Personal Information in the possession, custody or control of the Vendor at the Closing Time, including Personal Information about Employees, suppliers, customers, directors, officers or shareholders that is:

- (1) disclosed to the Purchaser or any Representative of the Purchaser prior to the Closing Time by any member of the SISP Team or any of the SISP Team's Representatives or otherwise; or
- (2) collected by the Purchaser or any Representative of the Purchaser prior to the Closing Time from any member of the SISP Team or any of the SISP Team's Representatives or otherwise,

in either case in connection with the transactions contemplated by the Agreement.

"Transfer Taxes" means all applicable Taxes, including where applicable, GST/HST and QST payable upon or in connection with the transactions contemplated by this Agreement and any filing, registration, recording or transfer fees payable in connection with the instruments of transfer provided for in this Agreement.

"Vendors" has the meaning set out in the preamble hereto.

"Wabush CCAA Parties" has the meaning set out in Recital B.

"Wabush Iron" has the meaning set out in Recital B.

"Wabush Mines" means an unincorporated contractual joint venture called "Wabush Mines" pursuant to which Wabush Resources and Wabush Iron have, respectively, undivided 73.17% and 26.83% co-ownership interests in the underlying assets and liabilities of the joint venture.

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“Wabush Resources” has the meaning set out in Recital B.

1.2 Actions on Non-Business Days. If any payment is required to be made or other action (including the giving of notice) is required to be taken pursuant to this Agreement on a day which is not a Business Day, then such payment or action shall be considered to have been made or taken in compliance with this Agreement if made or taken on the next succeeding Business Day.

1.3 Currency and Payment Obligations. Except as otherwise expressly provided in this Agreement: (a) all dollar amounts referred to in this Agreement are stated in the lawful currency of Canada; and (b) any payment contemplated by this Agreement shall be made by wire transfer of immediately available funds to an account of the Monitor specified by the payee, by cash, by certified cheque or by any other method that provides immediately available funds as agreed to between the Parties, with the consent of the Monitor.

1.4 Calculation of Time. In this Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. Eastern on the last day of the period. If any period of time is to expire hereunder on any day that is not a Business Day, the period shall be deemed to expire at 5:00 p.m. Eastern on the next succeeding Business Day.

1.5 Tender. Any tender of documents or money hereunder may be made upon the Parties or, if so indicated, the Monitor, or their respective counsel.

1.6 Additional Rules of Interpretation.

(1) *Gender and Number.* In this Agreement, unless the context requires otherwise, words in one gender include all genders and words in the singular include the plural and vice versa.

(2) *Headings and Table of Contents.* The inclusion in this Agreement of headings of Articles and Sections and the provision of a table of contents are for convenience of reference only and are not intended to be full or precise descriptions of the text to which they refer.

(3) *Section References.* Unless the context requires otherwise, references in this Agreement to Articles, Sections or Schedules are to Articles or Sections of this Agreement, and Schedules to this Agreement.

(4) *Words of Inclusion.* Wherever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” shall not be considered to set forth an exhaustive list.

(5) *References to this Agreement.* The words “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions shall be construed as referring to this Agreement in its entirety and not to any particular Section or portion of it.

(6) *Statute References.* Unless otherwise indicated, all references in this Agreement to any statute include the regulations thereunder, in each case as amended, re-enacted, consolidated or replaced from time to time and in the case of any such amendment, re-enactment, consolidation or replacement, reference herein to a particular provision shall be read as referring to such amended, re-enacted, consolidated or replaced provision and also include,

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unless the context otherwise requires, all applicable guidelines, bulletins or policies made in connection therewith.

(7) *Document References.* All references herein to any agreement (including this Agreement), document or instrument mean such agreement, document or instrument as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified therein, includes all schedules attached thereto.

1.7 Schedules. The following are the Schedules attached to and incorporated in this Agreement by reference and deemed to be a part hereof:

SCHEDULES

<u>Schedule "A"</u>	Form of Approval and Vesting Order
<u>Schedule "B"</u>	Permitted Encumbrances
<u>Schedule "C"</u>	Purchased Assets

Unless the context otherwise requires, words and expressions defined in this Agreement will have the same meanings in the Schedules and the interpretation provisions set out in this Agreement apply to the Schedules. Unless the context otherwise requires, or a contrary intention appears, references in the Schedules to a designated Article, Section, or other subdivision refer to the Article, Section, or other subdivision, respectively, of this Agreement.

**ARTICLE 2
PURCHASE OF ASSETS**

2.1 Purchase and Sale of Purchased Assets. At the Closing Time, on and subject to the terms and conditions of this Agreement and the Approval and Vesting Order, the Vendors shall sell to the Purchaser, and the Purchaser shall purchase from the Vendors, all of the Vendors' right, title and interest in and to the Purchased Assets, which shall be free and clear of all Encumbrances other than Permitted Encumbrances, to the extent and as provided for in the Approval and Vesting Order. For greater certainty, notwithstanding any other provision of this Agreement, this Agreement does not constitute an agreement by the Purchaser to purchase, or by the Vendors to sell any Excluded Asset. The Purchaser shall be responsible for all expenses and Liabilities accruing in respect of the Purchased Assets as of and from the Closing Date.

**ARTICLE 3
PURCHASE PRICE & TAXES**

3.1 Purchase Price. The consideration payable by the Purchaser to the Vendors for the Vendors' right, title and interest in and to the Purchased Assets (the "Purchase Price") shall be \$1,250,000.

3.2 Satisfaction of Purchase Price. The Purchase Price shall be paid and satisfied at Closing as follows:

- (1) the deposit in the amount of \$62,500, representing five percent (5%) of the Purchase Price, which was remitted by the Purchaser to the Monitor, in trust, in accordance with the SISP (the "Deposit"), shall be applied against the Purchase Price, in reduction thereto; and

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- (2) the balance of the Purchase Price shall be paid by the Purchaser to the Vendors by remitting same to the Monitor.

3.3 Taxes. In addition to the Purchase Price, the Purchaser shall be liable for and shall pay all applicable Transfer Taxes as follows:

(1) all Transfer Taxes applicable to the Purchased Assets that are immovable property shall be self-assessed by the Purchaser in accordance with subsections 221(2) and 228(4) of the *Excise Tax Act* (Canada) and subsections 423(2) and 438(1) of an *Act respecting the Québec sales tax*; and

(2) For all purposes, including for purposes of calculating the applicable Transfer Taxes to be paid by the Purchaser on Closing and remitted by the Vendors (if any), the Parties agree to allocate \$335,000 of the Purchase Price to Wabush Iron (being 26.8% of the Purchase Price) and \$915,000 of the Purchase Price to Wabush Resources (being 73.2% of the Purchase Price). For greater certainty, the Parties agree that the portion of the Purchase Price allocated to any Purchased Assets other than vacant land is nil.

3.4 Section 116 of ITA.

(1) Wabush Iron shall take all reasonable steps to obtain and deliver to the Purchaser on or before Closing a certificate of compliance issued by the Minister of National Revenue (Canada) under subsection 116(2) or 116(4) of the *ITA* in respect of its disposition of the 116(2) Property. A certificate issued by the Minister of National Revenue (Canada) under subsection 116(2) or 116(4) of the *ITA* in respect of the 116(2) Property is hereinafter referred to as a "Certificate of Compliance".

(2) If a Certificate of Compliance in respect of the 116(2) Property is delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 116(2) Property and payable to Wabush Iron at Closing twenty-five percent (25%) of the amount, if any, by which such portion of the Purchase Price exceeds the certificate limit specified in such certificate. If a Certificate of Compliance in respect of the 116(2) Property is not delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 116(2) Property and payable to Wabush Iron at Closing twenty-five percent (25%) of such portion of the Purchase Price.

(3) Where the Purchaser has withheld any amount under Section 3.4(2) and Wabush Iron delivers a Certificate of Compliance to the Purchaser after Closing and on or before the twenty-eighth day of the calendar month following the calendar month in which the Closing occurs (the "Remittance Date"), the Purchaser shall, where the certificate is delivered under subsection 116(2) or (4) of the *ITA*, remit forthwith to the Receiver General for Canada for the account of Wabush Iron twenty-five percent (25%) of the amount, if any, by which the portion of the Purchase Price allocable to the 116(2) Property and payable to Wabush Iron exceeds the certificate limit fixed in such certificate, and pay forthwith to Wabush Iron any amount that the Purchaser has withheld in respect of the 116(2) Property in excess of such amount.

(4) Where the Purchaser has withheld any amount under Section 3.4(2) and no Certificate of Compliance has been delivered to the Purchaser in respect of the 116(2) Property on or prior to the Remittance Date, such amount shall be remitted by the Purchaser to the

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Receiver General for Canada for the account of Wabush Iron in accordance with section 116 of the *ITA*.

(5) For the avoidance of doubt, the Purchaser shall not remit any amount referred to in Section 3.4(4) to the Receiver General for Canada before the Remittance Date, as such date may be extended pursuant to Section 3.4(6).

(6) Notwithstanding anything to the contrary in this Section 3.4, if prior to the Remittance Date, the Purchaser has received a comfort letter issued by the CRA in form and substance satisfactory to the Purchaser, acting reasonably, extending the time period under which the Purchaser is required to remit an amount in respect of the Purchase Price for the account of Wabush Iron without being subject to interest or penalties, the Purchaser shall not make any remittance to the Receiver General for Canada on the date that would otherwise be the Remittance Date and the Remittance Date shall be extended indefinitely, or until the Purchaser receives notification from the CRA that such comfort letter is no longer in effect.

(7) Where the Purchaser has withheld any amount under Section (2) such amount shall be paid to and held by the Purchaser's solicitors, in trust and invested by them for the benefit of Wabush Iron in Canadian dollar-denominated interest bearing instruments in such manner as Wabush Iron shall from time to time direct in writing (such ability of Wabush Iron to direct the Purchaser to be limited to instructions pertaining to the investment of the amounts withheld under Section 3.4(2)) until paid to the Monitor on behalf of Wabush Iron (together with the interest earned thereon) or remitted to the Receiver General for Canada for the account of Wabush Iron in accordance with this Section 3.4. For the avoidance of doubt, the Purchaser's solicitors shall be entitled to withhold and remit from interest earned on such amounts any and all amounts required to be withheld and remitted under the *ITA*.

(8) A copy of any Certificate of Compliance, other certificates, notices, comfort letters, correspondence or any other document sent by any Vendor or the Purchaser, or received by any Vendor or the Purchaser, pursuant to this Section 3.4 shall be sent promptly to the Monitor by the applicable Vendor or the Purchaser.

(9) The Parties recognize and acknowledge that Sections 1102.1 of the TAQ and 116 (5.2) of the *ITA* are not applicable to the transactions contemplated pursuant to this Agreement.

3.5 Taxable Québec Property

(1) Wabush Iron shall take all reasonable steps to obtain and deliver to the Purchaser on or before Closing a certificate of compliance issued by the Ministère du Revenu (Québec) under section 1098 or 1100 of the TAQ in respect of its disposition of the 1097 Property. A certificate issued by the Ministère du Revenu (Québec) under section 1098 or 1100 of the TAQ in respect of the 1097 Property is hereinafter referred to as a "**Québec Certificate of Compliance**".

(2) If a Québec Certificate of Compliance in respect of the 1097 Property is delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the 1097 Property and payable to Wabush Iron at Closing twelve percent (12%) of the amount, if any, by which such portion of the Purchase Price exceeds the certificate limit specified in such certificate. If a Québec Certificate of Compliance in respect of the 1097 Property is not delivered to the Purchaser on or before the Closing, the Purchaser shall be entitled to withhold from the portion of the Purchase Price allocable to the

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1097 Property and payable to Wabush Iron at Closing twelve percent (12%) of such portion of the Purchase Price.

(3) Where the Purchaser has withheld any amount under Section 3.5(2) and Wabush Iron delivers a Québec Certificate of Compliance to the Purchaser after Closing and on or before the Remittance Date, the Purchaser shall where the Québec Certificate of Compliance is delivered under section 1098 or 1100 of the TAQ, remit forthwith to the Ministère du Revenu (Québec) for the account of Wabush Iron twelve percent (12%) of the amount, if any, by which the portion of the Purchase Price allocable to the 1097 Property and payable to Wabush Iron exceeds the certificate limit fixed in such certificate and pay forthwith to Wabush Iron any amount that the Purchaser has withheld in respect of the 1097 Property in excess of such amount.

(4) Where the Purchaser has withheld any amount under Section 3.5(2) and no Québec Certificate of Compliance has been delivered to the Purchaser in respect of the 1097 Property on or prior to the Remittance Date, such amount shall be remitted by the Purchaser to the Ministère du Revenu (Québec) for the account of Wabush Iron in accordance with section 1101 or 1102.2 as the case may be of the TAQ.

(5) For the avoidance of doubt, the Purchaser shall not remit any amount referred to in Section 3.5(4) to the Ministère du Revenu (Québec) before the Remittance Date, as such date may be extended pursuant to Section 3.5(6).

(6) Notwithstanding anything to the contrary in this Section 3.5, if prior to the Remittance Date, the Purchaser has received a comfort letter issued by the Ministère du Revenu (Québec) in form and substance satisfactory to the Purchaser, acting reasonably, extending the time period under which the Purchaser is required to remit an amount in respect of the Purchase Price for the account of Wabush Iron without being subject to interest or penalties, the Purchaser shall not make any remittance to the Ministère du Revenu (Québec) on the date that would otherwise be the Remittance Date and the Remittance Date shall be extended indefinitely, or until the Purchaser receives notification from the Ministère du Revenu (Québec) that such comfort letter is no longer in effect.

(7) Where the Purchaser has withheld any amount under Section 3.5(2) such amount shall be paid to and held by the Purchaser's solicitors, in trust and invested by them for the benefit of Wabush Iron in Canadian dollar-denominated interest bearing instruments in such manner as Wabush Iron shall from time to time direct in writing (such ability of Wabush Iron to direct the Purchaser to be limited to instructions pertaining to the investment of the amounts withheld under Section under Section 3.5(2)) until paid to the Monitor on behalf of Wabush Iron (together with the interest earned thereon) or remitted to the Ministère du Revenu (Québec) for the account of Wabush Iron in accordance with this Section 3.5. For the avoidance of doubt, the Purchaser's solicitors shall be entitled to withhold and remit from interest earned on such amounts any and all amounts required to be withheld and remitted under the ITA.

(8) A copy of any Québec Certificate of Compliance, other certificates, notices, comfort letters, correspondence or any other document sent by any Vendor or the Purchaser, or received by any Vendor or the Purchaser, pursuant to this Section 3.5 shall promptly be sent to the Monitor by the applicable Vendor or the Purchaser.

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**ARTICLE 4
REPRESENTATIONS AND WARRANTIES**

4.1 Representations and Warranties of the Purchaser. As a material inducement to the Vendors entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Vendors are entering into this Agreement in reliance upon the representations and warranties of the Purchaser set out in this Section 4.1, the Purchaser represents and warrants to the Vendors as follows:

(1) *Incorporation and Corporate Power.* The Purchaser is a Crown corporation created pursuant to the Canada Marine Act, S.C. (1998) ch.10. The Purchaser has the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform its obligations under this Agreement and under all such other agreements and instruments.

(2) *Authorization by Purchaser.* The execution and delivery of this Agreement and all other agreements and instruments to be executed by it as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Purchaser.

(3) *Approvals.* No consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by the Purchaser of this Agreement or all other agreements and instruments to be executed by the Purchaser or the performance by the Purchaser of its obligations hereunder or thereunder.

(4) *Enforceability of Obligations.* This Agreement constitutes a valid and binding obligation of the Purchaser enforceable against the Purchaser in accordance with its terms. There is no Legal Proceeding in progress, pending, or threatened against or affecting the Purchaser, and there are no grounds on which any such Legal Proceeding might be commenced and there is no Order outstanding against or affecting the Purchaser which, in any such case, affects adversely or might affect adversely the ability of the Purchaser to enter into this Agreement or to perform its obligations hereunder.

(5) *ICA.* The Purchaser either is not a "non-Canadian" within the meaning of the ICA, or, if the Purchaser is a "non-Canadian", the Purchaser is a "WTO investor" within the meaning of the ICA.

(6) *Excise Tax Act.* The Purchaser is registered for GST/HST purposes under Part IX of the *Excise Tax Act* (Canada) and for QST purposes pursuant to the *Act respecting the Québec sales tax*, and its registration numbers are:

- (a) GST/HST - 866792757
- (b) QST - 1022337200TQ0001

(7) *Commissions.* The Vendors will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Purchaser.

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(8) *Sufficient Funds.* The Purchaser has sufficient financial resources or has arranged sufficient financing for it to pay on Closing the Purchase Price and the Transfer Taxes and any and all other amounts payable by the Purchaser hereunder.

4.2 Representations and Warranties of the Vendors. As a material inducement to the Purchaser's entering into this Agreement and completing the transactions contemplated by this Agreement and acknowledging that the Purchaser is entering into this Agreement in reliance upon the representations and warranties of the Vendors set out in this Section 4.2, the Vendors severally represent and warrant to the Purchaser as follows:

(1) *Incorporation and Corporate Power.* Wabush Iron is a corporation incorporated, organized and subsisting under the laws of the State of Ohio. Wabush Resources is a corporation incorporated, organized and subsisting under the federal laws of Canada. Subject to the granting of the Approval and Vesting Order, the Vendors have the corporate power, authority and capacity to execute and deliver this Agreement and all other agreements and instruments to be executed by it as contemplated herein and to perform their other obligations under this Agreement and under all such other agreements and instruments.

(2) *Authorization by Vendors.* Subject to the granting of the Approval and Vesting Order, the execution and delivery of this Agreement and all other agreements and instruments to be executed by it as contemplated herein and the completion of the transactions contemplated by this Agreement and all such other agreements and instruments have been duly authorized by all necessary corporate action on the part of the Vendors.

(3) *Enforceability of Obligations.* Subject to the granting of the Approval and Vesting Order, this Agreement constitutes a valid and binding obligation of the Vendors enforceable against the Vendors in accordance with its terms.

(4) *ITA and TAQ.* Wabush Resources is not a non-resident of Canada for purposes of the ITA and the TAQ, whereas Wabush Iron is a non-resident of Canada for purposes of the ITA and the TAQ.

(5) *Excise Tax Act.* The Vendors are registered for GST/HST purposes under Part IX of the *Excise Tax Act* (Canada) and for QST purposes pursuant to the *Act respecting the Québec sales tax* and their GST/HST and QST numbers are:

Wabush Iron:

- (a) GST/HST - 105566251
- (b) QST – 1000549114

Wabush Resources:

- (a) GST/HST - 881498307
- (b) QST – 1205018022

(6) *Commissions.* The Purchaser will not be liable for any brokerage commission, finder's fee or other similar payment in connection with the transactions contemplated by this Agreement because of any action taken by, or agreement or understanding reached by, the Vendors. The Vendors will be responsible for payment of any fees and other amounts charged by the Sale Advisor.

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4.3 As is, Where is. Notwithstanding any other provision of this Agreement, the Purchaser acknowledges, agrees and confirms that:

(1) except for the representations and warranties of the Vendors set forth in Section 4.2, it is entering into this Agreement, acquiring the Purchased Assets on an "as is, where is" basis as they exist as of the Closing Time and will accept the Purchased Assets in their state, condition and location as of the Closing Time except as expressly set forth in this Agreement and the sale of the Purchased Assets is made without legal warranty and at the risk and peril of the Purchaser;

(2) It has conducted to its satisfaction such independent searches, investigations and inspections of the Purchased Assets as it deemed appropriate, and based solely thereon, has determined to proceed with the transactions contemplated by this Agreement;

(3) except as expressly stated in Section 4.2, neither the Vendors nor any other Person is making, and the Purchaser is not relying on, any representations, warranties, statements or promises, express or implied, statutory or otherwise, concerning the Purchased Assets, the Environmental Liabilities or the Vendors' right, title or interest in or to the Purchased Assets, including with respect to merchantability, physical or financial condition, description, fitness for a particular purposes, suitability for development, title, description, use or zoning, environmental condition, existence of latent defects, quality, quantity or any other thing affecting any of the Purchased Assets or the Environmental Liabilities or in respect of any other matter or thing whatsoever, including any and all conditions, warranties or representations expressed or implied pursuant to any Applicable Law in any jurisdiction, which the Purchaser confirms do not apply to this Agreement and are hereby waived in their entirety by the Purchaser;

(4) without limiting the generality of the foregoing, no representation, warranty or covenant is given by any member of the SISP Team or any of the SISP Team's Representatives that Purchased Assets are or can be made operational within a specified time frame or will achieve any particular level of service, use, production capacity or actual production if made operational;

(5) without limiting the generality of the foregoing, except as expressly stated in Section 4.2, the Vendors have made no representation or warranty as to any regulatory approvals, consents or authorizations that may be needed to complete the transactions contemplated by this Agreement and the Purchaser is relying entirely on its own investigation, due diligence and inquiries in connection with such matters;

(6) all written and oral information obtained from any member of the SISP Team or any of the SISP Team's Representatives, including in any teaser letter, asset listing, confidential information memorandum or other document made available to the Purchaser (including in certain "data rooms", management presentations, site visits and diligence meetings or telephone calls), with respect to the Purchased Assets and the Environmental Liabilities has been obtained for the convenience of the Purchaser only, and no member of the SISP Team nor any of the SISP Team's Representatives have made any representation or warranty, express or implied, statutory or otherwise as to the accuracy or completeness of any such information;

(7) any information regarding or describing the Purchased Assets and the Environmental Liabilities in this Agreement (including the Schedules hereto), or in any other agreement or instrument contemplated hereby, is for identification purposes only, is not relied upon by the Purchaser, and no representation, warranty or condition, express or implied, has or will be given by any member of the SISP Team or any of the SISP Team's Representatives, or

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any other Person concerning the completeness or accuracy of such information or descriptions; and

(8) except as otherwise expressly provided in this Agreement, the Purchaser hereby unconditionally and irrevocably waives any and all actual or potential rights or claims the Purchaser might have against the Vendors, any member of the SISP Team or any of the SISP Team's Representatives pursuant to any warranty, express or implied, legal or conventional, of any kind or type, other than those representations and warranties expressly set forth in Section 4.2. Such waiver is absolute, unlimited, and includes, but is not limited to, waiver of express warranties, implied warranties, any warranties contained in the *Civil Code of Québec*, warranties of fitness for a particular use, warranties of merchantability, warranties of occupancy, strict liability and claims of every kind and type, including claims regarding defects, whether or not discoverable or latent, product liability claims, or similar claims, and all other claims that may be later created or conceived in strict liability or as strict liability type claims and rights.

For greater certainty and without limiting the generality of the foregoing, the Parties hereby agree to exclude altogether the effect of the legal warranty provided for by article 1716 of the *Civil Code of Québec* and that the Purchaser is purchasing the Purchased Assets at its own risk within the meaning of article 1733 of the *Civil Code of Québec*. This Section 4.3 shall not merge on Closing and is deemed incorporated by reference in all closing documents and deliveries. The Purchaser shall have no recourse or claim of any kind against the proceeds of the transactions contemplated by this Agreement following Closing.

ARTICLE 5 COVENANTS

5.1 Target Closing Date. The Parties shall cooperate with each other and shall use their commercially reasonable efforts to effect the Closing on the Target Closing Date.

5.2 Motion for Approval and Vesting Order. Pursuant to and subject to the terms of the SISP, the Vendors shall file with the Court, as soon as practicable after its execution and delivery of this Agreement, a motion seeking the Court's issuance of the Approval and Vesting Order. The Vendors shall diligently use their commercially reasonable efforts to seek the issuance and entry of the Approval and Vesting Order. The Purchaser shall cooperate with the Vendors in their efforts to obtain the issuance and entry of the Approval and Vesting Order. The Purchaser, at its own expense, will promptly provide to the Vendors and the Monitor all such information within its possession or under its control as the Vendors or the Monitor may reasonably require to obtain the Approval and Vesting Order.

5.3 Access During Interim Period. During the Interim Period, the Vendors shall, subject to any confidentiality or safety restrictions, give, or cause to be given, to the Purchaser and its Representatives reasonable access during normal business hours to the Purchased Assets, including the Books and Records, to conduct such investigations, inspections, surveys or tests thereof and of the financial and legal condition of the Purchased Assets as the Purchaser deems reasonably necessary or desirable to further familiarize itself with the Purchased Assets. Without limiting the generality of the foregoing, the Purchaser shall be permitted reasonable access during normal business hours to all documents relating to information scheduled or required to be disclosed under this Agreement. Such investigations, inspections, surveys and tests shall be carried out at the Purchaser's sole and exclusive risk, during normal business hours and the Vendors shall co-operate reasonably in facilitating such investigations, inspections, surveys and tests and shall furnish copies of all such documents and materials relating to such matters as may be reasonably requested by or on behalf of the Purchaser.

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5.4 Transaction Personal Information. Each Party shall comply with Privacy Law in the course of collecting, using and disclosing Transaction Personal Information. The Purchaser shall collect Transaction Personal Information prior to Closing only for purposes related to the transactions contemplated by this Agreement. Following the Closing, the Purchaser shall not, without the consent of the individuals to whom such Personal Information relates or as permitted or required by Applicable Law, use or disclose Transaction Personal Information:

- (1) for purposes other than those for which such Transaction Personal Information was collected by the Vendor prior to the Closing; and
- (2) which does not relate directly to the carrying out of the purposes for which the transactions contemplated by this Agreement were implemented.

The Purchaser shall protect and safeguard the Transaction Personal Information against unauthorized collection, use or disclosure, as provided by Privacy Law. The Purchaser shall cause its Representatives to observe the terms of this Section 5.4 and to protect and safeguard Transaction Personal Information in their possession in accordance with Privacy Law.

5.5 Risk of Loss. The Purchased Assets shall be at the risk of the Vendors until Closing. If before the Closing all or substantially all of the Purchased Assets are lost, damaged or destroyed or are expropriated or seized by any Governmental Authority or any other Person in accordance with Applicable Law or if notice of any such expropriation or seizure shall have been given in accordance with Applicable Law, the Purchaser, in its discretion, acting reasonably, shall have the option, exercisable by notice to the Vendors given prior to the Closing Time to terminate this Agreement, as provided in Section 8.1.

5.6 Care and Maintenance During Interim Period. During the Interim Period, the Vendors shall continue to maintain the Purchased Assets, in substantially the same state as it was on the date of this Agreement.

5.7 Indemnity. The Purchaser hereby indemnifies the Vendors, the Vendors' Affiliates and their respective Representatives, and save them fully harmless against, and will reimburse or compensate them for, any Damages arising from, in connection with or related in any manner whatsoever to:

- (1) Any Taxes including Transfer Taxes (including penalties and interest) which may be assessed against any Vendor;
- (2) the Purchaser's access in accordance with Section 5.3; and
- (3) any Environmental Liabilities.

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5.8 Books and Records. The Purchaser shall preserve and keep the Books and Records acquired by it pursuant to this Agreement for a period of six (6) years after Closing, or for any longer periods as may be required by any Laws applicable to such Books and Records. The Purchaser shall make such Books and Records, as well as electronic copies of such books and records (to the extent reasonably feasible), available to the Monitor and the Vendors, its successors, and any trustee in bankruptcy or receiver of the Vendors, and shall, at such party's expense, permit any of the foregoing persons to take copies of such Books and Records as they may require.

5.9 Environmental Liabilities. The Purchaser acknowledges and agrees that upon Closing, the Purchaser shall become responsible for the payment, performance and discharge of all Environmental Liabilities related to the Purchased Assets, including, as applicable, all obligations of any kind whatsoever under Environmental Laws relating to the Purchased Assets whether arising before, at or after the Closing.

5.10 Cooperation. Each Party shall, as promptly as possible, use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement (including for purpose of clarity any additional letters patent that may be required to fully effect the transaction contemplated pursuant hereto). Each Party shall cooperate reasonably with the other Party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The Parties shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals. Without limiting the generality of the foregoing, the Vendors undertakes to execute any document to effect any cadastral modification that may be necessary as a result of the transactions contemplated pursuant hereto, it being understood that the costs and fees associated to such cadastral modification shall be borne solely by the Purchaser.

5.11 Cooperation and Consultation with Governmental Authorities. All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either Party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the consummation of the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between the Vendors or the Purchaser with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other Party hereunder in advance of any filing, submission or attendance, it being the intent that the Parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each Party shall give notice to the other Party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other Party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing. The Closing shall take place at 10:00 a.m. Eastern time (the "Closing Time") on the Closing Date at the offices of the Vendors' counsel in Montréal, Québec, or at such other

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time on the Closing Date or such other place as may be agreed orally or in writing by the Vendors and the Purchaser.

6.2 Vendors' Closing Deliveries. At the Closing, the Vendors shall deliver or cause to be delivered to the Purchaser the following:

- (1) the Purchased Assets, provided that delivery shall occur *in situ* wheresoever such Purchased Assets are located at the Closing Time;
- (2) a true copy of the Approval and Vesting Order;
- (3) the Deed of Sale, duly executed by the Vendors;
- (4) a bring-down certificate executed by a senior officer of the Vendors dated as of the Closing Date, in form and substance satisfactory to the Purchaser, acting reasonably, certifying that (i) all of the representations and warranties of the Vendors hereunder remain true and correct in all material respects as of the Closing Date, and (ii) all of the terms and conditions set out in this Agreement to be complied with or performed by the Vendors at or prior to Closing have been complied with or performed by the Vendors in all material respects; and
- (5) such other agreements, documents and instruments as may be reasonably required by the Purchaser to complete the transactions provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

6.3 Purchaser's Closing Deliveries. At the Closing, the Purchaser shall deliver or cause to be delivered to the Vendors (or to the Monitor, if so indicated below), the following:

- (1) the payment referred to in Section 3.2(2), which shall be remitted to the Monitor;
- (2) a bring-down certificate executed by a senior officer of the Purchaser dated as of the Closing Date, in form and substance satisfactory to the Vendors, acting reasonably, certifying that (a) all of the representations and warranties of the Purchaser hereunder remain true and correct in all material respects as of the Closing Date, and (b) all of the terms and conditions set out in this Agreement to be complied with or performed by the Purchaser at or prior to Closing have been complied with or performed by the Purchaser in all material respects;
- (3) the Deed of Sale, duly executed by the Purchaser; and
- (4) such other agreements, documents and instruments and Deeds of Sale as may be reasonably required by the Vendors to complete the transactions provided for in this Agreement, all of which shall be in form and substance satisfactory to the Parties, acting reasonably.

**ARTICLE 7
CONDITIONS OF CLOSING**

7.1 Purchaser's Conditions. The Purchaser shall not be obligated to complete the transactions contemplated by this Agreement, unless, at or before the Closing Time, each of the conditions listed below in this Section 7.1 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Purchaser, and may be waived by the

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Purchaser in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Purchaser only if made in writing. The Vendors shall take all such actions, steps and proceedings as are reasonably within their control as may be necessary to ensure that the conditions listed below in this Section 7.1 are fulfilled at or before the Closing Time.

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court and shall not have been vacated, set aside or stayed.

(2) *Vendors' Deliverables.* The Vendors shall have executed and delivered or caused to have been executed and delivered to the Purchaser at the Closing all the documents contemplated in Section 6.2.

(3) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of (a) making any of the transactions contemplated by this Agreement illegal, or (b) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(4) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.2 shall be materially true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

(5) *No Breach of Covenants.* The Vendor shall have performed in all material respects all material covenants, obligations and agreements contained in this Agreement required to be performed by the Vendor on or before the Closing.

7.2 Vendors' Conditions. The Vendors shall not be obligated to complete the transactions contemplated by this Agreement unless, at or before the Closing Time, each of the conditions listed below in this Section 7.2 have been satisfied, it being understood that the said conditions are included for the exclusive benefit of the Vendors, and may be waived by the Vendors in whole or in part, without prejudice to any of its rights of termination in the event of non-fulfillment of any other condition in whole or in part. Any such waiver shall be binding on the Vendors only if made in writing. The Purchaser shall take all such actions, steps and proceedings as are reasonably within the Purchaser's control as may be necessary to ensure that the conditions listed below in this Section 7.2 are fulfilled at or before the Closing Time.

(1) *Court Approval.* The Approval and Vesting Order shall have been issued and entered by the Court and shall not have been vacated, set aside or stayed.

(2) *Purchaser's Deliverables.* The Purchaser shall have executed and delivered or caused to have been executed and delivered to the Vendors at the Closing all the documents and payments contemplated in Section 6.3.

(3) *No Violation of Orders or Law.* During the Interim Period, no Governmental Authority shall have enacted, issued or promulgated any final or non-appealable Order or Law which has the effect of (a) making any of the transactions contemplated by this Agreement illegal, or (b) otherwise prohibiting, preventing or restraining the consummation of any of the transactions contemplated by this Agreement.

(4) *No Breach of Representations and Warranties.* Each of the representations and warranties contained in Section 4.1, shall be materially true and correct (i) as of the Closing

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Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date.

(5) *No Breach of Covenants.* The Purchaser shall each have performed in all material respects all material covenants, obligations and agreements contained in this Agreement required to be performed by the Purchaser on or before the Closing.

7.3 Monitor's Certificate. When the conditions to Closing set out in Section 7.1 and Section 7.2, have been satisfied and/or waived by the Vendors or the Purchaser, as applicable, the Vendors and the Purchaser will each deliver to the Monitor written confirmation that such conditions of Closing, as applicable, have been satisfied and/or waived (the "**Conditions Certificates**"). Upon receipt of payment in full of the Purchase Price and of each of the Conditions Certificates, the Monitor shall (i) issue forthwith its Monitor's Certificate concurrently to the Vendors and the Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the Court (and shall provide a true copy of such filed certificate to the Vendors and the Purchaser). In the case of (i) and (ii), above, the Monitor will be relying exclusively on the basis of the Conditions Certificates and without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions.

ARTICLE 8 TERMINATION

8.1 Grounds for Termination. This Agreement may be terminated on or prior to the Closing Date:

- (1) by the mutual written agreement of the Vendors and the Purchaser, provided however that if this Agreement has been approved by the Court, any such termination shall require either the consent of the Monitor, or approval of the Court;
- (2) by written notice from the Purchaser to the Vendors in accordance with Section 5.5;
- (3) by the Purchaser, on the one hand, or by the Vendors, on the other hand, upon written notice to the other Parties if (i) the Approval and Vesting Order has not been obtained by February 15, 2016 or (ii) the Court declines at any time to grant the Approval and Vesting Order, in each case for reasons other than a breach of this Agreement by either the Purchaser, on the one hand, or the Vendors, on the other hand;
- (4) by written notice from the Purchaser to the Vendors if there has been a material breach by the Vendors of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Purchaser, and (i) such breach is not curable and has rendered the satisfaction of any condition in Section 7.1 impossible by the Outside Date, or (ii) if such breach is curable, the Purchaser has provided prior written notice of such breach to the Vendors, and such breach has not been cured within ten (10) days following the date upon which the Vendors received such notice;
- (5) by written notice from the Purchaser to the Vendors any time after the Outside Date, if the Closing has not occurred by the Outside Date for reasons other than

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as set out in Section 8.1(3), and such failure to close was not caused by or as a result of the Purchaser's breach of this Agreement;

- (6) by written notice from the Vendors to the Purchaser if there has been a material breach by the Purchaser of any representation, warranty or covenant contained in this Agreement, which breach has not been waived by the Vendors, and (i) such breach is not curable and has rendered the satisfaction of any condition in Section 7.2 impossible by the Outside Date, or (ii) if such breach is curable, the Vendors have provided prior written notice of such breach to the Purchaser, and such breach has not been cured within ten (10) days following the date upon which the Purchaser received such notice; or
- (7) by written notice from the Vendors to the Purchaser any time after the Outside Date, if the Closing has not occurred by the Outside Date for reasons other than as set out in Section 8.1(3), and such failure to close is not caused by or as a result of the Vendors' breach of this Agreement.

8.2 Effect of Termination. If this Agreement is terminated pursuant to Section 8.1, all further obligations of the Parties under this Agreement will terminate and no Party will have any Liability or further obligations hereunder, except as contemplated in Sections, 5.4 (*Transaction Personal Information*), 8.3 (*Treatment of Deposit*), 9.2 (*Expenses*), 9.3 (*Public Announcements*), 9.4 (*Notices*), 9.8 (*Amendment*), 9.12 (*Governing Law*), 9.13 (*Dispute Resolution*), 9.14 (*Attornment*), 10.15 (*Successors and Assigns*), 9.16 (*Assignment*), 9.17 (*Monitor's Capacity*), 9.18 (*Third Party Beneficiaries*) and 9.20 (*Language*), which shall survive such termination. For the avoidance of doubt, any Liability incurred by a Party prior to the termination of this Agreement shall survive such termination.

8.3 Treatment of Deposit.

(1) *Retention of Deposit.* In the event that this Agreement is terminated by the Vendors pursuant to Section 8.1(6) or 8.1(7), the Deposit shall be forfeited by the Purchaser and retained by the Monitor on behalf of the Vendors as a genuine estimate of liquidated damages, and not as a penalty. The retention of the Deposit by the Vendors shall be the Vendors' sole and exclusive remedy for any termination of this Agreement.

(2) *Return of Deposit.* In the event that this Agreement is terminated pursuant to Section 8.1(1), 8.1(2), 8.1(3), 8.1(4) or 8.1(5) the Deposit shall be returned to the Purchaser. The return of the Deposit shall be the Purchaser's sole and exclusive remedy for any termination of this Agreement.

(3) *GST/HST Gross Up.* In the event that any payment or forfeiture under this Agreement is deemed by the *Excise Tax Act* (Canada) to include GST/HST, or is deemed by the *Act respecting the Québec Sales Tax* to include QST, the amount of such payment or forfeiture shall be increased accordingly.

ARTICLE 9 GENERAL

9.1 Survival. All representations, warranties, covenants and agreements of the Vendors or the Purchaser made in this Agreement or any other agreement, certificate or instrument delivered pursuant to this Agreement shall not survive the Closing except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for rights, duties or

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obligations extending after the Closing, or as otherwise expressly provided in this Agreement. For greater certainty, Sections 3.3 (*Taxes*), 4.3 (*As is, Where is*), 5.4 (*Transaction Personal Information*), 5.7 (*Indemnity*), 5.8 (*Books and Records*), 6.9 (*Environmental Liabilities*), 10.1 (*Survival*), 9.2 (*Expenses*), 9.3 (*Public Announcements*), 9.4 (*Notices*), 9.8 (*Amendment*), 9.12 (*Governing Law*), 9.13 (*Dispute Resolution*), 9.14 (*Attornment*), 9.15 (*Successors and Assigns*), 9.16 (*Assignment*), 9.17 (*Monitor's Capacity*), 9.18 (*Third Party Beneficiaries*) and 9.20 (*Language*), shall survive Closing.

9.2 Expenses. Except as otherwise expressly provided herein, each Party shall be responsible for all costs and expenses (including any Taxes imposed on such expenses) incurred by it in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the transactions contemplated by this Agreement (including the fees and disbursements of legal counsel, bankers, investment bankers, accountants, brokers and other advisers). Notwithstanding the foregoing, the cost of retaining a notary and a land surveyor, if deemed necessary by the Purchaser, in connection with the preparation of the Deed of Sale and its registration in the appropriate land registry, shall be borne by the Purchaser.

9.3 Public Announcements. The Vendors shall be entitled to disclose this Agreement and all information provided by the Purchaser in connection herewith to the Court and parties in interest in the CCAA Proceedings, and this Agreement may be posted on the Monitor's website maintained in connection with the CCAA Proceedings. Other than as provided in the preceding sentence or statements made in Court (or in pleadings filed therein), the Vendors and the Purchaser shall not issue (prior to or after the Closing) any press release or make any public statement or public communication with respect to this Agreement or the transactions contemplated hereby without the prior written consent of the other Party, which shall not be unreasonably withheld or delayed, provided, however, that a Party may, without the prior consent of the other Party, issue such press release or make such public statement as may, upon the advice of counsel, be required by Applicable Law or by any Governmental Authority with competent jurisdiction including any applicable securities Laws. Notwithstanding any other provision of this Agreement, the Purchaser shall not disclose the quantum of the Purchase Price or Deposit to any Person prior to the Closing without the prior written consent of the Vendors and the Monitor.

9.4 Notices.

(1) *Mode of Giving Notice.* Any notice, direction, certificate, consent, determination or other communication required or permitted to be given or made under this Agreement shall be in writing and shall be effectively given and made if (i) delivered personally, (ii) sent by prepaid courier service, or (iii) sent by e-mail or other similar means of electronic communication, in each case to the applicable address set out below:

(1) if to the Vendors, to:

c/o Cliffs Québec Iron Mining ULC.
1155 Robert Bourassa Boul (formerly University Street)
Suite 508, Montréal, QC H3B 3A7

Attention: James Graham, Executive Vice President
General Counsel and Secretary AND
Clifford T. Smith, Executive Vice President

Email: James.Graham@CliffsNR.com / Clifford.Smith@CliffsNR.com

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with a copy (which shall not constitute notice) to:

Blake, Cassels & Graydon LLP
 199 Bay Street, Suite 4000, Commerce Court West
 Toronto, ON M5L 1A9
 Attention: Thomas A. McKee/ Milly Chow
 Email: tom.mckee@blakes.com / milly.chow@blakes.com

(2) if to the Purchaser, to:

Administration Portuaire de Sept-Îles/Sept-Îles Port Authority
 1, Quai Mgr-Blanche
 Sept-Îles (Québec) G4R 5P3
 Attention: Mr. Pierre Gagnon, President & CEO
 Email: pgagnon@portsi.com

with a copy (which shall not constitute notice) to:

Fasken Martineau DuMoulin LLP
 Stock Exchange Tower
 Suite 3700, P.O. Box 242
 800, Place Victoria
 Montréal, Québec, H4Z 1E9
 Attention: Luc Morin / Guillaume-Pierre Michaud
 Email: lmorin@fasken.com / gmichaud@fasken.com

(3) and in either case, with a copy to the Monitor, to:

FTI Consulting Canada Inc.
 TD South Tower, 790 Wellington Street West
 Toronto Dominion Centre, Suite 2010, P.O. Box 104
 Toronto, ON M5K 1G8
 Attention: Nigel Meakin
 Email: nigel.meakin@fticonsulting.com

and

Norton Rose Fullbright Canada LLP
 1 Place Ville Marie, Suite 2500
 Montréal, QC H3B1R1
 Attention: Sylvain Rigaud
 Email: sylvain.rigaud@nortonrosefulbright.com

(2) *Deemed Delivery of Notice.* Any such communication so given or made shall be deemed to have been given or made and to have been received on the day of delivery if delivered, or on the day of e-mailing or sending by other means of recorded electronic communication, provided that such day in either event is a Business Day and the communication is so delivered, e-mailed or sent before 5:00 p.m. Eastern on such day. Otherwise, such communication shall be deemed to have been given and made and to have been received on the next following Business Day.

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(3) *Change of Address.* Any Party may from time to time change its address under this Section 9.4 by notice to the other Party given in the manner provided by this Section 9.4.

9.5 Time of Essence. Time shall be of the essence of this Agreement in all respects.

9.6 Further Assurances. The Vendors and the Purchaser shall, at the sole expense of the requesting Party, from time to time promptly execute and deliver or cause to be executed and delivered all such further documents and instruments and shall do or cause to be done all such further acts and things in connection with this Agreement that the other Party may reasonably require as being necessary or desirable in order to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement or any provision hereof.

9.7 Entire Agreement. Other than any confidentiality agreement, non-disclosure agreement or similar undertaking or agreement signed by the Purchaser in favour of the CCAA Parties, or any of them, which remain in full force and effect, unamended by this Agreement, this Agreement and the agreements contemplated hereby constitute the entire agreement between the Parties or any of them pertaining to the subject matter of this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, (including the letter of intent submitted by the Purchaser pursuant to the SISF dated May 19, 2015. There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement.

9.8 Amendment. No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.

9.9 Waiver. A waiver of any default, breach or non-compliance under this Agreement shall not be effective unless in writing and signed by the Party to be bound by the waiver and then only in the specific instance and for the specific purpose for which it has been given. No waiver shall be inferred from or implied by any failure to act or delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement will not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).

9.10 Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

9.11 Remedies Cumulative. The rights, remedies, powers and privileges herein provided to a Party are cumulative and in addition to and not exclusive of or in substitution for any rights, remedies, powers and privileges otherwise available to that Party.

9.12 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Québec and the laws of Canada applicable therein.

9.13 Dispute Resolution. If any dispute arises with respect to the interpretation or enforcement of this Agreement, including as to what constitutes a breach or material breach of

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this Agreement for the purposes of Article 8, such dispute shall be determined by the Court within the CCAA Proceedings, or by such other Person or in such other manner as the Court may direct. Without prejudice to the ability of the Vendors to enforce this Agreement in any other proper jurisdiction, the Purchaser and the Vendors irrevocably submit and attorn to the non-exclusive jurisdiction of the courts of Québec.

9.14 Attornment. Each Party agrees (a) that any Legal Proceeding relating to this Agreement may (but need not) be brought in the Court, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of the Court; (b) that it irrevocably waives any right to, and shall not, oppose any such Legal Proceeding in the Court on any jurisdictional basis, including *forum non conveniens*; and (c) not to oppose the enforcement against it in any other jurisdiction of any Order duly obtained from the Court as contemplated by this Section 9.14. Each Party agrees that service of process on such Party as provided in Section 9.4 shall be deemed effective service of process on such Party.

9.15 Successors and Assigns. This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective successors and permitted assigns.

9.16 Assignment. Prior to the issuance of the Approval and Vesting Order, the Purchaser may assign all of its rights and obligations under this Agreement to an Affiliate, provided that (a) the Purchaser shall remain liable to perform all of its obligations hereunder, and (b) the Purchaser and its assignee execute and deliver to the Vendors an assignment and assumption agreement, in form and substance satisfactory to the Vendors, acting reasonably, evidencing such assignment. Other than in accordance with the preceding sentence, neither the Purchaser nor the Vendors may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement.

9.17 Monitor's Capacity. The Purchaser acknowledges and agrees that the Monitor, acting in its capacity as the Monitor of the Vendors and the other CCAA Parties in the CCAA Proceedings, will have no Liability in connection with this Agreement whatsoever in its capacity as Monitor, in its personal capacity or otherwise.

9.18 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9.19 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which taken together shall be deemed to constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by e-mail in pdf format or by other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

9.20 Language. The Parties have required that this Agreement and all deeds, documents and notices relating to this Agreement be drawn up in the English language. Les parties aux présentes ont exigé que le présent contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue anglaise.

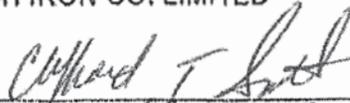
- 28 -

**[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE
FOLLOWS]**

R-11 Asset Purchase Agreement (Block Z), January 26, 2016 (cont'd)

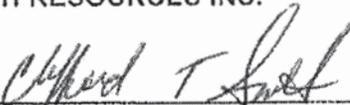
IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

WABUSH IRON CO. LIMITED

By: 
Name: Clifford Smith
Title: President

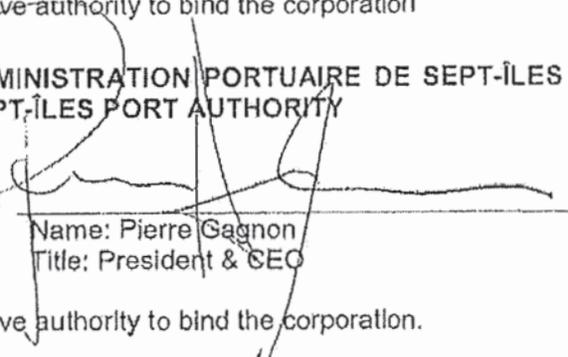
I have authority to bind the corporation

WABUSH RESOURCES INC.

By: 
Name: Clifford Smith
Title: President

I have authority to bind the corporation

ADMINISTRATION PORTUAIRE DE SEPT-ÎLES /
SEPT-ÎLES PORT AUTHORITY

By: 
Name: Pierre Gagnon
Title: President & CEO

I have authority to bind the corporation.

R-11 Asset Purchase Agreement (Block Z), January 26, 2016 (*cont'd*)

Schedule "A"

Form of Approval and Vesting Order

SUPERIOR COURT
(Commercial Division)

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N°: 500-11-048114-157

DATE: [DATE]____, 2016

PRESIDING: [THE HONOURABLE STEPHEN W. HAMILTON J.S.C.]

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED:

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

WABUSH MINES

Mise-en-cause

-and-

ADMINISTRATION PORTUAIRE DE SEPT-ÎLES / SEPT-ÎLES PORT AUTHORITY

Mise-en-cause

-and-

THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION DIVISION
OF SEPT-ÎLES

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

APPROVAL AND VESTING ORDER

- [1] **ON READING** the Petitioners' *Motion for the Issuance of an Approval and Vesting Order* (the "**Motion**"), the affidavit and the exhibits in support thereof, as well as the [NUMBER] Report of the Monitor dated [REDACTED], 2016 (the "**Report**");
- [2] **SEEING** the service of the Motion;
- [3] **SEEING** the submissions of the Petitioners' and the Monitor's attorneys and the submissions of [REDACTED];
- [4] **SEEING** that it is appropriate to issue an order approving the transaction (the "**Transaction**") contemplated by the agreement entitled Asset Purchase Agreement (the "**Purchase Agreement**") dated as of January 26, 2016 by and among the Petitioners *Wabush Iron Co. Limited* and *Wabush Resources Inc.*, as vendors (collectively, the "**Vendors**"), and *Administration Portuaire de Sept-Îles / Sept-Îles Port Authority* as purchaser (the "**Purchaser**"), a copy of which was filed as Exhibit R-[●] to the Motion, and vesting in the Purchaser all of the Vendors' right, title and interest in and to all of the Purchased Assets (as defined in the Purchase Agreement).

FOR THESE REASONS, THE COURT HEREBY:

- [5] **GRANTS** the Motion.
- [6] **ORDERS** that all capitalized terms in this Order shall have the meaning given to them in the Purchase Agreement unless otherwise indicated herein.

SERVICE

- [7] **ORDERS** that any prior time period for the presentation of this Motion is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
- [8] **PERMITS** service of this Order at any time and place and by any means whatsoever.

SALE APPROVAL

- [9] **ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Vendors is hereby authorized and approved, *nunc pro tunc*.
- [10] **AUTHORIZES AND DIRECTS** the Monitor to hold the Deposit, *nunc pro tunc*, and to apply, disburse and/or deliver the Deposit or the applicable portions thereof in accordance with the provisions of the Purchase Agreement and this Order.

EXECUTION OF DOCUMENTATION

- [11] **AUTHORIZES AND DIRECTS** the Vendors, the Purchaser and the Monitor to perform all acts, sign all documents and take any necessary action to execute any agreement, contract, deed, provision, transaction or undertaking stipulated in or contemplated by the Purchase Agreement (Exhibit R-[●]), with such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to but only with the consent of the Monitor, and any other ancillary document which could be required or useful to give full and complete effect thereto.

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AUTHORIZATION

- [12] **ORDERS and DECLARES** that this Order shall constitute the only authorization required by the Vendors to proceed with the Transaction and that no shareholder approval, if applicable, shall be required in connection therewith.

VESTING OF THE PURCHASED ASSETS

- [13] **ORDERS and DECLARES** that upon the issuance of a Monitor's certificate substantially in the form appended as **Schedule "A"** hereto (the "**Certificate**"), all rights, title and interest in and to the Purchased Assets shall vest free and clear, absolutely and exclusively in and with the Purchaser, from any and all right, title, benefits, priorities, claims (including claims provable in bankruptcy in the event that the Vendors should be adjudged bankrupt), liabilities (direct, indirect, absolute or contingent), obligations, interests, prior claims, security interests (whether contractual, statutory or otherwise), liens, charges, hypothecs, mortgages, pledges, trusts, deemed trusts (whether contractual, statutory, or otherwise), assignments, judgments, executions, writs of seizure or execution, notices of sale, options, agreements, rights of distress, legal, equitable or contractual setoff, adverse claims, levies, taxes, disputes, debts, charges, options to purchase, rights of first refusal or other pre-emptive rights in favour of third parties, restrictions on transfer of title, or other claims or encumbrances, whether or not they have attached or been perfected, registered, published or filed and whether secured, unsecured or otherwise (collectively, the "**Encumbrances**"), including without limiting the generality of the foregoing all Encumbrances created by order of this Court and all charges, security interests or charges evidenced by registration, publication or filing pursuant to the Civil Code of Québec, or any other applicable legislation providing for a security interest in personal or movable property, excluding however, the permitted encumbrances, easements and restrictive covenants listed on **Schedule "B"** hereto (the "**Permitted Encumbrances**") and, for greater certainty, **ORDERS** that all of the Encumbrances affecting or relating to the Purchased Assets, other than the Permitted Encumbrances, be expunged and discharged as against the Purchased Assets, in each case effective as of the applicable time and date of the Certificate.
- [14] **ORDERS and DIRECTS** the Monitor, upon receipt of payment in full of the Purchase Price and of each of the Conditions Certificates, to (i) issue forthwith the Certificate concurrently to the Vendors and the Purchaser; and (ii) file forthwith after issuance thereof a copy of the Certificate with the Court.
- [15] **DECLARES** that the Monitor shall be at liberty to rely exclusively on the Conditions Certificates in issuing the Certificate, without any obligation to independently confirm or verify the waiver or satisfaction of the applicable conditions.
- [16] **AUTHORIZES and DIRECTS** the Monitor to receive and hold the Purchase Price and to remit the Purchase Price in accordance with the provisions of this Order.

CANCELLATION OF SECURITY REGISTRATIONS

- [17] **ORDERS** the Land Registrar of the Registry Office for the Registration Division of Sept-Îles, upon presentation of the Certificate in the form appended as **Schedule "A"** and a certified copy of this Order accompanied by the required application for registration and upon payment of the prescribed fees, to publish this Order and (i) to make an entry on the Land Register showing the Purchaser as the owner of the Immovable property identified in **Schedule "C"** hereto (the "**Immovable Property**") and (ii) to cancel any and all Encumbrances on the Immovable Property (other than Permitted Encumbrances), including, without limitation, the registrations published at the said Registry Office listed on **Schedule "D"** hereto.

NET PROCEEDS

- [18] **ORDERS** that the Purchase Price payable to the Vendors in accordance with the Purchase Agreement (the "Net Proceeds") shall be remitted to the Monitor and shall, subject to the provisions of this Order, be held by the Monitor on behalf of the Vendors pending further order of the Court.
- [19] **ORDERS** that for the purposes of determining the nature and priority of the Encumbrances, the Net Proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that upon issuance of the Certificate, all Encumbrances except for the Permitted Encumbrances shall attach to the Net Proceeds with the same priority as they had with respect to the Purchased Assets immediately prior to the Closing, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the Closing.
- [20] **ORDERS** that upon the issuance of the Certificate, the Purchaser shall have no recourse or claim of any kind against the Net Proceeds.

RELEASE OF FUNDS TO FUND COSTS AND EXPENSES OF THE WABUSH CCAA PARTIES

- [21] **AUTHORIZES and DIRECTS** the Monitor to fund the costs and expenses of the Wabush CCAA Parties (the "Expense Payments") by way of weekly draws against the Net Proceeds, on the basis of cash flow projections to be prepared by the Wabush CCAA Parties from time to time and as approved by the Monitor and subject to the Monitor holding such reserves as it considers necessary to secure the CCAA Charges (as defined in the initial order rendered by this Court dated May 20, 2015, as amended, rectified, restated or otherwise modified from time to time).
- [22] **ORDERS** that notwithstanding:
- a) the pendency of these proceedings;
 - b) any assignment in bankruptcy;
 - c) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the Bankruptcy and Insolvency Act (the "BIA") or otherwise and any order issued pursuant to any such application; or
 - d) the provisions of any federal or provincial legislation;

the remittance of the Expense Payments in accordance with this Order is to be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendors, the Purchaser or the Monitor, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

- [23] **AUTHORIZES** the Monitor to take any and all steps which the Monitor, in its sole discretion and in consultation with the Vendors, may deem necessary in order to give effect to the above order for the Expense Payments. Any such payments made by the Monitor will be made without prejudice to any arguments concerning the allocation of such payments amongst the Vendors and the Vendors will subsequently bring a motion on notice to the service list for an order allocating the payments amongst the Vendors.

PROTECTION OF PERSONAL INFORMATION

- [24] **ORDERS** that, pursuant to sub-section 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or any similar provision of any applicable provincial legislation, the Vendors are authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Vendors' records pertaining to the Vendors' past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Vendors.

VALIDITY OF THE TRANSACTION

- [25] **ORDERS** that notwithstanding:
- a) the pendency of these proceedings;
 - b) any assignment in bankruptcy;
 - c) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the BIA or otherwise and any order issued pursuant to any such application; or
 - d) the provisions of any federal or provincial legislation;

the vesting of the Purchased Assets contemplated in this Order, as well as the execution of the Purchase Agreement pursuant to this Order, are to be binding on any trustee in bankruptcy or receiver that may be appointed, and shall not be void or voidable nor deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, as against the Vendors, the Purchaser or the Monitor, and shall not constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

LIMITATION OF LIABILITY

- [26] **DECLARES** that, subject to other orders of this Court, nothing herein contained shall require the Monitor to take control, or to otherwise manage all or any part of the Purchased Assets. The Monitor shall not, as a result of this Order, be deemed to be in possession of any of the Purchased Assets within the meaning of environmental legislation, the whole pursuant to the terms of the CCAA.
- [27] **DECLARES** that no action lies against the Monitor by reason of this Order or the performance of any act authorized by this Order, except by leave of the Court. The entities related to the Monitor or belonging to the same group as the Monitor shall benefit from the protection arising under the present paragraph.

GENERAL

- [28] **DECLARES** that the Vendors and the Purchaser shall be authorized to take all steps as may be necessary to effect the discharge of the Encumbrances.
- [29] **DECLARES** that this Order shall have full force and effect in all provinces and territories in Canada.
- [30] **DECLARES** that the Monitor shall be authorized to apply as it may consider necessary or desirable, with or without notice, to any other court or administrative body, whether in Canada, the United States of America or elsewhere, for orders which aid and complement this Order. All

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courts and administrative bodies of all such jurisdictions are hereby respectfully requested to make such orders and to provide such assistance to the Monitor as may be deemed necessary or appropriate for that purpose.

- [31] **REQUESTS** the aid and recognition of any court or administrative body in any Province of Canada and any Canadian federal court or administrative body and any federal or state court or administrative body in the United States of America and any court or administrative body elsewhere, to act in aid of and to be complementary to this Court in carrying out the terms of this Order.
- [32] **ORDERS** the provisional execution of the present Order, including without limiting the general application of the foregoing, the Interim Lender Repayment and the Sales Advisor Fee, notwithstanding any appeal and without the requirement to provide any security or provision for costs whatsoever.

THE WHOLE WITHOUT COSTS, save in case of contestation.

[STEPHEN W. HAMILTON J.S.C.]

SCHEDULE "A" TO APPROVAL AND VESTING ORDER
FORM OF CERTIFICATE OF THE MONITOR

SUPERIOR COURT
(Commercial Division)

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

File: No: 500-11-048114-157

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.
C-36, AS AMENDED:

WABUSH IRON CO. LIMITED

WABUSH RESOURCES INC.

Petitioners

-and-

WABUSH MINES

Mise-en-cause

-and-

ADMINISTRATION PORTUAIRE DE SEPT-ÎLES / SEPT-ÎLES PORT AUTHORITY

Mise-en-cause

-and-

THE LAND REGISTRAR FOR THE REGISTRY OFFICE FOR THE REGISTRATION DIVISION
OF SEPT-ÎLES

Mise-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

CERTIFICATE OF THE MONITOR

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RECITALS

- A. Pursuant to an initial order rendered by the Honourable Mr. Justice Martin Catonguay, J.S.C., of the Superior Court of Québec, [Commercial Division] (the "**Court**") on January 27, 2015 (as amended on February 20, 2015 and as may be further amended from time to time, the "**Initial Order**"), FTI Consulting Canada Inc. (the "**Monitor**") was appointed to monitor the business and financial affairs of Cliffs Québec Iron Mining ULC, Quinto Mining Corporation, 8568391 Canada Limited, Bloom Lake General Partner Limited, the Bloom Lake Railway Company Limited and The Bloom Lake Iron Ore Mine Limited Partnership (collectively, the "**Bloom Lake CCAA Parties**").
- B. Pursuant to an order of the Court granted May 20, 2015, the Monitor was appointed to monitor the business and financial affairs of Wabush Iron Co. Limited, Wabush Resources Inc., Arnaud Railway Company, Wabush Lake Railway Company Limited and Wabush Mines (collectively, the "**Wabush CCAA Parties**"). The Wabush CCAA Parties and the Bloom Lake CCAA parties are referred to herein collectively as the "**CCAA Parties**".
- C. Pursuant to an order (the "**Approval and Vesting Order**") rendered by the Court on [REDACTED], 2016, the transaction contemplated by the Asset Purchase Agreement dated as of January [REDACTED], 2016 (the "**Purchase Agreement**") by and among Wabush Iron Co. Limited and Wabush Resources Inc., as vendors, and Administration Portuaire De Sept-Îles / Sept-Îles Port Authority, as purchaser (the "**Purchaser**") was authorized and approved, with a view, *inter alia*, to vest in and to the Purchaser, all of the Vendors' right, title and interest in and to the Purchased Assets (as defined in the Purchase Agreement).
- D. Each capitalized term used and not defined herein has the meaning given to such term in the Purchase Agreement.
- E. The Approval and Vesting Order provides for the vesting of all of the Vendors' right, title and interest in and to the Purchased Assets in the Purchaser, in accordance with the terms of the Approval and Vesting Order and upon the delivery of a certificate (the "**Certificate**") issued by the Monitor confirming that the Vendors and the Purchaser have each delivered Conditions Certificates to the Monitor.
- F. In accordance with the Approval and Vesting Order, the Monitor has the power to authorize, execute and deliver this Certificate.
- G. The Approval and Vesting Order also directed the Monitor to file with the Court, a copy of this Certificate forthwith after issuance thereof.

THEREFORE, IN RELIANCE UPON THE CONDITIONS CERTIFICATES ADDRESSED AND DELIVERED TO THE MONITOR BY EACH OF THE VENDORS AND THE PURCHASER, THE MONITOR CERTIFIES THE FOLLOWING:

1. The Monitor has received payment in full of the Purchase Price in accordance with the Purchase Agreement.

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2. The Vendors and the Purchaser have each delivered to the Monitor the Conditions Certificates evidencing that all applicable conditions under the Purchase Agreement have been satisfied and/or waived, as applicable.

3. The Closing Time is deemed to have occurred on at ~~TIME~~ on ~~XX~~, 2016.

THIS CERTIFICATE was issued by the Monitor at ~~TIME~~ on ~~XX~~, 2016.

**FTI Consulting Canada Inc., in its capacity as
Monitor of the CCAA Parties, and not in its personal
or corporate capacity.**

By: _____

Name: Nigel Meakin

SCHEDULE "B" TO APPROVAL AND VESTING ORDER
PERMITTED ENCUMBRANCES

1. Servitude registered at the Registry Office for the Registration Division of Sept-Îles, under number 2 161;
2. Servitude registered at the Registry Office for the Registration Division of Sept-Îles, under number 32 464;
3. Servitudes or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Purchased Assets, provided such servitudes or rights-of-way are registered on title of the Purchased Assets;
4. Servitudes for the supply of utilities to the Purchased Assets and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, provided such servitudes are registered on title of the Purchased Assets;
5. Any unregistered servitudes or rights of way by Hydro-Québec to occupy a part of the Purchased Assets to install any circuits, poles and necessary equipment required for the connection or the network, in accordance to its by-law number 634 relating to the supply of electricity and any servitudes granted prior to January 1, 1917 which affect the Purchased Assets;
6. Restrictive covenants, private deed restrictions and other similar land use control agreements, provided they are registered on title to the Purchased Assets;
7. Any minor encroachments by any structure located on the Purchased Assets onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Purchased Assets;
8. Any title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Purchased Assets;
9. The provisions of Applicable Laws, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning;
10. Any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent; and
11. Servitudes in favour of Hydro-Québec registered at the Registry Office for the Registration Division of Sept-Îles, under numbers 75 876 and 75-877.

SCHEDULE "C" TO APPROVAL AND VESTING ORDER

DESCRIPTION OF IMMOVABLE PROPERTY

The immovable known and described as being composed of a part of lot 3 931 541, lot 3 931 539 and part of lot 3 669 214, all of the cadastre of Québec, registration division of Sept-Îles, such lot and parts of lots being for purposes hereof particularly described as follows:

- a) Une partie du lot 3 931 541 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

Une partie du lot 3 931 541, de figure irrégulière, bornée vers le nord-est et le nord par les lots 3 708 360 et 3 708 361, chemin de la Pointe-Noire, vers le nord-est, l'est, le nord, l'ouest et le sud-ouest par le lot 3 931 533, vers le nord et l'est par le lot 3 708 360, chemin de la Pointe-Noire, vers le nord par la partie restante du lot 3 931 541, vers le nord est par le lot 3 708 376, vers le sud et le sud-est par un territoire non cadastré, vers le sud-ouest et le sud par la limite des hautes eaux (marées) de la Baie-des-Sept-Îles (Territoire non cadastré), vers l'ouest par le lot 3 669 046, par un territoire non cadastré et par les lots 3 669 047 et 4 711 908, vers le sud-ouest par le lot 4 711 908 et vers le nord-ouest par le lot 3 708 359, rue Alband-Banchard; mesurant successivement 505,92 mètres, 30,04 mètres, 150,00 mètres, 50,02 mètres, 657,10 mètres, 7,87 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 94,78 mètres, 49,86 mètres, 49,98 mètres, 148,10 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 394,80 mètres et 338,91 mètres de long d'une courbe ayant un rayon de 815,00 mètres vers le nord-est, 104,06 mètres, 60,01 mètres, 90,00 mètres, 30,33 mètres, 51,32 mètres; 92,25 mètres d'arc le long d'une courbe ayant un rayon de 615,00 mètres, 35,95 mètres, 25,76 mètres, 21,05 mètres, 31,26 et 25,82 mètres vers le nord, 6,83 mètres vers le nord-ouest, 20,63 mètres, 51,45 mètres et 29,29 mètres vers le nord, 48,07 mètres, 5,39 mètres et 430,00 mètres vers le nord-ouest, 7,07 mètres vers le nord-est, 67,89 mètres vers l'est, 51,05 mètres d'arc le long d'une courbe ayant un rayon de 45,00 mètres vers le nord-est, 32,02 mètres vers le nord, 37,34 mètres vers l'est, 22,02 mètres vers le sud, 77,00 mètres vers l'est, 57,00 mètres vers le nord, 44,00 mètres vers l'ouest, 55,00 mètres vers le nord, 25,00 mètres vers l'ouest, 41,82 mètres et 25,72 mètres d'arc le long d'une courbe ayant un rayon de 40,00 mètres vers le sud-ouest, 40,70 mètres vers le sud, 98,10 mètres vers l'ouest, 35,21 mètres et 38,89 mètres d'arc le long d'une courbe ayant un rayon de 782,00 mètres vers le nord, 14,99 mètres vers le nord-ouest, 29,76 mètres vers le nord, 24,96 mètres vers le nord-ouest, 19,63 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 24,55 mètres, 34,28 mètres d'arc le long d'une courbe ayant un rayon de 783,50 mètres, 29,45 mètres, 107,02 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 180,94 mètres, 50,00 mètres, 35,00 mètres et 15,04 mètres vers le nord, 35,33 mètres vers l'est, 20,00 mètres, 70,46 mètres, 25,96 mètres, 63,00 mètres, 64,57 mètres, 61,30 mètres, 81,51 mètres d'arc le long d'une courbe ayant un rayon de 917,00 mètres vers le nord, 5,47 mètres vers le nord-ouest, 159,48 mètres d'arc le long d'une courbe ayant un rayon de 915,00 mètres, 193,99 mètres et 313,53 mètres vers le nord, 617,36 mètres vers le nord-est, 2111,36 mètres, 936,11 mètres et 232,24 mètres vers le sud, 265,84 mètres vers le sud-est, 1694,70 mètres mesurée en suivant une ligne sinueuse vers le sud-ouest et le sud, 135,90 mètres mesurée en suivant une ligne sinueuse vers le sud, 94,29 mètres, 1056,76 mètres et 389,82 mètres vers l'ouest, 78,00 mètres vers le sud-ouest et 89,56 mètres d'arc le long d'une courbe ayant un rayon de 522,92 mètres, 22,33 mètres d'arc le long d'une courbe ayant un rayon de 50,53 mètres et 30,67 mètres vers le nord-ouest; contenant une superficie de 3 321 872 mètres carrés.

R-11 Asset Purchase Agreement (Block Z), January 26, 2016 (cont'd)

- 2 -

- b) Le lot 3 931 539 du cadastre du Québec, circonscription foncière de Sept-Îles, lequel est plus particulièrement décrit comme suit:

De figure irrégulière, borné vers le nord-est par le lot 3 708 384, vers le sud-est et le nord-est par le lot 3 669 214, vers le sud, le sud-est, le sud-ouest et le sud par le lot 3 708 360, chemin de la Pointe-Noire, vers l'ouest, le sud et l'est par le lot 3 931 537 et vers le sud et le sud-ouest par le lot 3 708 361, chemin de la Pointe-Noire; mesurant successivement 235,54 mètres d'arc le long d'une courbe ayant un rayon de 813,35 mètres, 1535,40 mètres, 186,61 mètres d'arc le long d'une courbe ayant un rayon de 1796,57 mètres et 331,60 mètres vers le nord-est, 72,09 mètres vers le sud-est, 877,32 mètres vers le nord-est, 151,85 mètres, 31,62 mètres et 19,37 mètres vers le sud, 30,53 mètres vers le sud-est, 48,54 mètres et 19,57 mètres vers le sud, 6,62 mètres vers le sud-ouest, 72,62 mètres, 24,33 mètres, 34,11 mètres, 87,75 mètres d'arc le long d'une courbe ayant un rayon de 585,00 mètres, 48,70 mètres, 29,68 mètres, 90,00 mètres, 60,01 mètres et 45,00 mètres vers le sud, 45,00 mètres vers l'ouest, 40,00 mètres vers le sud, 45,00 mètres vers l'est, 19,06 mètres vers le sud, 326,43 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 394,80 mètres, 148,84 mètres d'arc le long d'une courbe ayant un rayon de 6 015,00 mètres, 50,26 mètres, 50,16 mètres, 95,29 mètres, 7,91 mètres d'arc le long d'une courbe ayant un rayon de 6.015.00 mètres, 657,10 mètres, 50,02 mètres, 150,00 mètres, 30,04 mètres et 522,35 mètres vers le sud-ouest ; contenant une superficie de ~~622-919,9~~ ^{662 919,9} mètres carrés.

- c) Une partie du lot 3 669 214 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés.

For purpose of clarity, the Block Z is identified in the attached land survey plan as being delimited by the red colored borders.

SCHEDULE "D" TO APPROVAL AND VESTING ORDER
REGISTRATIONS PUBLISHED AT THE REGISTRY OFFICE FOR THE REGISTRATION
DIVISION OF SEPT-ÎLES

- Legal Hypothec (construction) in favour of Axor Experts-Consell Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 306 859**;
- Legal Hypothec (construction) in favour of Kilotech Contrôle (1995) Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 231 306**;
- Prior Notice of the exercise of a sale by judicial authority in favour of Kilotech Contrôle (1995) Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 540 652**;
- Legal Hypothec (construction) in favour of Kilotech Contrôle (1995) Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 231 351**;
- Prior Notice of the exercise of a sale by judicial authority in favour of Kilotech Contrôle (1995) Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 540 654**;
- Legal Hypothec (construction) in favour of 3887952 Canada Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 269 941**;
- Prior Notice of the exercise of a sale by judicial authority in favour of 3887952 Canada Inc. registered at the Registry Office for the Registration Division of Sept-Îles, under number **21 503 424**.

R-11 Asset Purchase Agreement (Block Z), January 26, 2016 (cont'd)

Schedule "B"

Permitted Encumbrances

1. Servitude registered at the Registry Office for the Registration Division of Sept-Îles, under number 2 161;
2. Servitude registered at the Registry Office for the Registration Division of Sept-Îles, under number 32 464;
3. Servitudes or rights-of-way for the passage, ingress and egress of Persons and vehicles over parts of the Purchased Assets, provided such servitudes or rights-of-way are registered on title of the Purchased Assets;
4. Servitudes for the supply of utilities to the Purchased Assets and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services, provided such servitudes are registered on title of the Purchased Assets;
5. Any unregistered servitudes or rights of way by Hydro-Québec to occupy a part of the Purchased Assets to install any circuits, poles and necessary equipment required for the connection or the network, in accordance to its by-law number 634 relating to the supply of electricity and any servitudes granted prior to January 1, 1917 which affect the Purchased Assets;
6. Restrictive covenants, private deed restrictions and other similar land use control agreements, provided they are registered on title to the Purchased Assets;
7. Any minor encroachments by any structure located on the Purchased Assets onto any adjoining lands and any minor encroachment by any structure located on adjoining lands onto the Purchased Assets;
8. Any title defects, irregularities, easements, servitudes, encroachments, rights-of-way or other discrepancies in title or possession relating to the Purchased Assets;
9. The provisions of Applicable Laws, including by-laws, regulations, airport zoning regulations, ordinances and similar instruments relating to development and zoning;
10. Any reservations, exceptions, limitations, provisos and conditions contained in the original Crown grant or patent; and
11. Servitudes in favour of Hydro-Québec registered at the Registry Office for the Registration Division of Sept-Îles, under numbers 75 876 and 75-877.

Schedule "C"

Purchased Assets

The immovable known and described as being composed of a part of lot 3 931 541, lot 3 931 539 and part of lot 3 669 214, all of the cadastre of Québec, registration division of Sept-Îles, such lot and parts of lots being for purposes hereof particularly described as follows:

- a) Une partie du lot 3 931 541 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

Une partie du lot 3 931 541, de figure irrégulière, bornée vers le nord-est et le nord par les lots 3 708 360 et 3 708 361, chemin de la Pointe-Noire, vers le nord-est, l'est, le nord, l'ouest et le sud-ouest par le lot 3 931 533, vers le nord et l'est par le lot 3 708 360, chemin de la Pointe-Noire, vers le nord par la partie restante du lot 3 931 541, vers le nord-est par le lot 3 708 376, vers le sud et le sud-est par un territoire non cadastré, vers le sud-ouest et le sud par la limite des hautes eaux (marées) de la Baie-des-Sept-Îles (Territoire non cadastré), vers l'ouest par le lot 3 669 046, par un territoire non cadastré et par les lots 3 669 047 et 4 711 908, vers le sud-ouest par le lot 4 711 908 et vers le nord-ouest par le lot 3 708 359, rue Alband-Bancharde; mesurant successivement 505,92 mètres, 30,04 mètres, 150,00 mètres, 50,02 mètres, 657,10 mètres, 7,87 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 94,78 mètres, 49,86 mètres, 49,98 mètres, 148,10 mètres d'arc le long d'une courbe ayant un rayon de 5985,00 mètres, 394,80 mètres et 338,91 mètres de long d'une courbe ayant un rayon de 815,00 mètres vers le nord-est, 104,06 mètres, 60,01 mètres, 90,00 mètres, 30,33 mètres, 51,32 mètres; 92,25 mètres d'arc le long d'une courbe ayant un rayon de 615,00 mètres, 35,95 mètres, 25,76 mètres, 21,05 mètres, 31,26 et 25,82 mètres vers le nord, 6,83 mètres vers le nord-ouest, 20,63 mètres, 51,45 mètres et 29,29 mètres vers le nord, 48,07 mètres, 5,39 mètres et 430,00 mètres vers le nord-ouest, 7,07 mètres vers le nord-est, 67,89 mètres vers l'est, 51,05 mètres d'arc le long d'une courbe ayant un rayon de 45,00 mètres vers le nord-est, 32,02 mètres vers le nord, 37,34 mètres vers l'est, 22,02 mètres vers le sud, 77,00 mètres vers l'est, 57,00 mètres vers le nord, 44,00 mètres vers l'ouest, 55,00 mètres vers le nord, 25,00 mètres vers l'ouest, 41,82 mètres et 25,72 mètres d'arc le long d'une courbe ayant un rayon de 40,00 mètres vers le sud-ouest, 40,70 mètres vers le sud, 98,10 mètres vers l'ouest, 35,21 mètres et 38,89 mètres d'arc le long d'une courbe ayant un rayon de 782,00 mètres vers le nord, 14,99 mètres vers le nord-ouest, 29,76 mètres vers le nord, 24,96 mètres vers le nord-ouest, 19,63 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 24,55 mètres, 34,28 mètres d'arc le long d'une courbe ayant un rayon de 783,50 mètres, 29,45 mètres, 107,02 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 180,94 mètres, 50,00 mètres, 35,00 mètres et 15,04 mètres vers le nord, 35,33 mètres vers l'est, 20,00 mètres, 70,46 mètres, 25,96 mètres, 63,00 mètres, 64,57 mètres, 61,30 mètres, 81,51 mètres d'arc le long d'une courbe ayant un rayon de 917,00 mètres vers le nord, 5,47 mètres vers le nord-ouest, 159,48 mètres d'arc le long d'une courbe ayant un rayon de 915,00 mètres, 193,99 mètres et 313,53 mètres vers le nord, 617,36 mètres vers le nord-est, 2111,36 mètres, 936,11 mètres et 232,24 mètres vers le sud, 265,84 mètres vers le sud-est, 1694,70 mètres mesurée en suivant une ligne sinueuse vers le sud-ouest et le sud, 135,90 mètres mesurée en suivant une ligne sinueuse vers le sud, 94,29 mètres, 1056,76 mètres et 389,82 mètres vers l'ouest, 78,00 mètres vers le sud-ouest et 89,56 mètres d'arc le long d'une courbe ayant un rayon de 522,92 mètres, 22,33 mètres d'arc le long d'une courbe ayant un rayon de 50,53 mètres et 30,67 mètres vers le nord-ouest; contenant une superficie de 3 321 872 mètres carrés.

R-11 Asset Purchase Agreement (Block Z), January 26, 2016 (cont'd)

- 2 -

- b) Le lot 3 931 539 du cadastre du Québec, circonscription foncière de Sept-Îles, lequel est plus particulièrement décrit comme suit:

De figure irrégulière, borné vers le nord-est par le lot 3 708 384, vers le sud-est et le nord-est par le lot 3 669 214, vers le sud, le sud-est, le sud-ouest et le sud par le lot 3 708 360, chemin de la Pointe-Noire, vers l'ouest, le sud et l'est par le lot 3 931 537 et vers le sud et le sud-ouest par le lot 3 708 361, chemin de la Pointe-Noire; mesurant successivement 235,54 mètres d'arc le long d'une courbe ayant un rayon de 813,35 mètres, 1535,40 mètres, 186,61 mètres d'arc le long d'une courbe ayant un rayon de 1796,57 mètres et 331,60 mètres vers le nord-est, 72,09 mètres vers le sud-est, 877,32 mètres vers le nord-est, 151,85 mètres, 31,62 mètres et 19,37 mètres vers le sud, 30,53 mètres vers le sud-est, 48,54 mètres et 19,57 mètres vers le sud, 6,62 mètres vers le sud-ouest, 72,62 mètres, 24,33 mètres, 34,11 mètres, 87,75 mètres d'arc le long d'une courbe ayant un rayon de 585,00 mètres, 48,70 mètres, 29,68 mètres, 90,00 mètres, 60,01 mètres et 45,00 mètres vers le sud, 45,00 mètres vers l'ouest, 40,00 mètres vers le sud, 45,00 mètres vers l'est, 19,06 mètres vers le sud, 326,43 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 394,80 mètres, 148,84 mètres d'arc le long d'une courbe ayant un rayon de 6 015,00 mètres, 50,26 mètres, 50,16 mètres, 95,29 mètres, 7,91 mètres d'arc le long d'une courbe ayant un rayon de 6 015,00 mètres, 657,10 mètres, 50,02 mètres, 150,00 mètres, 30,04 mètres et 522,35 mètres vers le sud-ouest; contenant une superficie de 622 919,9 mètres carrés.

622 919,9

- c) Une partie du lot 3 669 214 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés.

For purpose of clarity, the Block Z is identified in the attached land survey plan as being delimited by the red colored borders.

R-11 Asset Purchase Agreement (Block Z), January 26, 2016 (*cont'd*)

- 2 -

- b) Le lot 3 931 539 du cadastre du Québec, circonscription foncière de Sept-Îles, lequel est plus particulièrement décrit comme suit:

De figure irrégulière, borné vers le nord-est par le lot 3 708 384, vers le sud-est et le nord-est par le lot 3 669 214, vers le sud, le sud-est, le sud-ouest et le sud par le lot 3 708 360, chemin de la Pointe-Noire, vers l'ouest, le sud et l'est par le lot 3 931 537 et vers le sud et le sud-ouest par le lot 3 708 361, chemin de la Pointe-Noire; mesurant successivement 235,54 mètres d'arc le long d'une courbe ayant un rayon de 813,35 mètres, 1535,40 mètres, 186,61 mètres d'arc le long d'une courbe ayant un rayon de 1796,57 mètres et 331,60 mètres vers le nord-est, 72,09 mètres vers le sud-est, 877,32 mètres vers le nord-est, 151,85 mètres, 31,62 mètres et 19,37 mètres vers le sud, 30,53 mètres vers le sud-est, 48,54 mètres et 19,57 mètres vers le sud, 6,62 mètres vers le sud-ouest, 72,62 mètres, 24,33 mètres, 34,11 mètres, 87,75 mètres d'arc le long d'une courbe ayant un rayon de 585,00 mètres, 48,70 mètres, 29,68 mètres, 90,00 mètres, 60,01 mètres et 45,00 mètres vers le sud, 45,00 mètres vers l'ouest, 40,00 mètres vers le sud, 45,00 mètres vers l'est, 19,06 mètres vers le sud, 326,43 mètres d'arc le long d'une courbe ayant un rayon de 785,00 mètres, 394,80 mètres, 148,84 mètres d'arc le long d'une courbe ayant un rayon de 6 015,00 mètres, 50,26 mètres, 50,16 mètres, 95,29 mètres, 7,91 mètres d'arc le long d'une courbe ayant un rayon de 6 015,00 mètres, 657,10 mètres, 50,02 mètres, 150,00 mètres, 30,04 mètres et 522,35 mètres vers le sud-ouest ; contenant une superficie de 622 919,9 mètres carrés.

- c) Une partie du lot 3 669 214 du cadastre du Québec, circonscription foncière de Sept-Îles, décrite comme suit :

De figure irrégulière, bornée vers le nord-ouest par une partie du lot 3 669 214, vers l'est, le nord et l'ouest par la partie du lot 3 669 214 qui remplace le lot Z-1 du bloc Z du cadastre du canton d'Arnaud, vers le nord par une partie du lot 3 669 214, vers le sud, le sud-est et le sud-ouest par le lot 3 708 360, chemin de la Pointe-Noire; mesurant successivement 420,43 mètres vers le nord-ouest, 55,32 mètres vers l'est, 434,95 mètres vers le nord, 24,08 mètres vers l'ouest, 390,14 mètres vers le nord, 52,21 mètres, 25,50 mètres, 25,50 mètres, 48,13 mètres, 154,25 mètres d'arc le long d'une courbe ayant un rayon de 885,00 mètres, 5,30 mètres et 78,49 mètres d'arc le long d'une courbe ayant un rayon de 883,00 mètres vers le sud, 5,30 mètres vers le sud-est, 44,24 mètres vers le sud, 17,89 mètres vers le sud-ouest, 24,75 mètres, 99,96 mètres, 50,00 mètres, 44,28 mètres, 20,62 mètres, 27,07 mètres, 35,00 mètres, 50,00 mètres, 180,94 mètres, 111,11 mètres d'arc le long d'une courbe ayant un rayon de 815,00 mètres, 30,63 mètres, 35,72 mètres d'arc le long d'une courbe ayant un rayon de 816,50 mètres et 25,54 mètres vers le sud; contenant une superficie de 122 810 mètres carrés.

For purpose of clarity, the Block Z is identified in the attached land survey plan as being delimited by the red colored borders.

R-13 Termination Notices by Newfoundland & Labrador Superintendent of Pensions,
December 16, 2015



Government of Newfoundland and Labrador
Service NL

December 16, 2015

Mr. Kurt Holland
Director - Benefits
c/o Cliffs Natural Resources, Inc.
200 Public Square, Suite 3300
Cleveland, Ohio
USA
44114 – 2315

Dear Mr. Holland:

**Re: Contributory Pension Plan for Salaried Employees of Wabush Mines,
Cliffs Mining Company, Managing Agent, Arnaud Railway Company and
Wabush Lake Railway Company, Limited; (the "Plan")
NL Registration Number 0021314**

I am writing to you in your capacity as the Plan administrator. Pursuant to subsections 59(1)(b) and (d) of the *Pension Benefits Act, 1997* (the Act), I am terminating the Plan effective immediately.

On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the "Wabush Group") were made subject to proceeding under the Companies' Creditors Arrangement Act (CCAA). As part of the CCAA proceeding, payments of special payments have been suspended as of May 2015. In addition, the Wabush Mine has been shut down and substantially all of its employees have been terminated. As a result, I am of the opinion that the Plan has failed to meet the requirements prescribed by the *Pension Benefits Act Regulations* (the Regulations) for solvency in respect of funding as required by section 12 of the Regulations, and that the employer has discontinued all of its business operations

Furthermore, it is my understanding based on recent communication with you and your legal counsel that, although there may be some prospects with respect to the sale of at least some of the Wabush Group's assets, it is highly unlikely that any potential buyer would agree to assume the assets and liabilities of the Plan. Given the Plan's future prospects and its current financial position, I consider that it would be in the best interests of members to terminate the Plan effective immediately.

Based on the above, I declare the Plan terminated effective the date of issuance of this letter, December 16, 2015.

R-13 Termination Notices by Newfoundland & Labrador Superintendent of Pensions,
December 16, 2015 (*cont'd*)

Mr. K. Holland
December 16, 2015

Subsection 61(1) of the Act provides that upon termination of a plan the employer must pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the Regulations for solvency. Under section 25 of the Regulations, this amount is required within 30 days of the date of termination of the Plan.

Additionally, subsection 61(2) of the Act requires that on plan termination the employer shall, as prescribed by the Regulations, pay into the pension fund the amount that is necessary to fund the benefits provided under the Plan. Section 25.1 of the Regulations outlines the rules with respect to the required funding.

Section 32 of the Act sets out rules with respect to the application of the deemed trust upon plan termination.

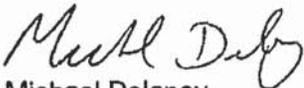
I wish to inform you that following the termination of a plan, an annual information return and actuarial termination report must be filed with my office pursuant to subsection 60(2) of the Act. Please be advised that funds cannot be transferred until the Superintendent has approved the termination report and transfer in writing. Please refer to the Act and associated regulations and Directives (in particular Nos. 8, 9 and 11) for additional details. The Directives can be found on the Service NL website.

Once the wind-up report has been approved, option statements must be provided to members in accordance with the Act and Directives. However, please note that copies/templates are required by this office prior to approving the termination report. Please refer to the requirements under Directive No. 8 (and any additional requirements under Directive No. 11).

Please inform all Plan members of my decision to declare the Plan terminated effective the date of issuance of this letter, December 16, 2015.

Should you have any questions or concerns please contact me directly at (709) 729-6014.

Yours truly,



Michael Delaney
Superintendent of Pensions
Pension Benefit Standards Division

cc: Marthe Brodeur, Cliffs Natural Resources
Natalie Bussière, Blakes
Nigel Meakin, FTI Consulting
Michel Drolet, Regie des rentes

R-13 Termination Notices by Newfoundland & Labrador Superintendent of Pensions,
December 16, 2015 (*cont'd*)



Government of Newfoundland and Labrador
Service NL

December 16, 2015

Mr. Kurt Holland
Director - Benefits
c/o Cliffs Natural Resources, Inc.
200 Public Square, Suite 3300
Cleveland, Ohio
USA
44114 – 2315

Dear Mr. Holland:

**Re: Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, and Wabush Lake Railway Company, Limited; (the "Plan")
NL Registration Number 0024699**

I am writing to you in your capacity as the Plan administrator. Pursuant to subsections 59(1)(b) and (d) of the *Pension Benefits Act, 1997* (the Act), I am terminating the Plan effective immediately. I am aware the federal pension regulator, who is jointly responsible for regulating the Plan is issuing a similar decision based on their legislative authority.

On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the "Wabush Group") were made subject to proceeding under the Companies' Creditors Arrangement Act (CCAA). As part of the CCAA proceeding, payments of special payments have been suspended as of May 2015. In addition, the Wabush Mine has been shut down and substantially all of its employees have been terminated. As a result, I am of the opinion that the Plan has failed to meet the requirements prescribed by the *Pension Benefits Act Regulations* (the Regulations) for solvency in respect of funding as required by section 12 of the Regulations, and that the employer has discontinued all of its business operations

Furthermore, it is my understanding based on recent communication with you and your legal counsel that, although there may be some prospects with respect to the sale of at least some of the Wabush Group's assets, it is highly unlikely that any potential buyer would agree to assume the assets and liabilities of the Plan. Given the Plan's future prospects and its current financial position, I consider that it would be in the best interests of members to terminate the Plan effective immediately.

Based on the above, I declare the Plan terminated effective the date of issuance of this letter, December 16, 2015.

R-13 Termination Notices by Newfoundland & Labrador Superintendent of Pensions,
December 16, 2015 (*cont'd*)

Mr. K. Holland
December 16, 2015

Subsection 61(1) of the Act provides that upon termination of a plan the employer must pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the Regulations for solvency. Under section 25 of the Regulations, this amount is required within 30 days of the date of termination of the Plan.

Additionally, subsection 61(2) of the Act requires that on plan termination the employer shall, as prescribed by the Regulations, pay into the pension fund the amount that is necessary to fund the benefits provided under the Plan. Section 25.1 of the Regulations outlines the rules with respect to the required funding.

Section 32 of the Act sets out rules with respect to the application of the deemed trust upon plan termination.

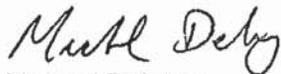
I wish to inform you that following the termination of a plan, an annual information return and actuarial termination report must be filed with my office pursuant to subsection 60(2) of the Act. Please be advised that funds cannot be transferred until the Superintendent has approved the termination report and transfer in writing. Please refer to the Act and associated regulations and Directives (in particular Nos. 8, 9 and 11) for additional details. The Directives can be found on the Service NL website.

Once the wind-up report has been approved, option statements must be provided to members in accordance with the Act and Directives. However, please note that copies/templates are required by this office prior to approving the termination report. Please refer to the requirements under Directive No. 8 (and any additional requirements under Directive No. 11).

Please inform all Plan members of my decision to declare the Plan terminated effective the date of issuance of this letter, December 16, 2015.

Should you have any questions or concerns please contact me directly at (709) 729-6014.

Yours truly,



Michael Delaney
Superintendent of Pensions
Pension Benefit Standards Division

cc: Marthe Brodeur, Cliffs Natural Resources
Natalie Bussière, Biakes
Nigel Meakin, FTI Consulting
Mark Zelmer, OSFI
Michel Drolet, Regie des rentes

R-14 Termination Notice by OSFI, December 16, 2015



Office of the Superintendent of
Financial Institutions Canada

Bureau du surintendant des
institutions financières Canada

Unclassified / Low Sensitivity

OSFI Plan ID: P-W180

December 16, 2015

Mr. Kurt Holland
Director, Compensation and Benefits
Cliffs Natural Resources
1155 University Street, Suite 508
Montreal, QC H3B 3A7

Subject: Termination of the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, and Wabush Lake Railway Company, Limited (the Plan)
OSFI Registration Number: 57777
Pension Benefits Standards Act, 1985 (PBSA)
Pension Benefits Standards Regulations, 1985 (the Regulations)

I am writing to you in your capacity as the Plan administrator. Pursuant to subsections 29(2), (2.1) and (3) of the PBSA I am terminating the Plan effective immediately. The Newfoundland Superintendent of Pensions, in a letter dated December 16, 2015, has also declared the Plan terminated effective as of today.

On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company¹ and Wabush Lake Railway Company Limited (collectively the "Wabush Group") were made subject to proceeding under the Companies' Creditors Arrangement Act (CCAA). As part of the CCAA proceeding, payments of special payments have been suspended as of May 2015. In addition, the Wabush Mine has been shut down and substantially all of its employees have been terminated. As a result, I am of the opinion that the Plan has failed to meet the prescribed tests and standards for solvency as required by subsection 9(1) of the PBSA and sections 8 and 9 of the Regulations, and that the employer has discontinued all of its business operations.

Furthermore, it is OSFI's understanding based on recent communication with you and your legal counsel that, although there may be some prospects with respect to the sale of at least some of the Wabush Group's assets, it is highly unlikely that any potential buyer would agree to assume the assets and liabilities of the Plan. Given the Plan's future prospects and its current financial position, I consider that it would be in the best interests of members to terminate the Plan effective immediately.

¹ Arnaud Railway Company is a federally regulated railway and is a participating employer in the Plan. The Plan was registered with the Office of the Superintendent of Financial Institutions (OSFI) on March 20, 2015 following a decision issued by the Canada Industrial Relations Board accrediting the union representing Plan members working at the Arnaud Railway Company at Pointe-Noire and Sept-Îles, Quebec, under the Canada Labour Code.



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R-14 Termination Notice by OSFI, December 16, 2015 (*cont'd*)

- 2 -

Based on the above, I declare the Plan terminated effective the date of issuance of this letter, December 16, 2015.

Subsection 29(6) of the PBSA provides that upon termination of a plan the employer must pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) of the PBSA.

Note that subsection 29(6.1) of the PBSA requires that on plan termination the employer pay into the pension fund the amount that is required to ensure that any obligation of the plan with respect to pension benefits, as they are determined on the date of the termination, is satisfied. Under subsection 29(6.4), this amount is payable immediately on the winding-up of the pension plan, or the liquidation, assignment or bankruptcy of the employer. Subsections 29(6.2) and 29(6.5), as well as subparagraph 8(1)(c)(ii), set out rules with respect to the application of the deemed trust upon plan termination.

I wish to inform you that following the termination of a plan, an actuarial termination report must be filed with my office pursuant to subsection 29(9) of the PBSA. Furthermore, upon termination of a plan, OSFI's approval would be required before the Plan's funds could be distributed. Section VI of OSFI's Instruction Guide titled "Filing and Reporting Requirements for Defined Benefit Pension Plan Terminations" outlines the documents that are expected to be filed with OSFI within 90 days of the termination date.

Please inform all Plan members and stakeholders of my decision to declare the Plan terminated as soon as possible.

If you have any questions you may contact Stephen Reid at 613-990-2537 or Chuck Saab at 613-990-8027.

Yours truly,



Mark Zelmer
Deputy Superintendent
Office of the Superintendent of Financial Institutions

cc: Marthe Brodeur, Cliffs Natural Resources
Natalie Bussière, Blakes
Michael Delaney, Newfoundland, Superintendent of Pensions
Michel Drolet, Régie des rentes du Québec
Nigel Meakin, FTI Consulting



Office of the Superintendent of
Financial Institutions Canada

Bureau du surintendant des
institutions financières Canada

References – Pension Benefits Standards Act, 1985

Appendix

Subsection 29(2) of the PBSA:

Where Superintendent may declare a plan terminated

- 29(2) The Superintendent may declare the whole or part of a pension plan terminated where
- (a) there is any suspension or cessation of employer contributions in respect of all or part of the plan members;
 - (b) the employer has discontinued or is in the process of discontinuing all of its business operations or a part thereof in which a substantial portion of its employees who are members of the pension plan are employed; or
 - (c) the Superintendent is of the opinion that the pension plan has failed to meet the prescribed tests and standards for solvency in respect of funding referred to in subsection 9(1).

Subsection 29(6) of the PBSA:

Payments by employer to meet solvency requirements

29(6) If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the pension fund

- (a) an amount equal to the normal cost that has accrued to the date of the termination;
- (b) the amounts of any prescribed special payments that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;
- (c) the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;
- (d) all of the following amounts that have not been remitted to the pension fund at the date of the termination:
 - (i) the amounts deducted by the employer from members' remuneration, and
 - (ii) other amounts due to the pension fund from the employer; and
- (e) the amounts of all of the payments that are required to be made under subsection 9.14(2).

Subsection 29(6.1) of the PBSA:

Payments by employer of pension benefits

29(6.1) If the whole of a pension plan that is not a negotiated contribution plan is terminated, the employer shall pay into the pension fund, in accordance with the regulations, the amount — calculated periodically in accordance with the regulations — that is required to ensure that any obligation of the plan with respect to pension benefits, as they are determined on the date of the termination, is satisfied.



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Subsection 29(6.4) of the PBSA:*Winding-up or bankruptcy*

29(6.4) On the winding-up of the pension plan or the liquidation, assignment or bankruptcy of the employer, the amount required to permit the plan to satisfy any obligations with respect to pension benefits as they are determined on the date of termination is payable immediately.

R-15 Replacement Plan Administrator Notice by Newfoundland & Labrador Superintendent of Pensions, March 30, 2016



Government of Newfoundland and Labrador
Service NL

March 30, 2016

Mr. Paul Chang, FCIA
Partner
Morneau Shepell
7071 Bayers Rd, Suite 3007
Halifax, NS B3L 2C2

Dear Mr. Chang:

Re: Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited; (the "Plan")
NL Registration Number 0021314

On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the "Wabush Group") were made subject to proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").

On December 16, 2015, the Superintendent of Pensions declared a termination of the Plan.

On March 1, 2016, the Wabush Group (through their legal counsel) requested, in writing, the appointment of a replacement administrator for the Plan on or about March 14, 2016. In this letter, and subsequent correspondence dated March 23, 2016, it was stated that the Wabush Group no longer has the resources available to act as administrator for the Plan.

Pursuant to section 63 of the *Pension Benefits Act, 1997* (the "Act"), where the whole of a pension plan has been terminated and the superintendent is of the opinion that no action or insufficient action has been taken to wind-up the plan, the superintendent may appoint an administrator for the plan.

Based on the request, there is sufficient concern regarding the wind-up of the Plan and I am of the opinion that another administrator should be appointed for the Plan.

R-15 Replacement Plan Administrator Notice by Newfoundland & Labrador Superintendent of Pensions, March 30, 2016 (*cont'd*)

Mr. P. Chang
March 30, 2016

I understand from your correspondence, dated March 4, 2016, that Morneau Shepell is willing to act as administrator for the Plan. Therefore, pursuant to section 63 of the Act, **effective the date of issuance of this letter, March 30, 2016, I hereby appoint Morneau Shepell as the administrator for the Plan.**

Please refer to the Act and associated legislation for the duties and responsibilities of an administrator.

Please inform all Plan members of your appointment as soon as possible. No official communication will be issued by this office but any future calls requesting to speak with the administrator will be directed to your firm. I understand that the initial point of contact is Paula Boyd and, when appropriate, I will provide her contact information to enquiring members of the Plan.

As administrator, you are entitled to all pertinent information relating to the Plan, including; plan documentation, agreements with any third-party providers, pension database(s), all previous communication to plan members and stakeholders, documentation filed with regulatory authorities, all previous filings with the monitor and Superior Court relating to the Plan (**including the Pension Claim**), etc. I trust that all parties will co-operate efficiently and completely with the new administrator to minimize any potential disruption to the members. Please notify me immediately if there are any issues.

Once you have an opportunity to familiarize yourself with the Plan I would suggest that we have a meeting to discuss the completion of the wind-up. Please contact me in the next two to three weeks to arrange such a meeting.

As you are aware, in your role as administrator for the Plan, you are responsible for ensuring that only permitted fees and expenses can be paid from the pension fund. I trust you will ensure that any expenses that are the responsibility of any party to the Plan will continue to be paid appropriately. I request that all expenses paid from the pension fund are filed with this office, within 30 days after the end of the month the expense is paid. However, please be advised that this office will not be approving the expenses – as this is the role of the administrator.

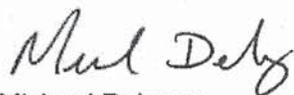
Finally, although the Wabush Group is relinquishing its role as administrator from March 30, 2016, it does not limit in any way the financial obligations of any employer involved in the Plan or any potential liability in respect of the fiduciary responsibilities prior to this date.

R-15 Replacement Plan Administrator Notice by Newfoundland & Labrador Superintendent of Pensions, March 30, 2016 (*cont'd*)

Mr. P. Chang
March 30, 2016

I trust this is satisfactory. Should you have any questions or concerns please contact me directly at (709) 729-6014.

Yours truly,



Michael Delaney
Superintendent of Pensions
Pension Benefit Standards Division

cc: Kurt Holland, Cliffs Natural Resources
Clifford Smith, Cliffs Natural Resources
Natalie Bussière, Blakes
Nigel Meakin, FTI Consulting
Michel Drolet, Retraite Québec
Cynthia Gaudreault, Willis Towers Watson
Ann-Marie White, CIBC Mellon
David Charland, Sun Life Financial

R-15 Replacement Plan Administrator Notice by Newfoundland & Labrador Superintendent of Pensions, March 30, 2016 (*cont'd*)



Government of Newfoundland and Labrador
Service NL

March 30, 2016

Mr. Paul Chang, FCIA
Partner
Morneau Shepell
7071 Bayers Rd, Suite 3007
Halifax, NS B3L 2C2

Dear Mr. Chang:

Re: Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, and Wabush Lake Railway Company, Limited; (the "Plan")
NL Registration Number 0024699

On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the "Wabush Group") were made subject to proceedings under the *Companies' Creditors Arrangement Act* ("CCAA").

On December 16, 2015, the Superintendent of Pensions declared a termination of the Plan.

On March 1, 2016, the Wabush Group (through their legal counsel) requested, in writing, the appointment of a replacement administrator for the Plan on or about March 14, 2016. In this letter, and subsequent correspondence dated March 23, 2016, it was stated that the Wabush Group no longer has the resources available to act as administrator for the Plan.

Pursuant to section 63 of the *Pension Benefits Act, 1997* (the "Act"), where the whole of a pension plan has been terminated and the superintendent is of the opinion that no action or insufficient action has been taken to wind-up the plan, the superintendent may appoint an administrator for the plan.

Based on the request, there is sufficient concern regarding the wind-up of the Plan and I am of the opinion that another administrator should be appointed for the Plan.

R-15 Replacement Plan Administrator Notice by Newfoundland & Labrador Superintendent of Pensions, March 30, 2016 (*cont'd*)

Mr. P. Chang
March 30, 2016

I understand from your correspondence, dated March 4, 2016, that Morneau Shepell is willing to act as administrator for the Plan. Therefore, pursuant to section 63 of the Act, **effective the date of issuance of this letter, March 30, 2016, I hereby appoint Morneau Shepell as the administrator for the Plan.**

I am aware the federal pension regulator, who is also responsible for regulating the Plan, is issuing a similar decision based on their legislative authority.

Please refer to the Act and associated legislation for the duties and responsibilities of an administrator.

Please inform all Plan members of your appointment as soon as possible. No official communication will be issued by this office but any future calls requesting to speak with the administrator will be directed to your firm. I understand that the initial point of contact is Paula Boyd and, when appropriate, I will provide her contact information to enquiring members of the Plan.

As administrator, you are entitled to all pertinent information relating to the Plan, including; plan documentation, agreements with any third-party providers, pension database(s), all previous communication to plan members and stakeholders, documentation filed with regulatory authorities, all previous filings with the monitor and Superior Court relating to the Plan (**including the Pension Claim**), etc. I trust that all parties will co-operate efficiently and completely with the new administrator to minimize any potential disruption to the members. Please notify me immediately if there are any issues.

Once you have an opportunity to familiarize yourself with the Plan I would suggest that we have a meeting to discuss the completion of the wind-up. Please contact me in the next two to three weeks to arrange such a meeting.

As you are aware, in your role as administrator for the Plan, you are responsible for ensuring that only permitted fees and expenses can be paid from the pension fund. I trust you will ensure that any expenses that are the responsibility of any party to the Plan will continue to be paid appropriately. I request that all expenses paid from the pension fund are filed with this office, within 30 days after the end of the month the expense is paid. However, please be advised that this office will not be approving the expenses – as this is the role of the administrator.

Finally, although the Wabush Group is relinquishing its role as administrator from March 30, 2016, it does not limit in any way the financial obligations of any employer involved in the Plan or any potential liability in respect of the fiduciary responsibilities prior to this date.

R-15 Replacement Plan Administrator Notice by Newfoundland & Labrador Superintendent of Pensions, March 30, 2016 (*cont'd*)

Mr. P. Chang
March 30, 2016

I trust this is satisfactory. Should you have any questions or concerns please contact me directly at (709) 729-6014.

Yours truly,



Michael Delaney
Superintendent of Pensions
Pension Benefit Standards Division

cc: Kurt Holland, Cliffs Natural Resources
Clifford Smith, Cliffs Natural Resources
Natalie Bussière, Blakes
Nigel Meakin, FTI Consulting
Benoit Briere, OSFI
Michel Drolet, Retraite Québec
Cynthia Gaudreault, Willis Towers Watson
Ann-Marie White, CIBC Mellon
David Charland, Sun Life Financial

R-15 Replacement Plan Administrator Notice by Newfoundland & Labrador Superintendent of Pensions, March 30, 2016 (*cont'd*)



Office of the Superintendent of
Financial Institutions Canada

Bureau du surintendant des
institutions financières Canada

Unclassified – Low Sensitivity

March 30, 2016

OSFI Plan ID: P-W180

Mr. Kurt Holland
Director, Compensation and Benefits
Cliffs Natural Resources
1155 University Street, Suite 508
Montreal, QC H3B 3A7

Dear Mr. Holland:

Subject: Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, and Wabush Lake Railway Company, Limited (the Plan)
OSFI Registration Number: 57777
Pension Benefits Standards Act, 1985 (PBSA)
Pension Benefits Standards Regulations, 1985 (the Regulations)

The purpose of this letter is to inform you that I have appointed a replacement administrator for the Plan effective immediately. My authority for doing this is based on subsection 7.6(1) of the PBSA and section 10 of the *Office of the Superintendent of Financial Institutions Act* (OSFI Act). For your information, attached is an Appendix containing the relevant legislative references.

On March 1, 2016, and subsequent clarification on March 23, 2016, Blake, Cassels & Graydon LLP issued letters on behalf of Wabush Mines to the Newfoundland Superintendent of Pensions and our office requesting the appointment of a replacement administrator for the Plan on the basis that the administrator no longer has the resources necessary to perform the tasks related to the administration of the Plan.

Given this and the ongoing liquidation process under CCAA, I am of the opinion that it is in the best interests of the members and former members, and any other persons entitled to pension benefits under the Plan, that the current administrator be removed and a replacement administrator be appointed pursuant to subsection 7.6(1) of the PBSA.

Consequently, I wish to inform you that effective immediately, I have removed Wabush Mines as the Plan's administrator and have appointed Morneau Shepell as replacement administrator. Pursuant to subsection 7.6(3) of the PBSA, Morneau Shepell is seized of the pension funds as of the date of this notification.



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R-15 Replacement Plan Administrator Notice by Newfoundland & Labrador Superintendent of Pensions, March 30, 2016 (*cont'd*)

If you have any questions or wish to discuss this matter, please contact Chuck Saab at 613-990-8027.

Sincerely,



Mark Zelmer
Deputy Superintendent
Office of the Superintendent of Financial Institutions

Att.

Cc: Morneau Shepell
Ann-Marie White, CIBC Mellon
David Charland, Sun Life Financial
Michel Drolet, Retraite Québec
Natalie Bussière, Blakes
Michael Delaney, Newfoundland Superintendent of Pensions
Nigel Meakin, FTI Consulting Inc.
Cynthia Gaudreault, Willis Towers Watson

R-15 Replacement Plan Administrator Notice by Newfoundland & Labrador Superintendent of Pensions, March 30, 2016 (*cont'd*)

Appendix

Legislative References – Pension Benefits Standards Act, 1985

Section 7.6 of the PBSA:

Appointment of a replacement administrator

7.6 (1) If the administrator of a pension plan is insolvent or unable to act or the Superintendent is of the opinion that it is in the best interests of the members or former members, or any other persons entitled to pension benefits under the plan, that the administrator be removed, the Superintendent may remove the administrator and appoint a replacement administrator. A replacement administrator may recover their reasonable fees and expenses from the pension fund.

Notification

7.6 (2) The Superintendent must notify a replaced administrator of their removal as soon as feasible.

Effect of Replacement

7.6 (3) The replacement administrator is seized of the pension fund as of the date of the notification under subsection (2).

Section 10 of the OSFI Act:

Pursuant to section 10 of the *Office of the Superintendent of Financial Institutions Act*, the Superintendent has permitted the Deputy Superintendent to exercise the authority to appoint a replacement administrator.

R-16 Summary Table of Contributions to Salaried Employees Pension Plan

Salaried Plan**Reconciliation of Required versus Actual Employer Contributions from January 1, 2015 to the wind-Defined Benefit Component Only**

Contributions for 2014 were as expected

Please note any shortfalls presented here have not been interest adjusted (although interest is payable on shortfall amounts to date). Also note we have included contributions in respect of the month of April 2015 (but not May 2015) as having accrued prior to the

1 Normal Cost required contributions as stated in the January 1, 2014 actuarial report

Period Covered	Contribution Required by	Required * Normal Cost	Actual Normal Cost Cont.	Shortfall (Overcontribution)
Jan-15	2-Mar-15		41,932	
Feb-15	30-Mar-15		41,932	
Mar-15	30-Apr-15		41,932	
Apr-15	30-May-15		41,932	
May-15	30-Jun-15		41,931	
Jun-15	30-Jul-15		41,931	
Jul-15	30-Aug-15		41,931	
Aug-15	30-Sep-15		15,000	
Sep-15	30-Oct-15		15,000	
Oct-15	30-Nov-15		15,000	
Nov-15	30-Dec-15		15,000	
Dec-16	30-Jan-16		7,742	
Total Full Year		191,303	361,264	\$ (169,961)

* Based on 7.88% 2015 payroll of approximately \$2,427,706.04

2 Special payment contributions as stated in the January 1, 2014 actuarial report

Period Covered	Contribution Required by	Required Special Pmts	Actual Special Pmts	Shortfall (Overcontribution)
Jan-15	2-Mar-15	273,219	273,218	1
Feb-15	30-Mar-15	273,219	273,218	1
Mar-15	30-Apr-15	273,219	273,218	1
Apr-15	30-May-15	273,219	273,218	1
May-15	30-Jun-15	273,219	0	273,219
Jun-15	30-Jul-15	273,219	0	273,219
Jul-15	30-Aug-15	273,219	0	273,219
Aug-15	30-Sep-15	273,219	0	273,219
Sep-15	30-Oct-15	273,219	0	273,219
Oct-15	30-Nov-15	273,219	0	273,219
Nov-15	30-Dec-15	273,219	0	273,219
Dec-15 (to Dec 16th)	30-Jan-16	273,219	0	273,219
Total to CCAA entry		1,092,874	1,092,871	3
Total after CCAA		2,185,749	-	2,185,749
Total Full Year		3,278,623	1,092,871	\$ 2,185,752

Total Missed/(over) Contributions

1 Normal Cost contribution up to wind-up date	\$ (169,961)
2 January 1, 2014 valuation report special payments for period up to CCAA date	3
3 January 1, 2014 valuation report special payments for period after CCAA date	2,185,749

R-17 Summary Table of Contributions to Unionized Employees Pension Plan

Bargaining Plan

Reconciliation of Required versus Actual Employer Contributions from last filed actuarial report to the wind-up date (December 16, 2015)
Defined Benefit Component Only

Please note any shortfalls presented here have not been interest adjusted (although interest is payable on shortfall amounts to date of payment)

Also note we have included contributions in respect of the month of April 2015 (but not May 2015) as having accrued prior to the Wabush CCAA Parties entering CCAA

1 Normal Cost required contributions as stated in the January 1, 2015 actuarial report

Period Covered	Contribution Required by	Required Normal Cost	Actual Normal Cost Cont.	Shortfall (Overcontribution)
Jan-15	2-Mar-15	44,356	50,495	\$ (6,139)
Feb-15	30-Mar-15	44,356	50,495	\$ (6,139)
Mar-15	30-Apr-15	44,356	50,495	\$ (6,139)
Apr-15	30-May-15	44,356	50,495	\$ (6,139)
May-15	30-Jun-15	44,356	50,495	\$ (6,139)
Jun-15	30-Jul-15	44,356	50,495	\$ (6,139)
Jul-15	30-Aug-15	44,356	50,495	\$ (6,139)
Aug-15	30-Sep-15	44,356	1,382	\$ 42,974
Sep-15	30-Oct-15	44,356	44,356	\$ (0)
Oct-15	30-Nov-15	44,356	44,356	\$ (0)
Nov-15	30-Dec-15	44,356	44,356	\$ (0)
Dec-15 *	30-Jan-16	44,356	22,893	\$ 21,463
Total Full Year		532,269	\$10,807	\$ 21,462

* Members received credited service for the entire month of December as per Plan terms

2 Special payment contributions as stated in the January 1, 2014 actuarial report

Period Covered	Contribution Required by	Required Special Pmts	Actual Special Pmts	Shortfall (Overcontribution)
Jan-15	2-Mar-15	474,879	393337	81,542
Feb-15	30-Mar-15	474,879	393337	81,542
Mar-15	30-Apr-15	377,029	393337	- 16,308
Apr-15	30-May-15	377,029	393337	- 16,308
May-15	30-Jun-15	377,029	0	377,029
Jun-15	30-Jul-15	377,029	0	377,029
Jul-15	30-Aug-15	377,029	0	377,029
Aug-15	30-Sep-15	377,029	0	377,029
Sep-15	30-Oct-15	377,029	0	377,029
Oct-15	30-Nov-15	377,029	0	377,029
Nov-15	30-Dec-15	377,029	0	377,029
Dec-15 (to Dec 16th)	30-Jan-16	377,029	0	377,029
Total to CCAA entry		1,703,815	1,573,348	130,467
Total after CCAA		3,016,229	-	3,016,229
Total Full Year		4,720,044	1,573,348	\$ 3,146,696

3 Additional special payments created by January 1, 2015 actuarial report not filed until after the Wabush Group entered into CCAA
No contributions toward this special payment stream were made as the actuarial valuation report was not filed until July 2015 after the Wabush Group entered into CCAA protection.

Period Covered	Contribution Required by	Required Special Pmts	Actual Special Pmts	Shortfall (Overcontribution)
Jan-15	26-Aug-15	293,760	0	293,760
Feb-15	26-Aug-15	293,760	0	293,760
Mar-15	26-Aug-15	293,760	0	293,760
Apr-15	26-Aug-15	293,760	0	293,760
May-15	26-Aug-15	293,760	0	293,760
Jun-15	26-Aug-15	293,760	0	293,760
Jul-15	30-Aug-15	293,760	0	293,760
Aug-15	30-Sep-15	293,760	0	293,760
Sep-15	30-Oct-15	293,760	0	293,760
Oct-15	30-Nov-15	293,760	0	293,760
Nov-15	30-Dec-15	293,760	0	293,760
Dec-15 (to Dec 16th)	30-Jan-16	293,760	0	293,760
Total to CCAA entry		1,175,042	-	1,175,042
Total after CCAA		2,350,083	-	2,350,083
Total Full Year		3,525,125	-	\$ 3,525,125

Total Missed/(over) Contributions	
1 Normal Cost contribution up to wind-up date	\$ 21,462
2 January 1, 2014 valuation report special payments for period up to CCAA date	130,467
3 January 1, 2014 valuation report special payments for period after CCAA date	3,016,229
4 January 1, 2015 valuation report additional special payments for period up to CCAA date	1,175,042
5 January 1, 2015 valuation report additional special payments for period after CCAA date	2,350,083

R-18 Proof of Claim for Salaried Employees Pension Plan, December 18, 2015

SCHEDULE H

**PROOF OF CLAIM
FOR CLAIMS AND RESTRUCTURING CLAIMS
AGAINST THE BLOOM LAKE CCAA PARTIES
AND/OR THE WABUSH CCAA PARTIES**

The "Bloom Lake CCAA Parties" are:

Bloom Lake General Partner Limited
Quinto Mining Corporation
856839 Canada Limited
Cliffs Quebec Iron Mining ULC
Bloom Lake Railway Company Limited
The Bloom Lake Iron Ore Mine Limited Partnership

The "Wabush CCAA Parties" are:

Wabush Iron Co. Limited
Wabush Resources Inc.
Wabush Mines
Arnaud Railway Company
Wabush Lake Railway Company Limited

(The Bloom Lake CCAA Parties and Wabush CCAA Parties collectively form the "CCAA Parties")

Please read the enclosed Instruction Letter carefully prior to completing the attached Proof of Claim. Capitalized terms not defined within this Proof of Claim form or the appended Instruction Letter shall have the meaning ascribed thereto in the Claims Procedure Order dated November 5, 2015 and amended on November 16, 2015 and as may be further amended, restated or supplemented from time to time. A copy of the Claims Procedure Order can be found on the Monitor's website at: <http://cfcanada.fticonsulting.com/bloomlake/>

Particulars of Creditor:

Please provide the following information:

Legal Name of Creditor:	Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, as Managing Agent, Arnaud Railway and Wabush Lake Railway
Doing Business As:	Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, as Managing Agent, Arnaud Railway and Wabush Lake Railway
Legal Counsel or Representative (if applicable):	Marthe Brodeur
Address:	
Number and Street (line 1)	1155 University
Number and Street (line 2)	Suite 508
City	Montreal
Province / State	Quebec
Postal / Zip Code	H3B 3A7
Country	Canada
Telephone Number (including area)	(844)954-6534
E-mail address:	Marthe.brodeur@cliffsnr.com
Attention (Contact Person):	Marthe Brodeur

R-18 Proof of Claim for Salaried Employees Pension Plan, December 18, 2015 (cont'd)

Proof of Claim (other than Restructuring Claims):

I, Marthe Brodeur (name of individual Creditor or Representative of corporate Creditor), of Montreal, Quebec (City, Province or State) do hereby certify:

that I am a Creditor; OR

am the Administrator (position or title) of Contributory Pension Plan for Salaried Employees (name of Creditor); and

that I have knowledge of all the circumstances connected with the Claim referred to below:

CCAA Party Name	Currency (CAD, USD, etc.) [1]	Amount of Unsecured Claim [2]	Amount of Secured Claim [3]	Particulars of Security (Secured Claims ONLY), e.g. General Security Agreement, hypothec, etc. [4]
Bloom Lake CCAA Parties				
<u>Cliffs Quebec Iron Mining ULC</u>		\$	\$	
<u>The Bloom Lake Iron Ore Mine Limited</u>		\$	\$	
<u>Bloom Lake General Partner Limited</u>		\$	\$	
<u>Quinto Mining Corporation</u>		\$	\$	
<u>8568391 Canada Limited</u>		\$	\$	
<u>Bloom Lake Railway Company Limited</u>		\$	\$	
Wabush CCAA Parties				
<u>Wabush Mines</u>	CAD	\$	\$24,000,000	
<u>Wabush Iron Co. Limited</u>		\$	\$	
<u>Wabush Resources Inc.</u>		\$	\$	
<u>Arnaud Railway Company</u>	CAD	\$	\$24,000,000	
<u>Wabush Lake Railway Company Limited</u>	CAD	\$	\$24,000,000	

Notes:

[1] Claims in a currency other than Canadian Dollars will be converted to Canadian Dollars at the noon spot rate of the Bank of Canada as at the Determination Date (January 27, 2015 for Bloom Lake CCAA Parties and May 20, 2015 for Wabush CCAA Parties).

[2] An "Unsecured" Claim is one for which no assets of any of the CCAA Parties are pledged as security.

[3] A "Secured" Claim is one which for which assets of the any one of the CCAA Parties are charged or held as security pursuant to statutory right or agreement.

[4] Provide full particulars of the security, including the date on which the security was given and attach a copy of the security documents - See Particulars of Claim(s) below.

R-18 Proof of Claim for Salaried Employees Pension Plan, December 18, 2015 (cont'd)

Proof of Claim with respect to a Restructuring Claim:

I, Marthe Brodeur (name of individual Creditor or Representative of corporate Creditor), of Montreal, Quebec (City, Province or State) do hereby certify:

that I am a Creditor; OR

am the Administrator (position or title) of Contributory Pension Plan for Salaried Employees (name of Creditor); and

that I have knowledge of all the circumstances connected with the Restructuring Claim referred to below:

CCAA Party Name	Amount of Restructuring Claim	Currency (CAD, USD, etc.) (1)	Event Giving Rise to Restructuring Claim (2)
Bloom Lake CCAA Parties			
Cliffs Quebec Iron Mining ULC	\$		
The Bloom Lake Iron Ore Mine Limited Partnership	\$		
Bloom Lake General Partner Limited	\$		
Quinto Mining Corporation	\$		
8568391 Canada Limited	\$		
Bloom Lake Railway Company Limited	\$		
Wabush CCAA Parties			
Wabush Mines	\$1,932,940	CAD	Unmade amortization payments
Wabush Iron Co. Limited	\$		
Wabush Resources Inc.	\$		
Araud Railway Company	\$1,932,940	CAD	Unmade amortization payments
Wabush Lake Railway Company Limited	\$1,932,940	CAD	Unmade amortization payments

Notes:

[1] Claims in a currency other than Canadian Dollars will be converted to Canadian Dollars at the noon spot rate of the Bank of Canada as at the Determination Date (January 27, 2015 for Bloom Lake CCAA Parties and May 20, 2015 for Wabush CCAA Parties).

[2] Provide a brief description of the source of the Restructuring Claim including whether as a result of the restructuring, suspension, disclaimer, resiliation, termination or breach of any contract, employment agreement, lease or other agreement or arrangement of any nature whatsoever.

R-18 Proof of Claim for Salaried Employees Pension Plan, December 18, 2015 (cont'd)

List of documentation evidencing Claim(s) indicated in the tables above (please attach all documentation to this Proof of Claim form):

Attachment 1 (description): email from Cynthia Gaudreault (Towers Watson)

Attachment 2 (description): _____

Attachment 3 (description): _____

Attachment 4 (description): _____

Attachment 5 (description): _____

[If documentation exceeds 5 attachments, please attach separate list.]

DATED this 18 day of December, 2015.


Witness:

Per: 

Print name of Creditor:

MARTHE BRODEUR

If Creditor is other than an individual, print name and title of authorized signatory

Name: Marthe Brodeur

Title: Administrator

SCHEDULE H

**PROOF OF CLAIM
FOR CLAIMS AND RESTRUCTURING CLAIMS
AGAINST THE BLOOM LAKE CCAA PARTIES
AND/OR THE WABUSH CCAA PARTIES**

The "Bloom Lake CCAA Parties" are:

Bloom Lake General Partner Limited
Quinto Mining Corporation
856839 Canada Limited
Cliffs Quebec Iron Mining ULC
Bloom Lake Railway Company Limited
The Bloom Lake Iron Ore Mine Limited Partnership

The "Wabush CCAA Parties" are:

Wabush Iron Co. Limited
Wabush Resources Inc.
Wabush Mines
Arnaud Railway Company
Wabush Lake Railway Company Limited

(The Bloom Lake CCAA Parties and Wabush CCAA Parties collectively form the "CCAA Parties")

Please read the enclosed Instruction Letter carefully prior to completing the attached Proof of Claim. Capitalized terms not defined within this Proof of Claim form or the appended Instruction Letter shall have the meaning ascribed thereto in the Claims Procedure Order dated November 5, 2015 and amended on November 16, 2015 and as may be further amended, restated or supplemented from time to time. A copy of the Claims Procedure Order can be found on the Monitor's website at: <http://cfcanada.fticonsulting.com/bloomlake/>

Particulars of Creditor:

Please provide the following information:

Legal Name of Creditor:	Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company as Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company
Doing Business As:	Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company as Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company
Legal Counsel or Representative (if applicable):	Marthe Brodeur
Address:	
Number and Street (line 1)	1155 University
Number and Street (line 2)	Suite 508
City	Montreal
Province / State	Quebec
Postal / Zip Code	H3B 3A7
Country	Canada
Telephone Number (including area)	(844)954-6534
E-mail address:	Marthe.brodeur@cliffsnr.com
Attention (Contact Person):	Marthe Brodeur

R-19 Proof of Claim for Unionized Employees Pension Plan, December 18, 2015 (cont'd)

Proof of Claim (other than Restructuring Claims):

I, Marthe Brodeur (name of individual Creditor or Representative of corporate Creditor), of Montreal, Quebec (City, Province or State) do hereby certify:

that I am a Creditor; OR

am the Administrator (position or title) of
Pension Plan for Bargaining Unit Employees (name of Creditor); and

that I have knowledge of all the circumstances connected with the Claim referred to below:

CCAA Party Name	Currency (CAD, USD, etc.) (1)	Amount of Unsecured Claim [2]	Amount of Secured Claim [3]	Particulars of Security (Secured Claims ONLY), e.g. General Security Agreement, hypothec, etc. (4)
Bloom Lake CCAA Parties				
<u>Cliffs Quebec Iron Mining ULC</u>		\$	\$	
<u>The Bloom Lake Iron Ore Mine Limited</u>		\$	\$	
<u>Bloom Lake General Partner Limited</u>		\$	\$	
<u>Quinto Mining Corporation</u>		\$	\$	
<u>8568391 Canada Limited</u>		\$	\$	
<u>Bloom Lake Railway Company Limited</u>		\$	\$	
Wabush CCAA Parties				
<u>Wabush Mines</u>	CAD	\$	\$29,000,000	
<u>Wabush Iron Co. Limited</u>		\$	\$	
<u>Wabush Resources Inc.</u>		\$	\$	
<u>Arnaud Railway Company</u>	CAD	\$	\$29,000,000	
<u>Wabush Lake Railway Company Limited</u>	CAD	\$	\$29,000,000	

Notes:

[1] Claims in a currency other than Canadian Dollars will be converted to Canadian Dollars at the noon spot rate of the Bank of Canada as at the Determination Date (January 27, 2015 for Bloom Lake CCAA Parties and May 20, 2015 for Wabush CCAA Parties).

[2] An "Unsecured" Claim is one for which no assets of any of the CCAA Parties are pledged as security.

[3] A "Secured" Claim is one which for which assets of the any one of the CCAA Parties are charged or held as security pursuant to statutory right or agreement.

[4] Provide full particulars of the security, including the date on which the security was given and attach a copy of the security documents - See Particulars of Claim(s) below.

R-19 Proof of Claim for Unionized Employees Pension Plan, December 18, 2015 (cont'd)

Proof of Claim with respect to a Restructuring Claim:

I, Marthe Brodeur (name of individual Creditor or Representative of corporate Creditor), of Montreal, Quebec (City, Province or State) do hereby certify:

that I am a Creditor; OR

am the Administrator (position or title) of Pension Plan for Bargaining Unit Employees (name of Creditor); and

that I have knowledge of all the circumstances connected with the Restructuring Claim referred to below:

CCAA Party Name	Amount of Restructuring Claim	Currency (CAD, USD, etc.) [1]	Event Giving Rise to Restructuring Claim [2]
Bloom Lake CCAA Parties			
Cliffs Quebec Iron Mining ULC	\$		
The Bloom Lake Iron Ore Mine Limited Partnership	\$		
Bloom Lake General Partner Limited	\$		
Quinto Mining Corporation	\$		
8568391 Canada Limited	\$		
Bloom Lake Railway Company Limited	\$		
Wabush CCAA Parties			
Wabush Mines	\$6,059,238	CAD	Unmade amortization payments
Wabush Iron Co. Limited	\$		
Wabush Resources Inc.	\$		
Arnaud Railway Company	\$6,059,238	CAD	Unmade amortization payments
Wabush Lake Railway Company Limited	\$6,059,238	CAD	Unmade amortization payments

Notes:

[1] Claims in a currency other than Canadian Dollars will be converted to Canadian Dollars at the noon spot rate of the Bank of Canada as at the Determination Date (January 27, 2015 for Bloom Lake CCAA Parties and May 20, 2015 for Wabush CCAA Parties).

[2] Provide a brief description of the source of the Restructuring Claim including whether as a result of the restructuring, suspension, disclaimer, resiliation, termination or breach of any contract, employment agreement, lease or other agreement or arrangement of any nature whatsoever.

R-19 Proof of Claim for Unionized Employees Pension Plan, December 18, 2015 (cont'd)

List of documentation evidencing Claim(s) indicated in the tables above (please attach all documentation to this Proof of Claim form):

Attachment 1 (description): email from Cynthia Gaudreault (Towers Watson)

Attachment 2 (description): _____

Attachment 3 (description): _____

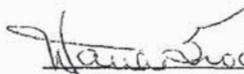
Attachment 4 (description): _____

Attachment 5 (description): _____

[If documentation exceeds 5 attachments, please attach separate list.]

DATED this 18 day of December, 2015.


Witness:

Per: 
Print name of Creditor:

MARTHE BRODEUR

If Creditor is other than an individual, print name and title of authorized signatory

Name: Marthe Brodeur

Title: Pension plan administrator

R-19 Proof of Claim for Unionized Employees Pension Plan, December 18, 2015 (cont'd)

Filing of Claims:

A **Proof of Claim** (other than for Restructuring Claims), **must be received by the Monitor by no later than 5:00 p.m. (prevailing Eastern time) on December 18, 2015**, or such later date as may be ordered by the Court, (the "**Claims Bar Date**").

A **Proof of Claim with respect to a Restructuring Claim** must be received by the Monitor by the later of: **(a)** the Claims Bar Date, and **(b)** by 5:00 p.m. on the day which is 21 days after any of (i) the date of the applicable Notice of Disclaimer or Resiliation becomes effective, (ii) the Court Order settling a contestation against such Notice of Disclaimer or Resiliation brought pursuant to Section 32(5)(b) of the CCAA, or (iii) the date of the event giving rise to the Restructuring Claim, or **(c)** such later date as may be ordered by the Court (the "**Restructuring Claims Bar Date**").

FAILURE TO FILE YOUR PROOF OF CLAIM AS DIRECTED BY THE CLAIMS BAR DATE WILL RESULT IN YOUR CLAIM BEING FOREVER BARRED AND EXTINGUISHED, AND YOU WILL BE PROHIBITED FROM MAKING OR ENFORCING A CLAIM AGAINST ANY OF THE CCAA PARTIES.

Proofs of Claim must be delivered by email to the Monitor at the applicable email address shown below.

Bloom Lake CCAA Parties' Creditors
bloomlake@fticonsulting.com

Wabush CCAA Parties' Creditors
wabush@fticonsulting.com

The subject line of your email should read "Proof of Claim – [legal name of Creditor]" and the following naming protocol must be used for any attachments included in the email:

For a Proof of Claim: **Proof_of_Claim_[legal name of Creditor].pdf**

For support schedules (if not already included in the Proof of Claim file):
Proof_of_Claim_[legal name of Creditor]_schedule [x of y].pdf

In the event that you are unable or unwilling to submit your Proof of Claim by email, you may deliver your Proof of Claim by prepaid registered mail, personal delivery or courier to the following address:

FTI Consulting Canada Inc., in its capacity as Monitor of the **[Bloom Lake or Wabush]**
CCAA Parties

79 Wellington Street West
TD Waterhouse Tower, Suite 2010
PO Box 104
Toronto, Ontario M5K 1G8
Attention: Steven Bissell

**AGREEMENT RESPECTING
MULTI-JURISDICTIONAL PENSION PLANS**

RECITALS

- I. Each signatory to this Agreement represents the government of a legislative jurisdiction in Canada and is authorized by the laws of the signatory's jurisdiction to sign this Agreement.
- II. A pension plan may be subject to the pension legislation of more than one jurisdiction and may be subject to the supervision of more than one jurisdiction's pension supervisory authority, by reason of the nature or place of the plan members' residence or employment or the nature of the business, work or undertaking of the members' employer.
- III. Pension plans that are subject to the pension legislation of more than one jurisdiction play a significant role in providing retirement income to many Canadians. To establish an efficient and transparent regulatory environment for such plans, the governments that are party to this Agreement deem it desirable to specify the rules that apply to such plans and allow, to the extent provided for in this Agreement, a single pension supervisory authority to exercise with respect to any such pension plan all of the supervisory and regulatory powers to which such plan is subject.
- IV. The laws of the jurisdictions whose governments are party to this Agreement allow for the incorporation of rules for pension plans enacted by Canadian legislative jurisdictions or as otherwise set out in this Agreement, as well as the reciprocal application of legislative provisions and administrative powers by the pension supervisory authorities concerned.
- V. The governments that are party to this Agreement agree as follows:

**PART I
GENERAL PROVISIONS**

***SECTION 1.
DEFINITIONS & SCHEDULES***

Definitions

1. (1) For the purposes of this Agreement, unless the context indicates a different meaning:

“active member” means, in relation to a pension plan, a person who:

- (a) is accruing benefits under the plan; or
- (b) is no longer accruing benefits under the plan, but who is deemed by the terms of the plan or the pension legislation that would apply to the person if this Agreement did not exist to have the same status as an active member of the plan as a person determined under clause (a); (« participant actif »)

2

“pension legislation” means, in relation to a jurisdiction, the legislation identified in Schedule A in respect of that jurisdiction and any subordinate legislation made under that legislation, all as amended or substituted from time to time; (« loi sur les régimes de retraite »)

“pension plan” means, in respect of a jurisdiction, any plan that is subject to the jurisdiction’s pension legislation; and (« régime de retraite »)

“pension supervisory authority” means the government ministry, department or agency of a jurisdiction that has supervisory or regulatory powers with respect to pension plans under the pension legislation of the jurisdiction. (« organisme de surveillance »)

Schedules

(2) The following attached Schedules form part of this Agreement:

- (a) Schedule A – Pension Legislation; and
- (b) Schedule B – Matters Covered by Incorporated Legislative Provisions.

SECTION 2.

APPLICATION

General application

2. (1) Subject to subsection (2) and section 26, this Agreement applies to any pension plan that would, if this Agreement and any other agreement respecting the supervision of pension plans did not exist, be subject to registration with a pension supervisory authority under the pension legislation of more than one jurisdiction whose government is a party to this Agreement.

Restriction

(2) This Agreement does not apply to a pension plan if the pension supervisory authority that would be designated as the major authority for the plan under this Agreement is not subject to this Agreement.

Plan provision not effective

(3) This Agreement applies in respect of a pension plan despite any conflicting provision in any document that creates or supports the pension plan.

PART II MAJOR AUTHORITY

SECTION 3.

DETERMINATION OF THE MAJOR AUTHORITY

One major authority

3. (1) One pension supervisory authority having jurisdiction over a pension plan shall be the major authority for the plan.

Plurality of active members

(2) Except as provided in sections 5 and 26, the major authority for a pension plan shall be the pension supervisory authority of the jurisdiction with the plurality of active members of the plan, as determined in accordance with subsection (3) and considering only those jurisdictions whose pension legislation would, if this Agreement and any other agreement respecting the supervision of pension plans did not exist, require the plan to be registered with the pension supervisory authority of that jurisdiction.

Determination of plurality

(3) The jurisdiction that, among those referred to in subsection (2), has the plurality of active members of a pension plan shall be determined using the most recent periodic information return that has been filed with a pension supervisory authority in relation to the plan's fiscal year end and on the following basis:

- (a) in respect of a provincial jurisdiction, the number of active members of the plan who are employed in that provincial jurisdiction and who would be subject to that jurisdiction's pension legislation if this Agreement and any other agreement respecting the supervision of pension plans did not exist; and
- (b) in respect of the federal jurisdiction, the number of active members of the plan who are employed in "included employment" within the meaning of that jurisdiction's pension legislation, where the plan is subject to that jurisdiction's pension legislation.

Equal number of active members

(4) Where the major authority for a pension plan cannot be determined by applying subsections (2) and (3) because two or more jurisdictions have authority over an equal number, greater than zero, of active members of the plan, the major authority for the plan shall be, of those jurisdictions, the authority whose main office is in closest proximity to the main office of the administrator of the plan. For the purposes of this subsection:

- (a) the main office of a pension supervisory authority is the office from which the authority conducts most of its supervisory activities; and
- (b) the main office of the pension plan administrator is the office from which the plan administrator described in the text of the pension plan conducts most of the plan's administration.

Status as major authority

(5) A pension supervisory authority that becomes the major authority for a pension plan in accordance with this Agreement shall remain the major authority for the plan until the authority loses its status as major authority in accordance with this Agreement.

4

Minor authorities

(6) Once a pension supervisory authority becomes the major authority for a pension plan, any other pension supervisory authority to which this Agreement extends and that has supervisory or regulatory powers with respect to the plan becomes a minor authority for the plan.

New pension plan registration

(7) Where a pension supervisory authority receives an application to register a pension plan, that authority shall determine whether it is the major authority for the plan within the meaning of this Agreement, and if necessary and as soon as possible thereafter, that authority shall notify the plan administrator as to the relevant authority with which the plan should or may be registered and shall notify the relevant authority about the plan to be registered.

SECTION 4.**ROLE OF THE MAJOR AUTHORITY****Interpretation**

4. (1) For the purposes of this section:

- (a) a decision includes an order, direction, approval or, if specific recourse is provided, a proposal to make such a decision; and
- (b) recourse includes the right to request a hearing, review, reconsideration or appeal.

Role of major authority

(2) The major authority for a pension plan shall:

- (a) supervise and regulate the plan in accordance with this Agreement, and on behalf of each of the minor authorities for the plan as required by this Agreement;
- (b) subject to subsection (3) and section 9, exercise, with respect to the plan and as required by this Agreement, the functions and powers necessary to carry out this Agreement conferred on the minor authority by the pension legislation of the minor authority's jurisdiction;
- (c) apply and enforce any rules specified in this Agreement that are not part of the pension legislation of a jurisdiction; and
- (d) determine any matter or question related to the application of this Agreement to the plan in accordance with this Agreement and the procedural provisions of the pension legislation of the major authority's jurisdiction.

Exceptions

(3) Despite clause (b) of subsection (2):

- (a) where the major authority for a pension plan and a minor authority for the plan agree that a particular function or power conferred by the pension legislation of the minor authority's jurisdiction shall be exercised in respect of the plan by the minor authority, only such minor authority may exercise such function or power in respect of the plan;
- (b) where the major authority for a pension plan and a minor authority for the plan agree that a particular decision concerning the application of provisions of the pension legislation of the minor authority's jurisdiction shall be made in respect of the plan by the minor authority, only such minor authority may make such decision in respect of the plan; and
- (c) where pension legislation confers on a pension supervisory authority the power to order or otherwise require the splitting of the assets and liabilities of a pension plan, only such authority may make a decision concerning the exercise of that power with respect to the liabilities of a plan that are subject to such pension legislation and the assets of the plan related to the funding of those liabilities.

Decisions and recourse

(4) Any decision that may be made by the major authority for a pension plan that applies the provisions of the pension legislation of a minor authority's jurisdiction as described in clause (b) of subsection (1) of section 6 is subject to the following rules:

- (a) the decision shall be made under the procedural provisions of the pension legislation of the major authority's jurisdiction that would have applied if the matter had arisen under that legislation;
- (b) the decision shall be deemed to have been made by the minor authority under the procedural provisions of the pension legislation of the minor authority's jurisdiction that would have applied if the minor authority had made the decision;
- (c) when the decision is issued by the major authority, it shall include notice to any person receiving the decision as to:
 - (i) the substantive provisions of the pension legislation of the minor authority's jurisdiction that were applied in formulating the decision that is made;
 - (ii) the recourse provided, if any, from the decision under the pension legislation of the minor authority's jurisdiction, including the body before whom such recourse may be exercised;

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- (iii) the time limit under the pension legislation of the minor authority's jurisdiction for exercising such recourse; and
 - (iv) where the pension legislation of the minor authority's jurisdiction does not provide for recourse from the decision, any recourse from the decision provided under any other legislation of that jurisdiction, including the body before whom such recourse may be exercised and the time limit for exercising such recourse; and
- (d) the right to recourse from the decision shall be determined under the pension legislation or other legislation of the minor authority's jurisdiction as though the decision had been made under the procedural provisions of that legislation.

Continued role of major authority

(5) Exercise of a recourse from a decision referred to in this section does not have the effect of preventing or releasing the major authority from continuing to fulfill its responsibilities with respect to the pension plan as set out in subsection (2).

Enforcement of decisions

(6) The major authority shall enforce any decision referred to in this section once that decision is no longer open to any further recourse, as well as any decision resulting from such recourse that is no longer open to any further recourse.

Communication with major authority

(7) A person shall be entitled to communicate with the major authority for a pension plan in the same manner that the person would be entitled to communicate with a pension supervisory authority under the legislation that would apply to the person if this Agreement did not exist.

Representative

(8) Where a person having any rights or benefits under a pension plan has designated another person or an association that represents people with rights or benefits under the plan to act on his or her behalf with respect to the major authority for the plan, such authority shall, to the extent permitted by law, communicate with that other person or association and, upon request, provide that other person or association with the information and documents to which the person is entitled.

SECTION 5.**LOSS OF MAJOR AUTHORITY STATUS****Loss of major authority status**

5. (1) The major authority for a pension plan shall lose its status in that regard on the date described in subsection (2) where, according to the most recent periodic information return that has been filed with the major authority in relation to the plan's fiscal year end, the number of active members of the plan employed in relation to the major authority's jurisdiction, as determined under subsection (3) of section 3 as of the plan's fiscal year end, is:

- (a) for the third consecutive fiscal year, less than the number of active members who were employed in relation to any other jurisdiction or jurisdictions;
- (b) less than 75% of the number of active members who were employed in relation to any other jurisdiction; or
- (c) equal to zero and there are active members of the plan employed in relation to any other jurisdiction.

Date of loss of major authority status

(2) The major authority for a pension plan loses its status in that regard:

- (a) in the case provided for in clause (a) or (b) of subsection (1), five days prior to the end of the first plan fiscal year that begins after the date on which the major authority received the information referred to in the relevant clause; and
- (b) in the case provided for in clause (c) of subsection (1), upon the later of the fifth day before the end of the current plan fiscal year during which the major authority received the information referred to in that clause or of the expiry of the period of six months beginning on the date the major authority received the information.

New major authority

(3) When the major authority for a pension plan loses its status in that regard in accordance with subsection (2), the pension supervisory authority for the jurisdiction having, as determined in accordance with subsection (1), the plurality of active members of the plan becomes the plan's new major authority if that new major authority is subject to this Agreement.

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Equal number of active members

(4) Where the new major authority for a pension plan cannot be determined in accordance with subsection (3) because two or more jurisdictions have authority over an equal number, greater than zero, of active members of the plan, the major authority for the plan shall be, of those jurisdictions, the authority whose main office is in closest proximity to the main office of the administrator of the plan. For the purposes of this subsection:

- (a) the main office of a pension supervisory authority is the office from which the authority conducts most of its supervisory activities; and
- (b) the main office of the pension plan administrator is the office from which the plan administrator described in the text of the pension plan conducts most of the plan's administration.

Transitional rules

(5) Where the major authority for a pension plan loses its status in that regard in accordance with this section:

- (a) all matters related to the plan that are pending before the major authority on the day preceding its loss of status as major authority shall be continued before that authority;
- (b) all matters related to the plan that concern a decision, order, direction or approval proposed or made by the major authority and pending before any administrative body or court on the day preceding the loss of the major authority's status as major authority shall be continued before such body or court;
- (c) for every matter in respect of which the major authority referred to in clause (a) or the administrative body or court referred to in clause (b) has proposed or made a decision, order, direction or approval to which the pension legislation or other legislation applying on the day preceding the replacement of the major authority provides a right of recourse:
 - (i) such right shall be maintained so long as the period provided for exercising that right has not expired; and
 - (ii) such recourse may be brought before the administrative body or court provided for by the legislation giving entitlement thereto;

- (d) for any matter related to the plan not described in clauses (a) to (c) that occurred while the major authority was the major authority for the plan and that related to the provisions of the pension legislation of the major authority's jurisdiction in respect of a matter referred to in Schedule B:
 - (i) the major authority may, even after it loses its status in that regard for the plan, conduct an examination, investigation or inquiry into the matter in accordance with the pension legislation of the major authority's jurisdiction to determine whether compliance with that legislation was met, and in such case, the matter shall remain subject to that major authority; and
 - (ii) where the matter constitutes an offence under the pension legislation of the major authority's jurisdiction, the offence may be prosecuted by the competent authority in that jurisdiction, and in such case, the matter shall remain subject to that major authority; and
- (e) all matters referred to in clauses (a) to (d) shall remain subject to the pension legislation or other legislation that, under this Agreement, applied to such matters on the day preceding the loss of the major authority's status as major authority.

Notice by major authority

(6) Where the major authority for a pension plan receives from the administrator of the plan the information described in clauses (a), (b) or (c) of subsection (1), it shall:

- (a) as soon as possible after receipt of the information, notify the pension plan administrator and each minor authority for the plan of the date on which, pursuant to subsection (2), it will lose its status as major authority for the plan and, if applicable, the pension supervisory authority that shall become the new major authority for the plan; and
- (b) as soon as possible after the plan's new major authority assumes its functions, provide to such new major authority all relevant records, documents or other information that it has concerning the plan.

Notice by new major authority

(7) The pension supervisory authority that replaces another authority as major authority for a pension plan shall, as soon as possible after assuming its functions, inform the pension plan administrator and each of the plan's minor authorities of the date on which it assumed the functions of major authority.

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Notice by plan administrator

(8) The administrator of a pension plan that receives from the plan's major authority notice of the information provided for in clause (a) of subsection (6) or in subsection (7) shall:

- (a) in respect of the information provided for in clause (a) of subsection (6), transmit such information to each employer that is party to the plan and any collective bargaining agent that represents any person who has rights or benefits under the plan within 90 days after such notice; and
- (b) in respect of the information provided for in subsection (7), transmit such information to each employer that is party to the plan and any person who has rights or benefits under the plan who is entitled to receive an annual statement of the person's benefits, no later than the expiry of the period for providing such persons with their next annual statements of benefits.

**PART III
APPLICABLE LAW**

SECTION 6.**APPLICABLE LEGISLATION****Applicable pension legislation**

6. (1) While a pension supervisory authority is the major authority for a pension plan in accordance with this Agreement:

- (a) the provisions of the pension legislation of the major authority's jurisdiction in respect of matters referred to in Schedule B apply to the plan instead of those of the corresponding provisions of the pension legislation of any minor authority's jurisdiction that would apply to the plan if this Agreement did not exist; and
- (b) subject to the provisions of this Agreement, the provisions of the pension legislation of each jurisdiction that are applicable to the plan under the terms of such legislation apply to the plan in respect of matters not referred to in Schedule B.

Funding rule exceptions

(2) Despite clause (a) of subsection (1):

- (a) where the pension legislation of a minor authority's jurisdiction would, if this Agreement did not exist, require the funding of a benefit provided in relation to a pension plan with respect to persons having rights under the plan who are subject to that legislation:
 - (i) subject to subclause (ii), funding shall be required in respect of that benefit with respect to those persons, even if funding for that benefit would not be required under the pension legislation of the major authority's jurisdiction; and
 - (ii) funding of the benefit described in subclause (i) shall be required in a manner consistent with, and to the extent determined by, the requirements under the pension legislation of the major authority's jurisdiction applicable to the funding of other benefits that are provided in relation to the plan and that are required to be funded in relation to the plan under that legislation;
- (b) where the pension legislation of a minor authority's jurisdiction would require, for the purposes of this clause, that an additional liability be established and funded in relation to a pension plan with respect to persons having rights under the plan who are subject to that legislation:
 - (i) subject to subclause (ii), such liability shall be required to be established and funded, even if such liability would not be required to be established, and such funding would not be required, under the pension legislation of the major authority's jurisdiction; and
 - (ii) funding of the liability described in subclause (i) shall be required in a manner consistent with, and to the extent determined by, the requirements under the pension legislation of the major authority's jurisdiction applicable to the funding of benefits that are provided in relation to the plan and that are required to be funded in relation to the plan under that legislation; and
- (c) subject to subsection (4), when a pension supervisory authority becomes the major authority for a pension plan in accordance with this Agreement, if the funding of any benefit provided under the plan has been based on actuarial valuation reports filed in respect of the plan with a pension supervisory authority, the funding of those benefits shall continue to be subject to the pension legislation that applied immediately before the major authority assumed its functions in respect of the plan until such time as a new actuarial valuation report is due to be filed in respect of the plan with the major authority in accordance with the pension legislation of the major authority's jurisdiction.

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Definitions

(3) For the purposes of subsection (4):

“alternative funding arrangement” means a fund or financial instrument that is described in the pension legislation of a jurisdiction and is permitted under that legislation to supplement, support or otherwise satisfy the funding requirements for a pension plan under that legislation, where in the absence of such fund or financial instrument additional contributions would be required to be made to the pension fund of the plan in order to satisfy the funding requirements for the plan under that legislation; (« instrument financier »)

“new major authority” means a pension supervisory authority that becomes the major authority for a pension plan in accordance with this Agreement; and

“prior authority” means a pension supervisory authority with which a pension plan is registered immediately before a pension supervisory authority becomes the major authority for the plan in accordance with this Agreement.

Alternative funding arrangement exceptions

(4) Despite clause (a) of subsection (1), when a pension supervisory authority becomes the new major authority for a pension plan, if the pension legislation of the prior authority’s jurisdiction permitted the use of an alternate funding arrangement, but the pension legislation of the new major authority’s jurisdiction does not permit the use of that alternate funding arrangement, then:

- (a) if, no later than thirty-five days before the new major authority becomes the major authority for the plan, the administrator of the plan provides notice to both the new major authority and the prior authority that it intends to file an actuarial valuation report with the new major authority with a valuation date that coincides with the fiscal year end of the plan that immediately follows the new major authority becoming the major authority for the plan, then the following rules shall apply with respect to the funding of the plan:
 - (i) the alternative funding arrangement may continue to be used until thirty days after the valuation report is due to be filed with the new major authority;
 - (ii) no later than thirty days after the valuation report is due to be filed with the new major authority, an amount equal to the lesser of the value of the alternative funding arrangement or the amount required to make the plan fully funded on a solvency basis shall be deposited into the pension fund of the plan by an employer that is party to the plan; and

- (iii) if the amount described in subclause (ii) has not been deposited by an employer into the pension fund of the plan within the thirty day timeframe described in that subclause, an amount equal to the full value of the alternative funding arrangement shall be immediately deposited into the pension fund of the plan by an employer that is party to the plan; and
- (b) if the administrator of the plan does not provide the notice described in clause (a), then the following rules shall apply with respect to the funding of the plan:
 - (i) no later than thirty days before the new major authority becomes the major authority for the plan, an amount equal to the lesser of the value of the alternative funding arrangement or the amount required to make the plan fully funded on a solvency basis shall be deposited into the pension fund of the plan by an employer that is party to the plan; and
 - (ii) until the time a new actuarial valuation report described in clause (c) of subsection (2) is filed with the new major authority respecting the plan, an amount equal to the lesser of the value of any subsequent alternative funding arrangement that would have been required to have been obtained in relation to the plan under the pension legislation of the prior authority's jurisdiction, or the amount that would be required to make the plan fully funded on a solvency basis, shall be deposited into the pension fund of the plan by an employer that is party to the plan instead of obtaining the subsequent alternative funding arrangement, at or before the time the alternative funding arrangement would have been required to have been obtained in relation to the plan under the pension legislation of the prior authority's jurisdiction and in accordance with the last actuarial valuation report that had been filed with the prior authority in respect of the plan.

SECTION 7.

DETERMINATION OF BENEFITS BY FINAL LOCATION

Deemed applicability of pension legislation

7. For the purposes of determining the benefits accrued by a person under a pension plan, the person's entire benefit accrual shall be deemed to have been subject to the pension legislation that applied to the person:

- (a) at the time the person's benefits were determined, if the person was still accruing benefits under the plan at that time; or
- (b) at the time the person ceased accruing benefits under the plan, if the person was no longer accruing benefits under the plan at the time the person's benefits were determined.

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SECTION 8.**PENSION PLAN INVESTMENTS****Deadline for compliance**

8. Despite any other provision of this Agreement, any investment by a pension plan that is held on the date a pension supervisory authority becomes the major authority for the plan and that, although it complies with the pension legislation that applied to the plan on the day preceding that date, does not comply with the pension legislation that applies to the plan's investments from that date, shall be brought into compliance with the latter legislation within five years from that date.

SECTION 9.**PENSION BENEFITS GUARANTEE FUND****Pension benefits guarantee fund**

9. Subject to sections 10 to 17, this Agreement shall not affect the application or administration of the Pension Benefits Guarantee Fund set out under the pension legislation of Ontario or any similar fund established under any other pension legislation.

PART IV**PENSION PLAN ASSET ALLOCATION INTO JURISDICTIONAL PORTIONS****SECTION 10.****APPLICABLE SITUATIONS****Applicable situations**

10. The assets of a pension plan shall be allocated into portions in accordance with this Part when:

- (a) the plan is amended so that part of the liability of the plan to pay benefits or other amounts to persons so entitled under the plan is transferred to a different pension plan, and where, as part and in consideration of that transfer of liability, part of the assets of the plan are transferred to the different plan;
- (b) a pension supervisory authority orders or otherwise requires the splitting of the assets and liabilities of the plan, as described in clause (c) of subsection (3) of section 4;
- (c) the plan has more than one participating employer and an employer withdraws from the plan, and pension legislation requires that the rights and benefits accrued under the plan be divided into groups, one of which consists of the rights and benefits of persons affected by the withdrawal, and that those persons may elect to have their rights and benefits under the plan be paid forthwith;
- (d) the plan is being wound up in part;
- (e) the plan is being fully wound up; or

- (f) a situation not described in clauses (a) to (e) occurs and assets of the plan related to a jurisdiction are to be paid to an employer that participates in the plan in accordance with the pension legislation of that jurisdiction.

SECTION 11.**ALLOCATION OF ASSETS****Allocation into portions**

11. (1) For the purposes of this Part, the assets of a pension plan shall be allocated into portions as of the date of allocation, each portion being related to the liability for benefits and other amounts accrued under the plan, and any additional liability referred to in clause (b) of subsection (2) of section 6 respecting the plan, that is subject to a jurisdiction's pension legislation, as determined in accordance with this section.

Standard allocation methodology

(2) Subject to section 12, the portion of a pension plan's assets that is subject to a jurisdiction's pension legislation as of the date of allocation shall be equal to the sum of the amounts referred to in section 13 as of the date of allocation, determined with respect to the benefits and other amounts described in section 13 that are subject to that jurisdiction's pension legislation and applying the requirements of sections 14 to 16.

Other allocation methodology

(3) The major authority for a pension plan may permit the assets of the plan to be allocated into the portions described in subsection (1) in a manner other than that required by subsection (2) or section 12 if:

- (a) the allocation of the plan's assets is made in relation to any situation described in section 10 other than the full wind up of the plan and a Fellow of the Canadian Institute of Actuaries certifies that:
- (i) the liabilities of the plan that are related to the plan assets to be allocated into the portions described in subsection (2) do not exceed those assets on either a solvency basis or a going concern basis; and
 - (ii) the allocation of the assets of the plan described in subclause (i) will not differ materially from an allocation of those assets conducted in accordance with subsection (2); or

- (b) the allocation of the plan's assets is made in relation to a situation described in clause (d) of section 10, no pension legislation that applies to the plan assets to be allocated into the portions described in subsection (2) requires the distribution of any plan assets related to the wound up part of the plan that remain after all liabilities related to the wound up part of the plan have been settled and a Fellow of the Canadian Institute of Actuaries certifies that the liabilities of the plan related to the wound up part of the plan do not exceed the plan assets related to the wound up part of the plan on either a solvency basis or a going concern basis immediately before the partial wind up of the plan.

SECTION 12.***PLAN WITH MORE THAN ONE PARTICIPATING EMPLOYER*****Plan with more than one participating employer**

12. (1) This section applies to a pension plan that has more than one participating employer and, in accordance with the pension legislation of the major authority's jurisdiction:

- (a) the following are determined and accounted for separately in respect of an employer that participates in the plan, as if a separate pension plan was established within the plan in respect of that employer:
 - (i) the assets and liabilities of the plan;
 - (ii) the contributions payable in relation to the plan;
 - (iii) the benefits and other amounts owing under the plan; and
 - (iv) the expenses payable in relation to the plan;
- (b) the liabilities of the plan related to the employer described in clause (a) are determined with reference to only the benefits and other amounts owing to a person in relation to that person's employment with that employer; and
- (c) among the contributions payable in relation to the plan by the employer described in clause (a), those that are required to be paid under the applicable pension legislation in relation to benefits and other amounts currently accruing by active members of the plan are determined only with reference to active members employed by that employer.

Allocation of assets into employer shares

(2) For the purposes of an asset allocation under this Part involving a pension plan described in subsection (1), the assets of the plan that have been determined and accounted for separately in relation to an employer as of the date of allocation shall be allocated to that employer as an employer share if the plan characteristics described in clause (a) of subsection (1) respecting the employer:

- (a) have been determined and accounted for separately since the start of the employer's participation in the plan; or
- (b) began to be determined and accounted for separately at a date subsequent to the start of the employer's participation in the plan, and the initial determination and accounting of the assets of the plan respecting that employer was consistent with, and conducted on the basis of, an allocation of the assets of the plan in accordance with the requirements of this Part and in relation to a situation other than that described in clause (c), (d) or (e) of section 10.

Allocation of employer shares into portions

(3) Any employer share allocated in accordance with subsection (2) shall be further allocated into portions in the manner provided for in section 11, and used in the manner provided for in section 17, as if the employer share consisted of the assets of a separate pension plan for that employer.

Allocation of remaining assets into portions

(4) For the purposes of an asset allocation under this Part involving a pension plan described in subsection (1), any assets of the plan not allocated to an employer share in accordance with subsection (2) shall be allocated into portions in the manner provided for in section 11, and used in the manner provided for in section 17, without considering the liabilities described in clause (b) of subsection (1) related to an employer for which an employer share has been allocated under this section.

SECTION 13.***DETERMINATION OF PORTIONS FOR ASSET ALLOCATION*****Determination of portions**

13. (1) The assets of a pension plan that are to be allocated into portions in accordance with subsection (2) of section 11 shall be allocated into portions as of the date of allocation in accordance with the levels of priority of allocation set out in this section.

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Contributions and similar amounts

(2) First, allocate assets of the pension plan equal to the sum of the following contributions and amounts, to the extent that such contributions and amounts are still credited to the account of a person having benefits under the plan on the date of allocation:

- (a) any contributions paid into the pension fund of the plan and any amounts that the person had elected to transfer into the pension fund of the plan, other than contributions and amounts used to fund benefits that are not determined solely as a function of amounts credited to the account of the person; and
- (b) any interest attributable to contributions or amounts described in clause (a).

Core liabilities

(3) Second, allocate assets of the pension plan equal to the sum of the following liability amounts, provided that the pension legislation that would govern those liabilities if this Agreement did not exist would require them to be funded on a solvency basis:

- (a) the value of benefits under the plan that are being paid on a regular and periodic basis to any person on the date of allocation, whether or not the benefit is payable for the lifetime of the person, and determined taking into account:
 - (i) any periodic increase in the benefits, based on any index, rate or formula provided for in the plan; and
 - (ii) any related benefits that are payable due to the death of the person;
- (b) the value of lifetime benefits accrued under the plan by any person who, on the date of allocation, is entitled to receive payment of the benefits on that date or a later date, but who is not in receipt of payment of the benefits as of the date of allocation, determined:
 - (i) using the earliest age at which all such persons are entitled to payment of unreduced lifetime benefits, without reference to any other requirements or conditions under the terms of the plan or any applicable pension legislation;
 - (ii) taking into account any post-retirement periodic increase in the lifetime benefits, based on any index, rate or formula provided for in the plan; and
 - (iii) taking into account any related benefits that are payable due to the death of the person, whether such death occurs before or after the person starts receiving payment of lifetime benefits under the plan and determined at the age described in subclause (i);

- (c) in respect of any person who has been required to make contributions under the plan, the amount by which the contributions made by the person plus any interest attributable to those contributions exceeds the amount representing 50% of the value of the benefits payable to the person under the plan, subject to the following requirements:
 - (i) the contributions, interest and value of the benefits shall be calculated as of the date of allocation and consistent with either the pension legislation that governs the benefits or the terms of the plan, whichever produces a larger excess amount; and
 - (ii) any such excess amount already determined in relation to a person before the date of allocation shall not be included, whether or not such previously determined excess amount has been refunded to the person; and
- (d) any unpaid part of the value of the benefits payable under the plan to a person who had elected before the date of allocation to be paid the value of the person's benefit entitlements under the plan, as well as any interest attributable to that unpaid part.

Other liabilities whose funding is required

(4) Third, allocate assets of the pension plan equal to the sum of the following liability amounts:

- (a) the value of benefits accrued under the plan, other than those referred to in subsection (3), by any person who, on the date of allocation, is entitled to receive payment of the benefit on that date or a later date, but who is not in receipt of payment of the benefit as of the date of allocation, provided that the pension legislation that would govern the benefits if this Agreement did not exist would require that such benefits be funded on a solvency basis; and
- (b) subject to subsection (5), the value of the additional liability referred to in clause (b) of subsection (2) of section 6.

Assets related to additional liability

(5) Where the assets of the pension plan that are allocated to a portion under subsections (2), (3) and (4) in the absence of the requirements of this subsection exceed the value of benefits and other amounts accrued under the plan that are related to that portion:

- (a) the value calculated for clause (b) of subsection (4) shall be reduced by the excess amount referred to in this subsection; and
- (b) the assets of the plan not allocated to a portion due to the application of clause (a) may be allocated to other portions in accordance with subsection (4).

Balance of assets

(6) Fourth, for the purposes of an asset allocation in any situation other than that described in clause (c), (d) or (e) of section 10:

- (a) any assets of the pension plan remaining after the allocations made in accordance with subsections (2) to (4) shall be sequentially allocated to the portion or portions with the lowest going concern ratio, until the going concern ratio of that portion equals the going concern ratio of the portion with the next highest going concern ratio;
- (b) the sequential allocation of the plan's assets described in clause (a) shall be made until all portions have the same going concern ratio or no assets remain to be allocated, whichever occurs first;
- (c) if, after applying the sequential allocation of assets described in clauses (a) and (b), the going concern ratio of each portion is lower than 1.0, any assets of the pension plan yet to be allocated shall be allocated to the portions so that the going concern ratios of all portions remain the same, until the going concern ratio of each portion reaches 1.0 or no assets remain to be allocated, whichever occurs first;
- (d) for the purposes of clauses (a), (b) and (c), the going concern ratio of a portion shall be calculated by using the assets of the pension plan allocated to the portion in accordance with this section and the going concern liabilities of the plan that are subject to the jurisdiction's pension legislation applicable to that portion, other than assets and liabilities related to contributions and amounts described in subsection (2); and
- (e) any assets of the pension plan remaining after the allocations made in accordance with clauses (a), (b) and (c) shall be allocated pro rata to the total of the going concern liabilities determined for each portion.

Balance of assets for certain asset allocations

(7) Fourth, for the purposes of an asset allocation in a situation described in clause (c), (d) or (e) of section 10:

- (a) allocate assets of the pension plan equal to the value of benefits accrued under the plan, other than those referred to in subsections (2), (3) or (4), to which persons are entitled under the plan as of the date of allocation; and
- (b) any assets of the pension plan remaining after the allocations made in accordance with subsections (2) to (5) and clause (a) shall be allocated pro rata to the total of the values determined for each portion in applying subsections (2) and (3) and clause (a) of subsection (4).

SECTION 14.**RULES OF APPLICATION****Alternative funding arrangements**

14. (1) For the purposes of this Part, the assets of a pension plan include any alternative funding arrangement described in section 6 that exists in relation to the plan at the time the assets of the plan are allocated into portions in accordance with this Part.

Determining value of benefits and assets

(2) For the purposes of sections 11 to 13, except subsection (6) of section 13, the value of the benefits and other amounts payable under a pension plan and the assets of the plan shall be determined as if the pension plan were wound up on the date of allocation.

Deemed solvency funding requirement

(3) If, at the time the assets of a pension plan are allocated into portions in accordance with this Part, a liability amount related to the plan or a benefit under the plan that is subject to a jurisdiction's pension legislation would not, if this Agreement did not exist, be required to be funded on a solvency basis due to a temporary suspension under that legislation of a requirement under that legislation that would otherwise require the funding of such liability amount or benefit on a solvency basis, the liability amount or benefit shall be deemed to be one that is required by that legislation to be funded on a solvency basis for the purposes of subsection (3) of section 13 and clause (a) of subsection (4) of section 13.

SECTION 15.**REDUCTION METHOD****Reduction method**

15. (1) Subject to subsection (2), to the extent that a value or amount referred to in subsection (3) or (4) of section 13 relates to benefits arising from the application of a provision of a pension plan or of pension legislation that came into effect less than five years before the date of allocation, such value or amount shall, for the purposes of subsection (3) or (4) of section 13, be reduced:

- (a) by 100%, if the period from the date that the provision of the pension plan or pension legislation came into effect to the date of allocation is less than one year;
- (b) by 80%, if the period is one year or more, but less than two years;
- (c) by 60%, if the period is two years or more, but less than three years;
- (d) by 40%, if the period is three years or more, but less than four years; and
- (e) by 20%, if the period is four years or more, but less than five years.

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Exception to reduction method

(2) The major authority for a pension plan may permit the assets of the plan to be allocated into the portions described in subsection (2) of section 11 without applying the requirements of subsection (1) if a Fellow of the Canadian Institute of Actuaries certifies that the liabilities of the plan that are related to the plan assets to be allocated into the portions described in subsection (2) of section 11 do not exceed those assets on a solvency basis.

SECTION 16.***INSUFFICIENCY OF ASSETS*****Insufficiency of assets**

16. If, at one of the levels of priority of allocation established by section 13, the assets of a pension plan that have yet to be allocated to a portion described in subsection (2) of section 11 are less than the total value of the benefits and other amounts that rank equally in that level of priority of allocation, the available plan assets shall be allocated to the portions pro rata to the total value of the benefits and other amounts that rank equally in that level of priority of allocation.

SECTION 17.***USE OF ASSETS FOLLOWING ALLOCATION*****Use of allocated assets**

17. (1) Where an asset allocation for a pension plan is made under this Part in any situation other than that described in clause (c), (d) or (e) of section 10, each portion of the assets of the plan allocated in accordance with sections 11 to 16 shall be utilized in conformity with the pension legislation applicable to the benefits and other amounts related to that portion.

Use of allocated assets for certain asset allocations

(2) Where an asset allocation for a pension plan is made under this Part in a situation described in clause (c), (d) or (e) of section 10, each portion of the assets of the plan allocated in accordance with sections 11 to 16 shall be utilized, in conformity with the pension legislation applicable to the benefits and other amounts related to that portion, to satisfy payment of those benefits and other amounts arising from the wind up of the plan or the withdrawal of the employer, as the case may be. In addition, any remaining assets related to that portion shall be distributed in accordance with that pension legislation, if so required under that legislation. No assets of the plan allocated to one portion shall be utilized to satisfy payment of the benefits and other amounts related to another portion on the wind up of the plan or the withdrawal of the employer, as the case may be.

Use of remaining allocated assets

(3) Where a situation described in clause (c) or (d) of section 10 occurs and the assets of a pension plan that have been allocated to a portion in accordance with sections 11 to 16 have been utilized to fully satisfy payment of the benefits and other amounts related to that portion that arise from the partial wind up of the plan or the withdrawal of the employer, as the case may be, and any other assets related to that portion have been distributed as required by the pension legislation applicable to the benefits and other amounts related to that portion, any remaining assets related to that portion shall remain in the pension fund of the plan and be commingled with the other assets therein.

**PART V
RELATIONS BETWEEN AUTHORITIES**

**SECTION 18.
COOPERATION**

Reciprocal obligations

18. The pension supervisory authorities that are subject to this Agreement shall:
- (a) provide to each other any information required for the application of this Agreement or pension legislation, and if requested, may provide other information which is reasonable in the circumstances;
 - (b) assist each other in any matter concerning the application of this Agreement or pension legislation as is reasonable in the circumstances, particularly with respect to subsection (7) of section 4, and may act as agent for each other;
 - (c) upon the request of such an authority, transmit to that authority any information on steps taken for the application of this Agreement and amendments to pension legislation, to the extent that such amendments affect the application of this Agreement;
 - (d) notify each other of any difficulty encountered in the interpretation or in the application of this Agreement or pension legislation; and
 - (e) seek an amicable resolution to any dispute that arises between them with respect to the interpretation of this Agreement.

PART VI
EXECUTION AND COMING INTO FORCE OF AGREEMENT

SECTION 19.
EXECUTION AND COMING INTO FORCE

Effective date

19. This Agreement shall come into force:

- (a) on July 1, 2011, in respect of each government on behalf of which this Agreement has been signed on or before that date; and
- (b) on the date unanimously agreed to by all governments that are party to this Agreement in respect of a government on behalf of which this Agreement is signed after July 1, 2011.

SECTION 20.
ADDITIONAL PARTIES

Unanimous consent

20. (1) A government may become party to this Agreement with the unanimous consent of the governments that are party to it.

Effects

(2) This Agreement shall enure to the benefit of and be binding upon a government that becomes a party to this Agreement, the government's jurisdiction and the jurisdiction's pension supervisory authority as of the date referred to, as the case may be, in clause (a) or (b) of section 19.

SECTION 21.
WITHDRAWAL

Written notice

21. (1) A government that is party to this Agreement may withdraw from this Agreement by giving written notice to all other governments that are party to this Agreement. Such notice shall be signed by a person authorized by the laws of the withdrawing government's jurisdiction to sign this Agreement.

Waiting period

(2) The withdrawal shall take effect on the first day of the month following expiry of a period of three years following the date on which the notice was transmitted. The withdrawal shall affect only the withdrawing government, and the Agreement shall remain in force for all other governments.

Minor authority

(3) Where, upon expiry of the three-year period referred to in subsection (2), the pension supervisory authority for the withdrawing government's jurisdiction acts as a minor authority with respect to a pension plan, the major authority for the plan shall provide, upon request, that minor authority with copies of all relevant records, documents and other information concerning the plan in the major authority's possession.

Major authority

(4) Where, upon expiry of the three-year period referred to in subsection (2), the pension supervisory authority for the withdrawing government's jurisdiction acts as the major authority for a pension plan, such authority shall:

- (a) determine which pension supervisory authority, if any, shall become the new major authority for the plan in accordance with section 3 as of the effective date of the withdrawal; and
- (b) provide the new major authority for the plan referred to in clause (a), as soon as possible after such authority assumes its functions, with all relevant records, documents and other information in its possession concerning the plan.

Notice by major authority

(5) The pension supervisory authority that becomes a pension plan's new major authority in accordance with subsection (4) shall, as soon as possible after assuming its functions, inform the plan administrator and each of the plan's minor authorities of the date on which it assumed the functions of major authority.

Notice by plan administrator

(6) The administrator of a pension plan that receives from the plan's new major authority notice of the information provided for in subsection (5) shall transmit such information:

- (a) to each employer that is party to the plan and any collective bargaining agent that represents any person who has rights or benefits under the plan within 90 days after such notice; and
- (b) to any person who has rights or benefits under the plan who is entitled to receive an annual statement of the person's benefits under the plan, no later than the expiry of the period for providing such persons with their next annual statements of benefits.

Decisions and recourse

(7) Despite sections 4 and 6, where a pension supervisory authority becomes a pension plan's new major authority in accordance with subsection (4):

- (a) all matters related to the plan that are pending before a prior major authority on the day preceding the new major authority's assumption of its functions under this Agreement shall be continued before that prior major authority;
- (b) all matters related to the plan that concern a decision, order, direction or approval proposed or made by a prior major authority and pending before any administrative body or court on the day preceding the new major authority's assumption of its functions under this Agreement shall be continued before such body or court;
- (c) for every matter in respect of which the prior major authority referred to in clause (a) or the administrative body or court referred to in clause (b) has proposed or made a decision, order, direction or approval to which the pension legislation or other legislation applying on the day preceding the new major authority's assumption of its functions under this Agreement provides a right of recourse:
 - (i) such right shall be maintained so long as the period provided for exercising that right has not expired; and
 - (ii) such recourse may be brought before the administrative body or court provided for by the legislation giving entitlement thereto;
- (d) for any matter related to the plan not described in clauses (a) to (c) that occurred before the new major authority's assumption of its functions under this Agreement and that related to the provisions of the pension legislation of a prior major authority's jurisdiction in respect of a matter referred to in Schedule B:
 - (i) the prior major authority may, even after it loses its status as major authority for the plan, conduct an examination, investigation or inquiry into the matter in accordance with the pension legislation of the prior major authority's jurisdiction to determine whether compliance with that legislation was met, and in such case, the matter shall remain subject to that prior major authority; and
 - (ii) where the matter constitutes an offence under the pension legislation of the prior major authority's jurisdiction, the offence may be prosecuted by the competent authority in that jurisdiction, and in such case, the matter shall remain subject to that prior major authority; and

- (e) all matters referred to in clauses (a) to (d) shall remain subject to the pension legislation or other legislation that applied to such matters on the day preceding the new major authority's assumption of its functions under this Agreement.

SECTION 22.

AMENDMENT

Unanimous consent

22. This Agreement may be amended with the unanimous written consent of the governments that are party to this Agreement.

SECTION 23.

COUNTERPARTS

Execution in counterparts

23. This Agreement or any amendment to this Agreement may be executed in counterparts.

SECTION 24.

EXECUTION IN ENGLISH AND IN FRENCH

Authentic texts

24. This Agreement and any amendment to this Agreement shall be executed in the English and French languages, each text being equally authoritative.

PART VII

IMPLEMENTATION AND TRANSITIONAL PROVISIONS

SECTION 25.

REPLACEMENT

Prior agreements

25. On the date referred to in clause (a) or (b) of section 19, as the case may be, this Agreement replaces the agreement entitled "Memorandum of Reciprocal Agreement" and any similar agreement respecting the application of pension legislation to pension plans made between the governments that are party to this Agreement or between the departments or agencies of such governments, to the extent that such plans are subject to this Agreement.

SECTION 26.

TRANSITION

Preliminary measure

26. (1) Where this Agreement comes into force on a date set out under section 19 and on that date a pension plan to which this Agreement would apply is registered with a pension supervisory authority that was not already the major authority for the plan immediately before that date:

- (a) if the plan is registered with only one pension supervisory authority and that authority is subject to this Agreement on that date, that authority shall become the major authority for the plan as of that date;

- (b) if the plan is registered with more than one pension supervisory authority and each of those authorities is subject to this Agreement on that date, the major authority for the plan shall be, of those authorities, the authority of the jurisdiction with the plurality of active members of the plan, as determined in accordance with subsection (3) of section 3 and considering only those jurisdictions whose pension legislation would, if this Agreement and any other agreement respecting the supervision of pension plans did not exist, require the plan to be registered with the pension supervisory authority of that jurisdiction; and
- (c) if the plan is registered with more than one pension supervisory authority and not all of those authorities are subject to this Agreement on that date, this Agreement shall not apply to the plan until such time as all of the authorities with which the plan is registered are subject to this Agreement, at which time the requirements of clause (b) shall apply to the plan.

Equal number of active members

(2) Where the major authority for a pension plan cannot be determined by applying clause (b) of subsection (1) because two or more jurisdictions have authority over an equal number, greater than zero, of active members of the plan, the major authority for the plan shall be, of those jurisdictions, the authority whose main office is in closest proximity to the main office of the administrator of the plan. For the purposes of this subsection:

- (a) the main office of a pension supervisory authority is the office from which the authority conducts most of its supervisory activities; and
- (b) the main office of the pension plan administrator is the office from which the plan administrator described in the text of the pension plan conducts most of the plan's administration.

Notice by major authority

(3) The pension supervisory authority that becomes a pension plan's major authority in accordance with this section shall, as soon as possible after assuming its functions, inform the plan administrator and each of the plan's minor authorities of the date on which it assumed the functions of major authority.

Notice by plan administrator

(4) The administrator of a pension plan that receives from the plan's major authority notice of the information provided for in subsection (3) shall transmit such information:

- (a) to each employer that is party to the plan and any collective bargaining agent that represents any person who has rights or benefits under the plan within 90 days after such notice; and

- (b) to any person who has rights or benefits under the plan who is entitled to receive an annual statement of the person's benefits under the plan, no later than the expiry of the period for providing such persons with their next annual statements of benefits.

Decisions and recourse

(5) Despite sections 4 and 6, where a pension supervisory authority becomes a pension plan's major authority in accordance with this section:

- (a) all matters related to the plan that are pending before a pension supervisory authority on the day preceding the major authority's assumption of its functions under this Agreement shall be continued before that pension supervisory authority;
- (b) all matters related to the plan that concern a decision, order, direction or approval proposed or made by a pension supervisory authority and pending before any administrative body or court on the day preceding the major authority's assumption of its functions under this Agreement shall be continued before such body or court;
- (c) for every matter in respect of which the pension supervisory authority referred to in clause (a) or the administrative body or court referred to in clause (b) has proposed or made a decision, order, direction or approval to which the pension legislation or other legislation applying on the day preceding the major authority's assumption of its functions under this Agreement provides a right of recourse:
 - (i) such right shall be maintained so long as the period provided for exercising that right has not expired; and
 - (ii) such recourse may be brought before the administrative body or court provided for by the legislation giving entitlement thereto;
- (d) for any matter related to the plan not described in clauses (a) to (c) that occurred before the major authority's assumption of its functions under this Agreement and that related to the provisions of the pension legislation of a pension supervisory authority's jurisdiction in respect of a matter referred to in Schedule B:
 - (i) the pension supervisory authority may, even after the major authority assumes its functions under this Agreement for the plan, conduct an examination, investigation or inquiry into the matter in accordance with the pension legislation of that authority's jurisdiction to determine whether compliance with that legislation was met, and in such case, the matter shall remain subject to that pension supervisory authority; and

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- (ii) where the matter constitutes an offence under the pension legislation of the pension supervisory authority's jurisdiction, the offence may be prosecuted by the competent authority in that jurisdiction, and in such case, the matter shall remain subject to that pension supervisory authority; and
- (e) all matters referred to in clauses (a) to (d) shall remain subject to the pension legislation or other legislation that applied to such matters on the day preceding the major authority's assumption of its functions under this Agreement.

**SCHEDULE A
PENSION LEGISLATION**

Alberta

1. *Employment Pension Plans Act*, R.S.A. 2000, c. E-8.

British Columbia

2. *Pension Benefits Standards Act*, R.S.B.C. 1996, c. 352.

Manitoba

3. *Pension Benefits Act*, R.S.M. 1987, c. P32.

New Brunswick

4. *Pension Benefits Act*, S.N.B. 1987, c. P-5.1.

Newfoundland and Labrador

5. *Pension Benefits Act, 1997*, S.N.L. 1996, c. P-4.01.

Nova Scotia

6. *Pension Benefits Act*, R.S.N.S. 1989, c. 340.

Ontario

7. *Pension Benefits Act*, R.S.O. 1990, c. P.8.

Quebec

8. *Supplemental Pension Plans Act*, R.S.Q., c. R-15.1.

Saskatchewan

9. *Pension Benefits Act, 1992*, S.S. 1992, c. P-6.001.

Federal jurisdiction

10. *Pension Benefits Standards Act, 1985*, R.S.C. 1985 (2nd supp.), c. 32.

SCHEDULE B
MATTERS COVERED BY INCORPORATED LEGISLATIVE PROVISIONS

SECTION 1.

MAJOR AUTHORITY'S PENSION LEGISLATION

Major authority's pension legislation

1. The pension legislation applicable to a pension plan shall be the pension legislation of the jurisdiction of the major authority for the plan in the following areas of pension legislation:

Registration of pension plans

1. Legislative provisions respecting:

- (a) the duty of the pension plan administrator to ensure that the plan complies with the applicable pension legislation;
- (b) requirements that a pension plan be registered with the authority;
- (c) prohibitions against administering a pension plan not registered with the authority;
- (d) the pension plan registration process (including the filing of required forms and documents, the form in which such documents must be filed, the contents of documents and filing deadlines);
- (e) whether registration of a plan is proof of compliance with the applicable pension legislation; and
- (f) the authority's power to refuse or revoke the registration of a plan due to non-compliance with the applicable pension legislation.

Registration of pension plan amendments

2. Legislative provisions respecting:

- (a) requirements that pension plan amendments, or amendments to prescribed pension plan documents, be registered with the authority;
- (b) the amendment registration process (including the filing of required forms and documents, the form in which such documents must be filed, the contents of documents and filing deadlines);
- (c) whether registration of an amendment is proof of compliance with the applicable pension legislation;

- (d) the authority's power to refuse or revoke the registration of a plan amendment due to non-compliance with the pension legislation applicable to the plan under clause (a) of subsection (1) of section 6 of the Agreement;
- (e) the ability of the administrator to administer the amended plan if it does not comply with the applicable pension legislation; and
- (f) requirements for notice of registration of the amendment to be provided to active members or other persons, the form and content of the notice and deadlines for providing such notice.

Pension plan administrators

3. Legislative provisions respecting:

- (a) requirements that a pension plan be administered by an administrator;
- (b) who may be an administrator; and
- (c) the right of active members or other persons to establish an advisory committee to advise the administrator, and requirements respecting such an advisory committee.

Pension plan administrators' duties

4. Legislative provisions respecting:

- (a) requirements that the pension plan administrator or the trustee, custodian or holder of the pension fund:
 - (i) administer the pension plan or pension fund in accordance with the applicable pension legislation and the plan terms;
 - (ii) stand in a fiduciary relationship to active members or other persons;
 - (iii) hold the pension fund in trust for the active members or other persons;
 - (iv) act honestly, in good faith and in the best interests of the active members or other persons;
 - (v) exercise the care, diligence and skill of a prudent person;

- (vi) invest the pension fund in accordance with the applicable pension legislation, the pension plan's written investment policies, in the best interests of the active members or other persons or in a reasonable and prudent manner; and
 - (vii) hold an annual or periodic meeting with the active members or other persons;
- (b) requirements that persons involved in the administration of a pension plan or pension fund:
- (i) employ all knowledge and skill they possess by reason of their business or profession;
 - (ii) familiarize themselves with their fiduciary duties and obligations; and
 - (iii) possess the skills, capability and dedication required to fulfill their responsibilities and seek advice from qualified advisors where appropriate;
- (c) conflict of interest requirements for persons involved in the administration of a pension plan or pension fund;
- (d) requirements for the selection, use and supervision of the administrator's agents or advisors, and requirements for such agents or advisors;
- (e) requirements that the employer or trustee provide information to the administrator; and
- (f) requirements respecting to the payment of expenses related to the pension plan.

Pension plan records

5. Legislative provisions respecting:

- (a) how long any person must retain information related to the pension plan; and
- (b) requests by the plan administrator for information necessary for the administration of the pension plan.

Funding of ongoing pension plans (not in the case of full or partial plan wind up)

6. Legislative provisions respecting:

- (a) requirements for contributions made to the pension fund (including the type or form of contributions, the manner in which they must be made and deadlines for making them);
- (b) minimum plan funding and solvency levels (including plan funding and solvency levels related to pension plan amendments and the use of plan assets for the funding of plan amendments);
- (c) the ability to take contribution holidays;
- (d) requirements for actuarial valuation reports to be filed with the authority in respect of pension plans (including the form and content of such reports, filing deadlines and actuarial standards to be applied in preparing such reports);
- (e) requirements for refunds of contributions to employers, active members or other persons;
- (f) restrictions on the amount of the commuted value of a person's benefit entitlements under a pension plan that can be transferred out of the pension fund of the plan where the plan is not fully funded on a solvency or going concern basis;
- (g) who may be the trustee, custodian or holder of the pension fund; and
- (h) requirements for the provision of information between administrators and the trustees, custodians or holders of pension funds with respect to contributions, and for notice to the authority of contributions not remitted when due.

Pension fund investments

7. Legislative provisions respecting:

- (a) requirements for the investment of the pension fund (including limitations on investments and requirements that pension fund assets to be held in the name of the pension plan);
- (b) requirements that the administrator prepare a written investment policy, requirements for such a policy (including the form and content of the policy, whether it must be filed with the authority and the deadline for filing) and requirements regarding to whom such a policy must be provided; and

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- (c) requirements in situations where active members or other persons direct the investment of their contributions (including the minimum number and type of investment options offered, the education and advice available to active members or who may provide the advice).

Pension fund assets

8. Legislative provisions respecting:

- (a) requirements for pension fund assets to be held by specified fund holders under a specified type of agreement;
- (b) requirements for contributions to be remitted to the pension fund;
- (c) requirements that the pension fund be held separate and apart from the employer's assets and deeming the pension fund to be held in trust for the active members or other persons;
- (d) an administrator's lien and charge on the employer's assets equal to the amounts deemed held in trust; and
- (e) the administrator's duty to take immediate action (including court proceedings) to obtain outstanding contributions.

Provision of information

9. Legislative provisions respecting:

- (a) requirements for documents and information to be filed by the administrator or any other person with the authority, including:
 - (i) periodic information returns;
 - (ii) actuarial information for defined benefit plans;
 - (iii) financial statements (including audited financial statements); and
 - (iv) the form and content of the documents and information, who must prepare them and filing deadlines;
- (b) requirements for the following documents and information to be provided by the administrator, including the form and content of the documents and information, who must prepare them and deadlines for providing them:
 - (i) pension plan summaries for active members or employees entitled to join the plan; and

- (ii) annual or periodic statements for active members or other persons; and
- (c) requirements for the inspection of pension plan documents in the possession of the administrator, authority or other persons (including who is entitled to inspect the documents and information, how often, where and at what cost).

Plan membership

10. Legislative provisions respecting:

- (a) pension plans being for one or more classes of employees; and
- (b) the ability of the employer to establish separate plans for full-time and part-time employees.

Appointment of pension plan administrator

11. Legislative provisions respecting:

- (a) the ability of the authority to appoint itself or another person as administrator of a pension plan and rescind the appointment; and
- (b) the powers of an appointed administrator.

SECTION 2.

MAJOR AUTHORITY'S POWERS

Major authority's powers

2. Where the pension legislation of the major authority's jurisdiction applies to a pension plan in accordance with section 1 of this Schedule, the following areas of the pension legislation of the major authority's jurisdiction shall, for the purposes of the plan and all jurisdictions that are subject to this Agreement in respect of the plan, also apply in respect of the application of the pension legislation described in section 1 of this Schedule:

Powers of examination, investigation or inquiry

1. All powers of examination, investigation or inquiry given to the major authority.

Orders, directions, approvals or decisions

2. The issuance of, or proposal to issue, orders, directions, approvals or decisions by the major authority, and any modification as may be made to such an order, direction, approval or decision by the authority, an administrative body or a court.

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Reconsideration or review

3. The rights of the plan or a person affected by an order, direction, approval or decision of the major authority, an administrative body or a court to have the order, direction, approval or decision reconsidered or reviewed by the authority, an administrative body or a court.

Offences and penalties

4. The offences and penalties that may be applied where the plan or a person is found to have contravened the terms of the applicable pension legislation.

**AGREEMENT RESPECTING
MULTI-JURISDICTIONAL PENSION PLANS**

IN WITNESS WHEREOF,
the undersigned, being duly authorized by
the Government of Quebec, have signed
the Agreement Respecting Multi-jurisdictional
Pension Plans.

Signed at Québec,

the 21st day of April, 2011.

(original signed by)

Julie Boulet

Minister of Employment and Social Solidarity

Signed at Québec,

the 28th day of April, 2011.

(original signed by)

Pierre Moreau

Minister responsible for Canadian Intergovernmental
Affairs and the Canadian Francophonie

**AGREEMENT RESPECTING
MULTI-JURISDICTIONAL PENSION PLANS**

IN WITNESS WHEREOF,
the undersigned, being duly authorized by
the Government of Ontario, has signed
the Agreement Respecting Multi-jurisdictional
Pension Plans.

Signed at Toronto,
the 9th day of May, 2011.

(original signed by)
Dwight Duncan
Minister of Finance

**2016 AGREEMENT RESPECTING
MULTI-JURISDICTIONAL PENSION PLANS**

The signatories of this Agreement are as follows:

The governments of

BRITISH COLUMBIA, herein acting and represented by the Minister of Finance;

NOVA SCOTIA, herein acting and represented by the Minister of Finance and Treasury Board;

ONTARIO, herein acting and represented by the Minister of Finance;

QUEBEC, herein acting and represented by the Minister of Finance and the Minister responsible for Canadian Relations and the Canadian Francophonie; and

SASKATCHEWAN, herein acting and represented by the Minister of Justice and Attorney General.

RECITALS

- I. Each signatory to this Agreement represents a legislative jurisdiction in Canada and is authorized by the laws of the signatory's jurisdiction to sign this Agreement.
- II. A pension plan may be subject to the pension legislation of more than one jurisdiction and may be subject to the supervision of more than one jurisdiction's pension supervisory authority, by reason of the nature or place of the plan members' residence or employment or the nature of the business, work or undertaking of the members' employer.
- III. Pension plans that are subject to the pension legislation of more than one jurisdiction play a significant role in providing retirement income to many Canadians. To establish an efficient and transparent regulatory environment for such plans, the parties to this Agreement deem it desirable to specify the rules that apply to such plans and allow, to the extent provided for in this Agreement, a single pension supervisory authority to exercise with respect to any such pension plan all of the supervisory and regulatory powers to which such plan is subject.
- IV. The laws of the jurisdictions whose governments are party to this Agreement allow for the incorporation of rules for pension plans enacted by Canadian legislative jurisdictions or as otherwise set out in this Agreement, as well as the reciprocal application of legislative provisions and administrative powers by the pension supervisory authorities concerned.
- V. Therefore, the parties to this Agreement agree as follows:

PART I GENERAL PROVISIONS

SECTION 1. DEFINITIONS & SCHEDULES

Definitions

1. (1) For the purposes of this Agreement, unless the context indicates a different meaning:

“active member” means, in relation to a pension plan, a person who:

- (a) is accruing benefits under the plan; or
- (b) is no longer accruing benefits under the plan, but who is deemed by the terms of the plan or the pension legislation that would apply to the person if this Agreement did not exist to have the same status as an active member of the plan as a person determined under clause (a); (“participant actif”)

“pension legislation” means, in relation to a jurisdiction, the legislation identified in Schedule A in respect of that jurisdiction and any subordinate legislation made under that legislation, all as amended or substituted from time to time; (“loi sur les régimes de retraite”)

“pension plan” means, in respect of a jurisdiction, any plan that is subject to the jurisdiction’s pension legislation; and (“régime de retraite”)

“pension supervisory authority” means the government ministry, department or agency of a jurisdiction that has supervisory or regulatory powers with respect to pension plans under the pension legislation of the jurisdiction. (“organisme de surveillance”)

Schedules

(2) The following attached Schedules form part of this Agreement:

- (a) Schedule A – Pension Legislation; and
- (b) Schedule B – Matters Covered by Incorporated Legislative Provisions.

SECTION 2.

APPLICATION

General application

2. (1) Subject to subsection (2) and section 26, this Agreement applies to any pension plan that would, if this Agreement and any other agreement respecting the supervision of pension plans did not exist, be subject to registration with a pension supervisory authority under the pension legislation of more than one jurisdiction that is subject to this Agreement.

Restriction

(2) This Agreement does not apply to a pension plan if the pension supervisory authority that would be designated as the major authority for the plan under this Agreement is not subject to this Agreement.

Plan provision not effective

(3) This Agreement applies in respect of a pension plan despite any conflicting provision in any document that creates or supports the pension plan.

**PART II
MAJOR AUTHORITY**

SECTION 3.

DETERMINATION OF THE MAJOR AUTHORITY

One major authority

3. (1) One pension supervisory authority having jurisdiction over a pension plan shall be the major authority for the plan.

Plurality of active members

(2) Except as provided in sections 5 and 26, the major authority for a pension plan shall be the pension supervisory authority of the jurisdiction with the plurality of active members of the plan, as determined in accordance with subsection (3) and considering only those jurisdictions whose pension legislation would, if this Agreement and any other agreement respecting the supervision of pension plans did not exist, require the plan to be registered with the pension supervisory authority of that jurisdiction.

Determination of plurality

(3) The jurisdiction that, among those referred to in subsection (2), has the plurality of active members of a pension plan shall be determined using the most recent periodic information return that has been filed with a pension supervisory authority in relation to the plan's fiscal year end, or if an application to register a new pension plan is received by a pension supervisory authority, determined using the information set out in the application, and on the following basis:

- (a) in respect of a provincial jurisdiction, the number of active members of the plan who are employed in that provincial jurisdiction and who would be subject to that jurisdiction's pension legislation if this Agreement and any other agreement respecting the supervision of pension plans did not exist; and
- (b) in respect of the federal jurisdiction, the number of active members of the plan who are employed in "included employment" within the meaning of that jurisdiction's pension legislation, where the plan is subject to that jurisdiction's pension legislation.

Equal number of active members

(4) Where the major authority for a pension plan cannot be determined by applying subsections (2) and (3) because two or more jurisdictions have authority over an equal number, greater than zero, of active members of the plan, the major authority for the plan shall be, of those jurisdictions, the authority whose main office is in closest proximity to the main office of the administrator of the plan. For the purposes of this subsection:

- (a) the main office of a pension supervisory authority is the office from which the authority conducts most of its supervisory activities; and

- (b) the main office of the pension plan administrator is the office from which the plan administrator described in the text of the pension plan conducts most of the plan's administration.

Status as major authority

(5) A pension supervisory authority that becomes the major authority for a pension plan in accordance with this Agreement shall remain the major authority for the plan until the authority loses its status as major authority in accordance with this Agreement.

Minor authorities

(6) Once a pension supervisory authority becomes the major authority for a pension plan, any other pension supervisory authority to which this Agreement extends and that has supervisory or regulatory powers with respect to the plan becomes a minor authority for the plan.

New pension plan registration

(7) Where a pension supervisory authority receives an application to register a pension plan, that authority shall determine whether it is the major authority for the plan within the meaning of this Agreement, and if necessary and as soon as possible thereafter, that authority shall notify the plan administrator as to the relevant authority with which the plan should or may be registered and shall notify the relevant authority about the plan to be registered.

SECTION 4.**ROLE OF THE MAJOR AUTHORITY****Interpretation**

4. (1) For the purposes of this section:

- (a) a decision includes an order, direction, approval or, if specific recourse is provided, a proposal to make such a decision; and
- (b) recourse includes the right to request a hearing, review, reconsideration or appeal.

Role of major authority

(2) The major authority for a pension plan shall:

- (a) supervise and regulate the plan in accordance with this Agreement, and on behalf of each of the minor authorities for the plan as required by this Agreement;
- (b) subject to subsection (3) and section 9, exercise, with respect to the plan and as required by this Agreement, the functions and powers necessary to carry out this Agreement conferred on the minor authority by the pension legislation of the minor authority's jurisdiction;

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- (c) apply and enforce any rules specified in this Agreement that are not part of the pension legislation of a jurisdiction; and
- (d) determine any matter or question related to the application of this Agreement to the plan in accordance with this Agreement and the procedural provisions of the pension legislation of the major authority's jurisdiction.

Exceptions

(3) Despite clause (b) of subsection (2):

- (a) where the major authority for a pension plan and a minor authority for the plan agree that a particular function or power conferred by the pension legislation of the minor authority's jurisdiction shall be exercised in respect of the plan by the minor authority, only such minor authority may exercise such function or power in respect of the plan;
- (b) where the major authority for a pension plan and a minor authority for the plan agree that a particular decision concerning the application of provisions of the pension legislation of the minor authority's jurisdiction shall be made in respect of the plan by the minor authority, only such minor authority may make such decision in respect of the plan; and
- (c) where pension legislation confers on a pension supervisory authority the power to order or otherwise require the splitting of the assets and liabilities of a pension plan, only such authority may make a decision concerning the exercise of that power with respect to the liabilities of a plan that are subject to such pension legislation and the assets of the plan related to the funding of those liabilities.

Decisions and recourse

(4) Any decision that may be made by the major authority for a pension plan that applies the provisions of the pension legislation of a minor authority's jurisdiction as described in clause (b) of subsection (1) of section 6 is subject to the following rules:

- (a) the decision shall be made under the procedural provisions of the pension legislation of the major authority's jurisdiction that would have applied if the matter had arisen under that legislation;
- (b) the decision shall be deemed to have been made by the minor authority under the procedural provisions of the pension legislation of the minor authority's jurisdiction that would have applied if the minor authority had made the decision;

- (c) when the decision is issued by the major authority, it shall include notice to any person receiving the decision as to:
- (i) the provisions of the pension legislation of the minor authority's jurisdiction that were applied in formulating the decision that is made;
 - (ii) the recourse provided, if any, from the decision under the pension legislation of the minor authority's jurisdiction, including the body before whom such recourse may be exercised;
 - (iii) the time limit under the pension legislation of the minor authority's jurisdiction for exercising such recourse; and
 - (iv) where the pension legislation of the minor authority's jurisdiction does not provide for recourse from the decision, any recourse from the decision provided under any other legislation of that jurisdiction, including the body before whom such recourse may be exercised and the time limit for exercising such recourse; and
- (d) the right to recourse from the decision shall be determined under the pension legislation or other legislation of the minor authority's jurisdiction as though the decision had been made under the procedural provisions of that legislation.

Continued role of major authority

(5) Exercise of a recourse from a decision referred to in this section does not have the effect of preventing or releasing the major authority from continuing to fulfill its responsibilities with respect to the pension plan as set out in subsection (2).

Enforcement of decisions

(6) The major authority shall enforce any decision referred to in this section once that decision is no longer open to any further recourse, as well as any decision resulting from such recourse that is no longer open to any further recourse.

Communication with major authority

(7) A person shall be entitled to communicate with the major authority for a pension plan in the same manner that the person would be entitled to communicate with a pension supervisory authority under the legislation that would apply to the person if this Agreement did not exist.

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Representative

(8) Where a person having any rights or benefits under a pension plan has designated another person or an association that represents people with rights or benefits under the plan to act on his or her behalf with respect to the major authority for the plan, such authority shall, to the extent permitted by law, communicate with that other person or association and, upon request, provide that other person or association with the information and documents to which the person is entitled.

SECTION 5.**LOSS OF MAJOR AUTHORITY STATUS****Loss of major authority status**

5. (1) The major authority for a pension plan shall lose its status in that regard on the date described in subsection (2) where, according to the most recent periodic information return that has been filed with the major authority in relation to the plan's fiscal year end, the number of active members of the plan employed in relation to the major authority's jurisdiction, as determined under subsection (3) of section 3 as of the plan's fiscal year end, is:

- (a) for the third consecutive fiscal year, less than the number of active members who were employed in relation to any other jurisdiction or jurisdictions;
- (b) less than 75% of the number of active members who were employed in relation to any other jurisdiction; or
- (c) equal to zero and there are active members of the plan employed in relation to any other jurisdiction.

Date of loss of major authority status

(2) The major authority for a pension plan loses its status in that regard:

- (a) in the case provided for in clause (a) or (b) of subsection (1), five days prior to the end of the first plan fiscal year that begins after the date on which the major authority received the information referred to in the relevant clause; and
- (b) in the case provided for in clause (c) of subsection (1), upon the later of the fifth day before the end of the current plan fiscal year during which the major authority received the information referred to in that clause or of the expiry of the period of six months beginning on the date the major authority received the information.

New major authority

(3) When the major authority for a pension plan loses its status in that regard in accordance with subsection (2), the pension supervisory authority for the jurisdiction having, as determined in accordance with subsection (1), the plurality of active members of the plan becomes the plan's new major authority if that new major authority is subject to this Agreement.

Equal number of active members

(4) Where the new major authority for a pension plan cannot be determined in accordance with subsection (3) because two or more jurisdictions have authority over an equal number, greater than zero, of active members of the plan, the major authority for the plan shall be, of those jurisdictions, the authority whose main office is in closest proximity to the main office of the administrator of the plan. For the purposes of this subsection:

- (a) the main office of a pension supervisory authority is the office from which the authority conducts most of its supervisory activities; and
- (b) the main office of the pension plan administrator is the office from which the plan administrator described in the text of the pension plan conducts most of the plan's administration.

Transitional rules

(5) Where the major authority for a pension plan loses its status in that regard in accordance with this section:

- (a) all matters related to the plan that are pending before the major authority on the day preceding its loss of status as major authority shall be continued before that authority;
- (b) all matters related to the plan that concern a decision, order, direction or approval proposed or made by the major authority and pending before any administrative body or court on the day preceding the loss of the major authority's status as major authority shall be continued before such body or court;
- (c) for every matter in respect of which the major authority referred to in clause (a) or the administrative body or court referred to in clause (b) has proposed or made a decision, order, direction or approval to which the pension legislation or other legislation applying on the day preceding the replacement of the major authority provides a right of recourse:
 - (i) such right shall be maintained so long as the period provided for exercising that right has not expired; and
 - (ii) such recourse may be brought before the administrative body or court provided for by the legislation giving entitlement thereto;

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- (d) for any matter related to the plan not described in clauses (a) to (c) that occurred while the major authority was the major authority for the plan and that related to the provisions of the pension legislation of the major authority's jurisdiction in respect of a matter referred to in Schedule B:
- (i) the major authority may, even after it loses its status in that regard for the plan, conduct an examination, investigation or inquiry into the matter in accordance with the pension legislation of the major authority's jurisdiction to determine whether compliance with that legislation was met, and in such case, the matter shall remain subject to that major authority; and
 - (ii) where the matter constitutes an offence under the pension legislation of the major authority's jurisdiction, the offence may be prosecuted by the competent authority in that jurisdiction, and in such case, the matter shall remain subject to that major authority; and
- (e) all matters referred to in clauses (a) to (d) shall remain subject to the pension legislation or other legislation that, under this Agreement, applied to such matters on the day preceding the loss of the major authority's status as major authority.

Notice by major authority

(6) Where the major authority for a pension plan receives from the administrator of the plan the information described in clauses (a), (b) or (c) of subsection (1), it shall:

- (a) as soon as possible after receipt of the information, notify the pension plan administrator and each minor authority for the plan of the date on which, pursuant to subsection (2), it will lose its status as major authority for the plan and, if applicable, the pension supervisory authority that shall become the new major authority for the plan; and
- (b) as soon as possible after the plan's new major authority assumes its functions, provide to such new major authority all relevant records, documents or other information that it has concerning the plan.

Notice by new major authority

(7) The pension supervisory authority that replaces another authority as major authority for a pension plan shall, as soon as possible after assuming its functions, inform the pension plan administrator and each of the plan's minor authorities of the date on which it assumed the functions of major authority.

Notice by plan administrator

(8) The administrator of a pension plan that receives from the plan's major authority notice of the information provided for in clause (a) of subsection (6) or in subsection (7) shall:

- (a) in respect of the information provided for in clause (a) of subsection (6), transmit such information to each employer that is party to the plan and any collective bargaining agent that represents any person who has rights or benefits under the plan within 90 days after such notice; and
- (b) in respect of the information provided for in subsection (7), transmit such information to each employer that is party to the plan and any person who has rights or benefits under the plan who is entitled to receive an annual statement of the person's benefits, no later than the expiry of the period for providing such persons with their next annual statements of benefits.

**PART III
APPLICABLE LAW**

SECTION 6.**APPLICABLE LEGISLATION****Applicable pension legislation**

6. (1) While a pension supervisory authority is the major authority for a pension plan in accordance with this Agreement:

- (a) the provisions of the pension legislation of the major authority's jurisdiction in respect of matters referred to in Schedule B apply to the plan instead of those of the corresponding provisions of the pension legislation of any minor authority's jurisdiction that would apply to the plan if this Agreement did not exist; and
- (b) subject to the provisions of this Agreement, the provisions of the pension legislation of each jurisdiction that are applicable to the plan under the terms of such legislation apply to the plan in respect of matters not referred to in Schedule B.

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Funding rule exceptions

(2) Despite clause (a) of subsection (1):

- (a) where the pension legislation of a minor authority's jurisdiction would, if this Agreement did not exist, require the funding of a benefit provided in relation to a pension plan with respect to persons having rights under the plan who are subject to that legislation:
 - (i) subject to subclause (ii), funding shall be required in respect of that benefit with respect to those persons, even if funding for that benefit would not be required under the pension legislation of the major authority's jurisdiction; and
 - (ii) funding of the benefit described in subclause (i) shall be required in a manner consistent with, and to the extent determined by, the requirements under the pension legislation of the major authority's jurisdiction applicable to the funding of other benefits that are provided in relation to the plan and that are required to be funded in relation to the plan under that legislation;
- (b) where the pension legislation of a minor authority's jurisdiction would require, for the purposes of this clause, that an additional liability be established and funded in relation to a pension plan with respect to persons having rights under the plan who are subject to that legislation:
 - (i) subject to subclause (ii), such liability shall be required to be established and funded, even if such liability would not be required to be established, and such funding would not be required, under the pension legislation of the major authority's jurisdiction; and
 - (ii) funding of the liability described in subclause (i) shall be required in a manner consistent with, and to the extent determined by, the requirements under the pension legislation of the major authority's jurisdiction applicable to the funding of benefits that are provided in relation to the plan and that are required to be funded in relation to the plan under that legislation; and
- (c) subject to subsection (4), when a pension supervisory authority becomes the major authority for a pension plan in accordance with this Agreement, if the funding of any benefit provided under the plan has been based on actuarial valuation reports filed in respect of the plan with a pension supervisory authority, the funding of those benefits shall continue to be subject to the pension legislation that applied immediately before the major authority assumed its functions in respect of the plan until such time as a new actuarial valuation report is due to be filed in respect of the plan with the major authority in accordance with the pension legislation of the major authority's jurisdiction.

Definitions

(3) For the purposes of subsection (4):

“alternative funding arrangement” means a fund or financial instrument that is described in the pension legislation of a jurisdiction and is permitted under that legislation to supplement, support or otherwise satisfy the funding requirements for a pension plan under that legislation, where in the absence of such fund or financial instrument additional contributions would be required to be made to the pension fund of the plan in order to satisfy the funding requirements for the plan under that legislation; (“instrument financier”)

“new major authority” means a pension supervisory authority that becomes the major authority for a pension plan in accordance with this Agreement; and

“prior authority” means a pension supervisory authority with which a pension plan is registered immediately before a pension supervisory authority becomes the major authority for the plan in accordance with this Agreement.

Alternative funding arrangement exceptions

(4) Despite clause (a) of subsection (1), when a pension supervisory authority becomes the new major authority for a pension plan, if the pension legislation of the prior authority’s jurisdiction permitted the use of an alternate funding arrangement, but the pension legislation of the new major authority’s jurisdiction does not permit the use of that alternate funding arrangement, then:

- (a) if, no later than thirty-five days before the new major authority becomes the major authority for the plan, the administrator of the plan provides notice to both the new major authority and the prior authority that it intends to file an actuarial valuation report with the new major authority with a valuation date that coincides with the fiscal year end of the plan that immediately follows the new major authority becoming the major authority for the plan, then the following rules shall apply with respect to the funding of the plan:
 - (i) the alternative funding arrangement may continue to be used until thirty days after the valuation report is due to be filed with the new major authority;
 - (ii) no later than thirty days after the valuation report is due to be filed with the new major authority, an amount equal to the lesser of the value of the alternative funding arrangement or the amount required to make the plan fully funded on a solvency basis shall be deposited into the pension fund of the plan by an employer that is party to the plan; and

- (iii) if the amount described in subclause (ii) has not been deposited by an employer into the pension fund of the plan within the thirty day timeframe described in that subclause, an amount equal to the full value of the alternative funding arrangement shall be immediately deposited into the pension fund of the plan by an employer that is party to the plan; and
- (b) if the administrator of the plan does not provide the notice described in clause (a), then the following rules shall apply with respect to the funding of the plan:
 - (i) no later than thirty days before the new major authority becomes the major authority for the plan, an amount equal to the lesser of the value of the alternative funding arrangement or the amount required to make the plan fully funded on a solvency basis shall be deposited into the pension fund of the plan by an employer that is party to the plan; and
 - (ii) until the time a new actuarial valuation report described in clause (c) of subsection (2) is filed with the new major authority respecting the plan, an amount equal to the lesser of the value of any subsequent alternative funding arrangement that would have been required to have been obtained in relation to the plan under the pension legislation of the prior authority's jurisdiction, or the amount that would be required to make the plan fully funded on a solvency basis, shall be deposited into the pension fund of the plan by an employer that is party to the plan instead of obtaining the subsequent alternative funding arrangement, at or before the time the alternative funding arrangement would have been required to have been obtained in relation to the plan under the pension legislation of the prior authority's jurisdiction and in accordance with the last actuarial valuation report that had been filed with the prior authority in respect of the plan.

SECTION 7.**DETERMINATION OF BENEFITS BY FINAL LOCATION****Deemed applicability of pension legislation**

7. For the purposes of determining the benefits accrued by a person under a pension plan, the person's entire benefit accrual shall be deemed to have been subject to the pension legislation that applied to the person:

- (a) at the time the person's benefits were determined, if the person was still accruing benefits under the plan at that time; or
- (b) at the time the person ceased accruing benefits under the plan, if the person was no longer accruing benefits under the plan at the time the person's benefits were determined.

SECTION 8.**PENSION PLAN INVESTMENTS****Deadline for compliance**

8. Despite any other provision of this Agreement, any investment by a pension plan that is held on the date a pension supervisory authority becomes the major authority for the plan and that, although it complies with the pension legislation that applied to the plan on the day preceding that date, does not comply with the pension legislation that applies to the plan's investments from that date, shall be brought into compliance with the latter legislation within five years from that date.

SECTION 9.**PENSION BENEFITS GUARANTEE FUND****Pension benefits guarantee fund**

9. Subject to sections 10 to 17, this Agreement shall not affect the application or administration of the Pension Benefits Guarantee Fund set out under the pension legislation of Ontario or any similar fund established under any other pension legislation.

PART IV**PENSION PLAN ASSET ALLOCATION INTO JURISDICTIONAL PORTIONS****SECTION 10.****APPLICABLE SITUATIONS****Applicable situations**

10. The assets of a pension plan shall be allocated into portions in accordance with this Part when:

- (a) the plan is amended so that part of the liability of the plan to pay benefits or other amounts to persons so entitled under the plan is transferred to a different pension plan, and where, as part and in consideration of that transfer of liability, part of the assets of the plan are transferred to the different plan;
- (b) a pension supervisory authority orders or otherwise requires the splitting of the assets and liabilities of the plan, as described in clause (c) of subsection (3) of section 4;
- (c) the plan has more than one participating employer and an employer withdraws from the plan, and pension legislation requires that the rights and benefits accrued under the plan be divided into groups, one of which consists of the rights and benefits of persons affected by the withdrawal, and that those persons may elect to have their rights and benefits under the plan be paid forthwith;
- (d) the plan is being wound up in part;
- (e) the plan is being fully wound up; or

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- (f) a situation not described in clauses (a) to (e) occurs and assets of the plan related to a jurisdiction are to be paid to an employer that participates in the plan in accordance with the pension legislation of that jurisdiction.

SECTION 11.**ALLOCATION OF ASSETS****Allocation into portions**

11. (1) For the purposes of this Part, the assets of a pension plan shall be allocated into portions as of the date of allocation, each portion being related to the liability for benefits and other amounts accrued under the plan, and any additional liability referred to in clause (b) of subsection (2) of section 6 respecting the plan, that is subject to a jurisdiction's pension legislation, as determined in accordance with this section.

Standard allocation methodology

(2) Subject to section 12, the portion of a pension plan's assets that is subject to a jurisdiction's pension legislation as of the date of allocation shall be equal to the sum of the amounts referred to in section 13 as of the date of allocation, determined with respect to the benefits and other amounts described in section 13 that are subject to that jurisdiction's pension legislation and applying the requirements of sections 14 to 16.

Other allocation methodology

(3) The major authority for a pension plan may permit the assets of the plan to be allocated into the portions described in subsection (1) in a manner other than that required by subsection (2) or section 12 if:

- (a) the allocation of the plan's assets is made in relation to any situation described in section 10 other than the full wind up of the plan and a Fellow of the Canadian Institute of Actuaries certifies that:
 - (i) the liabilities of the plan that are related to the plan assets to be allocated into the portions described in subsection (2) do not exceed those assets on either a solvency basis or a going concern basis; and
 - (ii) the allocation of the assets of the plan described in subclause (i) will not differ materially from an allocation of those assets conducted in accordance with subsection (2); or

- (b) the allocation of the plan's assets is made in relation to a situation described in clause (d) of section 10, no pension legislation that applies to the plan assets to be allocated into the portions described in subsection (2) requires the distribution of any plan assets related to the wound up part of the plan that remain after all liabilities related to the wound up part of the plan have been settled and a Fellow of the Canadian Institute of Actuaries certifies that the liabilities of the plan related to the wound up part of the plan do not exceed the plan assets related to the wound up part of the plan on either a solvency basis or a going concern basis immediately before the partial wind up of the plan.

SECTION 12.

PLAN WITH MORE THAN ONE PARTICIPATING EMPLOYER

Plan with more than one participating employer

12. (1) This section applies to a pension plan that has more than one participating employer and, in accordance with the pension legislation of the major authority's jurisdiction:

- (a) the following are determined and accounted for separately in respect of an employer that participates in the plan, as if a separate pension plan was established within the plan in respect of that employer:
 - (i) the assets and liabilities of the plan;
 - (ii) the contributions payable in relation to the plan;
 - (iii) the benefits and other amounts owing under the plan; and
 - (iv) the expenses payable in relation to the plan;
- (b) the liabilities of the plan related to the employer described in clause (a) are determined with reference to only the benefits and other amounts owing to a person in relation to that person's employment with that employer; and
- (c) among the contributions payable in relation to the plan by the employer described in clause (a), those that are required to be paid under the applicable pension legislation in relation to benefits and other amounts currently accruing by active members of the plan are determined only with reference to active members employed by that employer.

Allocation of assets into employer shares

(2) For the purposes of an asset allocation under this Part involving a pension plan described in subsection (1), the assets of the plan that have been determined and accounted for separately in relation to an employer as of the date of allocation shall be allocated to that employer as an employer share if the plan characteristics described in clause (a) of subsection (1) respecting the employer:

- (a) have been determined and accounted for separately since the start of the employer's participation in the plan; or
- (b) began to be determined and accounted for separately at a date subsequent to the start of the employer's participation in the plan, and the initial determination and accounting of the assets of the plan respecting that employer was consistent with, and conducted on the basis of, an allocation of the assets of the plan in accordance with the requirements of this Part and in relation to a situation other than that described in clause (c), (d) or (e) of section 10.

Allocation of employer shares into portions

(3) Any employer share allocated in accordance with subsection (2) shall be further allocated into portions in the manner provided for in section 11, and used in the manner provided for in section 17, as if the employer share consisted of the assets of a separate pension plan for that employer.

Allocation of remaining assets into portions

(4) For the purposes of an asset allocation under this Part involving a pension plan described in subsection (1), any assets of the plan not allocated to an employer share in accordance with subsection (2) shall be allocated into portions in the manner provided for in section 11, and used in the manner provided for in section 17, without considering the liabilities described in clause (b) of subsection (1) related to an employer for which an employer share has been allocated under this section.

SECTION 13.**DETERMINATION OF PORTIONS FOR ASSET ALLOCATION****Determination of portions**

13. (1) The assets of a pension plan that are to be allocated into portions in accordance with subsection (2) of section 11 shall be allocated into portions as of the date of allocation in accordance with the levels of priority of allocation set out in this section.

Contributions and similar amounts

(2) First, allocate assets of the pension plan equal to the sum of the following contributions and amounts, to the extent that such contributions and amounts are still credited to the account of a person having benefits under the plan on the date of allocation:

- (a) any contributions paid into the pension fund of the plan and any amounts that the person had elected to transfer into the pension fund of the plan, other than contributions and amounts used to fund benefits that are not determined solely as a function of amounts credited to the account of the person; and
- (b) any interest attributable to contributions or amounts described in clause (a).

Core liabilities

(3) Second, allocate assets of the pension plan equal to the sum of the following liability amounts, provided that the pension legislation that would govern those liabilities if this Agreement did not exist would require them to be funded on a solvency basis:

- (a) the value of benefits under the plan that are being paid on a regular and periodic basis to any person on the date of allocation, whether or not the benefit is payable for the lifetime of the person, and determined taking into account:
 - (i) any periodic increase in the benefits, based on any index, rate or formula provided for in the plan; and
 - (ii) any related benefits that are payable due to the death of the person;
- (b) the value of lifetime benefits accrued under the plan by any person who, on the date of allocation, is entitled to receive payment of the benefits on that date or a later date, but who is not in receipt of payment of the benefits as of the date of allocation, determined:
 - (i) using the earliest age at which all such persons are entitled to payment of unreduced lifetime benefits, without reference to any other requirements or conditions under the terms of the plan or any applicable pension legislation;
 - (ii) taking into account any post-retirement periodic increase in the lifetime benefits, based on any index, rate or formula provided for in the plan; and

- (iii) taking into account any related benefits that are payable due to the death of the person, whether such death occurs before or after the person starts receiving payment of lifetime benefits under the plan and determined at the age described in subclause (i);
- (c) in respect of any person who has been required to make contributions under the plan, the amount by which the contributions made by the person plus any interest attributable to those contributions exceeds the amount representing 50% of the value of the benefits payable to the person under the plan, subject to the following requirements:
 - (i) the contributions, interest and value of the benefits shall be calculated as of the date of allocation and consistent with either the pension legislation that governs the benefits or the terms of the plan, whichever produces a larger excess amount; and
 - (ii) any such excess amount already determined in relation to a person before the date of allocation shall not be included, whether or not such previously determined excess amount has been refunded to the person; and
- (d) any unpaid part of the value of the benefits payable under the plan to a person who had elected before the date of allocation to be paid the value of the person's benefit entitlements under the plan, as well as any interest attributable to that unpaid part.

Other liabilities whose funding is required

- (4) Third, allocate assets of the pension plan equal to the sum of the following liability amounts:
 - (a) the value of benefits accrued under the plan, other than those referred to in subsection (3), by any person who, on the date of allocation, is entitled to receive payment of the benefit on that date or a later date, but who is not in receipt of payment of the benefit as of the date of allocation, provided that the pension legislation that would govern the benefits if this Agreement did not exist would require that such benefits be funded on a solvency basis; and
 - (b) subject to subsection (5), the value of the additional liability referred to in clause (b) of subsection (2) of section 6.

Assets related to additional liability

(5) Where the assets of the pension plan that are allocated to a portion under subsections (2), (3) and (4) in the absence of the requirements of this subsection exceed the value of benefits and other amounts accrued under the plan that are related to that portion:

- (a) the value calculated for clause (b) of subsection (4) shall be reduced by the excess amount referred to in this subsection; and
- (b) the assets of the plan not allocated to a portion due to the application of clause (a) may be allocated to other portions in accordance with subsection (4).

Balance of assets

(6) Fourth, for the purposes of an asset allocation in any situation other than that described in clause (c), (d) or (e) of section 10:

- (a) any assets of the pension plan remaining after the allocations made in accordance with subsections (2) to (4) shall be sequentially allocated to the portion or portions with the lowest going concern ratio, until the going concern ratio of that portion equals the going concern ratio of the portion with the next highest going concern ratio;
- (b) the sequential allocation of the plan's assets described in clause (a) shall be made until all portions have the same going concern ratio or no assets remain to be allocated, whichever occurs first;
- (c) if, after applying the sequential allocation of assets described in clauses (a) and (b), the going concern ratio of each portion is lower than 1.0, any assets of the pension plan yet to be allocated shall be allocated to the portions so that the going concern ratios of all portions remain the same, until the going concern ratio of each portion reaches 1.0 or no assets remain to be allocated, whichever occurs first;
- (d) for the purposes of clauses (a), (b) and (c), the going concern ratio of a portion shall be calculated by using the assets of the pension plan allocated to the portion in accordance with this section and the going concern liabilities of the plan that are subject to the jurisdiction's pension legislation applicable to that portion, other than assets and liabilities related to contributions and amounts described in subsection (2); and
- (e) any assets of the pension plan remaining after the allocations made in accordance with clauses (a), (b) and (c) shall be allocated pro rata to the total of the going concern liabilities determined for each portion.

Balance of assets for certain asset allocations

(7) Fourth, for the purposes of an asset allocation in a situation described in clause (c), (d) or (e) of section 10:

- (a) allocate assets of the pension plan equal to the value of benefits accrued under the plan, other than those referred to in subsections (2), (3) or (4), to which persons are entitled under the plan as of the date of allocation; and
- (b) any assets of the pension plan remaining after the allocations made in accordance with subsections (2) to (5) and clause (a) shall be allocated pro rata to the total of the values determined for each portion in applying subsections (2) and (3) and clause (a) of subsection (4).

SECTION 14.**RULES OF APPLICATION****Alternative funding arrangements**

14. (1) For the purposes of this Part, the assets of a pension plan include any alternative funding arrangement described in section 6 that exists in relation to the plan at the time the assets of the plan are allocated into portions in accordance with this Part.

Determining value of benefits and assets

(2) For the purposes of sections 11 to 13, except subsection (6) of section 13, the value of the benefits and other amounts payable under a pension plan and the assets of the plan shall be determined as if the pension plan were wound up on the date of allocation.

Deemed solvency funding requirement

(3) If, at the time the assets of a pension plan are allocated into portions in accordance with this Part, a liability amount related to the plan or a benefit under the plan that is subject to a jurisdiction's pension legislation would not, if this Agreement did not exist, be required to be funded on a solvency basis due to a temporary suspension under that legislation of a requirement under that legislation that would otherwise require the funding of such liability amount or benefit on a solvency basis, the liability amount or benefit shall be deemed to be one that is required by that legislation to be funded on a solvency basis for the purposes of subsection (3) of section 13 and clause (a) of subsection (4) of section 13.

Additional deemed solvency funding requirement

(4) If, on the date as of which the assets of a pension plan are allocated into portions in accordance with this Part, the pension legislation of a government that is party to this Agreement has been amended after January 1, 2014, to permanently remove a requirement that some or all of the benefits and liability amounts under a pension plan be funded on a solvency basis, then that pension legislation shall be deemed, for the purposes of subsection (3) of section 13 and clause (a) of subsection (4) of section 13, to require that those benefits and liability amounts that are the subject of the amendment to the pension legislation and that have been accrued under the plan before the date that the amendment to the pension legislation has come into effect must be funded on a solvency basis.

SECTION 15.**REDUCTION METHOD****Reduction method**

15. (1) Subject to subsection (2), to the extent that a value or amount referred to in subsection (3) or (4) of section 13 relates to benefits arising from the application of a provision of a pension plan or of pension legislation that came into effect less than five years before the date of allocation, such value or amount shall, for the purposes of subsection (3) or (4) of section 13, be reduced:

- (a) by 100%, if the period from the date that the provision of the pension plan or pension legislation came into effect to the date of allocation is less than one year;
- (b) by 80%, if the period is one year or more, but less than two years;
- (c) by 60%, if the period is two years or more, but less than three years;
- (d) by 40%, if the period is three years or more, but less than four years; and
- (e) by 20%, if the period is four years or more, but less than five years.

Exception to reduction method

(2) The major authority for a pension plan may permit the assets of the plan to be allocated into the portions described in subsection (2) of section 11 without applying the requirements of subsection (1) if a Fellow of the Canadian Institute of Actuaries certifies that the liabilities of the plan that are related to the plan assets to be allocated into the portions described in subsection (2) of section 11 do not exceed those assets on a solvency basis.

SECTION 16.
INSUFFICIENCY OF ASSETS

Insufficiency of assets

16. If, at one of the levels of priority of allocation established by section 13, the assets of a pension plan that have yet to be allocated to a portion described in subsection (2) of section 11 are less than the total value of the benefits and other amounts that rank equally in that level of priority of allocation, the available plan assets shall be allocated to the portions pro rata to the total value of the benefits and other amounts that rank equally in that level of priority of allocation.

SECTION 17.
USE OF ASSETS FOLLOWING ALLOCATION

Use of allocated assets

17. (1) Where an asset allocation for a pension plan is made under this Part in any situation other than that described in clause (c), (d) or (e) of section 10, each portion of the assets of the plan allocated in accordance with sections 11 to 16 shall be utilized in conformity with the pension legislation applicable to the benefits and other amounts related to that portion.

Use of allocated assets for certain asset allocations

(2) Where an asset allocation for a pension plan is made under this Part in a situation described in clause (c), (d) or (e) of section 10, each portion of the assets of the plan allocated in accordance with sections 11 to 16 shall be utilized, in conformity with the pension legislation applicable to the benefits and other amounts related to that portion, to satisfy payment of those benefits and other amounts arising from the wind up of the plan or the withdrawal of the employer, as the case may be. In addition, any remaining assets related to that portion shall be distributed in accordance with that pension legislation, if so required under that legislation. No assets of the plan allocated to one portion shall be utilized to satisfy payment of the benefits and other amounts related to another portion on the wind up of the plan or the withdrawal of the employer, as the case may be.

Use of remaining allocated assets

(3) Where a situation described in clause (c) or (d) of section 10 occurs and the assets of a pension plan that have been allocated to a portion in accordance with sections 11 to 16 have been utilized to fully satisfy payment of the benefits and other amounts related to that portion that arise from the partial wind up of the plan or the withdrawal of the employer, as the case may be, and any other assets related to that portion have been distributed as required by the pension legislation applicable to the benefits and other amounts related to that portion, any remaining assets related to that portion shall remain in the pension fund of the plan and be commingled with the other assets therein.

**PART V
RELATIONS BETWEEN AUTHORITIES**

**SECTION 18.
COOPERATION**

Reciprocal obligations

18. The pension supervisory authorities that are subject to this Agreement shall:
- (a) provide to each other any information required for the application of this Agreement or pension legislation, and if requested, may provide other information which is reasonable in the circumstances;
 - (b) assist each other in any matter concerning the application of this Agreement or pension legislation as is reasonable in the circumstances, particularly with respect to subsection (7) of section 4, and may act as agent for each other;
 - (c) upon the request of such an authority, transmit to that authority any information on steps taken for the application of this Agreement and amendments to pension legislation, to the extent that such amendments affect the application of this Agreement;
 - (d) notify each other of any difficulty encountered in the interpretation or in the application of this Agreement or pension legislation; and
 - (e) seek an amicable resolution to any dispute that arises between them with respect to the interpretation of this Agreement.

**PART VI
EXECUTION AND COMING INTO FORCE OF AGREEMENT**

**SECTION 19.
EXECUTION AND COMING INTO FORCE**

Effective date

19. This Agreement shall come into force:
- (a) on July 1, 2016, in respect of the governments of British Columbia, Nova Scotia, Ontario, Quebec and Saskatchewan; and
 - (b) on the date unanimously agreed to by all parties to this Agreement in respect of a government on behalf of which this Agreement is signed after July 1, 2016.

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SECTION 20.**ADDITIONAL PARTIES****Unanimous consent**

20. (1) A government may become party to this Agreement with the unanimous consent of the parties to this Agreement.

Effects

(2) This Agreement shall enure to the benefit of and be binding upon a government that becomes party to this Agreement, the government's jurisdiction and the jurisdiction's pension supervisory authority as of the date referred to in section 19.

SECTION 21.**WITHDRAWAL****Written notice**

21. (1) A party to this Agreement may withdraw from this Agreement by giving written notice to all other parties to this Agreement. Such notice shall be signed by a person authorized by the laws of the withdrawing party's jurisdiction to sign this Agreement.

Waiting period

(2) The withdrawal shall take effect on the first day of the month following expiry of a period of three years following the date on which the notice was transmitted. The withdrawal shall affect only the withdrawing party, and this Agreement shall remain in force for all other parties to this Agreement.

Minor authority

(3) Where, upon expiry of the three year period referred to in subsection (2), the pension supervisory authority for the withdrawing party's jurisdiction acts as a minor authority with respect to a pension plan, the major authority for the plan shall provide, upon request, that minor authority with copies of all relevant records, documents and other information concerning the plan in the major authority's possession.

Major authority

(4) Where, upon expiry of the three year period referred to in subsection (2), the pension supervisory authority for the withdrawing party's jurisdiction acts as the major authority for a pension plan, such authority shall:

- (a) determine which pension supervisory authority, if any, shall become the new major authority for the plan in accordance with section 3 as of the effective date of the withdrawal; and
- (b) provide the new major authority for the plan referred to in clause (a), as soon as possible after such authority assumes its functions, with all relevant records, documents and other information in its possession concerning the plan.

Notice by major authority

(5) The pension supervisory authority that becomes a pension plan's new major authority in accordance with subsection (4) shall, as soon as possible after assuming its functions, inform the plan administrator and each of the plan's minor authorities of the date on which it assumed the functions of major authority.

Notice by plan administrator

(6) The administrator of a pension plan that receives from the plan's new major authority notice of the information provided for in subsection (5) shall transmit such information:

- (a) to each employer that is party to the plan and any collective bargaining agent that represents any person who has rights or benefits under the plan within 90 days after such notice; and
- (b) to any person who has rights or benefits under the plan who is entitled to receive an annual statement of the person's benefits under the plan, no later than the expiry of the period for providing such persons with their next annual statements of benefits.

Decisions and recourse

(7) Despite sections 4 and 6, where a pension supervisory authority becomes a pension plan's new major authority in accordance with subsection (4):

- (a) all matters related to the plan that are pending before a prior major authority on the day preceding the new major authority's assumption of its functions under this Agreement shall be continued before that prior major authority;
- (b) all matters related to the plan that concern a decision, order, direction or approval proposed or made by a prior major authority and pending before any administrative body or court on the day preceding the new major authority's assumption of its functions under this Agreement shall be continued before such body or court;
- (c) for every matter in respect of which the prior major authority referred to in clause (a) or the administrative body or court referred to in clause (b) has proposed or made a decision, order, direction or approval to which the pension legislation or other legislation applying on the day preceding the new major authority's assumption of its functions under this Agreement provides a right of recourse:
 - (i) such right shall be maintained so long as the period provided for exercising that right has not expired; and
 - (ii) such recourse may be brought before the administrative body or court provided for by the legislation giving entitlement thereto;

- (d) for any matter related to the plan not described in clauses (a) to (c) that occurred before the new major authority's assumption of its functions under this Agreement and that related to the provisions of the pension legislation of a prior major authority's jurisdiction in respect of a matter referred to in Schedule B:
- (i) the prior major authority may, even after it loses its status as major authority for the plan, conduct an examination, investigation or inquiry into the matter in accordance with the pension legislation of the prior major authority's jurisdiction to determine whether compliance with that legislation was met, and in such case, the matter shall remain subject to that prior major authority; and
 - (ii) where the matter constitutes an offence under the pension legislation of the prior major authority's jurisdiction, the offence may be prosecuted by the competent authority in that jurisdiction, and in such case, the matter shall remain subject to that prior major authority; and
- (e) all matters referred to in clauses (a) to (d) shall remain subject to the pension legislation or other legislation that applied to such matters on the day preceding the new major authority's assumption of its functions under this Agreement.

SECTION 22.**AMENDMENT****Unanimous consent**

22. This Agreement may be amended with the unanimous written consent of each of the parties to this Agreement.

SECTION 23.**COUNTERPARTS****Execution in counterparts**

23. This Agreement or any amendment to this Agreement may be executed in counterparts.

SECTION 24.**EXECUTION IN ENGLISH AND IN FRENCH****Authentic texts**

24. This Agreement and any amendment to this Agreement shall be executed in the English and French languages, each text being equally authoritative.

**PART VII
IMPLEMENTATION AND TRANSITIONAL PROVISIONS**

SECTION 25.

REPLACEMENT

Prior agreements

25. Subject to sections 27 and 28, as of the date referred to in section 19, this Agreement replaces the agreement entitled “Memorandum of Reciprocal Agreement” and any similar agreement respecting the application of pension legislation to pension plans that has been made between the governments that are party to this Agreement or between the departments or agencies of such governments.

SECTION 26.

TRANSITION

Preliminary measure

26. (1) Where this Agreement comes into force on a date referred to in section 19, and on that date a pension plan first becomes subject to this Agreement:

- (a) if the plan is registered with only one pension supervisory authority and that authority is subject to this Agreement on that date, that authority shall become the major authority for the plan as of that date;
- (b) if the plan is registered with more than one pension supervisory authority and each of those authorities is subject to this Agreement on that date, the major authority for the plan shall be, of those authorities, the authority of the jurisdiction with the plurality of active members of the plan, as determined in accordance with subsection (3) of section 3 and considering only those jurisdictions whose pension legislation would, if this Agreement and any other agreement respecting the supervision of pension plans did not exist, require the plan to be registered with the pension supervisory authority of that jurisdiction; and
- (c) if the plan is registered with more than one pension supervisory authority and not all of those authorities are subject to this Agreement on that date, this Agreement shall not apply to the plan until such time as all of the authorities with which the plan is registered are subject to this Agreement, at which time the requirements of clause (b) shall apply to the plan.

Equal number of active members

(2) Where the major authority for a pension plan cannot be determined by applying clause (b) of subsection (1) because two or more jurisdictions have authority over an equal number, greater than zero, of active members of the plan, the major authority for the plan shall be, of those jurisdictions, the authority whose main office is in closest proximity to the main office of the administrator of the plan. For the purposes of this subsection:

- (a) the main office of a pension supervisory authority is the office from which the authority conducts most of its supervisory activities; and
- (b) the main office of the pension plan administrator is the office from which the plan administrator described in the text of the pension plan conducts most of the plan's administration.

Notice by major authority

(3) The pension supervisory authority that becomes a pension plan's major authority in accordance with this section shall, as soon as possible after assuming its functions, inform the plan administrator and each of the plan's pension supervisory authorities of the date on which it assumed the functions of major authority.

Decisions and recourse

(4) Despite sections 4 and 6, where a pension supervisory authority becomes a pension plan's major authority in accordance with this section:

- (a) all matters related to the plan that are pending before a pension supervisory authority on the day preceding the major authority's assumption of its functions under this Agreement shall be continued before that pension supervisory authority;
- (b) all matters related to the plan that concern a decision, order, direction or approval proposed or made by a pension supervisory authority and pending before any administrative body or court on the day preceding the major authority's assumption of its functions under this Agreement shall be continued before such body or court;
- (c) for every matter in respect of which the pension supervisory authority referred to in clause (a) or the administrative body or court referred to in clause (b) has proposed or made a decision, order, direction or approval to which the pension legislation or other legislation applying on the day preceding the major authority's assumption of its functions under this Agreement provides a right of recourse:
 - (i) such right shall be maintained so long as the period provided for exercising that right has not expired; and
 - (ii) such recourse may be brought before the administrative body or court provided for by the legislation giving entitlement thereto;

- (d) for any matter related to the plan not described in clauses (a) to (c) that occurred before the major authority's assumption of its functions under this Agreement and that related to the provisions of the pension legislation of a pension supervisory authority's jurisdiction in respect of a matter referred to in Schedule B:
 - (i) the pension supervisory authority may, even after the major authority assumes its functions under this Agreement for the plan, conduct an examination, investigation or inquiry into the matter in accordance with the pension legislation of that authority's jurisdiction to determine whether compliance with that legislation was met, and in such case, the matter shall remain subject to that pension supervisory authority; and
 - (ii) where the matter constitutes an offence under the pension legislation of the pension supervisory authority's jurisdiction, the offence may be prosecuted by the competent authority in that jurisdiction, and in such case, the matter shall remain subject to that pension supervisory authority; and
- (e) subject to sections 27 and 28, all matters referred to in clauses (a) to (d) shall remain subject to the pension legislation, other legislation and agreements referred to in section 25 that applied to such matters on the day preceding the major authority's assumption of its functions under this Agreement.

New party to this Agreement after July 1, 2016

(5) Despite sections 4 and 6, if this Agreement comes into force after July 1, 2016, in respect of a government that was not party to this Agreement before that date, and a pension plan is, on the date this Agreement comes into force in respect of that party, already subject to this Agreement:

- (a) the major authority for that plan shall inform the plan administrator and each of the plan's pension supervisory authorities of the date on which this Agreement came into force in respect of that party, as soon as possible after that date;
- (b) all matters related to the plan that are pending before a pension supervisory authority on the day preceding the date this Agreement comes into force in respect of that party shall be continued before that pension supervisory authority;
- (c) all matters related to the plan that concern a decision, order, direction or approval proposed or made by a pension supervisory authority and pending before any administrative body or court on the day preceding the date this Agreement comes into force in respect of that party shall be continued before such body or court;

- (d) for every matter in respect of which the pension supervisory authority referred to in clause (b) or the administrative body or court referred to in clause (c) has proposed or made a decision, order, direction or approval to which the pension legislation or other legislation applying on the day preceding the date this Agreement comes into force in respect of that party provides a right of recourse:
 - (i) such right shall be maintained so long as the period provided for exercising that right has not expired; and
 - (ii) such recourse may be brought before the administrative body or court provided for by the legislation giving entitlement thereto;
- (e) for any matter related to the plan not described in clauses (b) to (d) that occurred before the date this Agreement came into force in respect of that party and that related to the provisions of the pension legislation of a pension supervisory authority's jurisdiction in respect of a matter referred to in Schedule B:
 - (i) the pension supervisory authority may, even after the date this Agreement comes into force in respect of that party, conduct an examination, investigation or inquiry into the matter in accordance with the pension legislation of that authority's jurisdiction to determine whether compliance with that legislation was met, and in such case, the matter shall remain subject to that pension supervisory authority; and
 - (ii) where the matter constitutes an offence under the pension legislation of the pension supervisory authority's jurisdiction, the offence may be prosecuted by the competent authority in that jurisdiction, and in such case, the matter shall remain subject to that pension supervisory authority; and
- (f) all matters referred to in clauses (b) to (e) shall remain subject to the pension legislation, other legislation and agreements referred to in section 25 that applied to such matters on the day preceding the date this Agreement came into force in respect of that party.

**PART VIII
FINAL AND SPECIAL PROVISIONS**

SECTION 27.

REPLACEMENT OF 2011 AGREEMENT

2011 agreement

27. As of July 1, 2016, this Agreement replaces the agreement entitled “Agreement Respecting Multi-jurisdictional Pension Plans” which came into force on July 1, 2011, in respect of the governments of Ontario and Quebec. The application of that agreement is limited to matters referred to in section 28.

SECTION 28.

ADDITIONAL TRANSITIONAL RULE

Pending matters under 2011 agreement

28. Despite section 27, any matter related to a pension plan that was subject to the agreement entitled “Agreement Respecting Multi-jurisdictional Pension Plans” on June 30, 2016, and that was still pending on that date before the Financial Services Commission of Ontario, Retraite Québec, an administrative body or a court continues to be subject to the requirements of that agreement.

SECTION 29.

WITHDRAWAL FROM AGREEMENT

Written notice to other parties

29. (1) Despite section 21, a party to this Agreement may withdraw from this Agreement by giving written notice to all other parties to this Agreement on or after January 1, 2019, and before April 1, 2019. Such notice shall be signed by a person authorized by the laws of the withdrawing party’s jurisdiction to sign this Agreement.

Effective date of withdrawal

(2) The withdrawal shall take effect on July 1, 2019. The withdrawal shall affect only the withdrawing party, and this Agreement shall remain in force for all other parties to this Agreement.

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**SCHEDULE A
PENSION LEGISLATION****Alberta**

1. *Employment Pension Plans Act*, S.A. 2012, c. E-8.1.

British Columbia

2. *Pension Benefits Standards Act*, S.B.C. 2012, c. 30.

Manitoba

3. *The Pension Benefits Act*, C.C.S.M., c. P32.

New Brunswick

4. *Pension Benefits Act*, S.N.B. 1987, c. P-5.1.

Newfoundland and Labrador

5. *Pension Benefits Act, 1997*, S.N.L. 1996, c. P-4.01.

Nova Scotia

6. *Pension Benefits Act*, S.N.S. 2011, c. 41.

Ontario

7. *Pension Benefits Act*, R.S.O. 1990, c. P.8.

Quebec

8. *Supplemental Pension Plans Act*, C.Q.L.R., c. R-15.1.

Saskatchewan

9. *The Pension Benefits Act, 1992*, S.S. 1992, c. P-6.001.

Federal jurisdiction

10. *Pension Benefits Standards Act, 1985*, R.S.C. 1985 (2nd supp.), c. 32.

SCHEDULE B
MATTERS COVERED BY INCORPORATED LEGISLATIVE PROVISIONS

SECTION 1.

MAJOR AUTHORITY'S PENSION LEGISLATION

Major authority's pension legislation

1. The pension legislation applicable to a pension plan shall be the pension legislation of the jurisdiction of the major authority for the plan in the following areas of pension legislation:

Registration of pension plans

1. Legislative provisions respecting:

- (a) the duty of the pension plan administrator to ensure that the plan complies with the applicable pension legislation;
- (b) requirements that a pension plan be registered with the authority;
- (c) prohibitions against administering a pension plan not registered with the authority;
- (d) the pension plan registration process (including the filing of required forms and documents, the form in which such documents must be filed, the contents of documents and filing deadlines);
- (e) whether registration of a plan is proof of compliance with the applicable pension legislation; and
- (f) the authority's power to refuse or revoke the registration of a plan due to non-compliance with the applicable pension legislation.

Registration of pension plan amendments

2. Legislative provisions respecting:

- (a) requirements that pension plan amendments, or amendments to prescribed pension plan documents, be registered with the authority;
- (b) the amendment registration process (including the filing of required forms and documents, the form in which such documents must be filed, the contents of documents and filing deadlines);
- (c) whether registration of an amendment is proof of compliance with the applicable pension legislation;

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- (d) the authority's power to refuse or revoke the registration of a plan amendment due to non-compliance with the pension legislation applicable to the plan under clause (a) of subsection (1) of section 6 of the Agreement;
- (e) the ability of the administrator to administer the amended plan if it does not comply with the applicable pension legislation; and
- (f) requirements for notice of registration of the amendment to be provided to active members or other persons, the form and content of the notice and deadlines for providing such notice.

Pension plan administrators

3. Legislative provisions respecting:

- (a) requirements that a pension plan be administered by an administrator;
- (b) who may be an administrator; and
- (c) the right of active members or other persons to establish an advisory committee to advise the administrator, and requirements respecting such an advisory committee.

Pension plan administrators' duties

4. Legislative provisions respecting:

- (a) requirements that the pension plan administrator or the trustee, custodian or holder of the pension fund:
 - (i) administer the pension plan or pension fund in accordance with the applicable pension legislation and the plan terms;
 - (ii) stand in a fiduciary relationship to active members or other persons;
 - (iii) hold the pension fund in trust for the active members or other persons;
 - (iv) act honestly, in good faith and in the best interests of the active members or other persons;
 - (v) exercise the care, diligence and skill of a prudent person;

- (vi) invest the pension fund in accordance with the applicable pension legislation, the pension plan's written investment policies, in the best interests of the active members or other persons or in a reasonable and prudent manner; and
 - (vii) hold an annual or periodic meeting with the active members or other persons;
- (b) requirements that persons involved in the administration of a pension plan or pension fund:
 - (i) employ all knowledge and skill they possess by reason of their business or profession;
 - (ii) familiarize themselves with their fiduciary duties and obligations; and
 - (iii) possess the skills, capability and dedication required to fulfill their responsibilities and seek advice from qualified advisors where appropriate;
- (c) conflict of interest requirements for persons involved in the administration of a pension plan or pension fund;
- (d) requirements for the selection, use and supervision of the administrator's agents or advisors, and requirements for such agents or advisors;
- (e) requirements that the employer or trustee provide information to the administrator; and
- (f) requirements respecting to the payment of expenses related to the pension plan.

Pension plan records

5. Legislative provisions respecting:

- (a) how long any person must retain information related to the pension plan; and
- (b) requests by the plan administrator for information necessary for the administration of the pension plan.

Funding of ongoing pension plans (not in the case of full or partial plan wind up)

6. Legislative provisions respecting:

- (a) requirements for contributions made to the pension fund (including the type or form of contributions, the manner in which they must be made and deadlines for making them);
- (b) minimum plan funding and solvency levels (including plan funding and solvency levels related to pension plan amendments and the use of plan assets for the funding of plan amendments);
- (c) the ability to take contribution holidays;
- (d) requirements for actuarial valuation reports to be filed with the authority in respect of pension plans (including the form and content of such reports, filing deadlines and actuarial standards to be applied in preparing such reports);
- (e) requirements for refunds of contributions to employers, active members or other persons;
- (f) restrictions on the amount of the commuted value of a person's benefit entitlements under a pension plan that can be transferred out of the pension fund of the plan where the plan is not fully funded on a solvency or going concern basis;
- (g) who may be the trustee, custodian or holder of the pension fund; and
- (h) requirements for the provision of information between administrators and the trustees, custodians or holders of pension funds with respect to contributions, and for notice to the authority of contributions not remitted when due.

Pension fund investments

7. Legislative provisions respecting:

- (a) requirements for the investment of the pension fund (including limitations on investments and requirements that pension fund assets to be held in the name of the pension plan);
- (b) requirements that the administrator prepare a written investment policy, requirements for such a policy (including the form and content of the policy, whether it must be filed with the authority and the deadline for filing) and requirements regarding to whom such a policy must be provided; and

- (c) requirements in situations where active members or other persons direct the investment of their contributions (including the minimum number and type of investment options offered, the education and advice available to active members or who may provide the advice).

Pension fund assets

8. Legislative provisions respecting:

- (a) requirements for pension fund assets to be held by specified fund holders under a specified type of agreement;
- (b) requirements for contributions to be remitted to the pension fund;
- (c) requirements that the pension fund be held separate and apart from the employer's assets and deeming the pension fund to be held in trust for the active members or other persons;
- (d) an administrator's lien and charge on the employer's assets equal to the amounts deemed held in trust; and
- (e) the administrator's duty to take immediate action (including court proceedings) to obtain outstanding contributions.

Provision of information

9. Legislative provisions respecting:

- (a) requirements for documents and information to be filed by the administrator or any other person with the authority, including:
 - (i) periodic information returns;
 - (ii) actuarial information for defined benefit plans;
 - (iii) financial statements (including audited financial statements); and
 - (iv) the form and content of the documents and information, who must prepare them and filing deadlines;
- (b) requirements for the following documents and information to be provided by the administrator, including the form and content of the documents and information, who must prepare them and deadlines for providing them:
 - (i) pension plan summaries for active members or employees entitled to join the plan; and

- (ii) annual or periodic statements for active members or other persons; and
- (c) requirements for the inspection of pension plan documents in the possession of the administrator, authority or other persons (including who is entitled to inspect the documents and information, how often, where and at what cost).

Plan membership

10. Legislative provisions respecting:

- (a) pension plans being for one or more classes of employees; and
- (b) the ability of the employer to establish separate plans for full-time and part-time employees.

Appointment of pension plan administrator

11. Legislative provisions respecting:

- (a) the ability of the authority to appoint itself or another person as administrator of a pension plan and rescind the appointment; and
- (b) the powers of an appointed administrator.

SECTION 2.**MAJOR AUTHORITY'S POWERS****Major authority's powers**

2. Where the pension legislation of the major authority's jurisdiction applies to a pension plan in accordance with section 1 of this Schedule, the following areas of the pension legislation of the major authority's jurisdiction shall, for the purposes of the plan and all jurisdictions that are subject to this Agreement in respect of the plan, also apply in respect of the application of the pension legislation described in section 1 of this Schedule:

Powers of examination, investigation or inquiry

1. All powers of examination, investigation or inquiry given to the major authority.

Orders, directions, approvals or decisions

2. The issuance of, or proposal to issue, orders, directions, approvals or decisions by the major authority, and any modification as may be made to such an order, direction, approval or decision by the authority, an administrative body or a court.

Reconsideration or review

3. The rights of the plan or a person affected by an order, direction, approval or decision of the major authority, an administrative body or a court to have the order, direction, approval or decision reconsidered or reviewed by the authority, an administrative body or a court.

Offences and penalties

4. The offences and penalties that may be applied where the plan or a person is found to have contravened the terms of the applicable pension legislation.

**2016 AGREEMENT RESPECTING
MULTI-JURISDICTIONAL PENSION PLANS**

IN WITNESS WHEREOF,
the undersigned, being duly authorized by
the Lieutenant Governor in Council for British Columbia, has signed
this 2016 Agreement Respecting Multi-jurisdictional
Pension Plans.

Signed at Victoria BC,

the 16 day of May, 2016.

(original signed by)

Michael de Jong

Minister of Finance

**2016 AGREEMENT RESPECTING
MULTI-JURISDICTIONAL PENSION PLANS**

IN WITNESS WHEREOF,
the undersigned, being duly authorized by
the Governor in Council for Nova Scotia, has signed
this 2016 Agreement Respecting Multi-jurisdictional
Pension Plans.

Signed at Halifax,

the 19 day of May, 2016.

(original signed by)

Randy Delorey

Minister of Finance and Treasury Board

**2016 AGREEMENT RESPECTING
MULTI-JURISDICTIONAL PENSION PLANS**

IN WITNESS WHEREOF,
the undersigned, being duly authorized by
the Lieutenant Governor in Council for Ontario, has signed
this 2016 Agreement Respecting Multi-jurisdictional
Pension Plans.

Signed at Toronto,

the 18 day of May, 2016.

(original signed by)

Charles Sousa

Minister of Finance

**2016 AGREEMENT RESPECTING
MULTI-JURISDICTIONAL PENSION PLANS**

IN WITNESS WHEREOF,
the undersigned, being duly authorized by
the Government of Quebec, have signed
this 2016 Agreement Respecting Multi-jurisdictional
Pension Plans.

Signed at Québec,

the 17th day of May, 2016.

(original signed by)

Carlos J. Leitão

Minister of Finance

Signed at Quebec,

the 18th day of May, 2016.

(original signed by)

Jean-Marc Fournier

Minister responsible for Canadian Relations
and the Canadian Francophonie

**2016 AGREEMENT RESPECTING
MULTI-JURISDICTIONAL PENSION PLANS**

IN WITNESS WHEREOF,
the undersigned, being duly authorized by
the Lieutenant Governor in Council for Saskatchewan, has signed
this 2016 Agreement Respecting Multi-jurisdictional
Pension Plans.

Signed at Regina,

the 16 day of May, 2016.

(original signed by)

Gordon Wyant

Minister of Justice and Attorney General

R-22 1986 Memorandum of Agreement

ACCORD MULTILATERAL DE RECIPROCITE

MEMORANDUM OF RECIPROCAL AGREEMENT

ATTENDU que chaque signataire de cet accord possède des fonctions et pouvoirs statutaires relatifs aux régimes de rentes couvrant des employés de la province de sa juridiction;

ATTENDU que, du fait que certains régimes couvrent des employés de plus d'une province, plus d'un signataire peut posséder des fonctions et pouvoirs statutaires relatifs à un régime de rentes;

ATTENDU que lesdits signataires ont considéré qu'il serait souhaitable qu'un seul signataire exerce tous les pouvoirs statutaires et fonctions relatifs à un même régime de rentes, agissant en son nom et au nom de tout autre signataire possédant des fonctions et pouvoirs relatifs à ce régime;

ATTENDU qu'en conséquence, chaque signataire s'est entendu avec chacun des autres signataires dans le sens énoncé ci-dessus;

EN FOI DE QUOI, et en vertu des ententes ci-haut mentionnées, les signataires de cet accord sont liés par les arrangements administratifs suivants:

1. Interprétation

Dans le présent accord,

- a) "régime" signifie une caisse ou un régime de retraite ou de rentes;
- b) "autorité" signifie une personne ou un organisme possédant des fonctions et pouvoirs statutaires relatifs à l'enregistrement, la capitalisation, la dévolution, la solvabilité, la

WHEREAS each signatory hereto has statutory functions and powers with respect to pension plans covering employees in the jurisdiction represented by such signatory;

AND WHEREAS, by reason of some pension plans covering employees in more than one jurisdiction, more than one signatory may have statutory functions and powers in respect of the same pension plan;

AND WHEREAS the said signatories have deemed it desirable that statutory functions and powers in respect of any one pension plan be exercised by one signatory only, acting both on its own behalf and on behalf of any other signatory having statutory functions and powers in respect of such plan;

AND WHEREAS each signatory has accordingly agreed with each other signatory to the effect hereinafter set forth;

NOW THEREFORE this Memorandum witnesseth that the signatories hereto are, by virtue of the aforementioned agreements, governed by the following administrative arrangements:

1. Interpretation

In this Memorandum,

- a) "plan" means a superannuation or pension fund or plan;
- b) "authority" means a person or body having statutory functions and powers with respect to registration, funding, vesting, solvency, audit, obtaining information, inspec-

R-22 1986 Memorandum of Agreement (cont'd)

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|---|--|
| <p>vérification, l'obtention de renseignements, l'inspection, la liquidation et autres aspects des régimes;</p> | <p>tion, winding up, and other aspects, of plans;</p> |
| <p>c) "autorité participante" signifie une autorité qui est signataire du présent accord;</p> | <p>c) "participating authority" means an authority which is a signatory hereto;</p> |
| <p>d) "autorité majoritaire" signifie, relativement à un régime, l'autorité participante de la province où la majorité des membres du régime sont employés (il ne sera pas tenu compte dans ce calcul des membres employés dans une province qui n'a pas d'autorité participante);</p> | <p>d) "major authority" means, with respect to a plan, the participating authority of the province where the plurality of the plan members are employed (save that members employed in a province not having a participating authority shall not be counted);</p> |
| <p>e) "autorité minoritaire" signifie, relativement à un régime, l'autorité participante de toute province où un ou plusieurs membres du régime sont employés, mais ne signifie pas l'autorité majoritaire.</p> | <p>e) "minor authority" means, with respect to a plan, the participating authority of any province where one or more plan members are employed, but does not include the major authority</p> |
| <p>2. L'autorité majoritaire de chaque régime exerce à la fois ses propres fonctions et pouvoirs statutaires et les fonctions et pouvoirs statutaires de chaque autorité minoritaire de ce régime.</p> | <p>2. The major authority for each plan shall exercise both its own statutory functions and powers and the statutory functions and powers of each minor authority for such plan.</p> |
| <p>3. Toute autorité peut s'exclure de l'application de l'article 2 à l'égard d'un régime déterminé en avisant par écrit l'autorité majoritaire d'un tel régime à cet effet (ou bien toutes les autorités minoritaires au cas où l'autorité majoritaire est celle qui s'exclue); et en pareil cas l'autorité qui s'exclue sera considérée comme n'étant plus une autorité participante à l'égard d'un tel régime.</p> | <p>3. Any authority may except itself from the operation of section 2 in respect of a specific plan by giving written notice to that effect to the major authority (or, if the major authority is the excepting authority, then to all the minor authorities) for such plan; and in such event the excepting authority shall be deemed not to be a participating authority in respect of such plan</p> |
| <p>4. Toute autorité participante peut s'exclure de l'application de l'article 2 à l'égard de tous régimes pour lesquels, n'était-ce cette exclusion, elle agirait comme autorité majoritaire; dans ce cas, et seulement aux fins de déterminer l'autorité majoritaire régissant chacun desdits régimes, elle ne sera pas considérée comme autorité participante.</p> | <p>4. Any participating authority may except itself from the operation of section 2, in respect of all plans for which it would, but for such exception, act as the major authority; and in such event it shall, for the purpose only of determining the major authority of each such plan, be deemed not to be a participating authority.</p> |
| <p>5. Toutes les autorités participantes qui possèdent des fonctions et pouvoirs statutaires à l'égard d'un</p> | <p>5. All participating authorities having statutory functions and powers in respect of a specific</p> |

R-22 1986 Memorandum of Agreement (cont'd)

- 3 -

- régime déterminé peuvent s'entendre et considérer l'une d'entre elles comme étant l'autorité majoritaire à l'endroit de ce régime.
6. Lorsque les circonstances entourant un régime déterminé changent de telle sorte qu'une autorité participante devient, ou cesse d'être, une autorité minoritaire de ce régime, l'autorité majoritaire doit en aviser cette autorité minoritaire.
7. Lorsque les circonstances entourant un régime déterminé changent de telle sorte qu'il en résulte un changement de l'autorité majoritaire, toutes les autorités minoritaires en seront avisées et l'ancienne autorité majoritaire fournira à la nouvelle autorité majoritaire tous documents et renseignements relatifs à ce régime.
8. Une autorité majoritaire agissant en vertu de l'article 2 fournira à chaque autorité minoritaire des renseignements complets concernant l'exercice de toute fonction et de tout pouvoir exercés au nom de cette autorité minoritaire.
9. Lorsqu'une autorité majoritaire est incapable d'exercer un pouvoir dont dispose l'une des autorités minoritaires, elle en avisera cette autorité minoritaire.
10. La participation de toute autorité à l'arrangement administratif qui précède commence à la date où elle signe cet accord (la signature ne doit être apposée qu'avec le consentement de tous les signataires précédents), et elle cesse le 31 décembre 1970, à moins que ladite autorité ne renonce avant cette date à cette terminaison. Cependant, toute autorité peut mettre fin à sa participation à cet arrangement administratif au moyen d'un avis écrit d'un an envoyé en même temps à toutes les autres autorités participantes.
11. Du fait qu'une autorité signe cet accord, elle conclut des accords de réciprocité avec toutes les autres autorités participantes.
- plan may concur in deeming one of their number to be the major authority for such plan.
6. Where changing circumstances in respect of a specific plan result in a participating authority becoming or ceasing to be, a minor authority for such plan, such minor authority shall be advised accordingly by the major authority.
7. Where changing circumstances in respect of a specific plan result in a change in the major authority for such plan, all minor authorities for such plan shall be advised accordingly, and the former major authority shall deliver all documents and information concerning such plan to the new major authority.
8. A major authority acting pursuant to section 2 shall fully inform each minor authority as to the exercise of any functions and powers exercised on behalf of such minor authority.
9. Where a major authority is unable to exercise a particular power of enforcement available to one of the minor authorities, it shall so advise that minor authority.
10. Participation by any authority in the foregoing Administrative Arrangement commences upon the date it becomes a signatory to this Memorandum (such signature to be affixed only with the consent of all prior signatories), and terminates on the 31st day of December, 1970, unless such authority disclaims such termination prior to that date; provided that any authority may terminate its participation in this Administrative Arrangement by contemporaneous delivery of one year's written notice to the other participating authorities.
11. Execution of this Memorandum by any authority shall evidence its entry into reciprocal agreements with all the other participating authorities.

R-22 1986 Memorandum of Agreement (cont'd)

12. "The Pension Commission of Ontario" est le dépositaire de cet accord jusqu'à ce que toutes les autorités participantes s'entendent sur le choix d'un autre dépositaire; et le dépositaire informera toutes les autorités participantes de la signature de cet accord par une autorité participante subséquentement à la date des présentes.

12. The Pension Commission of Ontario shall be the depository of this Memorandum, until such time as the participating authorities agree to another depository; and the depository shall inform all participating authorities in connection with the execution of this Memorandum by any participating authority subsequent to the date hereof.

EN FOI DE QUOI les autorités soussignées apposent leurs signatures sur le présent accord réciproque:

IN WITNESS WHEREOF the undersigned authorities do hereby execute this Memorandum of Agreement

LA REGIE DES RENTES DU QUEBEC

QUEBEC PENSION BOARD

June 27, 1968 [Signature]
Membre de la Regie

June 27, 1968 [Signature]
Member of the Board

LA COMMISSION DES RENTES DE L'ONTARIO

THE PENSION COMMISSION OF ONTARIO

June 27, 1968 [Signature]
Président

June 27, 1968 [Signature]
Chairman

LE SURINTENDANT DES RENTES, ALBERTA

THE SUPERINTENDENT OF PENSIONS, ALBERTA

June 27, 1968 [Signature]
Surintendant

June 27, 1968 [Signature]
Superintendent

LE SURINTENDANT DES RENTES, SASKATCHEWAN

THE SUPERINTENDENT OF PENSIONS, SASKATCHEWAN

February 5, 1969 [Signature]
Surintendant

February 5, 1969 [Signature]
Superintendent

LA COMMISSION DES RENTES DU MANITOBA

THE PENSION COMMISSION OF MANITOBA

7/x/76 [Signature]
Président

7/x/76 [Signature]
Chairman

LE SURINTENDANT DES RENTES, NOVA SCOTIA

THE SUPERINTENDENT OF PENSIONS, NOVA SCOTIA

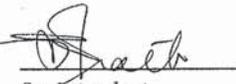
May 3, 1977 [Signature]
Surintendant

May 3, 1977 [Signature]
Superintendent

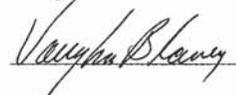
R-22 1986 Memorandum of Agreement (cont'd)

- 5 -

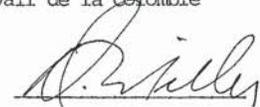
LE SURINTENDANT DES RENTES,
TERRE NEUVE

February 26, 1986 
Surintendant

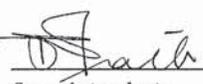
Ministre Enseignement supérieur et Travail

juin 1, 1992 

Ministre de la main d'oeuvre, de la
formation et du travail de la Colombie
britannique

FEB. 16, 1994 

THE SUPERINTENDENT OF PENSIONS,
NEW FOUNDLAND

February 26, 1986 
Superintendent

Minister Advanced Education and Labour
New Brunswick

June 1, 1992 

Minister of Skills, Training and Labour
of British Columbia

FEB. 16, 1994 

R-23 Unionized Employees Pension Plan

Financial Services
Regulation Division

DEC 07 2004

cc:sgd.

**Pension Plan for Bargaining Unit Employees of Wabush
Mines, Cliffs Mining Company, Managing Agent
Arnaud Railway Company
Wabush Lake Railway Company, Limited**

As Amended and Restated Effective as of March 1, 1996

Revenue Canada Registration Number 0555201

24699

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R-23 Unionized Employees Pension Plan (cont'd)

Section 1 — Amendment and Restatement

1.01 Amendment and Restatement

Amendment #1
eff: March 1, 1999

Effective as of March 1, 1996, the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, Wabush Lake Railway Company, Limited, Revenue Canada registration number 0555201, is amended and restated to allow active Members to choose, on a one-time-only basis, one of two forms of pension benefits:

- a Defined Benefit Provision based on a flat dollar benefit rate, pursuant to the terms of the Collective Agreement; or
- a Defined Benefit Provision based on a lower flat dollar benefit rate plus a Defined Contribution Provision with Member and Employer contributions, pursuant to the terms of the Collective Agreement.

R-23 Unionized Employees Pension Plan (*cont'd*)

Section 2 — Definitions

The following words and phrases, when used in this Plan, unless the context clearly indicates otherwise, shall have the following meanings:

2.01 Account

"Account" means, in respect of a Member, the account established to record the Member's contributions pursuant to Section 4.01(b), 4.03(a) and 4.04 and the Employer contributions pursuant to Sections 4.02(b), 4.03(b) and 4.04 plus any Credited Interest thereon.

2.02 Actuarial Equivalent

"Actuarial Equivalent" means, with respect to a benefit, the equivalent value, computed on the basis of actuarial assumptions last adopted for this purpose by the Employer on the recommendation of the Actuary. The determination of Actuarial Equivalent values shall not differentiate on the basis of gender.

2.03 Actuary

"Actuary" means the actuary or firm of actuaries retained by the Employer for the purposes of the Plan who is, or in the case of a firm of actuaries at least one of whom is, a Fellow of the Canadian Institute of Actuaries.

2.04 Approved Leave of Absence

"Approved Leave of Absence" means a period of unpaid leave of absence authorized by the Employer and includes a period of lay-off.

2.05 Beneficiary

"Beneficiary" means the person last designated by a Member by written notice filed with the Employer to receive benefits payable from the Plan upon the Member's death and who survives the Member.

2.06 Collective Agreement

"Collective Agreement" means the agreement in effect between the parties who are signatories to the Pension Agreement.

2.07 Commuted Value

"Commuted Value" means, with respect to pension benefits that a person has a present or future entitlement to receive, a lump-sum amount of the Actuarial Equivalent value of said benefits as of a specified date as determined by the Actuary in accordance with the Recommendations for the Computation of Transfer Values from Registered Pension Plans issued by the Canadian Institute of Actuaries, or such other basis as may be permitted or required from time to time under Provincial Pension Laws and the *Income Tax Act*.

R-23 Unionized Employees Pension Plan (*cont'd*)

2.08 Continuous Service

- (a) "Continuous Service" means the period of regular employment with the Employer from the later of the date of commencement of employment with the Employer or the date of re-employment following the last break in service, if any.
- (b) Continuous Service shall be broken by an Employee's resignation or other voluntary termination of employment or termination of employment by the Employer, retirement or absence due to a non-compensable Disability for a period in excess of 36 consecutive months.
- (c) Notwithstanding (a) and (b) above, Employees with eight or more years of Continuous Service as of the date they become eligible for long term disability benefits pursuant to the Employer's program of insurance benefits shall continue to accrue Continuous Service until the payment of or eligibility for such benefits ceases. In the event that the long term disability insurance benefits are reduced to zero by virtue of an offset for workers' compensation benefits, Continuous Service shall continue to accrue notwithstanding that the actual payment of long term disability insurance benefits has ceased, until such time as the payment of or eligibility for such payments would otherwise have ceased under the terms of the Employer's program of insurance benefits. In the event that the long term disability insurance benefits cease due to the Employee's refusal to undergo a medical examination, as specified under the Employer's program of insurance benefits, Continuous Service shall be broken as of the date of eligibility for long term disability benefits unless the Employee returns to work within 30 days of the scheduled date of examination.
- (d) Notwithstanding (a) and (b) above, Continuous Service shall be broken:
 - (i) due to layoff for a period in excess of 36 months for an Employee having less than 36 months of Continuous Service at the time of layoff;
 - (ii) due to layoff for a period in excess of length of Continuous Service for an Employee having three to five years of Continuous Service at the time of layoff; and
 - (iii) due to layoff for a period in excess of five years for an Employee having more than five years of Continuous Service at the time of layoff.
- (e) Full time work for the Union while an Employee of the Employer for a period of not more than one year, shall not constitute a break in Continuous Service.
- (f) Notwithstanding anything to the contrary in the Plan, a transfer of employment from one Employer to an affiliate or subsidiary of the Employer shall not constitute a break in Continuous Service for the purpose of determining eligibility for benefits pursuant to the Plan.

R-23 Unionized Employees Pension Plan (cont'd)

2.09 Credited Interest

"Credited Interest" means interest on the amount in a Member's Account including any additional voluntary contributions pursuant to Section 4, compounded annually and computed from the first day of the month following the month in which the contributions were made to the first day of the calendar month in which a determination thereof is to be made, at the rate equal to the rate of return calculated on the portion of the Pension Fund in which the Member's Account and the additional voluntary contributions are deposited.

2.10 Credited Service

- (a) "Credited Service" means a Member's years and completed calendar months (expressed as twelfths of a year) of Continuous Service during which the Member participated in or was credited with participation in the Plan. For the purposes of this section, a "completed calendar month" shall include a calendar month during which an employee has participated or was credited with participation in the Plan for 15 or more days in the month.
- (b) However, Credited Service excludes:
- (i) any service excluded pursuant to Section 3.05;
 - (ii) absence due to suspension, resulting from the Employer's decision or an arbitrator's award;
 - (iii) absence for study leave for more than 10 months;
 - (iv) full time work by an Employee on a self-employed basis or for an employer other than the Employer while on Approved Leave of Absence; and
 - (v) full time work for the Union by an Employee on an Approved Leave of Absence in excess of two months;
- (c) In no event shall the total period of unpaid Approved Leave of Absence for the purposes of Credited Service exceed five years, except for periods of parenting as defined in regulation 8507(3)(ii) of the *Income Tax Act*, in which case up to an additional three years of leave may be included as Credited Service. The limit in regulation 8507 of the *Income Tax Act* shall not apply to Disability.

R-23 Unionized Employees Pension Plan (cont'd)

2.11 Deferred Vested Termination Date

"Deferred Vested Termination Date" means the date described pursuant to Section 5.05.

2.12 Defined Benefit Provision

"Defined Benefit Provision" means the pension benefits calculated with reference to Section 6.01(a) and Section 6.01(b)(i) and excludes the pension benefits derived from the Defined Contribution Provision.

2.13 Defined Contribution Provision

"Defined Contribution Provision" means the pension benefits derived from the Members' contributions made pursuant to Section 4.01(b), 4.03(a) and 4.04, and the Employer's contributions made pursuant to Section 4.02(b), 4.03(b) and 4.04, and as calculated with reference to Section 6.01(b)(ii) and excludes the pension benefits derived from the Defined Benefit Provision.

2.14 Disability or Disabled

"Disability" or "Disabled" means, suffering from a physical or mental impairment, as certified by a medical doctor, that prevents an Employee from performing the duties of employment in which the Employee was engaged before the commencement of the impairment. If the Disability continues for more than two years, the impairment must prevent the Employee from performing any job available to the Employee under the Collective Agreement.

2.15 Early Retirement Date

"Early Retirement Date" means the date of a Member's early retirement pursuant to Section 5.02.

2.16 Effective Date

"Effective Date" means, in respect of this amended and restated text of the Plan, March 1, 1996.

2.17 Employee

"Employee" has the same meaning as in the Collective Agreement and:

- (a) "Full-Time Employee" means an Employee who, in the 120 months preceding retirement was regularly scheduled to work on a straight-time schedule of 40 hours per week.
- (b) "Part-Time Employee" means an Employee who, in the 120 months preceding retirement was regularly scheduled to work fewer hours than the straight-time schedule of a Full-Time Employee.

Per 3.01 ⇒
Immediate membership
for all "Employees"
⇒ Differentiation of FT/PT
not an issue -

R-23 Unionized Employees Pension Plan (*cont'd*)**2.18 Employer**

"Employer" means Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited.

2.19 Funding Agency

"Funding Agency" means the trust company or insurance company, or any successor trust or insurance company, the Employer may appoint from time to time to hold, invest and administer the assets in the Pension Fund.

2.20 Funding Agreement

"Funding Agreement" means the agreement entered into between the Employer and the Funding Agency governing the custody, investment and administration of the assets in the Pension Fund.

2.21 Hours of Service

"Hours of Service" means each hour for which an Employee is directly or indirectly paid by the Employer for the performance of duties or for reasons other than the performance of duties.

2.22 Income Tax Act

"Income Tax Act" means the *Income Tax Act (Canada)*, as amended from time to time, the regulations made thereunder and the published information circulars, interpretation bulletins and administrative guidelines of Revenue Canada.

2.23 Member

"Member" means an Employee who has been enrolled in the Plan pursuant to Section 3 and who continues to have rights or contingent rights to benefits pursuant to the Plan. "Member" includes a former Employee who has retired or terminated employment with the Employer but who retains a right to benefits pursuant to the Plan.

2.24 Normal Retirement Date

"Normal Retirement Date" means the date of a Member's normal retirement pursuant to Section 5.01.

2.25 Pension Agreement

"Pension Agreement" means the agreement between the Employer and Local Unions 6254, 6285 and 6680 of The United Steelworkers of America, with respect to this Plan and any similar agreement with another Union Local or Union, providing for the application of this Plan to the Employees represented by such union(s).

R-23 Unionized Employees Pension Plan (*cont'd*)

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- ✓ **2.26 Pension Committee**
"Pension Committee" means the committee described in Section 11.
- 2.27 Pension Benefits Act**
"Pension Benefits Act" means the Newfoundland *Pension Benefits Act*, as amended, and the Regulations thereunder.
- 2.28 Pension Commencement Date**
"Pension Commencement Date" means the date upon which a Member's payment of pension benefits is due to commence.
- 2.29 Pension Fund**
"Pension Fund" means the fund established pursuant to the terms of the Plan and the Funding Agreement to which all contributions under the Plan are made and from which the benefits and expenses of the Plan are paid.
- 2.30 Plan**
"Plan" means the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited.
- 2.31 Pre-Pension Spouse Coverage**
"Pre-Pension Spouse Coverage" means the optional benefit pursuant to Section 8.03.
- 2.32 Plan Year**
"Plan Year" means each 12 month period ending December 31.
- 2.33 Québec Member**
"Québec Member" means a Member who reports for work in the Province of Québec.
- 2.34 Special Early Retirement Date**
"Special Early Retirement Date" means the date of a Member's special early retirement pursuant to Section 5.03.
- 2.35 Special Postponed Retirement Date**
"Special Postponed Retirement Date" means the date of a Member's special postponed retirement pursuant to Section 5.04.

R-23 Unionized Employees Pension Plan (*cont'd*)**2.36 Spouse**

"Spouse" means a person of the opposite sex of a Member, who either:

- (a) on the date of determination of marital status, is legally married to the Member and is not living separate and apart from the Member;
- (b) is not legally married to the Member but who has been living with the Member in a conjugal relationship continuously for a period of at least 3 years; or
- (c) is not legally married to the Member, but who is living with the Member in a conjugal relationship continuously for a period of at least one year and who, together with the Member, is the natural or adoptive parent of a child, both as defined in applicable family law legislation.

It is provided, however, that a person described in (b) or (c) above shall not be considered the Spouse of the Member for the purposes of the Plan if there is also a legal Spouse pursuant to (a) above, unless the Member has submitted a written election to the contrary to the Employer.

2.37 Surplus Assets

"Surplus Assets" means, at any particular point in time, the excess of assets in the Pension Fund over the liabilities of the Plan, as determined by the Actuary. The assets and liabilities shall be as set out in the most recent going concern valuation report with respect to the determination of Surplus Assets on a going concern basis or the most recent wind-up valuation report with respect to the determination of Surplus Assets on a wind-up basis, as the case may be, filed with and approved by the applicable regulatory authorities.

2.38 Union

"Union" means Local Unions 6254, 6285 and 6680 of The United Steelworkers of America.

2.39 YMPE

"YMPE" means the Year's Maximum Pensionable Earnings as defined in the *Canada Pension Plan* or the *Québec Pension Plan*, as applicable.

Words importing the singular number shall include the plural and vice versa depending upon the context.

R-23 Unionized Employees Pension Plan (*cont'd*)**Section 3 — Membership****3.01 Immediate Membership**

A person who is hired by the Employer as an Employee shall join the Plan as of the Employee's date of hire.

3.02 Opting Out of Membership Not Permitted

A Member shall not discontinue or suspend his or her membership in the Plan while the Member is an Employee.

3.03 Change of Employment Status

If a Member's employment status with the Employer changes such that the Member is no longer an Employee, the Member's active participation in the Plan shall cease as of the date of said change in status and the Member shall cease to accrue further benefits pursuant to the Plan as of the date of said change in status.

3.04 Participation in Defined Benefit Provision and Defined Contribution Provision**(a) Current Members**

An Employee who is a Member as of the day preceding the Effective Date shall participate in the Defined Benefit Provision and may elect to participate in the Defined Contribution Provision, effective as of October 1, 1996, on the form prescribed by the Employer.

(b) New Members

An Employee who becomes a Member on or after the Effective Date shall participate in both the Defined Benefit Provision and the Defined Contribution Provision, effective as of the date the Employee becomes a Member.

3.05 Transfers of Employment

(a) An Employee who ceases to be a Union member, but who remains employed with the Employer, shall cease accruing benefits pursuant to the Plan, however, the employee shall remain eligible to receive the benefits accrued pursuant to the Plan upon the employee's subsequent termination of employment, retirement or death. Employment with the Employer in a capacity other than as an Employee shall continue to count as Continuous Service for the purpose of vesting of benefits, eligibility for retirement and similar matters, but not as Credited Service for benefit calculation purposes pursuant to the Plan.

R-23 Unionized Employees Pension Plan (*cont'd*)

- (b) Should an employee of the Employer transfer to a position in which the employee is classified as an Employee pursuant to the Plan, any pension benefits to which the employee is entitled by reason of his or her prior service shall be dealt with pursuant to any pension plan applicable to his or her prior employment. For the purposes of the Plan, such prior service shall be counted as Continuous Service for the purposes of eligibility for participation and benefits, but not as Credited Service for the purposes of benefit calculation.

R-23 Unionized Employees Pension Plan (cont'd)

Section 4 — Contributions**4.01 Member Contributions****(a) Defined Benefit Provision**

Members shall not contribute to the Defined Benefit Provision of the Plan. ✓

(b) Defined Contribution Provision

A Member who participates in the Defined Contribution Provision of the Plan shall contribute to the Member's Account, in equal installments, by payroll deduction, an amount equal to \$2,000 per calendar year.

(c) Additional Voluntary Contributions

A Member who participates in the Defined Contribution Provision may, in addition to the contributions pursuant to (b) above, make additional voluntary contributions to the Member's Account, by payroll deduction, up to such amounts as are permissible pursuant to the *Income Tax Act* as deductible contributions to a registered pension plan.

(d) Remittance of Contributions

The Employer shall remit Member contributions pursuant to (b) and (c) above within 30 days following the month in which they were deducted.

4.02 Employer Contributions

The Employer shall have no liability to make any payments to the Pension Fund except as expressly provided in the Plan.

(a) Defined Benefit Provision

- (i) The Employer shall bear the costs related to the Defined Benefit Provision. The Employer shall contribute to the Pension Fund in respect of the Defined Benefit Provision in such amount, based on the latest actuarial valuation report prepared by the Actuary and filed with the Newfoundland pension regulatory authority and Revenue Canada, as is required to provide for the normal cost of benefits accruing in the current Plan Year, after taking into account the assets of the Pension Fund and all other relevant factors, and to provide for the proper amortization of all unfunded liabilities and solvency deficiencies, if any, in accordance with the *Pension Benefits Act* and subject to subsection 147.2(2) of the *Income Tax Act*.

- (ii) The employer shall not contribute any amount to the Pension Fund which is not permissible pursuant to subsection 147.2(2) of the *Income Tax Act*.

R-23 Unionized Employees Pension Plan (cont'd)

*Amount: \$1
eff. March 1999*

Defined Contribution Provision

- (i) The Employer shall contribute in equal monthly instalments to the Pension Fund in respect of the Defined Contribution Provision each calendar year, an amount in respect of each Member who participates in the Defined Contribution Provision determined according to the Member's Continuous Service as follows:

Member's Continuous Service	Annual Employer Contribution
Less than 10 years	\$1,000
10 years or more but less than 20 years	\$1,750
20 years or more	\$2,500

- (ii) In the event that a Member attains 10 years or 20 years of Continuous Service part way through a calendar year, the Employer contribution shall increase for the remainder of the calendar year, in accordance with the above table, with effect from the beginning of the pay period immediately following the pay period in which the 10 or 20 year anniversary is attained.

(ind)
(c) **Remittance of Contributions**

The Employer shall remit its contributions in accordance with applicable legislation in equal installments within 30 days following the month in which they fall due.

4.03 Contributions Under Defined Contribution Provision During Approved Leaves of Absence

(a) **Member Contributions**

- (i) A Member who participates in the Defined Contribution Provision and who is on an Approved Leave of Absence may continue to contribute to the Member's Account pursuant to Section 4.01 (b). Alternatively, the Member may contribute a lesser amount or may cease contributing to the Member's Account. Prior to commencing the Approved Leave of Absence, the Member shall inform the Employer in writing of the amount of the Member's contributions. The contributions shall be made in equal installments, by payroll deduction or, if such method of payment is not possible, by delivering to the Employer post-dated cheques in respect of each month of the Approved Leave of Absence.
- (ii) In lieu of contributing to the Member's Account during an Approved Leave of Absence, the Member may instead elect to contribute to the Member's Account immediately upon returning to work from an

R-23 Unionized Employees Pension Plan (*cont'd*)

Approved Leave of Absence. In such case, the Member may elect to contribute the amount which he would have otherwise contributed pursuant to Section 4.01(b) or a lesser amount, and the Member shall make such contributions within the lesser of the period of time equal to the period of the Approved Leave of Absence or 12 months.

(b) Employer Contributions

The Employer shall contribute to the Pension Fund in respect of the Defined Contribution Provision pursuant to Section 4.02 in respect of a Member who participates in the Defined Contribution Provision and who is on an Approved Leave of Absence, however, if a Member elects to contribute a lesser amount than prescribed pursuant to Section 4.01 (b), the Employer's contributions shall be reduced proportionately. The Employer shall not contribute in respect of a Member who elects to cease contributing to the Member's Account during an Approved Leave of Absence.

4.04 Application of Surplus Assets

In the event there are Surplus Assets in the Pension Fund, the Employer may in its sole discretion apply the Surplus Assets or any portion of the Surplus Assets toward the amount of Employer contributions pursuant to Section 4.02 or Section 4.03.

4.05 Transitional Provision

A Member who elects to participate in the Defined Contribution Provision pursuant to Section 3.04(a) may elect to increase the amount of his or her contributions pursuant to Section 4.01(b) from October 1, 1996 to December 31, 1996 in an amount equal to part or all of the contributions the Member would have made pursuant to the Defined Contribution Provision on and after the Effective Date and prior to October 1, 1996 and in such case, the Employer's contributions made in respect of such Member pursuant to Section 4.02(b) above shall be increased proportionately.

4.06 Maximum Contributions Under Defined Contribution Provision

The total of the contributions by a Member to the Pension Fund pursuant to Sections 4.01, 4.03, and 4.05 above and the Employer's contributions in respect of the Member pursuant to Section 4.02(b) and Sections 4.03 and 4.05 above for a calendar year shall not exceed the money purchase limit for the calendar year as prescribed under the *Income Tax Act*.

4.07 Maximum Pension Adjustment

A Member's pension adjustment for a calendar year in respect of the Employer and any employer that does not deal at arm's length with the Employer shall not exceed the lesser of the money purchase limit for the calendar year and 18% of the Member's compensation in the calendar year, as prescribed under the *Income Tax Act*.

Section 6 — Retirement Benefits

6.01 Normal and Special Postponed Retirement Benefits

*Amended 12/1
eff March 1, 99*

(a) **Members Who Do Not Participate in the Defined Contribution Provision**

A Member who does not participate in the Defined Contribution Provision and who retires prior to March 1, 2001 on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a pension benefit payable in equal monthly installments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, calculated as the sum of (i), (ii), (iii), (iv) and (v) below. If the Member retires on or after March 1, 2001, (iv) below shall not apply.

- (i) \$32.50 multiplied by the Member's Credited Service not in excess of 15 years
- (ii) \$33.50 multiplied by the Member's Credited Service in excess of 15 years but not in excess of 30 years
- (iii) \$34.50 multiplied by the Member's Credited Service in excess of 30 years
- (iv) \$3.00 multiplied by the Member's Credited Service not in excess of 30 years
- (v) \$50.00.

(b) **Members Who Participate in the Defined Contribution Provision**

A Member who participates in the Defined Contribution Provision and who retires on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a benefit pursuant to (i) and (ii) below:

(i) *Benefit in Respect of Defined Benefit Provision*

A benefit payable in equal monthly installments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, calculated as the sum of (A), (B), (C) and (D) below:

- (A) \$29.50 multiplied by the Member's Credited Service not in excess of 15 years
- (B) \$31.00 multiplied by the Member's Credited Service in excess of 15 years but not in excess of 30 years
- (C) \$33.50 multiplied by the Member's Credited Service in excess of 30 years

R-23 Unionized Employees Pension Plan (*cont'd*)

(D) \$50.00.

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

6.02 Early Retirement Benefits

(a) Members Who Do Not Participate in the Defined Contribution Provision

A Member who does not participate in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date shall be entitled to receive a pension benefit payable in equal monthly installments commencing on an Early Retirement Date and continuing on the first day of each month thereafter, calculated pursuant to one of the following:

- (i) If the Member has completed at least 30 years of Continuous Service, a pension benefit equal to the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, without reduction on account of early commencement;
- (ii) If the Member has attained age 55 and completed at least 15 years of Continuous Service, a pension benefit equal to the Actuarial Equivalent of the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, provided that the amount of the reduction to the monthly benefit shall not be less than required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b);
- (iii) If the Member has attained age 62 and completed at least 10 years of Continuous Service and obtains the written consent of the Employer, a pension benefit equal to the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, without reduction on account of early commencement; or
- (iv) If the Member has attained age 62 and completed at least 10 years of Continuous Service and does not obtain the written consent of the Employer, a pension benefit equal to the Actuarial Equivalent of the amount calculated pursuant to Section 6.01 (a), based on the Member's Credited Service to his or her Early Retirement Date, provided that the amount of reduction to the monthly benefit shall not be less than required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date shall be entitled to receive a monthly pension benefit pursuant to (i) and (ii) below:

R-23 Unionized Employees Pension Plan (*cont'd*)**(i) Benefit in Respect of Defined Benefit Provision**

A benefit payable in equal monthly installments commencing on an Early Retirement Date and continuing on the first day of each month thereafter, equal to the pension described in (a) above that would be applicable to the Member if the references therein to "Section 6.01(a)" were changed to "Section 6.01(b)(i)".

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

6.03 Special Early Retirement Benefits**(a) Members Who Do Not Participate in the Defined Contribution Provision**

A Member who does not participate in the Defined Contribution Provision and who qualifies for a pension benefit commencing on a Special Early Retirement Date shall be entitled to receive a pension benefit payable in equal monthly installments commencing on a Special Early Retirement Date and continuing on the first day of each month thereafter, equal to the pension calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Special Early Retirement Date, without reduction on account of early commencement except as required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who qualifies for a pension benefit commencing on a Special Early Retirement Date shall be entitled to receive a monthly pension benefit pursuant to (i) and (ii) below:

(i) Benefit in Respect of Defined Benefit Provision

A benefit payable in equal monthly installments commencing on a Special Early Retirement Date and continuing on the first day of each month thereafter, equal to the benefit described in (a) above that would be applicable to the Member if the reference therein to "Section 6.01(a)" were changed to "Section 6.01(b)(i)".

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

R-23 Unionized Employees Pension Plan (*cont'd*)**6.04 Deferred Vested Retirement Benefits**

A Member who terminates employment with the Employer on a Deferred Vested Termination Date shall be entitled to receive a monthly pension benefit pursuant to (a) and (b) below or may transfer such benefit out of the Plan pursuant to (c) below. A Member who terminates employment with the Employer prior to a Deferred Vested Termination Date shall be entitled to the refund, if any, pursuant to (d) below.

(a) Benefit in Respect of Defined Benefit Provision

(i) A benefit payable in equal monthly installments commencing on the Member's Normal Retirement Date and continuing on the first day of each month thereafter, equal to the amount of pension calculated pursuant to Section 6.01(a) but excluding subsections (iv) and (v) thereof, or Section 6.01(b)(i), but excluding subsection (D) thereof, whichever is applicable to the Member. The Member may elect to commence his or her pension prior to the Normal Retirement Date, on the first day of any month after attaining age 55, in which case the amount of pension payable from such earlier Pension Commencement Date shall be the Actuarial Equivalent of the amount of pension payable upon the Member's Normal Retirement Date, provided that the amount of reduction to the monthly pension shall not be less than required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

(ii) Notwithstanding (i) above, the Member may elect to transfer the Commuted Value of the benefit pursuant to (i) above out of the Plan, pursuant to (c) below.

(b) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to (c) below.

(c) Transfer of Benefits Out of the Plan

The Commuted Value of a Member's accrued pension benefit in respect of the Defined Benefit Provision may be transferred out of the Plan and the amount in a Member's Account in respect of the Defined Contribution Provision may be transferred out of the Plan, to one of the retirement savings vehicles described in (i), (ii) and (iii) below, as elected by the Member on the form prescribed by the Employer and filed with the Employer within such time periods as prescribed by applicable provincial pension laws or at such other times as may be acceptable to the Employer:

- (i) a retirement savings plan, locked-in retirement account or life income fund, as prescribed by the *Pension Benefits Act*;
- (ii) the fund of another registered pension plan, if the other pension plan permits such a transfer; or

R-23 Unionized Employees Pension Plan (cont'd)

(iii) a life insurance company licensed to transact business in Canada for the purpose of purchasing a deferred life annuity.

A transfer pursuant to (i), (ii) or (iii) above shall be made on a locked-in basis and the transferred amount shall be used to provide an annuity which shall not commence payment before the earliest date that the Member would have been entitled to receive a benefit pursuant to the Plan or, if transferred to another pension plan, under that plan.

In the event that a transfer is elected pursuant to this Section 6.04(c), the Member shall have no further rights under the Plan.

(d) Benefit on Termination of Employment Prior to Deferred Vested Termination Date

A Member who terminates employment with the Employer prior to the completion of two years of Continuous Service shall be entitled to a benefit equal to the amount in the Member's Account, which may be transferred out of the Plan pursuant to (c) above.

6.05 Additional Voluntary Contributions

In addition to the benefits pursuant to Sections 6.01, 6.02, 6.03 and 6.04, a Member who participates in the Defined Contribution Provision and who has made additional voluntary contributions pursuant to Section 4.01(c) may be paid such contributions, plus Credited Interest thereon, in a lump sum payment at any time pursuant to the instructions of the Member or, in the alternative, the Member may elect to transfer such contributions plus Credited Interest thereon out of the Plan, pursuant to Section 6.04(c), however, such transfer shall not be on a locked-in basis.

6.06 Temporary Supplementary Benefit

(a) Members Who Do Not Participate in the Defined Contribution Provision

A Member who does not participate in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date or a Special Early Retirement Date shall be entitled to receive a temporary supplementary benefit payable in equal monthly installments commencing on the Member's Early Retirement Date or Special Early Retirement Date, as the case may be, and continuing thereafter on the first day of each month up to the earliest of the month in which the Member attains age 65, qualifies for unreduced statutory pension benefits (other than workers' compensation benefits) or dies, equal to \$24.00 multiplied by the Member's Credited Service to a maximum of 40 years. Such Member who retires prior to March 1, 2001 shall, in addition to the above benefit, be entitled to receive a temporary supplementary benefit equal to \$3.00 multiplied by the Member's Credited Service to maximum of 40 years, payable at the same time and in the same manner as described above. However, if the Member retires on an Early Retirement Date and receives an annual

*Amended #1
Feb. March, 1999*

R-23 Unionized Employees Pension Plan (*cont'd*)

pension pursuant to Sections 6.02(a)(ii) or 6.02(a)(iv), the amount of the temporary supplementary benefit shall be reduced by the same factors used to reduce the monthly pension payable under said provisions, whichever is applicable to the Member.

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date or a Special Early Retirement Date shall be entitled to receive a temporary supplementary benefit payable at the same time and in the same manner pursuant to (a) above, equal to \$22.50 multiplied by the Member's Credited Service to a maximum of 40 years, subject to the reduction factors referred to in (a) above.

6.07 Retirement Benefits for Part-Time Employees

The retirement benefits pursuant to the Defined Benefit Provision calculated pursuant to this section in respect of a Member who is a Part-Time Employee shall be reduced in an equitable manner to an amount related to the Hours of Service of the Member in comparison to the Hours of Service of other Members who are employed as Full-Time Employees in a similar capacity.

6.08 Return to Work After Retirement, Termination of Employment or Break in Continuous Service

(a) Re-Employment After Retirement

A Member who has retired and is receiving pension benefit payments pursuant to the Plan shall, upon re-employment with the Employer as an Employee, have such payments suspended. The Member shall retain his or her frozen suspended pension benefit which shall be added to any subsequent pension benefit to which the Member may become entitled in respect of service subsequent to the Member's date of re-employment.

(b) Re-Employment After Termination of Employment But Prior to Retirement

(i) A Member who has terminated employment with the Employer and is entitled to a deferred vested pension pursuant to the Plan and who is re-employed with the Employer as an Employee prior to commencing receipt of pension benefit payments shall retain his or her frozen deferred vested pension benefit, which shall be added to any subsequent pension benefit to which the Member may become entitled in respect of service subsequent to the Member's date of re-employment.

(ii) A Member who received a lump sum payment pursuant to Section 12.02(b) and is re-employed by the Employer as an Employee prior to commencing receipt of pension benefit payments, shall have his or her frozen accrued pension benefit with respect to which the Member received such lump sum payment used in calculating any subsequent pension benefit to which the

R-23 Unionized Employees Pension Plan (*cont'd*)

Member may become entitled provided that, within two years of such re-employment, the Member repays an amount to the Plan equal to such lump sum payment plus interest. At the time of re-employment, the Member shall be informed by the Employer of his or her right to make such repayment.

(c) Return to Work after Break in Continuous Service

- (i) An Employee who, on or after March 1, 1993, incurs a break in Continuous Service prior to becoming eligible for an immediate or deferred vested pension and who is re-employed by the Employer shall, upon completion of one year of Continuous Service following such re-employment, have such break in Continuous Service removed if the period of Continuous Service accrued prior to the break is in excess of the period between the break and the date of re-employment.**
- (ii) The period between a break in Continuous Service and the date of re-employment which results in the removal of a break in accordance with (c)(i) above shall not be creditable as Continuous Service, provided, however, that if an Employee is re-hired within 12 months the break in Continuous Service shall be removed, except that credit for the period commencing with termination of employment and ending with the re-hire date shall not be credited for the purposes of determining accrued benefits nor shall it be considered as Credited Service pursuant to Section 6.**

Section 7 — Forms of Pension Payment On Retirement

7.01 Normal Form of Payment

The normal form of payment of the pension benefit pursuant to the Defined Benefit Provision shall be a lifetime pension payable in equal monthly installments, ceasing with the payment due for the month in which the Member dies.

7.02 Surviving Spouse Benefit

Notwithstanding Section 7.01, if a Member retires on his or her Early Retirement Date or Special Early Retirement Date at or after age 45, on or after March 1, 1990 and has a Spouse as of the Pension Commencement Date, and subsequently dies prior to reaching his or her Normal Retirement Date, the Member's surviving Spouse shall be entitled to receive a pension benefit payable in equal monthly installments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, equal to 50% of the amount of the pension benefit accrued by the Member pursuant to Section 6.01(a), but excluding subsections (iv) and (v) thereof, or Section 6.01(b)(i), but excluding subsection (D) thereof, whichever would have been applicable to the Member, or \$140 per month if greater.

7.03 Automatic Form of Payment for a Member With a Spouse

The automatic form of payment of the pension benefit pursuant to the Defined Benefit Provision for a Member with a Spouse as of the Pension Commencement Date shall be a reduced pension payable in equal monthly installments for the lifetime of the Member, with 60% of the benefit continued after the Member's death to the Spouse for the remaining lifetime of the Spouse, provided that the Spouse survives the Member. Such reduced pension benefit shall be the Actuarial Equivalent of the normal form of payment pursuant to Section 7.01, and shall take into account the Surviving Spouse Benefit payable pursuant to Section 7.02.

7.04 Optional Forms of Payment

In lieu of the form of payment pursuant to Section 7.01 or Section 7.03, a Member with a Spouse as of the Pension Commencement Date may elect to receive a reduced pension payable in equal monthly installments for the lifetime of the Member, with either 50% or 100% of the reduced pension continued after the Member's death for the remaining lifetime of the Member's Spouse, provided that the Spouse survives the Member. Such reduced pension shall be the Actuarial Equivalent of the normal form of pension pursuant to Section 7.01 and shall take into account the Surviving Spouse Benefit payable pursuant to Section 7.02.

Section 8 — Pre-Retirement Death Benefits

8.01 Refund of Amount from Defined Contribution Provision

If a Member dies while employed with the Employer or after termination of employment with the Employer but prior to payment of benefits pursuant to Section 6.04(b), the Member's surviving Spouse shall be entitled to receive a benefit equal to the amount in the Member's Account in a single lump sum cash payment. If the Member is not survived by a Spouse, said amount shall be paid to the Member's Beneficiary or, if none, to the Member's estate.

8.02 Surviving Spouse Benefit

If a Member dies either

- (a) while employed with the Employer and after completion of at least 15 years of Continuous Service; or
- (b) after termination of employment with the Employer on or after March 1, 1990, at or after age 45, after becoming eligible for retirement and an immediate pension pursuant to the Plan but prior to application therefor,

the Member's surviving Spouse shall be entitled to receive a pension benefit payable in equal monthly installments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, equal to 50% of the amount of the pension benefit accrued by the Member pursuant to Section 6.01(a), but excluding subsections (iv) and (v) thereof, or Section 6.01(b)(i), but excluding subsection (D) thereof, whichever would have been applicable to the Member, or \$140 per month if greater.

8.03 Optional Pre-Pension Spouse Coverage

A Member who is an Employee and who has a Spouse and who has attained age 55 and completed at least 15 years of Continuous Service may elect Pre-Pension Spouse Coverage, the benefits pursuant to which shall be in addition to any other benefits pursuant to the Plan in the event of the Member's death prior to his or her Pension Commencement Date.

R-23 Unionized Employees Pension Plan (*cont'd*)**(a) Election**

At least two years and 90 days prior to becoming eligible to elect Pre-Pension Spouse Coverage, the Pension Committee shall advise each eligible Member of the opportunity to elect such coverage. The Member may elect to obtain such coverage by filing the prescribed form with the Pension Committee, either at the time the Member is first notified by the Pension Committee or at any time thereafter prior to the Member's Pension Commencement Date. A Member who has attained age 65 and completed at least 10 years of Continuous Service shall be deemed to have elected Pre-Pension Spouse Coverage, unless the Member waives such coverage in writing, and shall be so notified by the Pension Committee at least 90 days prior to satisfying the age and service requirements.

(b) Effective Date

The effective date of Pre-Pension Spouse Coverage for a Member shall be the later of the date the Member satisfies the required age and service criteria and the date that is two years following the date the Member elects the coverage except that, for a Member who is deemed to have elected Pre-Pension Spouse Coverage, the effective date of such coverage shall be the date upon which such Member shall be so deemed to have elected the coverage. If a Member dies as a result of an accident after having satisfied the required age and service criteria and having elected or being deemed to have elected Pre-Pension Spouse Coverage but prior to the date such coverage becomes effective, such coverage shall be deemed to have become effective as of the date such Member elected the coverage or was deemed to have elected the coverage.

(c) Termination

- (i) A Member may terminate Pre-Pension Spouse Coverage at any time by filing the prescribed form with the Pension Committee and the effective date of such termination shall be the date such form is filed with the Pension Committee. The consent of the Member's Spouse to terminate the coverage shall not be required.
- (ii) A Member's Pre-Pension Spouse Coverage shall terminate on the earliest of the date the Member ceases to have a Spouse, the Member's Pension Commencement Date or the date the Member incurs a break in Continuous Service. The Pre-Pension Spouse Coverage of a Member who incurs a break in Continuous Service shall be restored upon the Member's re-employment as an Employee, however, such Member may elect to revoke such coverage effective as of the date of re-employment, within 30 days after such re-employment.

(d) Amount of Pension Payable to Surviving Spouse in the Event of Member's Death While Pre-Pension Spouse Coverage is in Effect

The Pre-Pension Spouse Coverage shall be a pension benefit payable in equal monthly installments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, in an amount equal to 50% of the amount of pension accrued by the Member pursuant to

R-23 Unionized Employees Pension Plan (*cont'd*)

Section 6.01(a), but excluding subsections (iv) and (v) thereof, or Section 6.01(b)(i), but excluding subsection (D) thereof, whichever would have been applicable to the Member, as though the Member had attained his or her Normal Retirement Date on the date of death, multiplied by such actuarial factors as adopted from time to time by the Pension Committee based on the ages of the Member and the Member's Spouse as of the date of the Member's death. However, the amount determined pursuant to Section 6.01 shall be reduced by 0.75% multiplied by the number of years (and fractions thereof calculated to the nearest month) that the Pre-Pension Spouse Coverage was in effect for the Member.

(e) Adjustment to Amount of Pension Payable to Member On Retirement, if Pre-Pension Spouse Coverage is Elected

If a Member elects or is deemed to have elected Pre-Pension Spouse Coverage, the amount of the pension benefit payable to the Member upon his or her subsequent retirement pursuant to Section 6.01(a), but excluding subsections (iv) and (v) thereof, or Section 6.01(b)(i), but excluding subsection (D) thereof, whichever would have been applicable to the Member, shall be reduced by 0.75% multiplied by the number of years (and fractions thereof calculated to the nearest month) that the Pre-Pension Spouse Coverage was in effect for the Member.

(f) Evidence

The Member shall provide the Pension Committee with satisfactory proof of spousal status and proof of age of the Member and the Spouse prior to any payment of Pre-Pension Spouse Coverage. In order for Pre-Pension Spouse Coverage to terminate pursuant to Section 8.03(c)(ii), the Member shall provide the Pension Committee with satisfactory proof of loss of spousal status by death, divorce or separation.

(g) Communication

The Pension Committee shall make reasonable efforts to inform eligible Members and their respective Spouses of the availability of the Pre-Pension Spouse Coverage.

8.04 Statutory Minimum Benefits

In no event shall the Commuted Value of the pension benefit payable upon the death of a Member who has completed at least two years of Continuous Service be less than the Commuted Value of the pension benefit accrued by the Member pursuant to Section 6.01 in respect of Credited Service on and after January 1, 1990.

Section 9 — Payment of Benefits

9.01 Application of Benefits

A pension or other benefit under the Plan shall be granted by the Employer and payment shall be made only upon application therefor in the manner prescribed by the Employer, and upon submission of such relevant information and supporting documentation as the Employer in its discretion may request.

9.02 Proof of Age and Marital Status

A Member shall be required to inform the Employer of his or her age and marital status and the age of the Member's Spouse (if any) and to file such proof thereof as required by the Employer. Pension benefits shall not commence to be paid until such proof of age and marital status has been received and admitted by the Employer. In the event that payment of pension benefits is delayed pending receipt and admittance of satisfactory proof of age and marital status, retroactive payments shall be made once satisfactory proof has been received.

9.03 Misstatement in Application for Pension Benefit

If a Member either knowingly or unknowingly has submitted any information to the Employer relevant to the amount of benefits he or she is to receive from the Plan which is incorrect, the amount of benefits payable from the Plan may be adjusted either, in the case of underpayment, by making additional payments from the Plan or, in the case of overpayment, by requiring repayment from the Member, whichever is appropriate in the circumstances.

9.04 Method of Payment

All retirement income and other benefits payable under the Plan shall be paid by cheque mailed by ordinary prepaid mail to the last known address of the Member, Spouse or Beneficiary as the case may be, or may be deposited directly into an account as directed by the Member, Spouse or Beneficiary. Posting or deposit of the cheque shall be an effective discharge of the Plan for the amount thereof.

9.05 Evidence of Survival

The Employer shall have the right to require satisfactory evidence that a retired Member or other Beneficiary under the Plan is living on each and every date a pension benefit is due the retired Member or other Beneficiary. In the absence of such evidence when required by the Employer, the benefits otherwise due shall not be paid until the evidence has been received.

R-23 Unionized Employees Pension Plan (*cont'd*)**9.06 Payments to Minors or Incompetents**

If the Employer receives evidence satisfactory to it that a person entitled to receive any payment under the Plan is physically or mentally incompetent to receive such payment and to give valid receipt therefore, or is a minor, and another person or an institution is then maintaining or has custody of the person and no guardian, committee or other representative of the person has been duly and legally appointed, the Employer may authorize payment of the benefit to be made to such other person or institution and the release of the other person or institution shall be a valid and complete discharge of the liabilities of the Plan therefore.

9.07 Beneficiary Designation

A Member may, by written notice communicated to the Employer during the Member's lifetime, designate a Beneficiary to receive any benefits payable pursuant to the Plan in the event of the Member's death. The Member may revise or revoke any such designation from time to time, subject to the provisions of any annuity, insurance or other contract or law governing designation of beneficiaries which may apply to the Member. The written notice shall be in such form and executed in such manner as the Employer in its discretion may specify from time to time. In the event a Member has not validly and effectively designated a Beneficiary or, if having done so, the Beneficiary is not living on the date of the Member's death or if the Member revoked the last designation so made, any amount payable pursuant to the Plan shall be paid in a lump sum amount to the Member's estate.

9.08 Maximum Limits Under the *Income Tax Act*

The *Income Tax Act* imposes conditions in order for a pension plan to maintain registered status under the *Income Tax Act*. Certain restrictions must be specifically stated in the Plan, even though the regular provisions of the Plan may be more restrictive. In administering the Plan, contributions and benefits are first determined pursuant to the regular provisions of the Plan, then tested against the provisions of this Section 9.08 and modified if necessary.

(a) Maximum Pension

Notwithstanding any other provision of the Plan, and subject to section (b) below, the annual pension payable to a Member under the Defined Benefit Provision on the date of the Member's retirement, termination of employment, or upon termination of the Plan, including any benefits paid to a Spouse pursuant to Section 12.05, shall not exceed the lesser of:

R-23 Unionized Employees Pension Plan (*cont'd*)

- (i) 2% of the Member's "highest average compensation" multiplied by the Member's years of "pensionable service" with the Employer; and
- (ii) the "defined benefit limit" for such year (currently \$1,722.22) multiplied by the Member's years of "pensionable service" with the Employer.

Pensionable service for a Member shall not exceed 35 years during a Member's period of service prior to 1992.

For the purposes of this subsection, the terms "highest average compensation", "defined benefit limit" and "pensionable service" shall have the meanings as defined in the *Income Tax Act*.

(b) Maximum Early Retirement Pension

The annual early retirement pension payable to a Member, as calculated pursuant to Section 6.02 or 6.03 commencing prior to the Member's attainment of age 60, shall not exceed the lesser of the amount payable under Section 6.01 and the maximum amount determined pursuant to section (a) above, except that such maximum amount shall be reduced by 1/4 of 1% for each month by which the Member's Pension Commencement Date precedes the earliest of the first day of the month following:

- (i) the Member's attainment of age 60;
- (ii) the date the Member would have attained 30 years of service had he or she continued in employment with the Employer; or
- (iii) the date the Member would have attained a combined total of 80 years (and fractions of a year) of age and service had he or she continued in employment with the Employer.

(c) Combined Maximum Pension and Temporary Supplemental Benefit

In addition to the maximum pension limit described in paragraph (a) above, and notwithstanding any other provision of the Plan to the contrary, the total annual benefit payable to a Member under the Plan prior to the Member's attainment of age 65, at the time of the Member's termination of employment, retirement, or termination of the Plan, as the case may be, shall not exceed the sum of:

R-23 Unionized Employees Pension Plan (*cont'd*)

- (i) the defined benefit limit for such year of termination multiplied by the Member's years of "pensionable service", as defined in the *Income Tax Act*; and
- (ii) 25% of the average of the YMPE for such year of termination and the two preceding calendar years, multiplied by a fraction, the numerator of which is the Member's years of pensionable service as defined in the *Income Tax Act* to a maximum of 35 and the denominator of which is 35.

(d) Maximum Pension Adjustment

In no event shall a Member's "pension adjustment" in respect of the Employer, or any company not dealing at arm's length with the Employer, for a calendar year exceed the lesser of:

- (i) the "money purchase limit" for the calendar year; and
- (ii) 18% of the Member's "compensation" for the calendar year.

For purposes of this subsection, the terms "money purchase limit", "compensation" and "pension adjustment" shall have the same meanings as defined in the *Income Tax Act*.

Section 10 — Pension Fund

10.01 General

- (a) The Employer shall establish and maintain a Pension Fund for the purpose of receiving and investing the contributions and providing the benefits pursuant to the Defined Benefit Provision and the Defined Contribution Provision of the Plan.
- (b) The Pension Fund shall be administered and invested pursuant to the terms of the Funding Agreement, and in compliance with the provisions of the *Pension Benefits Act*, the *Income Tax Act* and other applicable laws.
- (c) The Employer shall have the sole right to appoint the Funding Agency and to determine the form and terms of the Funding Agreement.

10.02 Provision of Benefits

- (a) No part of the Pension Fund shall be used for or diverted to purposes other than for the exclusive benefit of Employees, pensioners, contingent annuitants and surviving spouses prior to satisfaction of all liabilities to such persons pursuant to the Plan and the Funding Agreement. No Employee, prior to retirement under conditions of eligibility for a pension under the Plan, shall have any right or interest in or to any portion of any funds which may be paid into the Pension Fund and an Employee, contingent annuitant or surviving Spouse shall not have any right to any such pension except to the extent provided in the Plan.
- (b) All benefits pursuant to the Plan shall be paid from the Pension Fund, however, the Employer reserves the right to insure or reinsure any part of the benefits with an insurance company licensed to transact such business.
- (c) All payments pursuant to the Plan shall be made in Canadian currency.

10.03 Investment—Defined Benefit Provision

The Employer shall direct the Funding Agency to invest the Pension Fund relating to the Defined Benefit Provision in such manner as the Employer deems appropriate from time to time, subject to the *Pension Benefits Act* and the *Income Tax Act*.

R-23 Unionized Employees Pension Plan (*cont'd*)**10.04 Investment—Defined Contribution Provision****(a) Investment Option Form**

- (i) Subject to the *Pension Benefits Act* and the *Income Tax Act*, a Member shall submit to the Funding Agency an investment option form directing the investment of the amount in the Member's Account in such investment options as may be offered by the Employer and the Funding Agency pursuant to the Funding Agreement.
- (ii) The amount in the Member's Account shall be invested in the investment options in such proportion as directed by the Member based on whole number increments from 1% to 100%.
- (iii) If a Member fails to submit an investment option form, the amount in a Member's Account shall be invested in an interest-bearing investment made available by the Funding Agency from time to time.

(b) Changes to Member Investment Options

A Member may change all or part of the Member's investment options once per month and at such other times and in such manner as may be permitted by the Employer, subject to any conditions as may be required by the Funding Agency. The Member may direct the funding Agency to transfer assets from one investment option to another and the Member's Account shall be debited or credited, as the case may be, by the value of the investment bought or sold as of the day the funding Agency completes the change to a Member's investment options.

10.05 Expenses

Subject to the *Pension Benefits Act*, all reasonable charges, fees, taxes and other expenses incurred in the operation of the Plan and Pension Fund including, but not limited to, investment management fees, registration fees, auditor fees, trustee fees, legal fees, and actuarial fees shall be paid from the Pension Fund, unless paid directly by the Employer or the Funding Agency.

Section 11 — Administration of the Plan

11.01 Administration of the Plan

- (a) The Plan, including the Defined Benefit Provision and the Defined Contribution Provision, shall be administered by the Pension Committee.
- (b) The Pension Committee shall consist of three or more persons resident in Canada, appointed by Cliffs Mining Company, to serve for such times until their respective successors have been appointed in like manner.

11.02 Officers of Pension Committee

The members of the Pension Committee shall elect a member to act as chairman and shall appoint a secretary who may, but need not be, a member of the Pension Committee.

11.03 Powers of Pension Committee

Subject to the *Pension Benefits Act*, the Pension Committee shall have all such powers and duties as Cliffs Mining Company may at any time grant, impose or delegate including, but not limited to, the following:

- (a) to award the payment of pension benefits pursuant to the Plan;
- (b) to make and enforce such rules and regulations as the Pension Committee deems necessary or appropriate for the efficient administration of the Plan;
- (c) to interpret or apply the Plan or any provision thereof; and
- (d) to do, or cause to be done, all such acts or things necessary or proper to carry out the rights and privileges granted to or the duties imposed upon it under any provision of the Plan or the Funding Agreement.

Except as otherwise provided in the Plan or the Funding Agreement, any act, interpretation or determination made by the Pension Committee shall be final and binding upon all affected persons.

11.04 Agents of Pension Committee

The Pension Committee may appoint or employ such administrative, medical, actuarial and legal agents as the Pension Committee deems necessary or appropriate. The fees and expenses of such agents shall be paid from the Pension Fund, unless paid directly by the Employer.

11.05 Actions of Pension Committee

Any action of the Pension Committee may be taken by the written approval or the affirmative votes of a majority of the members of the Pension Committee. The Pension Committee may delegate to any of its members, officers, or agents such

R-23 Unionized Employees Pension Plan (*cont'd*)

duties and powers, both ministerial and discretionary, as it deems appropriate, excepting only that any dispute shall be settled by the Pension Committee. The Pension Committee may authorize any one or more of its members to sign on its behalf any instructions, certificates, directions or notices of the Pension Committee to the Funding Agent or others, and the Funding Agent or any other person to whom any such writing is directed shall be fully protected in acting thereon.

11.06 Decisions of Pension Committee

The Pension Committee shall make all determinations as to the right of any person to a benefit pursuant to the Plan. Any denial by the Pension Committee of the claim for benefits pursuant to the Plan by a person shall be stated in writing by the Pension Committee and delivered or mailed to such person and shall set forth the specific reasons for the denial, in a manner that may be understood without the necessity for assistance by legal counsel or an actuary. In addition, the Pension Committee shall afford a reasonable opportunity to such person whose claim for benefits has been denied, for a reconsideration of the decision denying the claim.

11.07 Conflict With Pension Agreement

Any exercise of the powers of the Pension Committee specified in this Section which conflict with any provisions of the Plan or the Pension Agreement shall be subject to sections 3.1 through 3.10 of the Pension Agreement.

11.08 Actuarial Reports

The Employer shall provide, on a confidential basis, the most recent actuarial report of the Actuary to the actuary designated in writing by the Union.

11.09 Communication With Pension Committee

Any designations, elections or waivers pursuant to the Plan shall be in writing to the Pension Committee and, if valid, shall be considered in force as of the date received by the Pension Committee.

11.10 Allocation of Responsibilities Among the Employer, the Pension Committee and the Funding Agent

(a) The Employer, the Pension Committee and the Funding Agency shall have only those specific powers, duties, responsibilities and obligations as are specifically provided in the Plan and the Funding Agreement. The Employer shall have the sole authority to appoint and remove the Funding Agency and any investment manager which may be provided for pursuant to the Plan or the Funding Agreement. The Funding Agency shall have the sole responsibility for the administration of the Pension Fund and the management of the assets in the Pension Fund, pursuant to the Funding Agreement. The Employer, the Pension Committee and the Funding Agency may rely upon any direction, information or action of each other as being proper pursuant to the Plan and the Funding Agreement and is not required pursuant to inquire into the propriety of any such direction, information or action. It is intended that the Employer, the Pension Committee and the Funding Agency shall be responsible for the proper exercise

R-23 Unionized Employees Pension Plan (*cont'd*)

(b) Statement of Benefits

A Member who terminates employment with the Employer and who is entitled to a benefit from the Plan shall be provided with a written statement setting out the benefit to which he or she is entitled or may become entitled pursuant to the Plan.

(c) Annual Statement of Benefits

Each year the Employer shall provide each Member who is actively participating in the Plan with a written statement of the Member's benefits pursuant to the Plan and such other information as may be required by the *Pension Benefits Act*.

(d) Inspection of Documents

A Member or a Member's agent so authorized in writing may inspect and make photocopies of the following documents, which shall be available, upon written request in advance, at the head office of the Employer during regular business hours:

- (i) the provisions of the Plan applicable to the Member;
- (ii) the amendments to the Plan applicable to the Member;
- (iii) the annual information return;
- (iv) an abstract of the actuarial valuation report indicating the official name of the Plan, the employer actuarial normal cost under the Plan for future service, the balance of all unfunded liabilities, the annual special contributions required to liquidate such liabilities and the amortization periods, and the Surplus Assets in the Plan, if any;
- (v) the Plan's financial statements; and
- (vi) such other documents as prescribed by the *Pension Benefits Act*.

Section 12 — General Provisions

12.01 Employment Rights

The establishment and implementation of the Plan shall not constitute an enlargement of any rights which a Member may have as an Employee apart from the Plan. Membership in the Plan does not confer a right on a Member to require the Employer to continue the Member in its employment, and if the service of the Member is terminated before the Member's Normal Retirement Date, such Member has only such rights as are provided for under the Plan. The benefits pursuant to the Plan shall not be used to increase damages in respect of the termination of employment of a Member.

12.02 Non-Assignability and Non-Commutability of Benefits

(a) Any benefit payable pursuant to the Plan shall be for the personal use of the person entitled to receive such benefit, and shall not be given as security or be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance or charge, or to attachment or legal process for debts of the person receiving such benefits, except as specifically provided by paragraph 8502(f) of the regulations to the *Income Tax Act*, by statute and as provided in Section 12.05 below. In no event shall such benefits confer upon any Member, or any other person, any rights or interest therein which is capable of being surrendered or commuted except as specifically provided by the Plan.

(b) Notwithstanding (a) above, if the monthly pension pursuant to the Plan is less than \$10.00, a lump sum payment of the Actuarial Equivalent value may, at the discretion of the Pension Committee, be paid in full discharge of all liability in respect of such benefit provided that such Actuarial Equivalent value does not exceed \$1,750.00.

12.03 No Duplication of Benefits

There shall be no duplication of the benefits under any one section of the Plan and the benefits under any other section of the Plan, nor of the benefits under the Plan and the benefits under any other Employer-sponsored retirement plan or any other retirement plan sponsored by an affiliate or subsidiary of the Employer with respect to the same period of service.

12.04 Notices and Elections

Any notice or election to be given, made or communicated pursuant to or for any purpose of the Plan shall be given, made or communicated, as the case may be, in such manner as the Employer shall determine from time to time. Without limiting the generality of the foregoing, any person entitled to any benefit under the Plan shall be responsible for notifying the Employer in writing of his or her mailing address and subsequent changes of mailing address.

R-23 Unionized Employees Pension Plan (*cont'd*)

12.05 Division of Pension Benefits on Marriage Breakdown

In the event the Pension Committee is provided with a certified copy of a court order relating to the entitlement to or payment of a Member's pension benefits upon the marriage breakdown of the Member and the Member's Spouse, or a domestic agreement between the Member and the Member's Spouse which has been certified by a court order relating to the entitlement to or payment of the Member's pension benefits upon the marriage breakdown of the Member and the Member's Spouse, such benefits may be paid or divided pursuant to the terms of such court order or domestic agreement, as the case may be, subject to the *Pension Benefits Act*.

12.06 Applicable Law

The Plan shall be interpreted pursuant to the laws applicable in the province of Newfoundland.

Section 13 — Future of the Plan

13.01 Continuation of the Plan

The Employer and the Union intend to maintain the Plan in force indefinitely however, the Employer reserves the right to terminate the Plan, either in whole or in part, at any time or times in the event that future conditions warrant such action, subject to the *Pension Benefits Act* and the *Income Tax Act*.

13.02 Amendment of the Plan

The Employer reserves the right to amend the Plan from time to time. No amendment to the Plan or other instrument established or entered into for purposes of holding and administering funds contributed hereunder, shall operate to reduce the benefits accrued by members or by their Spouses, Beneficiaries or estates up to the date of the amendment nor shall any amendment be made which would cause or permit any portion of the Pension Fund to be used for purposes other than as prescribed by the provisions of the Plan and the requirements of the *Pension Benefits Act* and the *Income Tax Act*.

13.03 Termination of the Plan

In the event the Plan is terminated, the assets of the Pension Fund, after provision for administrative expenses (including any expenses incurred in the termination of the Plan), shall first be used to provide pension benefits for Members, their respective Spouses, Beneficiaries and estates in an equitable manner to be determined by the Employer and the Union, with the recommendation of the Actuary, subject to the *Pension Benefits Act* and the *Income Tax Act*. The rights of all Members and their Spouses, Beneficiaries and estates to benefits accrued to the date of such termination, to extent then funded, are non-forfeitable.

13.04 Wind-Up or Bankruptcy of the Employer

In the event the Employer is wound up or becomes bankrupt, the Plan, unless continued by another employer, shall be deemed terminated and the provisions of Section 13.03 shall apply, except to the extent that any termination or action required to be made thereunder by the Employer, shall in such event, be made by the liquidator or trustee in bankruptcy, as the case may be.

13.05 Asset Transfer or Merger

(a) The Employer may transfer or merge the assets of the Plan or the Pension Fund or any part thereof, and the Members related to such assets, to or with one or more trusts, pension fund societies or corporations, pension or superannuation plans or funds and which may result in one merged or amalgamated entity with or without termination of the entities merged. Subject to the *Pension Benefits Act* and without limiting the generality of the foregoing, the terms of the transfer or merger may provide for the termination or continuation of all or any part of the

R-23 Unionized Employees Pension Plan (*cont'd*)

entities to be merged, the consolidation of the assets and liabilities of the merged entities, with or without any requirement to maintain a separate accounting in respect thereof, and the application of the assets of the fund or any part thereof to the liabilities related to any new participants or the merged entity, provided that any account maintained in respect of a Member shall continue to be maintained in respect of the Member until such time as the Member terminates employment with no vested benefit remaining to be paid.

- (b) In the event of a merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Pension Fund to, another fund relating to any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Members, the assets of the Pension Fund relating to any transferred Members shall be transferred to the other fund provided that:
 - (i) each Member would be entitled to (if either the Plan or the other plan is then terminated) receive a pension benefit immediately after the merger, consolidation or transfer equal to or greater than the pension benefit he or she would have been entitled to receive pursuant to the Plan immediately prior to the merger, consolidation or transfer;
 - (ii) the Employer, or any new or successor employer of the affected Members authorizes such transfer of assets; and
 - (iii) such other plan and trust agreement are registered with the applicable regulatory authorities.

13.06 Surplus Assets

If, after all accrued benefits pursuant to the Plan to Members and their respective Spouses, Beneficiaries or estates, as the case may be, have been paid and all expenses pursuant to the Plan have been paid, Surplus Assets remain in the Pension Fund, the Employer shall have legal title to such Surplus Assets, subject to the *Pension Benefits Act*, the *Income Tax Act* and other applicable laws.

Section 14 — Special Provisions for Quebec Employees

14.01 Application

This section applies to Employees who report for work in the Province of Quebec and is included in the Plan in order for the Plan to comply with the *Supplemental Pension Plans Act (Quebec)* (the "SPPA") and shall supplement all other provisions of the Plan which are not inconsistent and shall replace any other provisions which are inconsistent.

14.02 Early Retirement

A Quebec Member may elect to retire on the first day of the month following his or her 55th birthday, or on the first day of any succeeding month prior to his Normal Retirement Date, provided the Member has completed at least two years of Continuous Service, the date of such retirement being hereunder described as his or her "Early Retirement Date". Such Member shall be entitled, upon such early retirement, to receive a pension determined pursuant to Section 14.03.

14.03 Early Retirement Pension

A Quebec Member who retires pursuant to Section 14.02 may elect to receive a monthly pension commencing on his or her Early Retirement Date or at the election of the Quebec Member on the first day of any subsequent month (but not later than his or her Normal Retirement Date), in an amount equal to the Actuarial Equivalent of the pension calculated as in Section 6.01 based on his or her Credited Service to his or her Early Retirement Date.

14.04 Postponed Retirement

A Quebec Member may postpone his or her retirement beyond his or her Normal Retirement Date.

14.05 Actuarial Adjustment

Upon a Quebec Member's postponed retirement date, which shall be the first day of the month coincident with or next following the date on which the Member retires, the Quebec Member shall be eligible to receive a retirement pension equal to the Actuarial Equivalent of the pension determined pursuant to Section 6.01 based on Credited Service in effect on the Normal Retirement Date. Such Actuarial Equivalent shall be determined as of the date the pension commences and shall be determined on the basis of the method described in Appendix "A" to the Plan entitled "Revalorization of Postponed Retirement Pension".

R-23 Unionized Employees Pension Plan (*cont'd*)**14.06 Maximum Deferral of Pension**

If a Quebec Member who has elected to postpone retirement after Normal Retirement Date has not effectively retired before his or her 69th birthday, the Member's postponed retirement pension shall commence on December 1st of the calendar year the Quebec Member attains age 69.

14.07 Effect of Maximum Benefit Rule

If a Quebec Member who has elected to postpone retirement after Normal Retirement Date shall become entitled to a postponed retirement pension which, after the revalorization described in Section 14.05 above, becomes equal to the maximum pension described in Section 9.08, the Member's postponed retirement pension shall then commence on the first day of the next calendar month.

14.08 Partial Payment of Pension

If the wages, as defined in the SPPA, of a Quebec Member who has elected to postpone retirement after Normal Retirement Date are reduced, the Member may elect to receive a partial payment of his or her retirement pension. Such election may be made at the time the Member's wages are reduced and each January 1st thereafter. The amount of the partial payment shall be equal to, if the amount of the retirement pension so permits, the amount of reduction in such wages. The remaining balance, if any, of his retirement pension shall be payable on the Member's effective retirement and shall be calculated according to Section 14.05 above.

14.09 Early Commencement of Deferred Vested Pension

A Quebec Member who is entitled to a deferred vested pension pursuant to Section 6.04 may, upon proper application therefore, elect to have the deferred vested pension commence prior to his or her Normal Retirement Date, on the first day of any month subsequent to the Member's 55th birthday, in which event the amount of such pension shall be the Actuarial Equivalent of the deferred pension otherwise payable from such Member's Normal Retirement Date.

14.10 Portability of Benefits

A Quebec Member whose employment with the Employer terminates before attaining age 55 and who is entitled to a deferred vested pension pursuant to the provisions of Section 6.04 may, within 180 days following the date of termination, and subsequently every five years, within 180 days from the date of expiry of each fifth year, elect to transfer an amount equal to the value of the deferred pension to a pension plan governed by the SPPA or to a locked in retirement account or annuity contract as prescribed by the SPPA. Any such transfer shall, however, be subject to such conditions and restrictions as may be prescribed by the SPPA, depending upon the solvency status of the Plan from time to time.

In the event that a portability election is completed pursuant to this Section 14.10, the Member shall have no further rights under the Plan.

R-23 Unionized Employees Pension Plan (cont'd)

14.11 Death in Service After Normal Retirement Date

If a Quebec Member dies subsequent to the Normal Retirement Date while in active employment leaving a surviving Spouse, the Member's Spouse shall be entitled to receive a pension the value of which shall be equal to the greater of:

- (a) the value of the death benefit under Section 8, or
- (b) the value of the pension the Spouse would have been entitled to receive under Section 7 if payment of the postponed pension had begun on the day preceding the death of the Quebec Member.

14.12 Commutation of Pension

If the value of a retirement pension or deferred vested pension payable under the Plan is less than 4% of the YMPE in the year that the Quebec Member retires, terminates employment or dies, or such other amount as may be permitted by the SPPA, from time to time, a lump sum amount equal to the value of the benefit shall be paid to the person entitled to such benefit in lieu of any other benefits under this Plan.

Effective as of March 1, 1996. Confirmed as of November 1, 2004.

WABUSH MINES, Cliffs Mining Company,
Managing Agent

By: *D. J. Ballyhe*
Senior Vice President and Treasurer

And: *John E. Leuband*
Vice President, Secretary and
General Counsel

ARNAUD RAILWAY COMPANY

By: *D. J. Ballyhe*
Treasurer

And: *John E. Leuband*
Secretary

WABUSH LAKE RAILWAY
COMPANY, LIMITED

By: *D. J. Ballyhe*
Treasurer

And: *[Signature]*
Secretary

R-23 Unionized Employees Pension Plan (*cont'd*)**Appendix A****Revalorization of Postponed Retirement Pension**

The retirement pension of a Quebec Member who has elected to postpone retirement after his or her Normal Retirement Date is revalorized as follows:

1. A notional account is set up for the Quebec Member.
2. There shall be credited to that account the monthly retirement pension that the Quebec Member would have received (up to but not including the date the Member actually begins to receive the retirement pension) if the Member had retired on his or her Normal Retirement Date.
3. There shall be credited to such account the interest earned on such monthly retirement pension from each due date thereof assuming a rate of interest for each calendar month corresponding to the average yield on "5-year personal fixed term deposits" (CANSIM series B14045) as published by the Bank of Canada Review.
4. When the postponement of the retirement pension ceases, a monthly postponed retirement pension shall be calculated based on the accumulated balance then existing in such account.
5. The accumulated balance in the account shall be divided by the present value of an annuity of \$1 per month payable for the Quebec Member's lifetime calculated by the Actuary and based on the following assumptions:
 - (i) 1983 Group Annuity Mortality Table, as published by the Society of Actuaries; and
 - (ii) Interest for the first 15 years at an annual rate equal to the yield on "long-term Government of Canada Bonds" (CANSIM series B14013) for the month preceding as published in the Bank of Canada Review, and interest at 6% per annum thereafter.
6. The Quebec Member's postponed retirement pension shall be calculated by adding:
 - (i) The monthly normal retirement pension that the Quebec Member would have been entitled to receive had the Member retired on his or her Normal Retirement Date; and
 - (ii) the pension calculated pursuant to paragraph 5 above.
7. In the event of a partial payment of the retirement pension after the Normal Retirement Date but before actual retirement (i.e. with different parts of the retirement pension being postponed for different periods), the foregoing procedure shall be applied separately to each part.

**UNION DB PLAN AMENDMENT
NO. 1**

R-23 Unionized Employees Pension Plan (cont'd)

**CERTIFICATE OF ASSISTANT SECRETARY
OF
CLIFFS MINING COMPANY, MANAGER
OF
WABUSH MINES JOINT VENTURE**

I, George W. Hawk, Jr., Assistant Secretary of Cliffs Mining Company, a Delaware corporation, which is the Managing Agent of Wabush Mines, a Joint Venture, comprised of Stelco Inc., Dofasco Inc., and Wabush Iron Co. Limited, the Joint Venturers, do hereby certify that the attached First Amendment to the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, and Wabush Lake Railway Company, Limited, as Amended and Restated Effective as of March 1, 1996 and executed on May 28, 2003, is a true and correct copy.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company, as of the 1st day of November, 2004.


Assistant Secretary

(SEAL)

**First Amendment to the Pension Plan for
Bargaining Unit Employees of**

**WABUSH MINES, Cliffs Mining Company, Managing Agent,
ARNAUD RAILWAY COMPANY, and
WABUSH LAKE RAILWAY COMPANY, LIMITED**

As Amended and Restated Effective as of March 1, 1996

Amendment No. 1

CERTIFICATION

The following First Amendment to the Pension Plan is hereby adopted by and for WABUSH MINES, Cliffs Mining Company, Managing Agent; ARNAUD RAILWAY COMPANY; and WABUSH LAKE RAILWAY COMPANY, LIMITED to be known as the "First Amendment to the Pension Plan for Bargaining Unit Employees of WABUSH MINES, Cliffs Mining Company, Managing Agent, ARNAUD RAILWAY COMPANY and WABUSH LAKE RAILWAY COMPANY, LIMITED", and is effective March 1, 1999.

The following sections of the Plan are amended as follows:

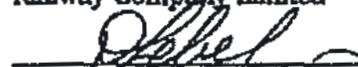
1. Section 1 shall be deleted and replaced by the revised Section 1 as attached.
2. Paragraph 4.01 shall be deleted and replaced by the revised paragraph 4.01 as attached.
3. Paragraph 4.02(b) shall be deleted and replaced by the revised paragraph 4.02(b) as attached.
4. Section 6.01 shall be deleted and replaced by the revised Section 6.01 as attached.
5. Section 6.06 shall be deleted and replaced by the revised Section 6.06 as attached.

Signed at Wabush, Labrador this 28 day of May 2003.

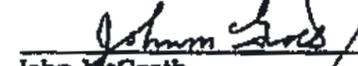
For the United Steelworkers of America

For Wabush Mines and Wabush Lake
Railway Company Limited


Tom Harris - Staff Representative


Damien Lebel - General Manager


Jim Skinner
President, local 6285 - USWA


John McGrath
Director - Human Resources

Section 1 — Amendment and Restatement

1.01 Amendment and Restatement

Effective as of March 1, 1996, the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, and Wabush Lake Railway Company, Limited, Canada Customs and Revenue Agency registration number 0555201, is amended and restated to allow active Members to choose, on a one-time-only basis, one of two forms of pension benefits:

- a Defined Benefit Provision based on a flat dollar benefit rate, pursuant to the terms of the Collective Agreement; or
- a Defined Benefit Provision based on a lower flat dollar benefit rate plus a Defined Contribution Provision with Member and Employer contributions, pursuant to the terms of the Collective Agreement.

1.02 Opportunity to Transfer from Defined Contribution Provision to Defined Benefit Provision

For Members who participate in the Defined Contribution Provision and who commit between January 1, 2000 and June 30, 2002 to retire by February 29, 2004, there will be a one-time-only opportunity to elect to have their benefit in respect of the Defined Benefit Provision and their temporary supplementary benefit at retirement calculated pursuant to Section 6.01(a) and 6.06(a), respectively. A life annuity will be calculated based upon the Member's Account, in respect of Employer contributions, as of the date of retirement and such annuity will reduce the pension benefit determined pursuant to Section 6.01(a).

1.03 Opportunity to Transfer from Defined Benefit Provision to Defined Contribution Provision

For Members who participate in the Defined Benefit Provision, who find that the circumstances which led them to elect that coverage in 1996 have now changed, there will be a one-time-only opportunity to elect to transfer from the Defined Benefit Provision to the Defined Contribution Provision. Members must make this election before December 31, 1999. The change will be effective prospectively from the date of the revised election; therefore benefits in respect of Credited Service earned prior to the date of the revised election shall be determined according to the terms of the Plan for Members who do not participate in the Defined Contribution Provision.

1.04 Benefits Prior to March 1, 1999

Benefits in respect of a Member whose employment with the Employer ceased prior to March 1, 1999 shall be determined in accordance with the terms of the Plan applicable when the Member ceased employment except as required by the Income Tax Act or the Pension Benefits Act or as may be specifically provided herein.

R-23 Unionized Employees Pension Plan (*cont'd*)**Section 4 — Contributions****4.01 Member Contributions****(a) Defined Benefit Provision**

Members shall not contribute to the Defined Benefit Provision of the Plan.

(b) Defined Contribution Provision

(i) A Member who participates in the Defined Contribution Provision of the Plan shall contribute to the Member's Account, in equal installments, by payroll deduction, an amount equal to \$2,500 per calendar year.

(ii) Members who originally elect not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03, subsequently decide to change their election shall not contribute for the period prior to the date of the revised election.

(c) Additional Voluntary Contributions

(i) A Member who participates in the Defined Contribution Provision may, in addition to the contributions pursuant to (b) above, make additional voluntary contributions to the Member's Account, by payroll deduction, up to such amounts as are permissible pursuant to the *Income Tax Act* as deductible contributions to a registered pension plan.

(ii) Members who originally elect not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03, subsequently decide to change their election may not contribute for the period prior to the date of the revised election.

(d) Remittance of Contributions

The Employer shall remit Member contributions pursuant to (b) and (c) above within 30 days following the month in which they were deducted.

4.02 Employer Contributions

The Employer shall have no liability to make any payments to the Pension Fund except as expressly provided in the Plan.

(a) Defined Benefit Provision

(i) The Employer shall bear the costs related to the Defined Benefit Provision. The Employer shall contribute to the Pension Fund in respect of the Defined Benefit Provision in such amount, based on the latest actuarial valuation report prepared by the Actuary and filed with the Newfoundland pension regulatory authority and Revenue Canada, as is required to provide for the normal cost of benefits accruing in the current Plan Year, after taking into account the assets of the Pension Fund and all other relevant factors, and to provide for the proper amortization of all unfunded liabilities and solvency deficiencies, if any, in accordance with the *Pension Benefits Act* and subject to subsection 147.2(2) of the *Income Tax Act*.

(ii) The employer shall not contribute any amount to the Pension Fund which is not permissible pursuant to subsection 147.2(2) of the *Income Tax Act*.

R-23 Unionized Employees Pension Plan (cont'd)

(b) Defined Contribution Provision

- (i) The Employer shall contribute in equal monthly instalments to the Pension Fund in respect of the Defined Contribution Provision each calendar year, an amount in respect of each Member who participates in the Defined Contribution Provision determined according to the Member's Continuous Service as follows:

Member's Continuous Service	Annual Employer Contribution
Less than 10 years	\$ 1,500
10 years or more but less than 20 years	\$ 2,500
20 years or more	\$ 3,500

- (ii) In the event that a Member attains 10 years or 20 years of Continuous Service part way through a calendar year, the Employer contribution shall increase for the remainder of the calendar year, in accordance with the above table, with effect from the beginning of the pay period immediately following the pay period in which the 10 or 20 year anniversary is attained.
- (iii) For Members who originally elect not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03, subsequently decide to change their election the Employer shall not contribute for the period prior to the date of the revised election.

(c) Remittance of Contributions

The employer shall remit its contributions in accordance with applicable legislation in equal instalments within 30 days following the month in which they fall due.

4.03 Contributions Under Defined Contribution Provision During Approved Leaves of Absence**(a) Member Contributions**

- (i) A Member who participates in the Defined Contribution Provision and who is on an Approved Leave of Absence may continue to contribute to the Member's Account pursuant to Section 4.01(b). Alternatively, the Member may contribute a lesser amount or may cease contributing to the Member's Account. Prior to commencing the Approved Leave of Absence, the Member shall inform the Employer in writing of the amount of the Member's contributions. The contributions shall be made in equal instalments, by a payroll deduction or, if such method of payment is not possible, by delivering to the Employer post-dated cheques in respect of each month of the Approved Leave of Absence.
- (ii) In lieu of contributing to the Member's Account during an Approved Leave of Absence, the member may instead elect to contribute to the Member's Account immediately upon returning to work from an

Section 6 — Retirement Benefits

6.01 Normal and Special Postponed Retirement Benefits

(a) Members Who Do Not Participate in the Defined Contribution Provision

A Member who does not participate in the Defined Contribution Provision and who retires on or after March 1, 1999, but prior to March 1, 2004 on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a pension benefit payable in equal monthly installments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, calculated as the sum of (i), (ii), (iii), (iv) and (v) below. If the Member retires on or after March 1, 2004, (iv) below shall not apply.

- (i) \$33.00 multiplied by the Member's Credited Service not in excess of 15 years
- (ii) \$34.00 multiplied by the Member's Credited Service in excess of 15 years but not in excess of 30 years
- (iii) \$35.00 multiplied by the Member's Credited Service in excess of 30 years
- (iv) \$4.50 multiplied by the Member's Credited Service not in excess of 30 years
- (v) \$50.00.

Members who retire prior to March 1, 1999 will receive a pension benefit in accordance with the Plan in effect on the Member's Normal Retirement Date, Early Retirement Date, Special Early Retirement Date, or Special Postponed Retirement Date, whichever is applicable.

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who retires on or after March 1, 1999 on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a benefit pursuant to (i) and (ii) below:

(i) Benefit in Respect of Defined Benefit Provision

A benefit payable in equal monthly installments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, calculated as the sum of (A), (B), (C) and (D) below:

- (A) \$31.00 multiplied by the Member's Credited Service not in excess of 15 years
- (B) \$32.00 multiplied by the Member's Credited Service in excess of 15 years but not in excess of 30 years
- (C) \$34.00 multiplied by the Member's Credited Service in excess of 30 years

R-23 Unionized Employees Pension Plan (cont'd)

(D) \$50.00

Members who originally elect not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03, subsequently decide to change their election shall have their benefit in respect of Credited Service earned prior to the date of the revised election calculated in accordance with Section 6.01(a).

Members who retire prior to March 1, 1999 will receive a pension benefit in accordance with the Plan in effect on the Member's Normal Retirement Date, Early Retirement Date, Special Early Retirement Date, or Special Postponed Retirement Date, whichever is applicable.

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

6.02 Early Retirement Benefits**(a) Members Who Do Not Participate in the Defined Contribution Provision**

A Member who does not participate in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date shall be entitled to receive a pension benefit payable in equal monthly installments commencing on an Early Retirement Date and continuing on the first day of each month thereafter, calculated pursuant to one of the following:

- (i) If the Member has completed at least 30 years of Continuous Service, a pension benefit equal to the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, without reduction on account of early commencement;
- (ii) If the Member has attained age 55 and completed at least 15 years of Continuous Service, a pension benefit equal to the Actuarial Equivalent of the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, provided that the amount of the reduction to the monthly benefit shall not be less than required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b);
- (iii) If the Member has attained age 62 and completed at least 10 years of Continuous Service and obtains the written consent of the Employer, a pension benefit equal to the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, without reduction on account of early commencement; or
- (iv) If the Member has attained age 62 and completed at least 10 years of Continuous Service and does not obtain the written consent of the Employer, a pension benefit equal to the Actuarial Equivalent of the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, provided that the amount of reduction to the monthly benefit shall not be less than required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date shall be entitled to receive a monthly pension benefit pursuant to (i) and (ii) below:

R-23 Unionized Employees Pension Plan (cont'd)

- (iii) a life insurance company licensed to transact business in Canada for the purpose of purchasing a deferred life annuity.

A transfer pursuant to (i), (ii) or (iii) above shall be made on a locked-in basis and the transferred amount shall be used to provide an annuity which shall not commence payment before the earliest date that the Member would have been entitled to receive a benefit pursuant to the Plan or, if transferred to another pension plan, under that plan.

In the event that a transfer is elected pursuant to this Section 6.04(c), the Member shall have no further rights under the Plan.

- (d) **Benefit on Termination of Employment Prior to Deferred Vested Termination Date**

A Member who terminates employment with the Employer prior to the completion of two years of Continuous Service shall be entitled to a benefit equal to the amount in the Member's Account, which may be transferred out of the Plan pursuant to (c) above.

6.05 Additional Voluntary Contributions

In addition to the benefits pursuant to Sections 6.01, 6.02, 6.03 and 6.04, a Member who participates in the Defined Contribution Provision and who has made additional voluntary contributions pursuant to Section 4.01(c) may be paid such contributions, plus Credited Interest thereon, in a lump sum payment at any time pursuant to the instructions of the Member or, in the alternative, the Member may elect to transfer such contributions plus Credited Interest thereon out of the Plan, pursuant to Section 6.04(c), however, such transfer shall not be on a locked-in basis.

6.06 Temporary Supplementary Benefit

- (a) **Members Who Do Not Participate in the Defined Contribution Provision**

A Member who does not participate in the Defined Contribution Provision and who, on or after March 1, 1999, qualifies for a pension benefit commencing on an Early Retirement Date or a Special Early Retirement Date shall be entitled to receive a temporary supplementary benefit payable in equal monthly installments commencing on the Member's Early Retirement Date or Special Early Retirement Date, as the case may be, and continuing thereafter on the first day of each month up to the earliest of the month in which the Member attains age 65, qualifies for unreduced statutory pension benefits (other than workers' compensation benefits) or dies, equal to \$27.00 multiplied by the Member's Credited Service to a maximum of 40 years. Such Member who retires prior to March 1, 2004 shall, in addition to the above benefit, be entitled to receive a temporary supplementary benefit equal to \$4.50 multiplied by the Member's Credited Service to maximum of 40 years, payable at the same time and in the same manner as described above. However, if the Member retires on an Early Retirement Date and receives an annual

R-23 Unionized Employees Pension Plan (cont'd)

pension pursuant to Sections 6.02(a)(iii) or 6.02(a)(iv), the amount of the temporary supplementary benefit shall be reduced by the same factors used to reduce the monthly pension payable under said provisions, whichever is applicable to the Member.

Members who retire prior to March 1, 1999 will receive a temporary supplementary benefit in accordance with the Plan in effect on the Member's Early Retirement Date or Special Early Retirement Date, whichever is applicable.

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who, on or after March 1, 1999, qualifies for a pension benefit commencing on an Early Retirement Date or a Special Early Retirement Date shall be entitled to receive a temporary supplementary benefit payable at the same time and in the same manner pursuant to (a) above, equal to \$24.00 multiplied by the Member's Credited Service to a maximum of 40 years, subject to the reduction factors referred to in (a) above.

Members who originally elect not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03, subsequently decide to change their election shall have their temporary supplementary benefit in respect of Credited Service earned prior to the date of the revised election calculated in accordance with Section 6.06(a).

Members who retire prior to March 1, 1999 will receive a temporary supplementary benefit in accordance with the Plan in effect on the Member's Early Retirement Date or Special Early Retirement Date, whichever is applicable.

6.07 Retirement Benefits for Part-Time Employees

The retirement benefits pursuant to the Defined Benefit Provision calculated pursuant to this section in respect of a Member who is a Part-Time Employee shall be reduced in an equitable manner to an amount related to the Hours of Service of the Member in comparison to the Hours of Service of other Members who are employed as Full-Time Employees in a similar capacity.

6.08 Return To Work After Retirement, Termination of Employment or Break In Continuous Service

(a) Re-Employment After Retirement

A Member who has retired and is receiving pension benefit payments pursuant to the Plan shall, upon re-employment with the Employer as an Employee, have such payments suspended. The Member shall retain his or her frozen suspended pension benefit which shall be added to any subsequent pension benefit to which the Member may become entitled in respect of service subsequent to the Member's date of re-employment.

(b) Re-Employment After Termination of Employment But Prior to Retirement

(i) A Member who has terminated employment with the Employer and is entitled to a deferred vested pension pursuant to the Plan and who is re-employed with the Employer as an Employee prior to commencing receipt of pension benefit payments shall retain his or her frozen deferred vested pension benefit, which shall be added to any subsequent pension benefit to which the Member may become entitled in respect of service subsequent to the Member's date of re-employment.

(ii) A Member who received a lump sum payment pursuant to Section 12.02(b) and is re-employed by the Employer as an Employee prior to

R-23 Unionized Employees Pension Plan (*cont'd*)

commencing receipt of pension benefit payments, shall have his or her frozen accrued pension benefit with respect to which the Member received such lump sum payment used in calculating any subsequent pension benefit to which the

**UNION DB PLAN AMENDMENT
NOS. 1-3**

**Pension Benefit
Standards Division**

JUL 30 2015

WABUSH IRON CO. LIMITED

**WRITTEN ACTION OF DIRECTORS WITHOUT A MEETING
PURSUANT TO OHIO REVISED CODE SECTION 1701.54**

The undersigned, being all of the Directors of WABUSH IRON CO. LIMITED (the "Company"), an Ohio corporation, do hereby consent to and adopt and approve the following resolutions as the action of the Company without a meeting of the Board of Directors:

RATIFICATION AND CONFIRMATION OF AMENDMENTS TO PENSION PLAN

RECITALS:

- A. The Company is and was at all relevant times a participant in Wabush Mines Joint Venture, an unincorporated joint venture of the Company and Wabush Resources Inc. ("Wabush Mines")
- B. Wabush Mines is currently the Employer under the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company Inc., Managing Agent as amended and restated effective as of March 1, 1996 (the "Pension Plan");
- C. The Pension Plan has been further amended pursuant to Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, and Amendment No. 5, each as set out in Exhibit A hereto (the "Pension Plan Amendments");
- D. The Company desires to ratify and confirm each of the Pension Plan Amendments, in each case effective as of the effective date of each such Pension Plan Amendment as set out in Exhibit A.
- E. The Company further desires to authorize any one officer or director of the Company, Wabush Resources Inc. or Cliffs Mining Company, as Managing Agent of Wabush Mines to take any and all such actions to file and register the Pension Plan Amendments with the appropriate regulatory authorities including, without limitation, the Office of the Superintendent of Financial Institutions, the Newfoundland and Labrador pension regulatory authorities and any relevant taxation authorities (the "Regulators") and to execute any documents in respect therewith.

RESOLVED THAT:

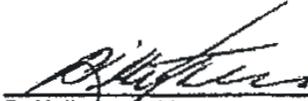
1. The Company does hereby ratify and confirm each of the Pension Plan Amendments, in each case effective as of the effective date of each such Pension Plan Amendment as set out in Exhibit A.
2. Any one officer or director of the Company, Wabush Resources Inc. or Cliffs Mining Company, as Managing Agent of Wabush Mines is hereby authorized and directed to execute, deliver, file and register the Pension Plan Amendments with the Regulators on behalf of the Company, Wabush Resources Inc. and Wabush Mines, and to take such further and other actions or steps as shall appear necessary, desirable, expedient, convenient or proper from time to time in order to carry out fully and give effect to these resolutions.

R-23 Unionized Employees Pension Plan (cont'd)

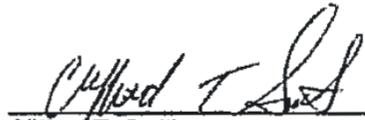
- 2 -

3. All actions previously taken by any director or officer of the Company, Wabush Resources Inc. or Cliffs Mining Company, as Managing Agent of Wabush Mines in connection with the items contemplated by the foregoing resolutions are hereby adopted, ratified, confirmed and approved in all respects.

DATED this 30th day of June, 2015.



P. Kelly Tompkins



Clifford T. Smith

R-23 Unionized Employees Pension Plan (*cont'd*)

**RESOLUTION OF THE DIRECTORS
OF
WABUSH RESOURCES INC.
(the "Corporation")**

**Pension Benefit
Standards Division**

JUL 30 2015

Ratification and Confirmation of Amendments to Pension Plan

RECITALS:

- A. The Corporation is and was at all relevant times a participant in or a successor to a participant in Wabush Mines Joint Venture, an unincorporated joint venture of the Corporation and Wabush Resources Inc. ("**Wabush Mines**")
- B. Wabush Mines is currently the Employer under the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company Inc., Managing Agent as amended and restated effective as of March 1, 1996 (the "**Pension Plan**");
- C. The Pension Plan has been further amended pursuant to Amendment No. 1, Amendment No. 2, Amendment No. 3, Amendment No. 4, and Amendment No. 5, each as set out in Exhibit A hereto (the "**Pension Plan Amendments**");
- D. The Corporation desires to ratify and confirm each of the Pension Plan Amendments, in each case effective as of the effective date of each such Pension Plan Amendment as set out in Exhibit A.
- E. The Corporation further desires to authorize any one officer or director of the Corporation, Wabush Iron Co. Limited or Cliffs Mining Company, as Managing Agent of Wabush Mines to take any and all such actions to file and register the Pension Plan Amendments with the appropriate regulatory authorities including, without limitation, the Office of the Superintendent of Financial Institutions, the Newfoundland and Labrador pension regulatory authorities and any relevant taxation authorities (the "**Regulators**") and to execute any documents in respect therewith.

RESOLVED THAT:

1. The Corporation does hereby ratify and confirm each of the Pension Plan Amendments, in each case effective as of the effective date of each such Pension Plan Amendment as set out in Exhibit A.
2. Any one officer or director of the Corporation, Wabush Iron Co. Limited or Cliffs Mining Company, as Managing Agent of Wabush Mines is hereby authorized and directed to execute, deliver, file and register the Pension Plan Amendments with the Regulators on behalf of the Corporation, Wabush Iron Co. Limited and Wabush Mines, and to take such further and other actions or steps as shall appear necessary, desirable, expedient, convenient or proper from time to time in order to carry out fully and give effect to these resolutions.

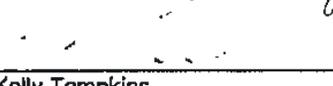
R-23 Unionized Employees Pension Plan (cont'd)

3. All actions previously taken by any director or officer of the Corporation, Wabush Iron Co. Limited or Cliffs Mining Company, as Managing Agent of Wabush Mines in connection with the items contemplated by the foregoing resolutions are hereby adopted, ratified, confirmed and approved in all respects.

Each of the foregoing resolutions is hereby consented to by all the directors of the Corporation pursuant to the *Canada Business Corporations Act* this 12 day of July, 2015.



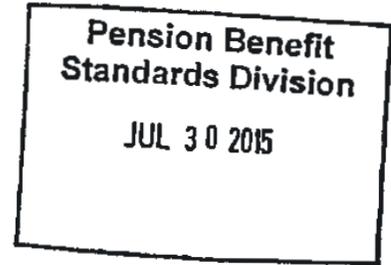
Pierre Bolduc



P. Kelly Tompkins

Exhibit A
Pension Plan Amendments

Amendment No. 1



The following sections of the Plan are amended as follows effective March 1, 1999:

1. Section 1 shall be deleted and replaced by the revised Section 1 as attached.
2. Paragraph 4.01 shall be deleted and replaced by the revised paragraph 4.01 as attached.
3. Paragraph 4.02(b) shall be deleted and replaced by the revised paragraph 4.02(b) as attached.
4. Section 6.01 shall be deleted and replaced by the revised Section 6.01 as attached.
5. Section 6.06 shall be deleted and replaced by the revised Section 6.06 as attached.

R-23 Unionized Employees Pension Plan (*cont'd*)

- 4 -

Section 1 – Amendment and Restatement

1.01 Amendment and Restatement

Effective as of March 1, 1996, the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, and Wabush Lake Railway Company, Limited, Canada Customs and Revenue Agency registration number 0555201, is amended and restated to allow active Members to choose, on a one-time-only basis, one of two forms of pension benefits:

- a Defined Benefit Provision based on a flat dollar benefit rate, pursuant to the terms of the Collective Agreement; or
- a Defined Benefit Provision based on a lower flat dollar benefit rate plus a Defined Contribution Provision with Member and Employer contributions, pursuant to the terms of the Collective Agreement.

1.02 Opportunity to Transfer from Defined Contribution Provision to Defined Benefit Provision

For Members who participate in the Defined Contribution Provision and who commit between January 1, 2000 and June 30, 2002 to retire by February 29, 2004, there will be a one-time-only opportunity to elect to have their benefit in respect of the Defined Benefit Provision and their temporary supplementary benefit at retirement calculated pursuant to Section 6.01(a) and 6.06(a), respectively. A life annuity will be calculated based upon the Member's Account, in respect of Employer contributions, as of the date of retirement and such annuity will reduce the pension benefit determined pursuant to Section 6.01(a).

1.03 Opportunity to Transfer from Defined Benefit Provision to Defined Contribution Provision

For Members who participate in the Defined Benefit Provision, who find that the circumstances which led them to elect that coverage in 1996 have now changed, there will be a one-time-only opportunity to elect to transfer from the Defined Benefit Provision to the Defined Contribution Provision. Members must make this election before December 31, 1999. The change will be effective prospectively from the date of the revised election; therefore benefits in respect of Credited Service earned prior to the date of the revised election shall be determined according to the terms of the Plan for Members who do not participate in the Defined Contribution Provision.

1.04 Benefits Prior to March 1, 1999

Benefits in respect of a Member whose employment with the Employer ceased prior to March 1, 1999 shall be determined in accordance with the terms of the Plan applicable when the Member ceased employment except as required by the Income Tax Act or the Pension Benefits Act or as may be specifically provided herein.

Section 4 – Contributions

4.01 Member Contributions**(a) Defined Benefit Provision**

Members shall not contribute to the Defined Benefit Provision of the Plan.

(b) Defined Contribution Provision

- (i) A Member who participates in the Defined Contribution Provision of the Plan shall contribute to the Member's Account, in equal instalments, by payroll deduction, an amount equal to \$2,500 per calendar year.
- (ii) Members who originally elect not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03, subsequently decide to change their election shall not contribute for the period prior to the date of the revised election.

(c) Additional Voluntary Contributions

- (i) A Member who participates in the Defined Contribution Provision may, in addition to the contributions pursuant to (b) above, make additional voluntary contributions to the Member's Account, by payroll deduction, up to such amounts as are permissible pursuant to the *Income Tax Act* as deductible contributions to a registered pension plan.
- (ii) Members who originally elect not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03, subsequently decide to change their election may not contribute for the period prior to the date of the revised election.

(d) Remittance of Contributions

The Employer shall remit Member contributions pursuant to (b) and (c) above within 30 days following the month in which they were deducted.

4.02 Employer Contributions

The Employer shall have no liability to make any payments to the Pension Fund except as expressly provided in the Plan.

(a) Defined Benefit Provision

- (i) The Employer shall bear the costs related to the Defined Benefit Provision. The Employer shall contribute to the Pension Fund in respect of the Defined Benefit Provision in such amount, based on the latest actuarial valuation report prepared by the Actuary and filed with the Newfoundland

R-23 Unionized Employees Pension Plan (cont'd)

- 6 -

pension regulatory authority and Revenue Canada, as is required to provide for the normal cost of benefits accruing in the current Plan Year, after taking into account the assets of the Pension Fund and all other relevant factors, and to provide for the proper amortization of all unfunded liabilities and solvency deficiencies, if any, in accordance with the *Pension Benefits Act* and subject to subsection 147.2(2) of the *Income Tax Act*.

- (ii) The employer shall not contribute any amount to the Pension Fund which is not permissible pursuant to subsection 147.2(2) of the *Income Tax Act*.

(b) Defined Contribution Provision

- (i) The Employer shall contribute in equal monthly instalments to the Pension Fund in respect of the Defined Contribution Provision each calendar year, an amount in respect of each Member who participates in the Defined Contribution Provision determined according to the Member's Continuous Service as follows:

Member's Continuous Service	Annual Employer Contribution
Less than 10 years	\$ 1,500
10 years or more but less than 20 years	\$ 2,500
20 years or more	\$ 3,500

- (ii) In the event that a Member attains 10 years or 20 years of Continuous Service part way through a calendar year, the Employer contribution shall increase for the remainder of the calendar year, in accordance with the above table, with effect from the beginning of the pay period immediately following the pay period in which the 10 or 20 year anniversary is attained.
- (iii) For Members who originally elect not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03, subsequently decide to change their election the Employer shall not contribute for the period prior to the date of the revised election.

(c) Remittance of Contributions

The employer shall remit its contributions in accordance with applicable legislation in equal instalments within 30 days following the month in which they fall due.

R-23 Unionized Employees Pension Plan (*cont'd*)

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4.03 Contributions Under Defined Contribution Provision During Approved Leaves of Absence**(a) Member Contributions**

- (i) A Member who participates in the Defined Contribution Provision and who is on an Approved Leave of Absence may continue to contribute to the Member's Account pursuant to Section 4.01(b). Alternatively, the Member may contribute a lesser amount or may cease contributing to the Member's Account. Prior to commencing the Approved Leave of Absence, the Member shall inform the Employer in writing of the amount of the Member's contributions. The contributions shall be made in equal instalments, by a payroll deduction or, if such method of payment is not possible, by delivering to the Employer post-dated cheques in respect of each month of the Approved Leave of Absence.
- (ii) In lieu of contributing to the Member's Account during an Approved Leave of Absence, the member may instead elect to contribute to the Member's Account immediately upon returning to work from an

Section 6 – Retirement Benefits

6.01 Normal and Special Postponed Retirement Benefits**(a) Members Who Do Not Participate in the Defined Contribution Provision**

A Member who does not participate in the Defined Contribution Provision and who retires on or after March 1, 1999, but prior to March 1, 2004 on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, calculated as the sum of (i), (ii), (iii), (iv) and (v) below. If the Member retires on or after March 1, 2004, (iv) below shall not apply.

- (i) \$33.00 multiplied by the Member's Credited Service not in excess of 15 years
- (ii) \$34.00 multiplied by the Member's Credited Service in excess of 15 years but not in excess of 30 years
- (iii) \$35.00 multiplied by the Member's Credited Service in excess of 30 years
- (iv) \$4.50 multiplied by the Member's Credited Service not in excess of 30 years
- (v) \$50.00.

Members who retire prior to March 1, 1999 will receive a pension benefit in accordance with the Plan in effect on the Member's Normal Retirement Date, Early Retirement Date, Special Early Retirement Date, or Special Postponed Retirement Date, whichever is applicable.

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who retires on or after March 1, 1999 on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a benefit pursuant to (i) and (ii) below:

(i) Benefit in Respect of Defined Benefit Provision

A benefit payable in equal monthly instalments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, calculated as the sum of (A), (B), (C) and (D) below:

R-23 Unionized Employees Pension Plan (*cont'd*)

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- (A) \$31.00 multiplied by the Member's Credited Service not in excess of 15 years
- (B) \$32.00 multiplied by the Member's Credited Service in excess of 15 years but not in excess of 30 years
- (C) \$34.00 multiplied by the Member's Credited Service in excess of 30 years
- (D) \$50.00

Members who originally elect not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03, subsequently decide to change their election shall have their benefit in respect of Credited Service earned prior to the date of the revised election calculated in accordance with Section 6.01(a).

Members who retire prior to March 1, 1999 will receive a pension benefit in accordance with the Plan in effect on the Member's Normal Retirement Date, Early Retirement Date, Special Early Retirement Date, or Special Postponed Retirement Date, whichever is applicable.

(ii) *Benefit in Respect of Defined Contribution Provision*

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

6.02 Early Retirement Benefits

(a) Members Who Do Not Participate in the Defined Contribution Provision

A Member who does not participate in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on an Early Retirement Date and continuing on the first day of each month thereafter, calculated pursuant to one of the following:

- (i) If the Member has completed at least 30 years of Continuous Service, a pension benefit equal to the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, without reduction on account of early commencement;
- (ii) If the Member has attained age 55 and completed at least 15 years of Continuous Service, a pension benefit equal to the Actuarial Equivalent of the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, provided that the amount of the reduction to the monthly benefit shall not be less than

R-23 Unionized Employees Pension Plan (*cont'd*)

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required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b);

- (iii) If the Member has attained age 62 and completed at least 10 years of Continuous Service and obtains the written consent of the Employer, a pension benefit equal to the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, without reduction on account of early commencement; or
- (iv) If the Member has attained age 62 and completed at least 10 years of Continuous Service and does not obtain the written consent of the Employer, a pension benefit equal to the Actuarial Equivalent of the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, provided that the amount of reduction to the monthly benefit shall not be less than required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date shall be entitled to receive a monthly pension benefit pursuant to (i) and (ii) below:

- (iii) a life insurance company licensed to transact business in Canada for the purpose of purchasing a deferred life annuity.

A transfer pursuant to (i), (ii) or (iii) above shall be made on a locked-in basis and the transferred amount shall be used to provide an annuity which shall not commence payment before the earliest date that the Member would have been entitled to receive a benefit pursuant to the Plan or, if transferred to another pension plan, under that plan.

In the event that a transfer is elected pursuant to this Section 6.04(c), the Member shall have no further rights under the Plan.

(d) Benefit on Termination of Employment Prior to Deferred Vested Termination Date

A Member who terminates employment with the Employer prior to the completion of two years of Continuous Service shall be entitled to a benefit equal to the amount in the Member's Account, which may be transferred out of the Plan pursuant to (c) above.

6.05 Additional Voluntary Contributions

In addition to the benefits pursuant to Sections 6.01, 6.02, 6.03 and 6.04, a Member who participates in the Defined Contribution Provision and who has made additional

R-23 Unionized Employees Pension Plan (*cont'd*)

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voluntary contributions pursuant to Section 4.01(c) may be paid such contributions, plus Credited Interest thereon, in a lump sum payment at any time pursuant to the instructions of the Member or, in the alternative, the Member may elect to transfer such contributions plus Credited Interest thereon out of the Plan, pursuant to Section 6.04(c), however, such transfer shall not be on a locked-in basis.

6.06 Temporary Supplementary Benefit**(a) Members Who Do Not Participate in the Defined Contribution Provision**

A Member who does not participate in the Defined Contribution Provision and who, on or after March 1, 1999, qualifies for a pension benefit commencing on an Early Retirement Date or a Special Early Retirement Date shall be entitled to receive a temporary supplementary benefit payable in equal monthly instalments commencing on the Member's Early Retirement Date or Special Early Retirement Date, as the case may be, and continuing thereafter on the first day of each month up to the earliest of the month in which the Member attains age 65, qualifies for unreduced statutory pension benefits (other than workers' compensation benefits) or dies, equal to \$27.00 multiplied by the Member's Credited Service to a maximum of 40 years. Such Member who retires prior to March 1, 2004 shall, in addition to the above benefit, be entitled to receive a temporary supplementary benefit equal to \$4.50 multiplied by the Member's Credited Service to maximum of 40 years, payable at the same time and in the same manner as described above. However, if the Member retires on an Early Retirement Date and receives an annual pension pursuant to Sections 6.02(a)(ii) or 6.02(a)(iv), the amount of the temporary supplementary benefit shall be reduced by the same factors used to reduce the monthly pension payable under said provisions, whichever is applicable to the Member.

Members who retire prior to March 1, 1999 will receive a temporary supplementary benefit in accordance with the Plan in effect on the Member's Early Retirement Date or Special Early Retirement Date, whichever is applicable.

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who, on or after March 1, 1999, qualifies for a pension benefit commencing on an Early Retirement Date or a Special Early Retirement Date shall be entitled to receive a temporary supplementary benefit payable at the same time and in the same manner pursuant to (a) above, equal to \$24.00 multiplied by the Member's Credited Service to a maximum of 40 years, subject to the reduction factors referred to in (a) above.

Members who originally elect not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03, subsequently decide to change their election shall have their temporary supplementary benefit in respect

R-23 Unionized Employees Pension Plan (*cont'd*)

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of Credited Service earned prior to the date of the revised election calculated in accordance with Section 6.06(a).

Members who retire prior to March 1, 1999 will receive a temporary supplementary benefit in accordance with the Plan in effect on the Member's Early Retirement Date or Special Early Retirement Date, whichever is applicable.

6.07 Retirement Benefits for Part-Time Employees

The retirement benefits pursuant to the Defined Benefit Provision calculated pursuant to this section in respect of a Member who is a Part-Time Employee shall be reduced in an equitable manner to an amount related to the Hours of Service of the Member in comparison to the Hours of Service of other Members who are employed as Full-Time Employees in a similar capacity.

6.08 Return To Work After Retirement, Termination of Employment or Break In Continuous Service

(a) Re-Employment After Retirement

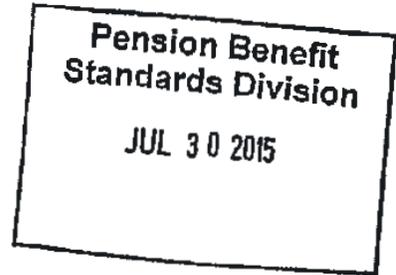
A Member who has retired and is receiving pension benefit payments pursuant to the Plan shall, upon re-employment with the Employer as an Employee, have such payments suspended. The Member shall retain his or her frozen suspended pension benefit which shall be added to any subsequent pension benefit to which the Member may become entitled in respect of service subsequent to the Member's date of re-employment.

(b) Re-Employment After Termination of Employment But Prior to Retirement

- (i) A Member who has terminated employment with the Employer and is entitled to a deferred vested pension pursuant to the Plan and who is re-employed with the Employer as an Employee prior to commencing receipt of pension benefit payments shall retain his or her frozen deferred vested pension benefit, which shall be added to any subsequent pension benefit to which the Member may become entitled in respect of service subsequent to the Member's date of re-employment.
- (ii) A Member who received a lump sum payment pursuant to Section 12.02(b) and is re-employed by the Employer as an Employee prior to commencing receipt of pension benefit payments, shall have his or her frozen accrued pension benefit with respect to which the Member received such lump sum payment used in calculating any subsequent pension benefit to which the

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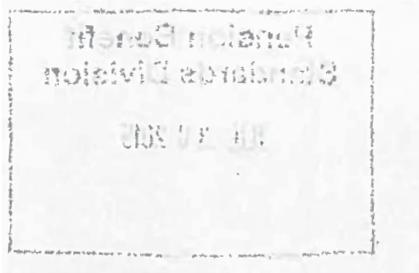
AMENDMENT No. 2



Effective June 27, 2007:

- 1. The name of the Plan is amended to be the following:**
Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company,
Managing Agent
- 2. Section 2.18 is deleted and replaced with the following:**
“Employer” means Wabush Mines, Cliffs Mining Company, Managing Agent.

R-23 Unionized Employees Pension Plan (cont'd)



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AMENDMENT No. 3

Pension Benefit Standards Division
JUL 30 2015

Effective March 1, 2004:

1. **Section 1.04 is deleted in its entirety and replaced with the following:**

- 1.04 **Benefits Prior to March 1, 2004**

- Benefits in respect of a Member whose employment with the Employer ceased prior to March 1, 2004 shall be determined in accordance with the terms of the Plan applicable when the Member ceased employment except as required by the Income Tax Act or the Pension Benefits Act or a may be specifically provided herein.

2. **A new Section 1.05 is added to Section 1 as follows:**

- 1.05 **Transfer from Defined Benefit Provision to Defined Contribution Provision**

- For Members who are currently in active employment status with the Employer on October 8, 2004 and who participate in the Defined Benefit Provision, there will be a one-time-only opportunity to elect to transfer from the Defined Benefit Provision to the Defined Contribution Provision. Members must make this election on or before November 24, 2006. The change will be effective January 1, 2006; therefore benefits in respect of Credited Service earned prior to January 1, 2006 shall be determined according to the terms of the Plan for Members who do not participate in the Defined Contribution Provision. The change is subject to the following:

- (a) A Member who makes an election pursuant to this Section may elect to increase the amount of his contributions pursuant to Section 4.01(b) from November 27, 2006 to December 31, 2006 in an amount equal to part or all of the contributions the Member would have made pursuant to the Defined Contribution Provision on and after March 1, 2004 and on or before November 26, 2006 and in such case, the Employer's contributions made in respect of such Member pursuant to Section 4.02(b) shall be increased proportionately. All contributions made pursuant to this Section are subject to Section 4.06.
 - (b) If a Member has 20 or more years of Continuous Service as of March 1, 2004 and makes an election pursuant to this Section, the Employer shall make a special contribution, subject to Section 4.06, of \$20,000 to the Member's Account.
 - (c) If a Member has 10 to 19 years of Continuous Service as of March 1, 2004 and makes an election pursuant to this Section, the Employer shall make a special contribution, subject to Section 4.06, of \$10,000 to the Member's Account.
 - (d) If a Member has less than 10 years of Continuous Service as of March 1, 2004 and makes an election pursuant to this Section, the Employer shall make a special contribution, subject to Section 4.06, of \$7,200 to the Member's Account.

R-23 Unionized Employees Pension Plan (cont'd)

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Pension Benefits
 Standards Division
 3.
 2.01 Account

3. Section 2.01 is deleted in its entirety and replaced with the following:

2.01 Account

“Account” means, in respect of a Member, the account established to record the Member’s contributions pursuant to Sections 1.05, 4.01(b), 4.03(a) and 4.05 and the Employer contributions pursuant to Sections 1.05, 4.02(b), 4.03(b), 4.04 and 4.05 plus any Credited Interest thereon.

4. Section 4.01(b) is deleted in its entirety and replaced with the following:

(b) Defined Contribution Provision

- (i) A Member who participates in the Defined Contribution Provision of the Plan shall contribute to the Member’s Account, in equal instalments, by payroll deduction, an amount equal to \$2,500 per calendar year.
- (ii) Members who originally elected not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03 or Section 1.05, subsequently decide to change their election shall not contribute for the period prior to the date of the revised election.
- (iii) A Member who participates in the Defined Contribution Provision and who was on strike immediately prior to October 8, 2004, may elect to make additional contributions equal to the amount which the Member would have made had he been actively at work, provided the contribution is made on or before December 31, 2004.

5. Section 4.01(c) is deleted in its entirety and replaced with the following:

- (i) A Member who participates in the Defined Contribution Provision may, in addition to the contributions pursuant to (b) above, make additional voluntary contributions to the Member’s Account, by payroll deduction, until February 29, 2004, up to such amounts as are permissible pursuant to the *Income Tax Act* as deductible contributions to a registered pension plan. No further additional voluntary contributions shall be permitted on or after March 1, 2004.
- (ii) Members who originally elected not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03 or Section 1.05, subsequently decide to change their election may not contribute for the period prior to the date of the revised election.

6. Section 4.02(b) is deleted in its entirety and replaced with the following:

(b) Defined Contribution Provision

- (i) The Employer shall contribute in equal monthly instalments to the Pension Fund in respect of the Defined Contribution Provision each calendar year, an amount in

R-23 Unionized Employees Pension Plan (cont'd)

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respect of each Member who participates in the Defined Contribution Provision determined according to the Member's Continuous Service as follows:

Member's Continuous Service	Annual Employer Contribution
1 to 9 years	\$1,500
10 to 19 years	\$2,500
20 to 29 years	\$3,500
30 to 31 years	\$4,500
32 or more years	\$5,500

- (ii) In the event that a Member attains 10 years, 20 years, 30 years or 32 years of Continuous Service, as applicable, part way through a calendar year, the Employer contribution shall increase for the remainder of the calendar year, in accordance with the above table, with effect from the beginning of the pay period immediately following the pay period in which the 10, 20, 30 or 32 year anniversary is attained.
- (iii) For Members who originally elected not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03 or Section 1.05, subsequently decide to change their election, the Employer shall not contribute for the period prior to the date of the revised election.
- (iv) In the event that a Member makes a contribution pursuant to Section 4.01(b)(iii), the Employer shall make corresponding Employer contributions based on the table above.

7. Section 4.06 is deleted in its entirety and replaced with the following:

4.06 Maximum Contributions Under Defined Contribution Provision

The total of the contributions by a Member to the Pension Fund pursuant to Sections 1.05, 4.01, 4.03 and 4.05 above and the Employer's contributions in respect of the Member pursuant to Sections 1.05, 4.02(b), 4.03 and 4.05 above for a calendar year shall not exceed the money purchase limit for the calendar year as prescribed under the *Income Tax Act*.

8. Section 6.01(a) is deleted in its entirety and replaced with the following:

(a) Members Who Do Not Participate in the Defined Contribution Provision

A Member who does not participate in the Defined Contribution Provision and who retires on or after March 1, 2004, but prior to March 1, 2009 on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the Normal

R-23 Unionized Employees Pension Plan (cont'd)

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Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, calculated as the sum of (i), (ii), (iii), (iv) and (v) below. If the Member is not currently in active employment status with the Employer on October 8, 2004, or if the Member retires from the Employer while not currently in active employment status, or if the Member retires on or after March 1, 2009, (iv) below shall not apply. Notwithstanding the restrictions described in the preceding sentence, if the Member is Disabled or on an Approved Leave of Absence on October 8, 2004 and subsequently returns to active employment status with the Employer and retires from active employment status with the Employer prior to March 1, 2009, (iv) below shall apply.

- (i) \$33.00 multiplied by the Member's Credited Service not in excess of 15 years;
- (ii) \$34.00 multiplied by the Member's Credited Service in excess of 15 years but not in excess of 30 years;
- (iii) \$35.00 multiplied by the Member's Credited Service in excess of 30 years;
- (iv) \$4.50 multiplied by the Member's Credited Service not in excess of 30 years;
- (v) \$50.00.

Members who retire prior to March 1, 2004 will receive a pension benefit in accordance with the Plan in effect on the Member's Normal Retirement Date, Early Retirement Date, Special Early Retirement Date, or Special Postponed Retirement Date, whichever is applicable.

Notwithstanding the foregoing, if a Member:

- (A) is currently in active employment status with the Employer on October 8, 2004, or is Disabled or on an Approved Leave of Absence on October 8, 2004 and subsequently returns to active employment status with the Employer; and
- (B) elects to retire from active employment status with the Employer on or after March 1, 2004 but on or before December 31, 2008; and
- (C) has 30 or more years of Credited Service at his retirement date; and
- (D) is eligible to receive the temporary supplemental benefit payable under Section 6.06;

the Member shall receive, subject to Section 9.08, a minimum retirement income up to the month in which the Member attains age 65, payable in the normal form as set out in Section 7.01, as set out below:

Retirement Date	Minimum Monthly Retirement Income
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R-23 Unionized Employees Pension Plan (cont'd)

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On or after March 1, 2004, but on or before December 31, 2004	\$2,135 per month
January 1, 2005 to December 31, 2005	\$2,200 per month
January 1, 2006 to December 31, 2006	\$2,265 per month
January 1, 2007 to December 31, 2007	\$2,330 per month
January 1, 2008 to December 31, 2008	\$2,450 per month

The minimum monthly retirement income set out in the table above shall include all amounts payable under the Plan.

9. Section 6.01(b)(ii) is deleted in its entirety and replaced with the following:

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

Notwithstanding the foregoing, if a Member:

- (A) is currently in active employment status with the Employer on October 8, 2004, or is Disabled or on an Approved Leave of Absence on October 8, 2004 and subsequently returns to active employment status with the Employer; and
- (B) elects to retire from active employment status with the Employer on or after March 1, 2004 but on or before December 31, 2008; and
- (C) has 30 or more years of Credited Service at his retirement date;

the amount of pension which could be purchased with the Employer-paid portion of his Account shall, subject to Section 9.08, be at least \$200 per month, payable in accordance with the normal form set out in Section 7.01.

10. A new paragraph (iii) is added to Section 6.01(b) as follows:

(iii) Retirements on and after March 1, 2004 but on or before December 31, 2008

Notwithstanding the foregoing, if a Member:

- (A) is currently in active employment status with the Employer on October 8, 2004, or is Disabled or on an Approved Leave of Absence on October 8, 2004 and subsequently returns to active employment status with the Employer; and
- (B) elects to retire from active employment status with the Employer on or after March 1, 2004 but on or before December 31, 2008; and

R-23 Unionized Employees Pension Plan (cont'd)

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- (C) has 30 or more years of Credited Service at his retirement date; and
- (D) is eligible to receive the temporary supplemental benefit payable under Section 6.06; and
- (E) has participated in the Defined Contribution Provision since October 1, 1996; and
- (F) has, on a date at least two years before his retirement and after October 8, 2004, at least 50% of his Account invested in the bond fund, treasury bill fund and/or guaranteed investment certificate fund; and
- (G) has, following the date described in (F) above, instructed the Funding Agency to invest at least 50% of subsequent contributions to his Account in each payroll period in one or more of the bond fund, treasury bill fund and/or guaranteed investment certificate fund; and
- (H) has not, following the date described in (F) above, given the Funding Agency instructions to make changes to his investments that would reduce the percentage of his Account invested in the bond fund, treasury bill fund and guaranteed investment certificate fund in aggregate to less than 50% of his total Account balance;

the Member shall receive, subject to Section 9.08, a minimum retirement income up to the month in which the Member attains age 65, payable in the normal form as set out in Section 7.01, from all Employer-paid retirement provisions in the Plan, as set out below:

Retirement Date	Minimum Monthly Retirement Income
On or after March 1, 2004, but on or before December 31, 2004	\$2,135 per month
January 1, 2005 to December 31, 2005	\$2,200 per month
January 1, 2006 to December 31, 2006	\$2,265 per month
January 1, 2007 to December 31, 2007	\$2,330 per month
January 1, 2008 to December 31, 2008	\$2,450 per month

The minimum monthly retirement income set out in the table above shall include all Employer-paid amounts payable under the Plan. Any portion of any Member's Account which is derived from contributions made by the Member plus accrued investment earnings thereon shall not count towards the minimum pension set out above.

11. Section 6.02(b)(i) is deleted in its entirety and replaced with the following:

R-23 Unionized Employees Pension Plan (*cont'd*)

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(i) Benefit in Respect of Defined Benefit Provision

A benefit payable in equal monthly instalments commencing on an Early Retirement Date and continuing on the first day of each month thereafter, equal to the pension described in (a) above that would be applicable to the Member if the references therein to "Section 6.01(a)" were changed to "Sections 6.01(b)(i) and 6.01(b)(iii)".

12. Section 6.02(b)(ii) is deleted in its entirety and replaced with the following:

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

Notwithstanding the foregoing, if a Member:

- (A) is currently in active employment status with the Employer on October 8, 2004, or is Disabled or on an Approved Leave of Absence on October 8, 2004 and subsequently returns to active employment status with the Employer; and
- (B) elects to retire from active employment status with the Employer on or after March 1, 2004 but on or before December 31, 2008; and
- (C) has 30 or more years of Credited Service at his retirement date;

the amount of pension which could be purchased with the Employer-paid portion of his Account shall, subject to Section 9.08, be at least \$200 per month, payable in accordance with the normal form set out in Section 7.01.

13. A new Section 6.08(d) is added to Section 6.08 as follows:

(d) Special Provision for Active Members on March 1, 2004

Notwithstanding the foregoing, a Member who is currently in active employment status with the Employer on March 1, 2004 shall be entitled to include any service which had been recorded as Continuous Service prior to his termination of employment with the Employer with his Continuous Service following his subsequent re-employment with the Employer, for the purpose of determining the Member's eligibility for lifetime pension benefits under the Defined Benefit Provision of the Plan.

**UNION DB PLAN AMENDMENT
NO. 3**

R-23 Unionized Employees Pension Plan (cont'd)

**CERTIFICATE OF ASSISTANT SECRETARY
OF
CLIFFS MINING COMPANY, MANAGER
OF
WABUSH MINES JOINT VENTURE**

I, _____, Assistant Secretary of Cliffs Mining Company, a Delaware corporation (the "Company"), which is the Managing Agent of Wabush Mines, a Joint Venture, comprised of Stelco Inc., Dofasco Inc., and Wabush Iron Co. Limited, the Joint Venturers, do hereby certify that the attached Third Amendment to the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, as Amended and Restated Effective as of March 1, 1996 and executed on _____, is a true and correct copy.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company, as of the _____ day of _____, 2008.

Assistant Secretary

R-23 Unionized Employees Pension Plan (*cont'd*)

**Third Amendment to the Pension Plan for Bargaining Unit Employees of
Wabush Mines, Cliffs Mining Company, Managing Agent,**

as Amended and Restated Effective as of March 1, 1996

Amendment No. 3

WHEREAS Wabush Mines, Cliffs Mining Company, Managing Agent, maintains the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (the "Plan"); and

WHEREAS pursuant to the Wabush Mines Management Agreement, dated January 1, 1967 between Wabush Iron Co. Limited, Stelco Inc., Dofasco Inc. and Cliffs Mining Company (the "Management Agreement"), Cliffs Mining Company is delegated authority as Managing Agent to act on behalf of the Employer; and

WHEREAS Section 13.02 of the Plan permits the Employer to amend the Plan; and

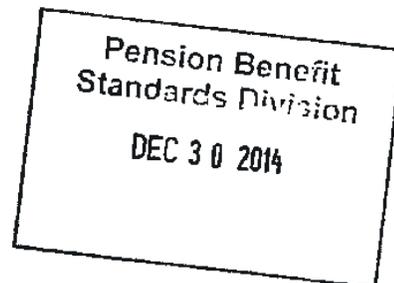
WHEREAS it is necessary to amend the Plan with regard to the changes in benefit provisions set out in the October 8, 2004 Final Monetary Settlement Offer to the United Steelworkers of America, Locals 6285, 6254 and 6680 as confirmed in subsequent arbitration proceedings and subsequent discussions with the Union;

NOW THEREFORE IT IS HEREBY RESOLVED:

1. The Plan is hereby amended as set forth in Exhibit "A" annexed hereto, with effect from the dates shown therein; and
2. Cliffs Mining Company, Managing Agent, pursuant to the Management Agreement, is authorized and directed to sign all documents and to perform all acts necessary or appropriate to give effect to the foregoing resolution and to maintain registration of the Plan with the regulatory authorities having jurisdiction over the Plan and to implement these resolutions, including any additional minor amendments to be made on the advice of counsel or as may be required to maintain such registration.

IN WITNESS WHEREOF Cliffs Mining Company, as Managing Agent, authorizes the foregoing Resolutions pursuant to the power granted to it.

Cliffs Mining Company,
Managing Agent of Wabush Mines



Pension Benefit
Standards Division

DEC 30 2014

Exhibit "A"

**Pension Plan for Bargaining Unit Employees of Wabush Mines,
Cliffs Mining Company, Managing Agent**

AMENDMENT No. 3

Effective March 1, 2004:

1. Section 1.04 is deleted in its entirety and replaced with the following:

1.04 Benefits Prior to March 1, 2004

Benefits in respect of a Member whose employment with the Employer ceased prior to March 1, 2004 shall be determined in accordance with the terms of the Plan applicable when the Member ceased employment except as required by the Income Tax Act or the Pension Benefits Act or a may be specifically provided herein.

2. A new Section 1.05 is added to Section 1 as follows:

1.05 Transfer from Defined Benefit Provision to Defined Contribution Provision

For Members who are currently in active employment status with the Employer on October 8, 2004 and who participate in the Defined Benefit Provision, there will be a one-time-only opportunity to elect to transfer from the Defined Benefit Provision to the Defined Contribution Provision. Members must make this election on or before November 24, 2006. The change will be effective January 1, 2006; therefore benefits in respect of Credited Service earned prior to January 1, 2006 shall be determined according to the terms of the Plan for Members who do not participate in the Defined Contribution Provision. The change is subject to the following:

- (a) A Member who makes an election pursuant to this Section may elect to increase the amount of his contributions pursuant to Section 4.01(b) from November 27, 2006 to December 31, 2006 in an amount equal to part or all of the contributions the Member would have made pursuant to the Defined Contribution Provision on and after March 1, 2004 and on or before November 26, 2006 and in such case, the Employer's contributions made in respect of such Member pursuant to Section 4.02(b) shall be increased proportionately. All contributions made pursuant to this Section are subject to Section 4.06.
- (b) If a Member has 20 or more years of Continuous Service as of March 1, 2004 and makes an election pursuant to this Section, the Employer shall make a special contribution, subject to Section 4.06, of \$20,000 to the Member's Account.

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- (c) If a Member has 10 to 19 years of Continuous Service as of March 1, 2004 and makes an election pursuant to this Section, the Employer shall make a special contribution, subject to Section 4.06, of \$10,000 to the Member's Account.
- (d) If a Member has less than 10 years of Continuous Service as of March 1, 2004 and makes an election pursuant to this Section, the Employer shall make a special contribution, subject to Section 4.06, of \$7,200 to the Member's Account.

3. Section 2.01 is deleted in its entirety and replaced with the following:

2.01 Account

"Account" means, in respect of a Member, the account established to record the Member's contributions pursuant to Sections 1.05, 4.01(b), 4.03(a) and 4.05 and the Employer contributions pursuant to Sections 1.05, 4.02(b), 4.03(b), 4.04 and 4.05 plus any Credited Interest thereon.

4. Section 4.01(b) is deleted in its entirety and replaced with the following:

(b) Defined Contribution Provision

- (i) A Member who participates in the Defined Contribution Provision of the Plan shall contribute to the Member's Account, in equal instalments, by payroll deduction, an amount equal to \$2,500 per calendar year.
- (ii) Members who originally elected not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03 or Section 1.05, subsequently decide to change their election shall not contribute for the period prior to the date of the revised election.
- (iii) A Member who participates in the Defined Contribution Provision and who was on strike immediately prior to October 8, 2004, may elect to make additional contributions equal to the amount which the Member would have made had he been actively at work, provided the contribution is made on or before December 31, 2004.

5. Section 4.01(c) is deleted in its entirety and replaced with the following:

- (i) A Member who participates in the Defined Contribution Provision may, in addition to the contributions pursuant to (b) above, make additional voluntary contributions to the Member's Account, by payroll deduction, until February 29, 2004, up to such amounts as are permissible pursuant to the *Income Tax Act* as deductible contributions to a registered pension plan. No further additional voluntary contributions shall be permitted on or after March 1, 2004.
- (ii) Members who originally elected not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03 or Section 1.05, subsequently decide to change their election may not contribute for the period prior to the date of the revised election.

6. Section 4.02(b) is deleted in its entirety and replaced with the following:

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(b) Defined Contribution Provision

- (i) The Employer shall contribute in equal monthly instalments to the Pension Fund in respect of the Defined Contribution Provision each calendar year, an amount in respect of each Member who participates in the Defined Contribution Provision determined according to the Member's Continuous Service as follows:

Member's Continuous Service	Annual Employer Contribution
1 to 9 years	\$1,500
10 to 19 years	\$2,500
20 to 29 years	\$3,500
30 to 31 years	\$4,500
32 or more years	\$5,500

- (ii) In the event that a Member attains 10 years, 20 years, 30 years or 32 years of Continuous Service, as applicable, part way through a calendar year, the Employer contribution shall increase for the remainder of the calendar year, in accordance with the above table, with effect from the beginning of the pay period immediately following the pay period in which the 10, 20, 30 or 32 year anniversary is attained.
- (iii) For Members who originally elected not to participate in the Defined Contribution Provision and who, in accordance with Section 1.03 or Section 1.05, subsequently decide to change their election, the Employer shall not contribute for the period prior to the date of the revised election.
- (iv) In the event that a Member makes a contribution pursuant to Section 4.01(b)(iii), the Employer shall make corresponding Employer contributions based on the table above.

7. Section 4.06 is deleted in its entirety and replaced with the following:

4.06 Maximum Contributions Under Defined Contribution Provision

The total of the contributions by a Member to the Pension Fund pursuant to Sections 1.05, 4.01, 4.03 and 4.05 above and the Employer's contributions in respect of the Member pursuant to Sections 1.05, 4.02(b), 4.03 and 4.05 above for a calendar year shall not exceed the money purchase limit for the calendar year as prescribed under the *Income Tax Act*.

8. Section 6.01(a) is deleted in its entirety and replaced with the following:

(a) Members Who Do Not Participate in the Defined Contribution Provision

R-23 Unionized Employees Pension Plan (*cont'd*)

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A Member who does not participate in the Defined Contribution Provision and who retires on or after March 1, 2004, but prior to March 1, 2009 on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, calculated as the sum of (i), (ii), (iii), (iv) and (v) below. If the Member is not currently in active employment status with the Employer on October 8, 2004, or if the Member retires from the Employer while not currently in active employment status, or if the Member retires on or after March 1, 2009, (iv) below shall not apply. Notwithstanding the restrictions described in the preceding sentence, if the Member is Disabled or on an Approved Leave of Absence on October 8, 2004 and subsequently returns to active employment status with the Employer and retires from active employment status with the Employer prior to March 1, 2009, (iv) below shall apply.

- (i) \$33.00 multiplied by the Member's Credited Service not in excess of 15 years;
- (ii) \$34.00 multiplied by the Member's Credited Service in excess of 15 years but not in excess of 30 years;
- (iii) \$35.00 multiplied by the Member's Credited Service in excess of 30 years;
- (iv) \$4.50 multiplied by the Member's Credited Service not in excess of 30 years;
- (v) \$50.00.

Members who retire prior to March 1, 2004 will receive a pension benefit in accordance with the Plan in effect on the Member's Normal Retirement Date, Early Retirement Date, Special Early Retirement Date, or Special Postponed Retirement Date, whichever is applicable.

Notwithstanding the foregoing, if a Member:

- (A) is currently in active employment status with the Employer on October 8, 2004, or is Disabled or on an Approved Leave of Absence on October 8, 2004 and subsequently returns to active employment status with the Employer; and
- (B) elects to retire from active employment status with the Employer on or after March 1, 2004 but on or before December 31, 2008; and
- (C) has 30 or more years of Credited Service at his retirement date; and
- (D) is eligible to receive the temporary supplemental benefit payable under Section 6.06;

the Member shall receive, subject to Section 9.08, a minimum retirement income up to the month in which the Member attains age 65, payable in the normal form as set out in Section 7.01, as set out below:

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Retirement Date	Minimum Monthly Retirement Income
On or after March 1, 2004, but on or before December 31, 2004	\$2,135 per month
January 1, 2005 to December 31, 2005	\$2,200 per month
January 1, 2006 to December 31, 2006	\$2,265 per month
January 1, 2007 to December 31, 2007	\$2,330 per month
January 1, 2008 to December 31, 2008	\$2,450 per month

The minimum monthly retirement income set out in the table above shall include all amounts payable under the Plan.

9. Section 6.01(b)(ii) is deleted in its entirety and replaced with the following:

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

Notwithstanding the foregoing, if a Member:

- (A) is currently in active employment status with the Employer on October 8, 2004, or is Disabled or on an Approved Leave of Absence on October 8, 2004 and subsequently returns to active employment status with the Employer; and
- (B) elects to retire from active employment status with the Employer on or after March 1, 2004 but on or before December 31, 2008; and
- (C) has 30 or more years of Credited Service at his retirement date;

the amount of pension which could be purchased with the Employer-paid portion of his Account shall, subject to Section 9.08, be at least \$200 per month, payable in accordance with the normal form set out in Section 7.01.

10. A new paragraph (iii) is added to Section 6.01(b) as follows:

(iii) Retirements on and after March 1, 2004 but on or before December 31, 2008

Notwithstanding the foregoing, if a Member:

- (A) is currently in active employment status with the Employer on October 8, 2004, or is Disabled or on an Approved Leave of Absence on October 8, 2004 and subsequently returns to active employment status with the Employer; and

R-23 Unionized Employees Pension Plan (cont'd)

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- (B) elects to retire from active employment status with the Employer on or after March 1, 2004 but on or before December 31, 2008; and
- (C) has 30 or more years of Credited Service at his retirement date; and
- (D) is eligible to receive the temporary supplemental benefit payable under Section 6.06; and
- (E) has participated in the Defined Contribution Provision since October 1, 1996; and
- (F) has, on a date at least two years before his retirement and after October 8, 2004, at least 50% of his Account invested in the bond fund, treasury bill fund and/or guaranteed investment certificate fund; and
- (G) has, following the date described in (F) above, instructed the Funding Agency to invest at least 50% of subsequent contributions to his Account in each payroll period in one or more of the bond fund, treasury bill fund and/or guaranteed investment certificate fund; and
- (H) has not, following the date described in (F) above, given the Funding Agency instructions to make changes to his investments that would reduce the percentage of his Account invested in the bond fund, treasury bill fund and guaranteed investment certificate fund in aggregate to less than 50% of his total Account balance;

the Member shall receive, subject to Section 9.08, a minimum retirement income up to the month in which the Member attains age 65, payable in the normal form as set out in Section 7.01, from all Employer-paid retirement provisions in the Plan, as set out below:

Retirement Date	Minimum Monthly Retirement Income
On or after March 1, 2004, but on or before December 31, 2004	\$2,135 per month
January 1, 2005 to December 31, 2005	\$2,200 per month
January 1, 2006 to December 31, 2006	\$2,265 per month
January 1, 2007 to December 31, 2007	\$2,330 per month
January 1, 2008 to December 31, 2008	\$2,450 per month

The minimum monthly retirement income set out in the table above shall include all Employer-paid amounts payable under the Plan. Any portion of any Member's Account which is derived from contributions made by the Member plus accrued investment earnings thereon shall not count towards the minimum pension set out above.

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11. Section 6.02(b)(i) is deleted in its entirety and replaced with the following:**(i) Benefit in Respect of Defined Benefit Provision**

A benefit payable in equal monthly instalments commencing on an Early Retirement Date and continuing on the first day of each month thereafter, equal to the pension described in (a) above that would be applicable to the Member if the references therein to "Section 6.01(a)" were changed to "Sections 6.01(b)(i) and 6.01(b)(iii)".

12. Section 6.02(b)(ii) is deleted in its entirety and replaced with the following:**(ii) Benefit in Respect of Defined Contribution Provision**

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

Notwithstanding the foregoing, if a Member:

- (A) is currently in active employment status with the Employer on October 8, 2004, or is Disabled or on an Approved Leave of Absence on October 8, 2004 and subsequently returns to active employment status with the Employer; and
- (B) elects to retire from active employment status with the Employer on or after March 1, 2004 but on or before December 31, 2008; and
- (C) has 30 or more years of Credited Service at his retirement date;

the amount of pension which could be purchased with the Employer-paid portion of his Account shall, subject to Section 9.08, be at least \$200 per month, payable in accordance with the normal form set out in Section 7.01.

13. A new Section 6.08(d) is added to Section 6.08 as follows:**(d) Special Provision for Active Members on March 1, 2004**

Notwithstanding the foregoing, a Member who is currently in active employment status with the Employer on March 1, 2004 shall be entitled to include any service which had been recorded as Continuous Service prior to his termination of employment with the Employer with his Continuous Service following his subsequent re-employment with the Employer, for the purpose of determining the Member's eligibility for lifetime pension benefits under the Defined Benefit Provision of the Plan.

**UNION DB PLAN AMENDMENT
NO. 4**

R-23 Unionized Employees Pension Plan (cont'd)

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Amendment No. 4

Pension Benefit
Standards Division

JUL 30 2015

1. Effective November 26, 2010, subparagraph 10.04(a)(iii) shall be deleted in its entirety and replaced with the following:
 - “(iii) If a Member fails to submit an investment option form, the amount in the Member’s Account shall be invested in a target retirement date fund offered by the Employer and the Funding Agency pursuant to the Funding Agreement, with such target retirement date fund having a target date which is closest to the earlier of the date on which the Member will first attain 30 years of Continuous Service or age 65.”

**UNION DB PLAN AMENDMENT
NO. 5**

R-23 Unionized Employees Pension Plan (*cont'd*)

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Amendment No. 5

1. Effective March 1, 2010, a new Section 1.06 shall be added to Section 1 as follows:

" 1.06 Benefits Prior to March 1, 2010

Benefits in respect of a Member whose employment with the Employer ceased prior to March 1, 2010 shall be determined in accordance with the terms of the Plan as applicable when the Member ceased employment except as required by the Income Tax Act or the Pension Benefits Act or as may be specifically provided herein."

2. Effective March 1, 2010, Section 2.36 shall be deleted in its entirety and replaced with the following:

"2.36 Spouse

"Spouse" means a person who:

- (a) is married to the Member or former Member;
- (b) is married to the Member or former Member by a marriage that is voidable and has not been voided by a judgment of nullity;
- (c) has gone through a form of a marriage with the Member or former Member, in good faith, that is void and is cohabiting or has cohabited with the member or former member within the preceding year;
- (d) in relation to a Member or former Member who has a Spouse, as described in (a), (b) or (c) above, means a person who is not the Spouse of the Member or former Member, who has cohabited continuously with the Member or former Member in a conjugal relationship for not less than three years; or
- (e) in relation to a Member or former Member who does not have a Spouse as described in (a), (b) or (c) above, means a person who has cohabited continuously with the Member or former Member in a conjugal relationship for not less than one year.

For the purposes of paragraphs (d) and (e), the person must be cohabiting with the Member or must have cohabited with the Member within the preceding year."

3. Effective March 1, 2010, subparagraph 4.01(b)(i) shall be deleted in its entirety and replaced with the following:

- " (i) A Member who participates in the Defined Contribution Provision of the Plan shall contribute to the Member's Account, in equal

Pension Benefit
Standards Division

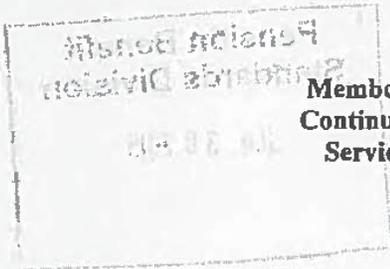
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installments and by payroll deduction, an amount equal to \$3,000 per calendar year.”

4. Effective March 1, 2010, subparagraph 4.02(b)(i) shall be deleted in its entirety and replaced with the following:

“ (i) The Employer shall contribute in equal monthly installments to the Pension Fund in respect of the Defined Contribution Provision each calendar year, an amount in respect of each Member who participates in the Defined Contribution Provision determined according to the Member’s Continuous Service as follows:



Member’s Continuous Service	Annual Employer Contribution Rate for March to December 2010	Annual Employer Contribution Rate for 2011	Annual Employer Contribution Rate for 2012	Annual Employer Contribution Rate for 2013 and Onward
Less than 10 years	\$2,025	\$2,050	\$2,100	\$2,200
10 years or more but less than 20	\$3,325	\$3,350	\$3,400	\$3,500
20 years or more but less than 30	\$4,625	\$4,650	\$4,700	\$4,800
30 years or more but less than 32	\$4,625	\$4,650	\$4,700	\$4,800
32 years or more	\$5,500	\$5,550	\$5,600	\$5,700

Increases in the annual employer contribution rates shown in the table above shall be implemented with effect from the first day of the pay period closest to March 1, 2010, January 1, 2011, January 1, 2012 or January 1, 2013, as the case may be.”

5. Effective March 1, 2010, Section 5.01 shall be deleted in its entirety and replaced with the following:

“5.01 Normal Retirement Date

A Member’s Normal Retirement Date shall be the first day of the month following the Member’s attainment of age 65.”

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6. Effective March 1, 2010, Section 5.04 shall be deleted in its entirety and replaced with the following:

"5.04 Special Postponed Retirement Date

If a Member continues in employment with the Employer beyond his Normal Retirement Date, the Member's Special Postponed Retirement Date shall be the date on which the Member retires, or is deemed to have retired for purposes of the Plan, and shall not be later than December 1 of the calendar year during which the Member attains age 71."

7. Effective March 1, 2010, Section 6.01(a) shall be deleted in its entirety and replaced with the following:

" (a) Members Who Do Not Participate in the Defined Contribution Provision

A Member who does not participate in the Defined Contribution Provision and who retires on or after March 1, 2010, but prior to March 1, 2015 on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a pension benefit payable in equal monthly installments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, calculated as the sum of (i), (ii), (iii) and (iv) below.

- (i) \$33.00 multiplied by the Member's Credited Service not in excess of 15 years;
- (ii) \$34.00 multiplied by the Member's Credited Service in excess of 15 years but not in excess of 30 years;
- (iii) \$35.00 multiplied by the Member's Credited Service in excess of 30 years; and
- (iv) \$50.00.

Members who retire prior to March 1, 2009 will receive a pension benefit in accordance with the Plan in effect on the Member's Normal Retirement Date, Early Retirement Date, Special Early Retirement Date, or Special Postponed Retirement Date, whichever is applicable.

Members who retire on or after March 1, 2009 but prior to March 1, 2010 will receive a pension benefit in accordance with the Plan in effect on the Member's Normal Retirement Date, Early Retirement Date, Special Early Retirement Date, or Special Postponed Retirement Date, whichever is applicable, as if Section 6.01(a) of the Plan in effect on that date were amended to (1) change all references to "March 1, 2009" to "March 1,

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2010", (2) change all references to "December 31, 2008" to "December 31, 2009", and (3) change "\$4.50" in Section 6.01(a)(iv) to "\$0.00".

Notwithstanding the foregoing, if a Member:

- (A) is currently on the Employer's seniority list at the time of his retirement and has been actively at work for at least one full pay period during the life of the collective agreement signed in 2010; and
- (B) elects to retire on or after March 1, 2010 but on or before February 1, 2015; and
- (C) has 30 or more years of Credited Service at his retirement date; and
- (D) is eligible to receive the temporary supplemental benefit payable under Section 6.06;

the Member shall receive, subject to Section 9.08, a minimum retirement income up to the month in which the Member attains age 65, payable in the normal form as set out in Section 7.01, from all Employer-paid retirement provisions in the Plan, as set out below:

Retirement Date	Minimum Monthly Retirement Income
On or after March 1, 2010, but on or before December 31, 2010	\$2,900 per month
January 1, 2011 to December 31, 2011	\$3,000 per month
January 1, 2012 to December 31, 2012	\$3,100 per month
January 1, 2013 to December 31, 2013	\$3,200 per month
January 1, 2014 to February 28, 2015	\$3,200 per month

A Member who attains 30 years of Continuous Service but who has not attained 30 or more years of Credited Service on or prior to February 1, 2014 shall be entitled to include any Continuous Service that was not considered Credited Service due to a period or periods of layoff that did not result in termination of employment with the Employer but that did exceed five years in total, for purposes of determining the Member's eligibility for the minimum monthly retirement income described above. For purposes of calculation under this subsection, the minimum monthly retirement income shall be pro-rated by the ratio of the Member's years of

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actual Credited Service divided by 30 years, with such ratio not to exceed 1.00.

The minimum monthly retirement income set out in the table and provisions above shall include all Employer-paid amounts payable under the Plan.”

8. Effective March 1, 2010, Section 6.01(b) shall be deleted in its entirety and replaced with the following:

“ (b) **Members Who Participate in the Defined Contribution Provision**

A Member who participates in the Defined Contribution Provision and who retires on or after March 1, 2010, but prior to March 1, 2015 on the Member’s Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a pension benefit pursuant to (i), (ii) and (iii) below:

(i) *Benefit in Respect of Defined Benefit Provision*

A benefit payable in equal monthly installments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, calculated as the sum of (A), (B), (C) and (D) below:

- (A) \$33.00 multiplied by the Member’s Credited Service not in excess of 15 years;
- (B) \$34.00 multiplied by the Member’s Credited Service in excess of 15 years but not in excess of 30 years;
- (C) \$35.00 multiplied by the Member’s Credited Service in excess of 30 years;
- (D) \$50.00.

Members who retire prior to March 1, 2009 will receive a pension benefit in accordance with the Plan in effect on the Member’s Normal Retirement Date, Early Retirement Date, Special Early Retirement Date, or Special Postponed Retirement Date, whichever is applicable.

Members who retire on or after March 1, 2009 but prior to March 1, 2010 will receive a pension benefit in accordance with the Plan in effect on the Member’s Normal Retirement Date, Early Retirement Date, Special Early Retirement Date, or Special Postponed Retirement Date, whichever is applicable, as if Section

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6.01(b)(iii) of the Plan in effect on that date were amended to change all references to "December 31, 2008" to "December 31, 2009".

(ii) *Benefit in Respect of Defined Contribution Provision*

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

(iii) *Retirements on and after March 1, 2010 but on or before February 1, 2015*

Notwithstanding the foregoing, if a Member:

- (A) is currently on the Employer's seniority list at the time of his retirement and has been actively at work for at least one full pay period during the life of the collective agreement signed in 2010; and
- (B) elects to retire on or after March 1, 2010 but on or before February 1, 2015; and
- (C) has 30 or more years of Credited Service at his retirement date; and
- (D) is eligible to receive the temporary supplementary benefit payable under Section 6.06; and
- (E) has participated in the Defined Contribution Provision since October 1, 1996; and
- (F) has, on a date at least two years before his retirement, at least 50% of his Account invested in the bond fund, money market fund and/or guaranteed investment certificate fund; and
- (G) has, following the date described in (F) above, instructed the Funding Agency to invest at least 50% of subsequent contributions to his Account in each payroll period in one or more of the bond fund, money market fund and/or guaranteed investment certificate fund; and
- (H) has not, following the date described in (F) above, given the Funding Agency instructions to make changes to his investments that would reduce the percentage of his Account invested in the bond fund, money market fund and guaranteed investment certificate fund in aggregate to less than 50% of his total Account balance;

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the Member shall receive, subject to Section 9.08, a minimum retirement income up to the month in which the Member attains age 65, payable in the normal form as set out in Section 7.01, from all Employer-paid retirement provisions in the Plan, as set out below:

Retirement Date	Minimum Monthly Retirement Income
On or after March 1, 2010, but on or before December 31, 2010	\$2,900 per month
January 1, 2011 to December 31, 2011	\$3,000 per month
January 1, 2012 to December 31, 2012	\$3,100 per month
January 1, 2013 to December 31, 2013	\$3,200 per month
January 1, 2014 to February 28, 2015	\$3,200 per month

A Member who attains 30 years of Continuous Service but who has not attained 30 or more years of Credited Service on or prior to February 1, 2014 shall be entitled to include any Continuous Service that was not considered Credited Service due to a period or periods of layoff that did not result in termination of employment with the Employer but that did exceed five years in total, for purposes of determining the Member's eligibility for the minimum monthly retirement income described above. For purposes of calculation under this subsection, the minimum monthly retirement income shall be pro-rated by the ratio of the Member's years of actual Credited Service divided by 30 years, with such ratio not to exceed 1.00.

The minimum monthly retirement income set out in the table and provisions above shall include all Employer-paid amounts payable under the Plan. Any portion of any Member's Account which is derived from contributions made by the Member plus accrued investment earnings thereon shall not count towards the minimum pension set out above."

9. Effective March 1, 2010, subparagraph 6.02(b)(ii) shall be deleted in its entirety and replaced with the following:

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“ (ii) **Benefit in Respect of Defined Contribution Provision**

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).”

10. Effective March 1, 2004, Section 6.03(b)(i) shall be deleted in its entirety and replaced with the following:

“ (i) **Benefit in Respect of Defined Benefit Provision**

A benefit payable in equal monthly installments commencing on a Special Early Retirement Date and continuing on the first day of each month thereafter, equal to the benefit described in (a) above that would be applicable to the Member if the reference therein to “Section 6.01(a)” were changed to “Sections 6.01(b)(i) and 6.01(b)(iii).”

11. Effective March 1, 2010, Section 6.06 shall be deleted in its entirety and replaced with the following:

“6.06 Temporary Supplementary Benefit

(a) **Members Who Do Not Participate in the Defined Contribution Provision**

A Member who does not participate in the Defined Contribution Provision and who, on or after March 1, 2010, qualifies for a pension benefit commencing on an Early Retirement Date or a Special Early Retirement Date shall be entitled to receive a temporary supplementary benefit payable in equal monthly installments commencing on the Member's Early Retirement Date or Special Early Retirement Date, as the case may be, and continuing thereafter on the first day of each month up to the earlier of the month in which the Member attains age 65 or dies, equal to \$27.00 multiplied by the Member's Credited Service to a maximum of 40 years. However, if the Member retires on an Early Retirement Date and receives an annual pension pursuant to Section 6.02(a)(ii) or 6.02(a)(iv), the amount of the temporary supplementary benefit shall be reduced by the same factors used to reduce the monthly pension payable under said provision, whichever is applicable to the Member.

Members who retire prior to March 1, 2010 will receive a temporary supplementary benefit in accordance with the Plan in effect on the Member's Early Retirement Date or Special Early Retirement Date, whichever is applicable.

(b) **Members Who Participate in the Defined Contribution Provision**

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A Member who participates in the Defined Contribution Provision and who, on or after March 1, 2010, qualifies for a pension benefit commencing on an Early Retirement Date or a Special Early Retirement Date shall be entitled to receive a temporary supplementary benefit payable at the same time and in the same manner pursuant to (a) above, equal to \$27.00 multiplied by the Member's Credited Service to a maximum of 40 years, subject to the reduction factors referred to in (a) above.

Members who retire prior to March 1, 2010 will receive a temporary supplementary benefit in accordance with the Plan in effect on the Member's Early Retirement Date or Special Early Retirement Date, whichever is applicable."

12. Effective March 1, 2010, Section 7.03 shall be deleted in its entirety and replaced with the following:

"7.03 Automatic Form of Payment for a Member With a Spouse

- (a) The automatic form of payment of the pension benefit pursuant to the Defined Benefit Provision for a Member with a Spouse as of the Pension Commencement Date shall be a reduced pension payable in equal monthly installments for the lifetime of the Member, with 60% of the benefit continued after the Member's death to the Spouse for the remaining lifetime of the Spouse, provided that the Spouse survives the Member. Such reduced pension benefit shall be the Actuarial Equivalent of the normal form of payment pursuant to Section 7.01, and shall take into account the surviving Spouse benefit payable pursuant to Section 7.02.
- (b) Notwithstanding paragraph (a), if the Member was under age 65 at the time of his death, the surviving Spouse, in addition to the benefit described in paragraph (a), shall receive a temporary benefit equal to 60% of the Member's temporary supplementary benefit under Section 6.06, payable until the date the Member would have attained age 65. The Member's temporary supplementary benefit payable at the date of retirement will be adjusted on an Actuarially Equivalent basis to reflect this option."

13. Effective March 1, 2010, Section 7.04 shall be deleted in its entirety and replaced with the following:

"7.04 Optional Forms of Payment

- (a) In lieu of the form of payment pursuant to Section 7.01 or Section 7.03, a Member with a Spouse as of the Pension Commencement Date may elect to receive a reduced pension payable in equal monthly installments for the lifetime of the Member, with either 50% or 100% of the reduced pension continued after the Member's death for the remaining lifetime of the Member's Spouse, provided that the Spouse survives the Member. Such reduced pension benefit shall be the

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Actuarial Equivalent of the normal form of pension pursuant to Section 7.01 and shall take into account the surviving Spouse benefit payable pursuant to Section 7.02.

- (b) Notwithstanding paragraph (a), if the Member was under age 65 at the time of his death, the surviving Spouse, in addition to the benefit described in paragraph (a), shall receive a temporary benefit equal to the elected percentage of the Member's supplementary benefit under Section 6.06, payable until the date the Member would have attained age 65. The Member's temporary supplementary benefit payable at the date of retirement will be adjusted on an Actuarially Equivalent basis to reflect this option."

14. Effective March 1, 2010, a new Section 8.05 shall be added to Section 8 as follows:

"8.05 Death in Service after Eligibility for an Unreduced Pension

If a Member while in employment with the Employer and subsequent to qualifying for an unreduced pension benefit under Section 6.01, 6.02(a)(i), 6.02(a)(iii), 6.02(b) or 6.03, leaving a surviving Spouse, the Member's Spouse shall be entitled to elect to receive a pension benefit the value of which shall be equal to the greater of:

- (a) the value of the applicable death benefit under Section 8; or
- (b) the value of the pension the Spouse would have been entitled to receive under Section 7.03 if payment of the pension had begun on the day preceding the death of the Member."

15. Effective November 26, 2010, Section 10.04(a)(iii) shall be deleted in its entirety and replaced with the following:

" (iii) If a Member fails to submit an investment option form, the amount in the Member's Account shall be invested in a target retirement date fund offered by the Employer and the Funding Agency pursuant to the Funding Agreement, with such target retirement date fund having a target date which is closest to the earlier of the date on which the Member will first attain 30 years of Continuous Service or age 65."

16. Effective March 1, 2010, Section 14.06 shall be deleted in its entirety and replaced with the following:

"14.06 Maximum Deferral of Pension

If a Quebec Member who has elected to postpone retirement after Normal Retirement Date has not effectively retired before his or her 71st birthday, the Member's postponed retirement pension shall commence on December 1st of the calendar year the Quebec Member attains age 71."

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17. Effective March 1, 2010, Section 14.12 shall be deleted in its entirety and replaced with the following:

"14.12 Commutation of Pension

If the value of a retirement pension or deferred vested pension payable under the Plan is less than 20% of the YMPE in the year that the Quebec Member retires, terminates employment or dies, or such other amount as may be permitted by the SPPA, from time to time, a lump sum amount equal to the value of the benefit shall be paid to the person entitled to such benefit in lieu of any other benefits under this Plan."

18. Effective March 1, 2010, a new Section 14.13 shall be added to the Plan as follows:

"14.13 Definition of Spouse

"Spouse" means, in relation to a Quebec Member:

- (a) Subject to paragraphs (c) and (d), in relation to a Member, the person who, at the earlier of the commencement of the Member's pension and the date of the Member's death, meets one of the following eligibility requirements:
- (i) the person who is married to or in a civil union with the Member; or
 - (ii) where the Member is neither married nor in a civil union, the person who lives together with the Member in a conjugal relationship:
 - 1. continuously for a period of three years or more; or
 - 2. continuously for a period of one year or more if:
 - a. at least one child is born, or to be born, of their union;
 - b. they have adopted, jointly, at least one child while living together in a conjugal relationship; or
 - c. one of them has adopted at least one child who is the child of the other, while living together in a conjugal relationship.

For the purposes of subparagraph (ii), the birth or adoption of a child during a marriage, a civil union or a period of conjugal relationship prior to the period of conjugal relationship existing on the day as of which spousal status is established may qualify a person as a Spouse.

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- (b) For the purposes of paragraphs (c), (d) and (e), "Separation" means, in relation to a Member and his Spouse:
 - (i) legal separation from bed and board if the Spouse is married to the Member;
 - (ii) dissolution or annulment of their civil union; or
 - (iii) cessation of conjugal relationship if the Spouse satisfies the eligibility requirement set out in subparagraph (a)(ii).
- (c) If Separation occurs pursuant to subparagraph (b)(i), prior to the date the first installment is due to the Member, the person who is the Member's Spouse in accordance with subparagraph (a)(i) shall cease to be the Member's Spouse for the purposes of Section 7.02 and Section 7.03, except where the Member notified the Participating Company in writing to have such person entitled to the contingent pension despite such Separation.
- (d) If Separation occurs, the person who is the Member's Spouse in accordance with paragraph (a) shall cease to be the Member's Spouse for the purposes of Section 8 and Section 14.11.
- (e) If, after the commencement of the Member's pension, Separation occurs or the Spouse ceases to be married to or in a civil union with the Member, the person who was the Spouse of the Member on the commencement of the Member's pension shall cease to be the Member's Spouse for the purposes of any contingent pension payable under the form of payment elected by the Member in accordance with Section 7, except where the Member notified the Company in writing to have such person entitled to the contingent pension despite such Separation or termination of marriage or civil union."

**UNION DB PLAN AMENDMENT
NO. 6**

**The Pension Plan for Bargaining Unit Employees
of Wabush Mines, Cliffs Mining Company, Managing Agent
Amendment no 6**

Whereas Wabush Mines, Cliffs Mining Company, Managing Agent (the "Employer") maintains the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (the "Plan");

Whereas pursuant to an agreement, known as the Wabush Mines Management Agreement, dated January 1, 1967 and amended from time to time thereafter, between Wabush Iron Co. Limited and Cliffs Mining Company (the "Management Agreement"), Cliffs Mining Company has the authority to act on behalf of the Employer;

Whereas, pursuant to Section 13.02 of the Plan, the Employer has reserved the right to amend the Plan;

Whereas it is required, in order to maintain registration of the Plan with the regulatory authorities having jurisdiction over the Plan, to amend the Plan to comply with legal mandatory requirements;

THEREFORE, IT IS HEREBY RESOLVED THAT:

1. The Plan is hereby amended as set forth in Exhibit "A" attached, with effect from January 1, 2001; and,
2. Cliffs Mining Company, Managing Agent pursuant to the Management Agreement, is authorized and directed to sign all documents and to perform all acts necessary or appropriate to give effect to the foregoing resolution, including any additional minor amendments to be made on the advice of counsel or as may be required to maintain registration of the Plan with the regulatory authorities having jurisdiction over the Plan.

IN WITNESS THEREOF Cliffs Mining Company, as Managing Agent, authorizes the foregoing resolutions pursuant to the power granted to it under the Management Agreement.

NAME
Title
Cliffs Mining Company
Managing Agent of Wabush Mines

**Pension Benefit
Standards Division**

SEP 30 2015

Exhibit "A"
**Pension Plan for Bargaining Unit Employees of Wabush Mines,
 Cliffs Mining Company, Managing Agent**

Amendment No. 6

Effective January 1, 2001, Section 14 is deleted in its entirety and replaced with the following:

Section 14 – Special Provisions for Québec Employees

14.01 Application

This section applies to Employees who report for work in the Province of Québec and is included in the Plan in order for the Plan to comply with the Supplemental Pension Plans Act (Québec) (the "SPPA") and shall supplement all other provisions of the Plan which are not inconsistent and shall replace any other provisions which are inconsistent.

14.02 Definition of Spouse

Notwithstanding Section 2.36, "Spouse" means, in relation to a Québec Member:

- (a) Subject to paragraphs (b), (c) and (d), in relation to a Member, the person who, at the earlier of the commencement of the Member's pension and the date of the Member's death, meets one of the following eligibility requirements:
- (i) the person who is married to or in a civil union with the Member; or
 - (ii) where the Member is neither married nor in a civil union, the person who has been living together with the Member in a conjugal relationship:
 - 1. continuously for a period of three years or more; or
 - 2. continuously for a period of one year or more if:
 - a. at least one child is born, or to be born, of their union;
 - b. they have adopted, jointly, at least one child while living together in a conjugal relationship; or
 - c. one of them has adopted at least one child who is the child of the other, while living together in a conjugal relationship.

For the purposes of subparagraph (ii), the birth or adoption of a child during a marriage, a civil union or a period of conjugal relationship prior to the period of conjugal relationship existing on the day as of which spousal status is established may qualify a person as a Spouse.

- (b) For the purposes of paragraphs (c) and (d) below, "Separation" means in relation to a Member and his Spouse:

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- (i) legal separation from bed and board if the Spouse is married to the Member,
 - (ii) dissolution or annulment of their civil union; or
 - (iii) cessation of conjugal relationship if the Spouse satisfies the eligibility requirement set out in subparagraph (a)(ii).
- (c) If Separation pursuant to subparagraph (b)(i) occurs before the day as of which spousal status is established, the person who would be considered the Member's Spouse in accordance with paragraph (a)(i) shall not be considered as the Member's Spouse when applying any provision of this plan conferring a benefit upon a surviving Spouse.

However, when the Member has notified the Employer in writing that the person should still be considered as the Member's Spouse despite this Separation, such person shall be so considered when applying a provision of this plan purporting to confer a benefit upon a surviving Spouse after the commencement of the Member's pension.

- (d) If, after the commencement of the Member's pension, Separation occurs or the Spouse ceases to be married to or in a civil union with the Member, the person who was the Spouse of the Member on the commencement of the Member's pension shall cease to be the Member's Spouse for the purposes of any contingent pension payable under the form of payment elected by the Member at the time of pension commencement, except where the Member notified the Employer in writing to have such person entitled to the contingent pension despite such Separation or termination of marriage or civil union.

14.03 Transfer of Employment

Notwithstanding Section 5.06, if an Employee who is a Québec Member ceases to be a Union Member, but remains employed with the Employer, such Member may, as a result of such cessation of active membership,

- (a) elect to transfer the Member's accrued benefits out of the Plan in accordance with the provisions applicable to a Member who terminates employment before Normal Retirement Date or an early retirement date, as if the date on which the cessation of active membership occurred was a Deferred Vested Termination Date; or
- (b) remain eligible to receive the benefits accrued pursuant to the Plan upon the employee's subsequent termination of employment, retirement or death and
 - (i) employment with the Employer in a capacity other than as an Employee shall continue to count as Continuous Service for the purpose of eligibility for retirement and similar matters, but not as Credited Service for benefit calculation purposes pursuant to the Plan;
 - (ii) the employee shall not be authorized to contribute to the Pension Fund in any capacity or in any ways.

R-23 Unionized Employees Pension Plan (*cont'd*)**14.04 Statutory Early Commencement Date**

Notwithstanding Sections 5.02, 5.03 and 5.06, a Québec Member may begin to receive his pension entitlements, on request, from the date the Member's Continuous Service is broken if, on this date, he has attained or exceeded age 55. Such date shall be known as the Member's Statutory Early Commencement Date.

The Member's monthly pension under the Defined Benefits Provision shall be an amount equal to the Actuarial Equivalent of the pension calculated as in Section 6.01, based on the Member's Credited Service as at the Statutory Early Commencement Date. Under the Defined Contribution Provision, there shall be payable a benefit equal to the amount in the the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

14.05 Continuation of Active Membership after Normal Retirement Date

Notwithstanding Section 5.01 but subject to Section 14.06, if a Québec Member continues to be employed after the Normal Retirement Date and

- (a) the Member does not participate in the Defined Contribution Provision, he may :
 - (i) postpone commencement of his retirement benefits, up until his Special Postponed Retirement Date; or
 - (ii) elect to receive payment of all or a portion of the Member's pension determined as at the Normal Retirement Date, but only to the extent necessary to compensate for a reduction in salaries or wages incurred on or after the Normal Retirement Date; the Member may make such an election not more frequently than once every 12 months;
- (b) the Member participates in the Defined Contribution Provision, he may :
 - (i) continue to contribute to his Account and receive Employer contributions in his Account and postpone commencement of his retirement benefits under the Defined Benefits Provision of the Plan , up until his Special Postponed Retirement Date; or,
 - (ii) elect to receive payment of all or a portion of the Member's pension but only to the extent necessary to compensate for a reduction in salaries or wages incurred on or after the Normal Retirement Date; the Member may make such an election not more frequently than once every 12 months;

if the Member makes such an election, a pension shall be purchased for the Member with the amount in the Member's Account; if such pension is not sufficient to compensate for the reduction in the salaries or wages incurred by the Member, an additional pension shall be paid from the Defined Benefit Provision of the Plan up to lesser of the entitlements accumulated by the Member under this provision and the amount of pension required to compensate fully the Member for the reduction in salaries or wages.

14.06 Postponed Retirement Benefits***(a) Members Who Do Not Participate in the Defined Contribution Provision***

Notwithstanding Section 6.01, a Québec Member who does not participate in the Defined Contribution Provision and who retires on a Special Postponed Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the Special Postponed Retirement Date and continuing on the first day of each month thereafter, calculated as the Actuarial Equivalent of the monthly pension that would have commenced at the Normal Retirement Date, determined in accordance with Section 6.01(a) using Credited Service to the Member's Normal Retirement Date.

Such Actuarial Equivalent shall be determined as of the date the pension commences and shall be determined on the basis of the method described in Appendix "B" to the Plan entitled "Revalorization of Postponed Retirement Pension".

In the event that the Member has elected to receive the payment of all or a portion of the Member's pension prior to the Member's Special Postponed Retirement Date, the Actuarial Equivalent retirement income commencing on the Special Postponed Retirement Date shall be decreased to take into account the Actuarial Equivalent of the retirement income received prior to the Member's Special Postponed Retirement Date, with interest thereon at a rate determined by the plan administrator.

(b) Members Who Participate in the Defined Contribution Provision

Notwithstanding Section 6.01, a Québec Member who participates in the Defined Contribution Provision and who retires on a Special Postponed Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the Special Postponed Retirement Date and continuing on the first day of each month thereafter. The Member's pension shall be determined as follows:

(i) Benefit in Respect of Defined Benefit Provision

The benefit in respect of the Defined Benefit Provision of the Plan shall be calculated as the Actuarial Equivalent of the monthly pension that would have commenced at the Normal Retirement Date, determined in accordance with Section 6.01(b)(i) using Credited Service to the Member's Normal Retirement Date.

Such Actuarial Equivalent shall be determined as of the date the pension commences and shall be determined on the basis of the method described in Appendix "B" to the Plan entitled "Revalorization of Postponed Retirement Pension".

In the event that the Member has elected to receive the payment of all or a portion of the Member's pension prior to the Member's Special Postponed Retirement Date, the Actuarial Equivalent retirement income commencing on the Special Postponed Retirement Date shall be decreased to take into account the Actuarial

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Equivalent of the retirement income received prior to the Member's Special Postponed Retirement Date, with interest thereon at a rate determined by the plan administrator.

(ii) Benefit in Respect of Defined Contribution Provision

The benefit in respect of the Defined Contribution Provision shall be the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

14.07 Effect of Maximum Benefit Rule on Postponement of Pension

If a Québec Member who has elected to postpone retirement after Normal Retirement Date shall become entitled to a postponed retirement pension which, after the revalorization described in Section 14.06 above, becomes equal to the maximum pension described in Section 9.08, the Member's postponed retirement pension shall then commence on the first day of the next calendar month.

14.08 120-Month Guarantee Option

In lieu of the forms of payment described in Sections 7.01 to 7.03, a Québec Member who has become entitled to a pension may elect to receive a reduced monthly pension payable for his life, guaranteed in any event for 10 years.

Where the Québec Member has a Spouse, this option shall be a guaranteed 10-year pension reduced to a joint and survivor pension equal to 60% of the amount of the Québec Member's pension.

The amount of pension payable to the Member shall be the Actuarial Equivalent of the Member's pension pursuant to Section 7.01 and shall take into account the surviving Spouse benefit payable pursuant to Section 7.02.

14.09 Temporary Pension Option

- (a) A Québec Member who elects to receive his retirement income payable under Section 6 prior to his Normal Retirement Date and who files a duly signed form prescribed by the SPPA with the plan administrator prior to the payment of the first instalment of the benefit, may elect to receive his retirement income, except the temporary supplementary benefit and the temporary minimum benefit payable in accordance with Article 6, as applicable, in the form of a life annuity plus a temporary annuity ceasing in the month preceding the Member's Normal Retirement Date, both payable in equal monthly instalments. The annual amount of the temporary annuity shall be fixed by the Member before payment begins, but shall not exceed (i) minus (ii), where:

(i) is the lesser of:

- (A) 40% of the YMPE in the calendar year of payment commencement; and

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- (B) the maximum annual amount of temporary retirement income permitted by the Income Tax Act; and
- (ii) is the annual amount of the temporary supplementary benefit and the temporary minimum benefit payable in accordance with Article 6, as applicable.
- (b) If the Member elects the temporary pension option described in paragraph (a), any benefits payable to the Member's Beneficiary or Spouse after the Member's death shall be determined in accordance with such form of payment elected by the Member in accordance with Article 7 or Section 14.08, any guarantee or continuance being applied to the annuity payment pattern resulting from the temporary pension option.
- (c) The value of the benefits payable under the temporary pension option described in paragraph (a) shall be the Actuarial Equivalent of the benefit which would have been otherwise payable had the Member not elected this temporary pension option.
- (d) A Spouse who becomes entitled to the payment of a retirement income under the Plan may elect the temporary pension option described in the foregoing provisions of this Section, adapted as required.

14.10 Replacement of Pension by an Annual Lump Sum

A Québec Member who is entitled to a retirement income from the Plan, or the Spouse of the Québec Member who has become entitled to a pension, who has attained or exceeded age 55 but not age 65 is entitled to partially replace his pension before payment begins, by an annual lump sum payment, the amount of which is fixed by him and which meets the following requirements:

- (a) the amount does not exceed 40% of the YMPE for the year in which the application is made, reduced by the total temporary income and other bridge benefits that the Member has received or must receive during the year from any of the following sources :
 - (i) a registered pension plan,
 - (ii) a life income fund,
 - (iii) an annuity contract which is funded by registered pension plan assets;
- (b) the application can only be made once per calendar year and must include a completed declaration in the form prescribed under the SPPA;
- (c) the lifetime pension of the Québec Member or of the Spouse of the Québec Member who has elected such a lump sum replacement benefit will be reduced on an actuarial equivalent basis to take into account the aggregate of the lump sums replacement benefits paid.

14.11 Deferred Vested Termination Date

Notwithstanding Section 5.06, a Québec Member's Deferred Vested Termination Date shall be the date of a Member's termination of employment with the Employer

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for any reason other than death, prior to the Normal Retirement Date, Early Retirement Date, Statutory Early Commencement Date or Special Early Retirement Date.

14.12 Additional Pension Benefit

The deferred pension payable to a Québec Member under Section 6.04 shall be increased as of his Pension Commencement Date to reflect 50 % of the change in the Consumer Price Index for Canada which occurred during the period between the date of termination of his employment and the date that is 10 years prior to his Normal Retirement Date. The annualized increase shall not be less than 0% nor greater than 2%.

For the purposes of the above paragraph, "Consumer Price Index" means the Consumer Price Index for Canada, as published by Statistics Canada under the authority of the Statistics Act (Canada).

14.13 Redetermination of Form of Pension

- (a) If a Québec Member receives a pension under a form that provides for the continuance of a portion of his pension to his Spouse after the Member's death and if, after the commencement of the Member's pension, the Member's Spouse ceases to be entitled to the contingent pension by virtue of sub-paragraph (d) of Section 14.02, the Member is entitled, on request to the plan administrator, to a redetermination of the pension. Subject to paragraph (c), the effective date of the redetermination shall be the effective date of the judgment granting the separation from bed and board, the divorce or the annulment of the marriage, or the date of the cessation of the conjugal relationship. The redetermined pension shall be in the same amount and have the same characteristics as the pension that would be payable to the Member at the date of redetermination had the Member not had a Spouse on the date the payment of the pension began.
- (b) Unless the plan administrator has received the notice provided for in sub-paragraph (d) in the definition of Spouse in Section 14.02, the plan administrator shall redetermine the Member's pension in accordance with paragraph (a) if the benefits accrued to the Member under the Plan are partitioned, subsequent to the commencement of the Member's pension, as a result of the break in the marital relationship.
- (c) If the Member requests a redetermination in accordance with paragraph (a) and the effective date of the judgment granting the separation from bed and board, the divorce or the annulment of the marriage, or the date of the cessation of the conjugal relationship, is prior to January 1, 2001, the redetermination shall be effective as of the date of the Member's request.

R-23 Unionized Employees Pension Plan (*cont'd*)**14.14 Pre-Retirement Death Benefit**

Notwithstanding Sections 8.01 and 8.02, if a Québec Member dies while employed with the Employer or after termination of employment with the Employer but prior to payment of benefits pursuant to the Plan, the Member's surviving Spouse shall be entitled to receive

- (a) if the Member participated in the Defined Contribution Provision, a benefit equal to the amount in the Member's Account in either a lump sum cash payment or as a transfer to a non locked-in RRSP, as the Spouse may elect.
- (b) if the Member's has accumulated 15 years of Continuous Service or more as at the date of his death or if he has become eligible to an immediate pension after having attained age 45: a pension benefit payable in equal monthly instalments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, equal to the greater of :
 - (i) an amount equal to the Actuarial Equivalent of the pension benefit accrued by the Member and payable as at Normal Retirement Date pursuant to Section 6.04(a) in respect of Credited Service on and after January 1, 1990;
 - (ii) 50% of the amount of the immediate pension benefit accrued by the Member pursuant to Section 6.01(a), but excluding subsections (iv) and (v) thereof, or Section 6.01(b)(i), but excluding subsection (D) thereof, whichever would have been applicable of the Member, or 140\$ per month if greater.
- (c) if the Member has not met the conditions described in paragraph (b): a pension benefit payable in equal monthly instalments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, equal to an immediate retirement income which correspond to the Actuarial Equivalent of the amount of the pension benefit accrued by the Member and payable as at Normal Retirement Date pursuant to Section 6.04(a) in respect of Credited Service on and after January 1, 1990; if the Spouse so elects, the Actuarial Equivalent of this benefit may be paid out as a lump sum or transferred out of the Plan pursuant to Section 6.04(c).
- (d) If the Member is not survived by a Spouse, the amount described in paragraph (a) and a lump-sum amount being the Actuarial Equivalent of the pension described in paragraph (b) or (c), as applicable, shall be paid to the Member's Beneficiary or, if none, to the Member's estate.

R-23 Unionized Employees Pension Plan (*cont'd*)**14.15 Spousal Waiver of Pre-Retirement Death Benefits.**

If the Spouse of a Québec Member waives entitlement to the benefits set out in Article 8 in the manner and form prescribed by the SPPA, the value of said benefits shall be paid in accordance with paragraph (d) of Section 14.14.

14.16 Death in Service After Normal Retirement Date

If a Québec Member dies after the Normal Retirement Date while in active employment leaving a surviving Spouse, the Member's Spouse is entitled to receive a pension the value of which shall be equal to the greater of:

- (a) the Actuarial Equivalent of the monthly pension that would have commenced at the Normal Retirement Date, determined in accordance with Section 6.01(a) using Credited Service on and after January 1, 1990 up to the Member's Normal Retirement Date; such Actuarial Equivalent shall be determined as of the date the pension commences to be paid to the Member's Spouse, on the basis of the method described in Appendix "B" to the Plan entitled "Revalorization of Postponed Retirement Pension";
- (b) the Actuarial Equivalent of the pension that would have been payable to the Member's Spouse, under the Defined Benefits Provision of the Plan pursuant to Section 7.03, if payment of the postponed defined benefit pension, as determined pursuant to Section 14.06, had begun on the day preceding the death of the Québec Member.

In addition to such benefit, if a Québec Member participated in the Defined Contribution Provision, the Member's Spouse is entitled to a benefit payable in a lump sum equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

If the Member is not survived by a Spouse, a lump sum amount being the Actuarial Equivalent of the benefit described in paragraph (a) or (b) above and a lump sum amount equal to the amount in the Member's Account, as applicable, shall be paid to the Member's Beneficiary or, if none, to the Member's estate.

14.17 Commutation and Unlocking of Small Benefits

Notwithstanding paragraph (b) of Section 12.02, if the value of a retirement pension or deferred pension payable under the Plan is less than 20% of the YMPE in the year that the Québec Member retires, terminates employment or dies, or such other amount as may be permitted by the SPPA, from time to time, a lump sum amount equal to the Actuarial Equivalent of the benefit may be paid, on request, to the person entitled to such benefit in lieu of any other benefits under this Plan.

If the requirements set out in the above paragraph are met, the plan administrator may, at his discretion and without the consent of the Member, refund the Québec Member the Actuarial Equivalent of the Member's entitlements, in satisfaction of the Member's rights under the Plan. To this end, the plan administrator must first

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send a notice to the Member requesting instructions as to the refund formula; where no reply is received within 30 days of the sending of the notice, the plan administrator may make the refund, which possibility shall be mentioned in the notice.

14.18 Refund of Benefits for Non-Residents

A Québec Member who has terminated employment with the Employer and who has not been residing in Canada for at least two years is entitled, whether he has commenced or not to receive a pension under the Plan, to a refund of an amount being the Actuarial Equivalent of the benefits he has accrued under the Plan.

**Contributory Pension Plan for Salaried Employees of
Wabush Mines, Cliffs Mining Company, Managing Agent
Arnaud Railway Company and
Wabush Lake Railway Company, Limited**

As Amended and Restated Effective as of January 1, 1997

Revenue Canada / Canada Customs and Revenue Agency
Registration Number 0343558

Newfoundland Registration Number 021314-000

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Section 1 — Amendment and Restatement

1.01 Amendment and Restatement

Effective as of January 1, 1997, the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited, Revenue Canada registration number 0343558, is amended and restated to allow active Members to choose, on a one-time-only basis, one of two forms of pension benefits:

- a Defined Benefit Provision; or
- a Defined Benefit Provision plus a Defined Contribution Provision.

For active Members who terminated employment, died or retired on or after October 1, 1996 and before January 1, 1997, the Defined Benefit Provision as described in this amended and restated plan text shall apply.

Section 2 — Definitions

The following words and phrases, when used in this Plan, shall have the following meanings unless the context clearly indicates otherwise:

2.01 Account

“Account” means, in respect of a Member, the account established to record the Member's contributions pursuant to Sections 4.01(b), 4.01(c) and 4.03(a) and the Employer contributions pursuant to Sections 4.02(b), 4.03(b) and 4.04 plus any Credited Interest thereon.

2.02 Actuarial Equivalent

“Actuarial Equivalent” means, with respect to a benefit, the equivalent value, computed on the basis of actuarial assumptions last adopted for this purpose by the Employer on the recommendation of the Actuary. The determination of Actuarial Equivalent values shall not differentiate on the basis of gender, unless required by law.

2.03 Actuary

“Actuary” means the actuary or firm of actuaries retained by the Employer for the purposes of the Plan who is, or in the case of a firm of actuaries at least one of whom is, a Fellow of the Canadian Institute of Actuaries.

2.04 Approved Leave of Absence

“Approved Leave of Absence” means a period of paid or unpaid leave of absence authorized by the Employer for the purposes of the Plan.

2.05 Beneficiary

“Beneficiary” means the person last designated by a Member under Section 9.07 by written notice filed with the Employer to receive benefits payable from the Plan upon the Member's death and who survives the Member.

2.06 Commuted Value

“Commuted Value” means, with respect to pension benefits that a person has a present or future entitlement to receive, a lump-sum amount of the Actuarial Equivalent value of said benefits as of a specified date as determined by the Actuary in accordance with the Recommendations for the Computation of Transfer Values from Registered Pension Plans issued by the Canadian Institute of Actuaries, or such other basis as may be permitted or required from time to time under the *Pension Benefits Act* and the *Income Tax Act*.

R-24 Salaried Employees Pension Plan (*cont'd*)**2.07 Continuous Service**

- (a) "Continuous Service" means the period of regular employment with the Employer from the later of the date of commencement of employment with the Employer or the date of re-employment following the last break in service, if any and shall include service with any subsidiary, affiliated or predecessor employer designated by the Employer.
- (b) Continuous Service shall be broken by an Employee's resignation or other voluntary termination of employment or termination of employment by the Employer or retirement.
- (c) Notwithstanding (a) and (b) above, Employees with eight or more years of Continuous Service as of the date they become eligible for long term disability benefits pursuant to the Employer's program of insurance benefits shall continue to accrue Continuous Service until the earlier of 30 years of Credited Service, Normal Retirement Date, or the date the payment of or eligibility for such benefits ceases.
- (d) Notwithstanding (a) and (b) above, a break in Continuous Service shall occur as of the date:
- (i) the Employee fails to return to work promptly at the termination of any leave of absence; or
 - (ii) the Employee has been absent from work due to disability for more than 1 year in the case of an Employee with less than 3 years' service at the beginning of the absence, and for more than 2 years in the case of other Employees unless such absence was due to a temporary Disability compensable under workers' compensation laws or similar law in the province of employment and the Employee returns to work within 30 days after the termination of weekly compensation payments in respect of the disability, unless otherwise provided for under (c) above.
- (e) Notwithstanding anything to the contrary in the Plan, a transfer of employment from one Employer to an affiliate or subsidiary of the Employer shall not constitute a break in Continuous Service for the purpose of determining eligibility for benefits pursuant to the Plan.

R-24 Salaried Employees Pension Plan (*cont'd*)**2.08 Credited Interest**

With respect to the Defined Contribution Provision, "Credited Interest" means interest on the amount in a Member's Account including any additional voluntary contributions pursuant to Section 4, compounded annually and computed from the first day of the month following the month in which the contributions were made to the first day of the calendar month in which a determination thereof is to be made, at the rate equal to the rate of return calculated on the portion of the Pension Fund in which the Member's Account and the additional voluntary contributions are deposited. With respect to the Defined Benefit Provision, Credited Interest means interest at the rate of 3% per annum for all periods prior to January 1, 1971, 3 ½% per annum for the period January 1, 1971 through December 31, 1975, 5% per annum for the period January 1, 1976 through May 31, 1989 and the calendar year average of the yields of five-year personal fixed term chartered bank deposit rates published monthly in the Bank of Canada Review as CANSIM Series B14045 for the preceeding calendar year after May 31, 1989, compounded annually at the end of each calendar year and, on and after January 1, 1990, computed from the first day of the month following the month in which contributions were made to the date of retirement, death or other termination of employment.

2.09 Credited Service

- (a) "Credited Service" means a Member's years and completed calendar months (expressed as twelfths of a year) of Continuous Service during which the Member participated in or was credited with participation in the Plan. Credited Service shall also include periods during which a Member is on an Approved Leave of Absence. For the purposes of this section, a "completed calendar month" shall include a calendar month during which an employee has participated or was credited with participation in the Plan for 15 or more days in the month.
- (b) In no event shall the total period of unpaid Approved Leave of Absence on and after January 1, 1991 for the purposes of Credited Service exceed the sum of:
- (i) five years; and
 - (ii) the period of parenting as defined in the Income Tax Act, subject to a maximum of 36 months of such periods of parenting and a maximum of 12 months for any one period of parenting.
- The limitation on Credited Service set out in this Section 2.09(b) shall not apply to a period of disability.

2.10 Deferred Vested Termination Date

"Deferred Vested Termination Date" means the date described in Section 5.05.

2.11 Defined Benefit Provision

"Defined Benefit Provision" means the pension benefits calculated with reference to Section 6.01(a) and Section 6.01(b)(i) and excludes the pension benefits derived from the Defined Contribution Provision.

2.12 Defined Contribution Provision

"Defined Contribution Provision" means the pension benefits derived from the Members' contributions made pursuant to Section 4.01(b), 4.03(a), and the Employer's contributions made pursuant to Section 4.02(b), 4.03(b) and 4.04, and as calculated with reference to Section

R-24 Salaried Employees Pension Plan (*cont'd*)

6.01(b)(ii) and excludes the pension benefits derived from the Defined Benefit Provision .

2.13 Disability or Disabled

“Disability ” or “Disabled” means, suffering from a physical or mental impairment, as certified by a medical doctor, that prevents an Employee from performing the duties of employment in which the Employee was engaged before the commencement of the impairment.

2.14 Early Retirement Date

“Early Retirement Date” means the date of a Member’s early retirement pursuant to Section 5.02.

2.15 Earnings

“Earnings” means the base salary paid by the Employer to a Member, including taxable income from cost of living adjustments, overtime pay, Sunday, shift and holiday premium payments, cash bonuses, the Northern allowance, and special vacation, regular vacation, and out-of-season vacation bonus pay. Earnings excludes lump sum payments paid to an individual as a consequence of the termination of employment of the individual and all other forms of remuneration, including but not limited to, all non-cash benefits, any remuneration resulting from the exercise of a qualified stock option, incentive stock option or other stock option or appreciation right, and all allowances (except the Northern allowance), including but not limited to, the housing, travel and tax equalization allowances. In determining the Earnings of a Member during a calendar month, the Earnings in the calendar year shall be divided by twelve.

2.16 Effective Date

“Effective Date” means January 1, 1982.

2.17 Employee

“Employee” means an individual who is employed by the Employer and receives a salary.

2.18 Employer

“Employer” means Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited.

R-24 Salaried Employees Pension Plan (*cont'd*)**2.19 Final Average Earnings**

“Final Average Earnings” means the highest average annual Earnings of a Member during any 60 consecutive months of the last 120 full calendar months of Credited Service, excluding periods of layoff, immediately preceding the date of retirement, termination or death, whichever occurs first, except in the case of a Disabled Member, where Final Average Earnings shall be determined based on Earnings and Credited Service prior to the date the Member becomes Disabled. If, during the last ten consecutive calendar years of Credited Service, the Member was absent from work without pay or with reduced pay because of layoff, the references to “60 consecutive months” in this definition shall be read as the “number of months not exceeding 60”.

2.20 Funding Agency

“Funding Agency” means the trust company or insurance company, or any successor trust or insurance company, the Employer may appoint from time to time to hold, invest and administer the assets in the Pension Fund.

2.21 Funding Agreement

“Funding Agreement” means the agreement entered into between the Employer and the Funding Agency governing the custody, investment and administration of the assets in the Pension Fund.

2.22 Income Tax Act

“Income Tax Act” means the *Income Tax Act (Canada)*, as amended from time to time, the regulations made thereunder and the information circulars, interpretation bulletins and published administrative guidelines of Revenue Canada or any successor thereto.

2.23 Member

“Member” means an Employee who has been enrolled in the Plan pursuant to Section 3 and who continues to have rights or contingent rights to benefits pursuant to the Plan. “Member” includes a former Employee who has retired or terminated employment with the Employer but who retains a right to benefits pursuant to the Plan.

2.24 Normal Retirement Date

“Normal Retirement Date” means the date of a Member's normal retirement pursuant to Section 5.01.

2.25 Pension Benefits Act

“Pension Benefits Act” means the Newfoundland *Pension Benefits Act 1997*, S.N. 1996, c.P-4.01, as amended from time to time, and the Regulations thereunder as well as any similar statute applicable in a particular circumstance and any regulation pursuant thereto adopted by the federal or any provincial government.

R-24 Salaried Employees Pension Plan (*cont'd*)**2.26 Pension Commencement Date**

“Pension Commencement Date” means the date upon which a Member's payment of pension benefits is due to commence.

2.27 Pension Committee

“Pension Committee” means the committee described in Section 11.

2.28 Pension Fund

“Pension Fund” means the fund established pursuant to the terms of the Plan and the Funding Agreement to which all contributions under the Plan are made and from which the benefits and expenses of the Plan are paid.

2.29 Plan

“Plan” means the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited.

2.30 Plan Year

“Plan Year” means each 12 month period ending December 31.

2.31 Pre-Pension Spouse Coverage

“Pre-Pension Spouse Coverage” means the optional benefit pursuant to Section 8.03.

2.32 Québec Member

“Québec Member” means a Member who reports for work in the Province of Québec.

2.33 Special Early Retirement Date

“Special Early Retirement Date” means the date of a Member's special early retirement pursuant to Section 5.03.

2.34 Special Postponed Retirement Date

“Special Postponed Retirement Date” means the date of a Member's special postponed retirement pursuant to Section 5.04.

2.35 Spouse

“Spouse” means a person of the opposite sex of a Member who, on the date of determination of marital status, either:

- (a) is legally married to the Member and is not living separate and apart from the Member;
- (b) is not legally married to the Member but who has been living with the Member in a conjugal relationship continuously for a period of at least 3 years; or
- (c) is not legally married to the Member, but who is living with the Member in a conjugal

R-24 Salaried Employees Pension Plan (*cont'd*)

relationship continuously for a period of at least one year and who, together with the Member, is the natural or adoptive parent of a child, both as defined in applicable family law legislation.

It is provided, however, that a person described in (b) or (c) above shall not be considered the Spouse of the Member for the purposes of the Plan if there is also a legal Spouse pursuant to (a) above, unless the Member has submitted a written election to the contrary to the Employer. With respect to same-sex spouses or equivalent, effective June 16, 1999, the definition set out in this section shall not apply where prohibited by the Pension Benefits Act in which case such other definition of spouse or equivalent as set out in the Pension Benefits Act shall apply.

2.36 Surplus Assets

“Surplus Assets” means, at any particular point in time, the excess of assets in the Pension Fund over the liabilities of the Plan, as determined by the Actuary. The assets and liabilities shall be as set out in the most recent going concern valuation report with respect to the determination of Surplus Assets on a going concern basis or the most recent wind-up valuation report with respect to the determination of Surplus Assets on a wind-up basis, as the case may be, filed with the applicable regulatory authorities.

2.37 YMPE

“YMPE” means the Year’s Maximum Pensionable Earnings as defined in the *Canada Pension Plan* or the *Québec Pension Plan*, as applicable.

Words importing the singular number shall include the plural and vice versa depending upon the context.

Section 3 — Membership

3.01 Immediate Membership

A person who is hired by the Employer as an Employee shall join the Plan as of the Employee's date of hire.

3.02 Opting Out of Membership Not Permitted

A Member shall not discontinue or suspend his or her membership in the Plan while the Member is an Employee.

3.03 Change of Employment Status

If a Member's employment status with the Employer changes such that the Member is no longer an Employee, the Member's active participation in the Plan shall cease as of the date of said change in status and the Member shall cease to accrue further benefits pursuant to the Plan as of the date of said change in status.

3.04 Participation in Defined Benefit Provision and Defined Contribution Provision

(a) Current Members

An Employee who is a Member as of December 31, 1996 shall participate in the Defined Benefit Provision and may elect to participate in the Defined Contribution Provision, effective as of January 1, 1997, by completing the form prescribed by the Employer.

(b) New Members

An Employee who becomes a Member on or after January 1, 1997 shall participate in both the Defined Benefit Provision and the Defined Contribution Provision, effective as of the date the Employee becomes a Member.

3.05 Transfers of Employment

- (a) A Member who ceases to be an Employee, but who remains employed with the Employer, shall cease accruing benefits pursuant to the Plan; however, such Member shall remain eligible to receive the benefits accrued pursuant to the Plan upon his or her subsequent termination of employment, retirement or death. Employment with the Employer in a capacity other than as an Employee shall continue to count as Continuous Service for the purpose of vesting of benefits, eligibility for retirement, and pre-retirement death benefits, but not as Credited Service for benefit calculation purposes pursuant to the Plan.

R-24 Salaried Employees Pension Plan (*cont'd*)

- (b) Should an employee of the Employer transfer to a position in which the employee is classified as an Employee pursuant to the Plan, any pension benefits to which the employee is entitled by reason of his or her prior service shall be dealt with pursuant to any pension plan applicable to his or her prior employment. For the purposes of the Plan, such prior service shall be counted as Continuous Service for the purposes of eligibility for participation and benefits, but not as Credited Service for the purposes of benefit calculation.

Section 4 — Contributions

4.01 Member Contributions

(a) Defined Benefit Provision

Members who elect not to participate in the Defined Contribution Provision shall contribute 2% of their Earnings to the Defined Benefit Provision of the Plan by payroll deduction. Once a Member has acquired 30 years of Credited Service, no further contributions shall be required of such Member.

(b) Defined Contribution Provision

A Member who elects to participate in the Defined Contribution Provision of the Plan shall contribute 2% of Earnings to his or her Account by payroll deduction.

(c) Additional Voluntary Contributions

A Member who participates in the Defined Contribution Provision may, in addition to the contributions pursuant to (b) above, make additional voluntary contributions to the Member's Account, by payroll deduction, up to such amounts as are permissible pursuant to the *Income Tax Act* as deductible contributions to a registered pension plan.

(d) Remittance of Contributions

The Employer shall remit Member contributions pursuant to (a) not later than the date specified in the *Pension Benefits Act*, pursuant to (b) and (c) as early as 7 days following the pay date on which they fall due but in any event not later than the date specified in the *Pension Benefits Act*.

4.02 Employer Contributions

The Employer shall have no liability to make any payments to the Pension Fund except as expressly provided in the Plan.

(a) Defined Benefit Provision

(i) The Employer shall contribute to the Pension Fund in respect of the Defined Benefit Provision in such amount, based on the latest actuarial valuation report prepared by the Actuary and filed with the Newfoundland pension regulatory authority and Revenue Canada, as is required to provide for the normal cost of benefits accruing in the current Plan Year, after taking into account the assets of the Pension Fund and all other relevant factors, and to provide for the proper amortization of all unfunded liabilities and solvency deficiencies, if any, in accordance with the *Pension Benefits Act* and subject to subsection 147.2(2) of the *Income Tax Act*.

(ii) The employer shall not contribute any amount to the Pension Fund which is not permissible pursuant to subsection 147.2(2) of the *Income Tax Act*.

R-24 Salaried Employees Pension Plan (*cont'd*)**(b) Defined Contribution Provision**

The Employer shall contribute each payroll period to the Account of each Member who participates in the Defined Contribution Provision an amount equal to 3% of the Member's Earnings.

(c) Remittance of Contributions

The Employer shall remit its contributions in respect of the Defined Benefit Provision in accordance with the Pension Benefits Act, and shall remit its contributions in respect of the Defined Contribution Provision as soon as practical but not later than the date specified in the Pension Benefits Act.

4.03 Contributions Under Defined Contribution Provision During Approved Leaves of Absence**(a) Member Contributions**

(i) A Member who participates in the Defined Contribution Provision and who is on an Approved Leave of Absence may continue to contribute to the Member's Account pursuant to Section 4.01 (b). Alternatively, the Member may contribute a lesser amount or may cease contributing to the Member's Account. Prior to commencing the Approved Leave of Absence, the Member shall inform the Employer in writing of the amount of the Member's contributions. The contributions shall be made by payroll deduction or, if such method of payment is not possible, by delivering to the Employer post-dated cheques in respect of each month of the Approved Leave of Absence.

(ii) In lieu of contributing to the Member's Account during an Approved Leave of Absence, the Member may instead elect to contribute to the Member's Account immediately upon returning to work from an Approved Leave of Absence. In such case, the Member may elect to contribute the amount which he would have otherwise contributed pursuant to Section 4.01(b) or a lesser amount, and the Member shall make such contributions within the lesser of the period of time equal to the period of the Approved Leave of Absence or 12 months.

R-24 Salaried Employees Pension Plan (*cont'd*)

(b) Employer Contributions

The Employer shall contribute to the Pension Fund in respect of the Defined Contribution Provision pursuant to Section 4.02 in respect of a Member who participates in the Defined Contribution Provision and who is on an Approved Leave of Absence; however, if a Member elects to contribute a lesser amount than prescribed pursuant to Section 4.01 (b), the Employer's contributions shall be reduced proportionately. The Employer shall not contribute in respect of a Member who elects to cease contributing to the Member's Account during an Approved Leave of Absence. Depending on the manner in which the Member elects to contribute to the Member's Account pursuant to subparagraph (a)(i) or (a)(ii) above, the Employer shall contribute to the Member's Account accordingly.

4.04 Application of Surplus Assets

In the event there are Surplus Assets in the Pension Fund, the Employer may in its sole discretion apply the Surplus Assets or any portion of the Surplus Assets toward the amount of Employer contributions pursuant to Section 4.02 or Section 4.03.

4.05 Transitional Provision

Any Member who elected to participate in the Defined Contribution Provision pursuant to Section 3.04(a) and who made contributions to the Plan prior to January 1, 1991 shall have such contributions, along with Credited Interest, transferred to his or her Member Account.

4.06 Maximum Contributions Under Defined Contribution Provision

The total of the contributions by a Member to the Pension Fund pursuant to Sections 4.01 and 4.03 above and the Employer's contributions in respect of the Member pursuant to Section 4.02 and Section 4.03 above for a calendar year shall not exceed the money purchase limit for the calendar year as prescribed under the *Income Tax Act*.

Section 5 — Retirement Dates

5.01 Normal Retirement Date

A Member's Normal Retirement Date shall be the first day of the month following the Member's attainment of age 65.

5.02 Early Retirement Date

A Member's Early Retirement Date shall be the date of a Member's retirement from the Employer on the first day of any month prior to the Member's Normal Retirement Date and after the Member has met one or both of the following requirements:

- (a) completion of at least 30 years of Continuous Service; or
- (b) attainment of at least age 55 and completion of at least 15 years of Continuous Service.

5.03 Special Early Retirement Date

A Member's Special Early Retirement Date shall be the date of a Member's retirement from the Employer on the first day of any month prior to the Member's Normal Retirement Date and after the Member has either

- attained at least age 55 and completed at least 15 years of Continuous Service; or
- completed at least 15 years of Continuous Service and the sum of the Member's age and Continuous Service, in years and completed months, equals 80 or more; and

the Member has satisfied one or more of the following requirements:

- (a) the Member's Continuous Service is broken by reason of a permanent shutdown of the operations in which the Member is engaged, or by reason of a layoff or physical disability;
- (b) the Member's Continuous Service is not broken and the Member is absent from work by reason of:
 - (i) a layoff resulting from such permanent shutdown, or
 - (ii) a Disability or layoff other than a layoff resulting from such permanent shutdown and whose return to active employment is declared unlikely by the Employer; or

R-24 Salaried Employees Pension Plan (*cont'd*)

- (c) the Member considers that it would be in his or her interest to retire and the Employer considers that such retirement would likewise be in its interest and, by applying like rules in a nondiscriminatory manner to like or similar circumstances, approves an application for retirement under mutually satisfactory conditions.

5.04 Special Postponed Retirement Date

A Member may, with the consent of the Company, elect to retire on a Special Postponed Retirement Date, which shall be the first day of any month beyond the Member's Normal Retirement Date, provided, however, that the Member's retirement date for purposes of the Plan shall not be postponed beyond December 1st of the year the Member attains age 69.

5.05 Deferred Vested Termination Date

A Member's Deferred Vested Termination Date under the Defined Benefit Provision shall be the date of a Member's termination of employment with the Employer for any reason other than death, prior to the Normal Retirement Date, Early Retirement Date or Special Early Retirement Date and after completion of at least (a) ten years of Continuous Service, in respect of benefits accrued prior to January 1, 1990, and (b) two years of Continuous Service, in respect of all other benefits.

A Member's deferred Vested Termination Date under the Defined Contribution Provision shall be the date of a Member's termination of employment with the Employer for any reason other than death, prior to the Normal Retirement Date, Early Retirement Date or Special Early Retirement Date and after the Member joins the Plan.

5.06 Eligibility

A Member shall be entitled to receive pension benefits pursuant to only one of Sections 5.01, 5.02, 5.03, 5.04 or 5.05.

Section 6 — Retirement Benefits

6.01 Normal and Special Postponed Retirement Benefits

(a) Members Who Do Not Participate in the Defined Contribution Provision

A Member who does not participate in the Defined Contribution Provision and who retires on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive an annual pension benefit payable in equal monthly instalments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, equal to:

- (i) 1.7% multiplied by the Member's Final Average Earnings multiplied by the Member's years of Credited Service, plus
- (ii) any additional benefits applicable pursuant to Sections 6.01(c) and 6.01(d).

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who retires on the Member's Normal Retirement Date or Special Postponed Retirement Date shall be entitled to receive a benefit pursuant to (i) and (ii) below:

(i) Benefit in Respect of Defined Benefit Provision

An annual benefit payable in equal monthly instalments commencing on the Normal Retirement Date or Special Postponed Retirement Date, as the case may be, and continuing on the first day of each month thereafter, equal to:

- (A) 1.5% multiplied by the Member's Final Average Earnings up the YMPE multiplied by the Member's years of Credited Service prior to January 1, 1997

plus

1.6% multiplied by the Member's Final Average Earnings in excess of the YMPE multiplied by the Member's years of Credited Service prior to January 1, 1997; plus

- (B) 1.0% multiplied by the Member's Final Average Earnings multiplied by the Member's years of Credited Service on and after January 1, 1997; plus

- (C) any additional benefits applicable pursuant to Sections 6.01(c) and 6.01(d).

R-24 Salaried Employees Pension Plan (*cont'd*)**(ii) Benefit in Respect of Defined Contribution Provision**

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

(c) Minimum Benefit

The annual pension benefit payable under this Section 6.01 in respect of the Defined Benefit Provision shall be at least equal to:

(i) the annual pension benefit which would be payable under Section 6.01 of the Pension Plan for Bargaining Unit employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited, if the Member had been a member of that plan instead of this Plan in respect of his Credited Service, plus

(ii) an annual pension benefit, commencing on the Member's Normal Retirement Date and payable for life in accordance with Section 7.01, which is the Actuarial Equivalent of the Member's contributions in respect of the Defined Benefit Provision together with Credited Interest but excluding any amounts transferred to his or her Member Account under Section 4.05.

(d) Make-up Benefit

In the event a Member has transferred to the Plan from the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (the "bargaining unit plan") and his Continuous Service is terminated at a time when he has an entitlement to a deferred pension, he shall be eligible for a Make-up Benefit under the Plan, as set out in this Section 6.01(d). A Make-up Benefit shall be determined as a monthly amount determined by multiplying the Member's credited service under the bargaining unit plan by the lifetime benefit formula in effect under the bargaining unit at the time of the termination of Continuous Service under the Plan, less the frozen monthly lifetime benefit amount actually payable to the Member under the bargaining unit plan.

6.02 Early Retirement Benefits**(a) Members Who Do Not Participate in the Defined Contribution Provision**

A Member who does not participate in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on an Early Retirement Date and continuing on the first day of each month thereafter, calculated pursuant to one of the following:

R-24 Salaried Employees Pension Plan (*cont'd*)

- (i) If the Member has completed at least 30 years of Continuous Service, a pension benefit equal to the amount calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, without reduction on account of early commencement;
- (ii) If the Member has attained age 55 and completed at least 15 years of Continuous Service, a pension benefit calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Early Retirement Date, except the Member's pension benefit shall be reduced by $\frac{1}{2}\%$ for each month by which commencement of the Member's pension precedes his or her Normal Retirement Date. It is further provided that the amount of the reduction to the monthly benefit shall not be less than required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

(b) Members Who Participate in the Defined Contribution Provision

A Member who participates in the Defined Contribution Provision and who qualifies for a pension benefit commencing on an Early Retirement Date shall be entitled to receive a monthly pension benefit pursuant to (i) and (ii) below:

(i) Benefit in Respect of Defined Benefit Provision

A benefit payable in equal monthly instalments commencing on an Early Retirement Date and continuing on the first day of each month thereafter, equal to the pension described in (a) above that would be applicable to the Member if the references therein to "Section 6.01(a)" were changed to "Section 6.01(b)(i)".

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

6.03 Special Early Retirement Benefits**(a) Members Who Do Not Participate in the Defined Contribution Provision**

A Member who does not participate in the Defined Contribution Provision and who qualifies for a pension benefit commencing on a Special Early Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on a Special Early Retirement Date and continuing on the first day of each month thereafter, equal to the pension calculated pursuant to Section 6.01(a), based on the Member's Credited Service to his or her Special Early Retirement Date, without reduction on account of early commencement except as required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

R-24 Salaried Employees Pension Plan (*cont'd*)**(b) Members Who Participate in the Defined Contribution Provision**

A Member who participates in the Defined Contribution Provision and who qualifies for a pension benefit commencing on a Special Early Retirement Date shall be entitled to receive a monthly pension benefit pursuant to (i) and (ii) below:

(i) Benefit in Respect of Defined Benefit Provision

A benefit payable in equal monthly instalments commencing on a Special Early Retirement Date and continuing on the first day of each month thereafter, equal to the benefit described in (a) above that would be applicable to the Member if the reference therein in to "Section 6.01(a)" were changed to "Section 6.01(b)(i)".

(ii) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

6.04 Deferred Vested Retirement Benefits

A Member who terminates employment with the Employer on a Deferred Vested Termination Date shall be entitled to receive a monthly pension benefit pursuant to (a) and (b) below or, if the Member has not attained age 55 at the date of transfer, may transfer such benefit out of the Plan pursuant to (c) below. A Member who terminates employment with the Employer prior to a Deferred Vested Termination Date shall be entitled to the refund, if any, pursuant to (d) below.

(a) Benefit in Respect of Defined Benefit Provision

(i) A benefit payable in equal monthly instalments commencing on the Member's Normal Retirement Date and continuing on the first day of each month thereafter, equal to the amount of pension calculated pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever is applicable to the Member. The Member may elect to commence his or her pension prior to the Normal Retirement Date, on the first day of any month after attaining age 55, in which case the amount of pension payable from such earlier Pension Commencement Date shall be reduced by $\frac{1}{2}\%$ for each month by which commencement of the Member's pension precedes his or her Normal Retirement Date if the Member has 15 or more years of Continuous Service, or else shall be the Actuarial Equivalent of the amount of pension payable upon the Member's Normal Retirement Date, provided that the amount of reduction to the monthly pension shall not be less than required pursuant to regulation 8503(3)(c) of the *Income Tax Act* as described in Section 9.08(b).

(ii) Notwithstanding (i) above, the Member may elect to transfer the Commuted Value of the benefit pursuant to (i) above out of the Plan, pursuant to (c) below.

(b) Benefit in Respect of Defined Contribution Provision

A benefit equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to (c) below.

R-24 Salaried Employees Pension Plan (*cont'd*)**(c) Transfer of Benefits Out of the Plan**

The Commuted Value of a Member's accrued pension benefit in respect of the Defined Benefit Provision may be transferred out of the Plan and the amount in a Member's Account in respect of the Defined Contribution Provision may be transferred out of the Plan, to one of the retirement savings vehicles described in (i), (ii) and (iii) below, as elected by the Member on the form prescribed by the Employer and filed with the Employer within such time periods as prescribed by applicable provincial pension laws or at such other times as may be acceptable to the Employer:

- (i) a retirement savings plan, locked-in retirement account or life income fund, as prescribed by the *Pension Benefits Act*;
- (ii) the fund of another registered pension plan, if the other pension plan permits such a transfer; or
- (iii) a life insurance company licensed to transact business in Canada for the purpose of purchasing a deferred life annuity.

A transfer pursuant to (i), (ii) or (iii) above shall be made on a locked-in basis and the transferred amount shall be used to provide an annuity which shall not commence payment before the earliest date that the Member would have been entitled to receive a benefit pursuant to the Plan or, if transferred to another pension plan, under that plan.

In the event that a transfer is elected pursuant to this Section 6.04(c), the Member shall have no further rights under the Plan.

(d) Refund on Termination of Employment Prior to Deferred Vested Termination Date

A Member who terminates employment with the Employer prior to the completion of (a) ten years of Continuous Service, in respect of benefits accrued prior to January 1, 1990, and (b) two years of Continuous Service in respect of all other benefits, shall be entitled to

- (A) a benefit equal to the amount in the Member's Account, which may be transferred out of the Plan pursuant to (c) above, plus
- (B) a refund of his or her contributions made pursuant to Section 4.01 (a) and 4.03(a) plus Credited Interest thereon in the form of a lump sum payment.

R-24 Salaried Employees Pension Plan (*cont'd*)**6.05 Additional Voluntary Contributions**

In addition to the benefits pursuant to Sections 6.01, 6.02, 6.03 and 6.04, a Member who participates in the Defined Contribution Provision and who has made additional voluntary contributions pursuant to Section 4.01(c) may be paid such contributions, plus Credited Interest thereon, in a lump sum payment at any time pursuant to the instructions of the Member or, in the alternative, the Member may elect to transfer such contributions plus Credited Interest thereon out of the Plan, pursuant to Section 6.04(c); however, such transfer shall not be on a locked-in basis.

6.06 Temporary Supplementary Benefit

A Member who qualifies for a pension benefit commencing on an Early Retirement Date or a Special Early Retirement Date shall be entitled to receive a temporary supplementary benefit payable in equal monthly instalments commencing on the Member's Early Retirement Date or Special Early Retirement Date, as the case may be, and continuing thereafter on the first day of each month, ending with the earlier of the month in which the Member attains age 65 and the month in which the Member dies, equal to one of the following, whichever is applicable to the Member:

- (i) \$18 multiplied by the Member's years of Credited Service, where the Member retires prior to attaining age 60 and has less than 35 years of Credited Service;
- (ii) \$27 multiplied by the Member's years of Credited Service to a maximum of 40 years, where the Member retires prior to attaining age 60 and has 35 or more years of Credited Service;
- (iii) \$18 multiplied by the Member's years of Credited Service, where the Member retires between ages 60 and 65 and has less than 30 years of Credited Service; or
- (iv) \$27 multiplied by the Member's years of Credited Service to a maximum of 40 years, where the Member retires between ages 60 and 65 and has 30 or more years of Credited Service.

If the Member retires on an Early Retirement Date and receives an annual pension pursuant to Sections 6.02(a)(ii), the amount of the temporary supplementary benefit shall be reduced by the same factors used to reduce the monthly pension payable under said provisions, whichever is applicable to the Member.

6.07 Retirement Benefits for Part-Time Employees

The retirement benefits pursuant to the Defined Benefit Provision calculated pursuant to this section in respect of a Member who is a part-time Employee shall be reduced in an equitable manner to an amount related to the hours worked by the Member in comparison to the hours worked by other Members who are employed as full-time Employees in a similar capacity.

6.08 Re-Employment After Retirement, Termination of Employment or Break In Continuous Service**(a) Re-Employment After Retirement**

R-24 Salaried Employees Pension Plan (*cont'd*)

A Member who has retired and is receiving pension benefit payments pursuant to the Plan shall, upon re-employment with the Employer as an Employee, have such payments suspended. The Member shall retain his or her frozen suspended pension benefit which shall be added to any subsequent pension benefit to which the Member may become entitled in respect of service subsequent to the Member's date of re-employment.

(b) Re-Employment After Termination of Employment But Prior to Retirement

A Member who has terminated employment with the Employer and is entitled to a deferred vested pension pursuant to the Plan and who is re-employed with the Employer as an Employee prior to commencing receipt of pension benefit payments shall retain his or her frozen deferred vested pension benefit, which shall be added to any subsequent pension benefit to which the Member may become entitled in respect of service subsequent to the Member's date of re-employment.

(c) Return to Work After Break in Continuous Service

An Employee who incurs a break in Continuous Service prior to becoming eligible for an immediate or deferred vested pension and who is re-employed by the Employer shall, upon completion of one year of Continuous Service following such re-employment, have such break in Continuous Service removed if the period of Continuous Service accrued prior to the break is in excess of the period between the break and the date of re-employment.

Section 7 — Forms of Pension Payment On Retirement

7.01 Normal Form of Payment

The normal form of payment of the pension benefit pursuant to the Defined Benefit Provision shall be a lifetime pension payable in equal monthly instalments, ceasing with the payment due for the month in which the Member dies.

If upon the death of the Member after his or her retirement pension has commenced, the Member contributions in respect of the Defined Benefit Provision, together with Credited Interest to his or her retirement date but excluding any amounts transferred to his or her Member Account under Section 4.05, exceed the aggregate of his pension payments, such excess, if any, shall be paid to the deceased Member's Beneficiary, or to the deceased Member's estate if there is no such beneficiary.

7.02 Surviving Spouse Benefit

Notwithstanding Section 7.01, if a Member retires on his or her Early Retirement Date or Special Early Retirement Date at or after age 45, on or after March 1, 1990 and has a Spouse as of the Pension Commencement Date, and subsequently dies prior to reaching his or her Normal Retirement Date, the Member's surviving Spouse shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, equal to 50% of the amount of the pension benefit accrued by the Member pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever would have been applicable to the Member, or \$140 per month if greater.

7.03 Automatic Form of Payment for a Member With a Spouse

The automatic form of payment of the pension benefit pursuant to the Defined Benefit Provision for a Member with a Spouse as of the Pension Commencement Date shall be a reduced pension payable in equal monthly instalments for the lifetime of the Member, with 60% of the benefit continued after the Member's death to the Spouse for the remaining lifetime of the Spouse, provided that the Spouse survives the Member. Such reduced pension benefit shall be the Actuarial Equivalent of the normal form of payment pursuant to Section 7.01, and shall take into account the Surviving Spouse Benefit payable pursuant to Section 7.02.

7.04 Optional Forms of Payment

In lieu of the form of payment pursuant to Section 7.01 or Section 7.03, a Member with a Spouse as of the Pension Commencement Date may elect to receive

- (a) a reduced pension payable in equal monthly instalments for the lifetime of the Member, with either 50% or 100% of the reduced pension continued after the Member's death for the remaining lifetime of the Member's Spouse, provided that the Spouse survives the Member, or

R-24 Salaried Employees Pension Plan (*cont'd*)

- (b) a reduced pension payable in equal monthly instalments for the lifetime of the Member, with the provision that in the event the Member dies before receiving 60, 120 or 180 payments, as elected by the Member, such monthly pension will, in any event, be continued to the Member's Beneficiary or his estate, as the case may be, for the remainder of the guarantee period elected by the Member.

Such reduced pension shall be the Actuarial Equivalent of the normal form of pension pursuant to Section 7.01 and shall take into account the Surviving Spouse Benefit payable pursuant to Section 7.02.

7.05 Election

In order to elect the normal form of payment pursuant to Section 7.01 or an optional form of payment pursuant to Section 7.04, a Member and the Member's Spouse, as applicable, shall sign and file the prescribed waiver form with the Employer within the period prescribed by applicable pension legislation.

7.06 Defined Contribution Provision

The form of payment of the pension benefit pursuant to the Defined Contribution Provision shall be the form of payment applicable to the retirement savings vehicle to which the benefit is transferred pursuant to Section 6.04(c), subject to the *Income Tax Act* and the *Pension Benefits Act*.

Section 8 — Pre-Retirement Death Benefits

8.01 Refund of Amount from Defined Contribution Provision

If a Member dies while employed with the Employer or after termination of employment with the Employer but prior to payment of benefits pursuant to Section 6.04(b), the Member's surviving Spouse shall be entitled to receive a benefit equal to the amount in the Member's Account in a single lump sum cash payment, or may direct the Employer to transfer the amount to a Registered Retirement Savings Plan on the Spouse's behalf. If the Member is not survived by a Spouse, said amount shall be paid to the Member's Beneficiary or, if none, to the Member's estate.

8.02 Surviving Spouse Benefit

If a Member dies either

- (a) while employed with the Employer and after completion of at least 15 years of Continuous Service; or
- (b) after termination of employment with the Employer on or after October 15, 1985, after becoming eligible for retirement and an immediate pension pursuant to the Plan but prior to application therefor,

the Member's surviving Spouse shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, equal to 50% of the amount of the pension benefit accrued by the Member pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever would have been applicable to the Member, or \$140 per month if greater.

8.03 Optional Pre-Pension Spouse Coverage

A Member who is an Employee and who has a Spouse and who has attained age 55 and completed at least 15 years of Continuous Service may elect Pre-Pension Spouse Coverage, the benefits pursuant to which shall be in addition to any other benefits pursuant to the Plan in the event of the Member's death prior to his or her Pension Commencement Date.

R-24 Salaried Employees Pension Plan (*cont'd*)

(a) Election

At least two years and 90 days prior to becoming eligible to elect Pre-Pension Spouse Coverage, the Pension Committee shall advise each eligible Member of the opportunity to elect such coverage. The Member may elect to obtain such coverage by filing the prescribed form with the Pension Committee, either at the time the Member is first notified by the Pension Committee or at any time thereafter prior to the Member's Pension Commencement Date. A Member who has attained age 65 and completed at least 10 years of Continuous Service shall be deemed to have elected Pre-Pension Spouse Coverage, unless the Member waives such coverage in writing, and shall be so notified by the Pension Committee at least 90 days prior to satisfying the age and service requirements.

(b) Effective Date

The effective date of Pre-Pension Spouse Coverage for a Member shall be the later of the date the Member satisfies the required age and service criteria and the date that is two years following the date the Member elects the coverage except that, for a Member who is deemed to have elected Pre-Pension Spouse Coverage, the effective date of such coverage shall be the date upon which such Member shall be so deemed to have elected the coverage. If a Member dies as a result of an accident after having satisfied the required age and service criteria and having elected or being deemed to have elected Pre-Pension Spouse Coverage but prior to the date such coverage becomes effective, such coverage shall be deemed to have become effective as of the date such Member elected the coverage or was deemed to have elected the coverage.

(c) Termination

- (i) A Member may terminate Pre-Pension Spouse Coverage at any time by filing the prescribed form with the Pension Committee and the effective date of such termination shall be the date such form is filed with the Pension Committee. The consent of the Member's Spouse to terminate the coverage shall not be required.
- (ii) A Member's Pre-Pension Spouse Coverage shall terminate on the earliest of the date the Member ceases to have a Spouse, the Member's Pension Commencement Date or the date the Member incurs a break in Continuous Service. The Pre-Pension Spouse Coverage of a Member who incurs a break in Continuous Service shall be restored upon the Member's re-employment as an Employee, however, such Member may elect to revoke such coverage effective as of the date of re-employment, within 30 days after such re-employment.

R-24 Salaried Employees Pension Plan (*cont'd*)**(d) Amount of Pension Payable to Surviving Spouse in the Event of Member's Death While Pre-Pension Spouse Coverage is in Effect**

The Pre-Pension Spouse Coverage shall be a pension benefit payable in equal monthly instalments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, in an amount equal to 50% of the amount of pension accrued by the Member pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever would have been applicable to the Member, as though the Member had attained his or her Normal Retirement Date on the date of death, multiplied by such actuarial factors as adopted from time to time by the Pension Committee based on the ages of the Member and the Member's Spouse as of the date of the Member's death. However, the amount determined pursuant to Section 6.01 shall be reduced by 0.68% multiplied by the number of years (and fractions thereof calculated to the nearest month) that the Pre-Pension Spouse Coverage was in effect for the Member.

(e) Adjustment to Amount of Pension Payable to Member On Retirement, if Pre-Pension Spouse Coverage is Elected

If a Member elects or is deemed to have elected Pre-Pension Spouse Coverage, the amount of the pension benefit payable to the Member upon his or her subsequent retirement pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever would have been applicable to the Member, shall be reduced by 0.68% multiplied by the number of years (and fractions thereof calculated to the nearest month) that the Pre-Pension Spouse Coverage was in effect for the Member.

(f) Evidence

The Member shall provide the Pension Committee with satisfactory proof of spousal status and proof of age of the Member and the Spouse prior to any payment of Pre-Pension Spouse Coverage. In order for Pre-Pension Spouse Coverage to terminate pursuant to Section 8.03(c)(ii), the Member shall provide the Pension Committee with satisfactory proof of loss of spousal status by death, divorce or separation.

(g) Communication

The Pension Committee shall make reasonable efforts to inform eligible Members and their respective Spouses of the availability of the Pre-Pension Spouse Coverage.

8.04 Statutory Minimum Benefits

In no event shall the Commuted Value of the pension benefit payable upon the death of a Member who has completed at least two years of Continuous Service be less than the Commuted Value of the pension benefit accrued by the Member pursuant to Section 6.01, in respect of Credited Service on and after January 1, 1990.

Section 9 — Payment of Benefits

9.01 Application for Benefits

Payment of a pension or other benefit under the Plan shall be granted by the Employer and payment shall be made only upon application therefor in the manner prescribed by the Employer, and upon submission of such relevant information and supporting documentation as the Employer in its discretion may reasonably request.

9.02 Proof of Age and Marital Status

A Member shall be required to inform the Employer of his or her age and marital status and the age of the Member's Spouse (if any) and to file such proof thereof as required by the Employer. Pension benefits shall not commence to be paid until such proof of age and marital status has been received and admitted by the Employer. In the event that payment of pension benefits is delayed pending receipt and admittance of satisfactory proof of age and marital status, retroactive payments shall be made once satisfactory proof has been received.

9.03 Misstatement in Application for Pension Benefit

If a Member either knowingly or unknowingly has submitted any information to the Employer relevant to the amount of benefits he or she is to receive from the Plan which is incorrect, the amount of benefits payable from the Plan may be adjusted either, in the case of underpayment, by making additional payments from the Plan or, in the case of overpayment, by requiring repayment from the Member, whichever is appropriate in the circumstances.

9.04 Method of Payment

All retirement income and other benefits payable under the Plan shall be paid by cheque mailed by ordinary prepaid mail to the last known address of the Member, Spouse or Beneficiary as the case may be, or may be deposited directly into an account as directed by the Member, Spouse or Beneficiary. Posting or deposit of the cheque shall be an effective discharge of the Plan for the amount thereof.

9.05 Evidence of Survival

The Employer shall have the right to require satisfactory evidence that a retired Member or other Beneficiary under the Plan is living on each and every date a pension benefit is due the retired Member or other Beneficiary. In the absence of such evidence when required by the Employer, the benefits otherwise due shall not be paid until the evidence has been received.

R-24 Salaried Employees Pension Plan (*cont'd*)**9.06 Payments to Minors or Incompetents**

If the Employer receives evidence satisfactory to it that a person entitled to receive any payment under the Plan is physically or mentally incompetent to receive such payment and to give valid receipt therefor, or is a minor, and another person or an institution is then maintaining or has custody of the person and no guardian, committee or other representative of the person has been duly and legally appointed, the Employer may authorize payment of the benefit to be made to such other person or institution and the release of the other person or institution shall be a valid and complete discharge of the liabilities of the Plan therefor.

9.07 Beneficiary Designation

A Member may, by written notice communicated to the Employer during the Member's lifetime, designate a Beneficiary to receive any benefits payable pursuant to the Plan in the event of the Member's death. The Member may revise or revoke any such designation from time to time, subject to the provisions of any annuity, insurance or other contract or law governing designation of beneficiaries which may apply to the Member. A Quebec Member may revoke the designation of a beneficiary only if the designation is stated to be revocable. The written notice shall be in such form and executed in such manner as the Employer in its discretion may specify from time to time. In the event a Member has not validly and effectively designated a Beneficiary or, if having done so, the Beneficiary is not living on the date of the Member's death or if the Member revoked the last designation so made, any amount payable pursuant to the Plan shall be paid in a lump sum amount to the Member's estate.

9.08 Maximum Limits Under the *Income Tax Act*

The *Income Tax Act* imposes conditions in order for a pension plan to maintain registered status under the *Income Tax Act*. Certain restrictions must be specifically stated in the Plan, even though the regular provisions of the Plan may be more restrictive. In administering the Plan, contributions and benefits are first determined pursuant to the regular provisions of the Plan, then tested against the provisions of this Section 9.08 and modified if necessary.

(a) Maximum Pension

Notwithstanding any other provision of the Plan, and subject to section (b) below, the annual pension payable to a Member under the Defined Benefit Provision on the date of the Member's retirement, termination of employment, or upon termination of the Plan, including any benefits paid to a Spouse pursuant to Section 12.05, shall not exceed the lesser of:

- (i) 2% of the Member's "highest average compensation" multiplied by the Member's years of "pensionable service" with the Employer; and
 - (ii) the "defined benefit limit" for such year (currently \$1,722.22) multiplied by the Member's years of "pensionable service" with the Employer.
- Pensionable service for a Member shall not exceed 35 years during a Member's period of service prior to 1992.

For the purposes of this subsection, the terms "highest average compensation", "defined

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R-24 Salaried Employees Pension Plan (*cont'd*)

benefit limit" and "pensionable service" shall have the meanings as defined in the *Income Tax Act*.

(b) Maximum Early Retirement Pension

The annual early retirement pension payable to a Member under the Defined Benefit Provision, as calculated pursuant to Section 6.02, 6.03 or 6.04 commencing prior to the Member's attainment of age 60, shall not exceed the lesser of the amount payable under the Defined Benefit Provision under Section 6.01 and the maximum amount determined pursuant to section (a) above, except that such maximum amount shall be reduced by 1/4 of 1% for each month by which the Member's Pension Commencement Date precedes the earliest of the first day of the month following:

- (i) the Member's attainment of age 60;
- (ii) the date the Member would have attained 30 years of service had he or she continued in employment with the Employer; or
- (iii) the date the Member would have attained a combined total of 80 years (and fractions of a year) of age and service had he or she continued in employment with the Employer.

(c) Combined Maximum Pension and Temporary Supplemental Benefit

In addition to the maximum pension limit described in paragraph (a) above, and notwithstanding any other provision of the Plan to the contrary, the total annual benefit payable to a Member under the Defined Benefit Provision prior to the Member's attainment of age 65, at the time of the Member's termination of employment, retirement, or termination of the Plan, as the case may be, shall not exceed the sum of:

- (i) the defined benefit limit for such year of termination multiplied by the Member's years of "pensionable service", as defined in the *Income Tax Act*; and
- (ii) 25% of the average of the YMPE for such year of termination and the two preceding calendar years, multiplied by a fraction, the numerator of which is the Member's years of pensionable service as defined in the *Income Tax Act* to a maximum of 35 and the denominator of which is 35.

R-24 Salaried Employees Pension Plan (*cont'd*)

(d) Maximum Pension Adjustment

A Member's pension adjustment for a calendar year in respect of the Employer and any employer that does not deal at arm's length with the Employer shall not exceed the maximum pension adjustment permitted under the *Income Tax Act*.

9.09 Retirement Benefits From Excess Contributions

(a) A Member who is eligible to receive benefits under the Defined Benefit Provision shall receive additional monthly retirement income that is the Actuarial Equivalent of the amount, if any, by which his contributions made prior to January 1, 1990, together with Credited Interest but excluding any amounts transferred to his Member Account under Section 4.05, exceed the Commuted Value of any retirement income earned in respect of Credited Service prior to January 1, 1990 under the Defined Benefit Provision.

(b) A Member who is eligible to receive benefits under the Defined Benefit Provision shall receive additional retirement income that is the Actuarial Equivalent of the amount, if any, by which his contributions made on or after January 1, 1990, together with Credited Interest but excluding any amounts transferred to his Member Account under Section 4.05, exceed 50% of the Commuted Value of any retirement income earned in respect of Credited Service on or after January 1, 1990 under the Defined Benefit Provision.

Section 10 — Pension Fund

10.01 General

- (a) The Employer shall establish and maintain a Pension Fund for the purpose of receiving and investing the contributions and providing the benefits pursuant to the Defined Benefit Provision and the Defined Contribution Provision of the Plan.
- (b) The Pension Fund shall be administered and invested pursuant to the terms of the Funding Agreement, and in compliance with the provisions of the *Pension Benefits Act*, the *Income Tax Act* and other applicable laws.
- (c) The Employer shall have the sole right to appoint the Funding Agency and to determine the form and terms of the Funding Agreement.

10.02 Provision of Benefits

- (a) No part of the Pension Fund shall be used for or diverted to purposes other than for the exclusive benefit of Employees, pensioners, contingent annuitants and surviving spouses prior to satisfaction of all liabilities to such persons pursuant to the Plan and the Funding Agreement. No Employee, prior to retirement under conditions of eligibility for a pension under the Plan, shall have any right or interest in or to any portion of any funds which may be paid into the Pension Fund and an Employee, contingent annuitant or surviving Spouse shall not have any right to any such pension except to the extent provided in the Plan.
- (b) All benefits pursuant to the Plan shall be paid from the Pension Fund; however, the Employer reserves the right to insure or reinsure any part of the benefits with an insurance company licensed to transact such business. If an annuity is purchased to provide pension benefits, such purchase shall operate as a complete discharge of the Employer and the Plan in respect of the amount purchased.
- (c) All payments pursuant to the Plan shall be made in Canadian currency.

10.03 Investment—Defined Benefit Provision

The Employer shall direct the Funding Agency to invest the Pension Fund relating to the Defined Benefit Provision in such manner as the Employer deems appropriate from time to time, subject to the *Pension Benefits Act* and the *Income Tax Act*.

R-24 Salaried Employees Pension Plan (*cont'd*)**10.04 Investment—Defined Contribution Provision****(a) Investment Option Form**

- (i) Subject to the *Pension Benefits Act* and the *Income Tax Act*, a Member shall submit to the Funding Agency an investment option form directing the investment of the amount in the Member's Account in such investment options as may be offered by the Employer and the Funding Agency pursuant to the Funding Agreement.
- (ii) The amount in the Member's Account shall be invested in the investment options in such proportion as directed by the Member based on whole number increments from 1% to 100%.
- (iii) If a Member fails to submit an investment option form, the amount in a Member's Account shall be invested in an interest-bearing investment made available by the Funding Agency from time to time.

(b) Changes to Member Investment Options

A Member may change all or part of the Member's investment options at any time, subject to any conditions as may be required by the Funding Agency. The Member may direct the Funding Agency to transfer assets from one investment option to another and the Member's Account shall be debited or credited, as the case may be, by the value of the investment bought or sold as of the day the Funding Agency completes the change to a Member's investment options.

10.05 Expenses

Subject to the *Pension Benefits Act*, all reasonable charges, fees, taxes and other expenses incurred in the operation of the Plan and Pension Fund including, but not limited to, investment management fees, registration fees, auditor fees, trustee fees, legal fees, consulting fees and actuarial fees shall be paid from the Pension Fund, unless paid directly by the Employer or the Funding Agency.

Section 11 — Administration of the Plan

11.01 Administration of the Plan

- (a) The Employer is the administrator of the Plan. The Pension Committee is responsible for the day-to-day operation of the Plan, including the Defined Benefit Provision and the Defined Contribution Provision.
- (b) The Pension Committee shall consist of three or more persons resident in Canada, appointed by Cliffs Mining Company, to serve for such times until their respective successors have been appointed in like manner.

11.02 Officers of Pension Committee

The members of the Pension Committee shall elect a member to act as chairman and shall appoint a secretary who may, but need not be, a member of the Pension Committee.

11.03 Powers of Pension Committee

Subject to the *Pension Benefits Act*, the Pension Committee shall have all such powers and duties as Cliffs Mining Company may at any time grant, impose or delegate including, but not limited to, the following:

- (a) to award the payment of pension benefits pursuant to the Plan;
- (b) to make and enforce such rules and regulations as the Pension Committee deems necessary or appropriate for the efficient administration of the Plan;
- (c) to interpret or apply the Plan or any provision thereof; and
- (d) to do, or cause to be done, all such acts or things necessary or proper to carry out the rights and privileges granted to or the duties imposed upon it under any provision of the Plan or the Funding Agreement.

Except as otherwise provided in the Plan or the Funding Agreement, any act, interpretation or determination made by the Pension Committee shall be final and binding upon all affected persons.

11.04 Agents of Pension Committee

The Pension Committee may appoint or employ such administrative, medical, actuarial, legal and other agents as the Pension Committee deems necessary or appropriate. The fees and expenses of such agents shall be paid from the Pension Fund, unless paid directly by the Employer.

R-24 Salaried Employees Pension Plan (*cont'd*)**11.05 Actions of Pension Committee**

Any action of the Pension Committee may be taken by the written approval or the affirmative votes of a majority of the members of the Pension Committee. The Pension Committee may delegate to any of its members, officers, or agents such duties and powers, both ministerial and discretionary, as it deems appropriate, excepting only that any dispute shall be settled by the Pension Committee. The Pension Committee may authorize any one or more of its members to sign on its behalf any instructions, certificates, directions or notices of the Pension Committee to the Funding Agent or others, and the Funding Agent or any other person to whom any such writing is directed shall be fully protected in acting thereon.

11.06 Decisions of Pension Committee

The Pension Committee shall make all determinations as to the right of any person to a benefit pursuant to the Plan. Any denial by the Pension Committee of the claim for benefits pursuant to the Plan by a person shall be stated in writing by the Pension Committee and delivered or mailed to such person and shall set forth the specific reasons for the denial. In addition, the Pension Committee shall afford a reasonable opportunity to such person whose claim for benefits has been denied, for a reconsideration of the decision denying the claim.

11.07 Communication With Pension Committee

Any designations, elections or waivers pursuant to the Plan shall be in writing to the Pension Committee and, if valid, shall be considered in force as of the date received by the Pension Committee.

11.08 Allocation of Responsibilities Among the Employer, the Pension Committee and the Funding Agent

(a) The Employer, the Pension Committee and the Funding Agency shall have only those specific powers, duties, responsibilities and obligations as are specifically provided in the Plan and the Funding Agreement. The Employer shall have the sole authority to appoint and remove the Funding Agency and any investment manager which may be provided for pursuant to the Plan or the Funding Agreement. The Funding Agency shall have the sole responsibility for the administration of the Pension Fund, pursuant to the Funding Agreement. The Employer, the Pension Committee and the Funding Agency may rely upon any direction, information or action of each other as being proper pursuant to the Plan and the Funding Agreement and is not required pursuant to inquire into the propriety of any such direction, information or action. It is intended that the Employer, the Pension Committee and the Funding Agency shall be responsible for the proper exercise of their respective own powers, duties, responsibilities and obligations pursuant to the Plan and the Funding Agreement and shall not be responsible for any act or failure to act of each other.

R-24 Salaried Employees Pension Plan (*cont'd*)

- (b) The rights of any person entitled to receive any payment or benefit pursuant to the Plan shall be limited to the assets of the Pension Fund as such assets exist from time to time. Neither the Plan nor the Funding Agreement shall create any privity between the Employer and any Employee or other person entitled to receive any payment or benefit pursuant to the Plan, and no right or claim of any such person shall be asserted or made against the Employer by reason of the Plan or the Funding Agreement. No right or claim shall be asserted or made by any person against the Funding Agency or the Pension Fund except in respect of a benefit provided pursuant to the Plan or the Funding Agreement and which has become due and payable pursuant to the Plan or the Funding Agreement.
- (c) The obligations of the Employer pursuant to the Plan shall be limited to the payments required to be made by the Employer in any calendar year pursuant to the Plan.

11.09 Records of the Employer

Wherever the records of the Employer or the Pension Committee are used for the purposes of the Plan, such records shall be conclusive of the facts with which they are concerned.

11.10 Communication

(a) Notice of Plan Provisions and Amendments

The Employer shall provide to each Member and each Employee eligible for membership in the Plan a written explanation of:

- (i) the provisions of the Plan and any amendments thereto applicable to the Member or Employee;
- (ii) the rights and duties of the Member or Employee with respect to the benefits available pursuant to the Plan;
- (iii) such other information as may be required under the *Pension Benefits Act* or other applicable provincial or federal laws; and
- (iv) amendments to the Plan, within the time period prescribed by the *Pension Benefits Act*.

(b) Statement of Benefits

A Member who terminates employment with the Employer and who is entitled to a benefit from the Plan shall be provided with a written statement setting out the benefit to which he or she is entitled or may become entitled pursuant to the Plan.

R-24 Salaried Employees Pension Plan (*cont'd*)

(c) Annual Statement of Benefits

Each year the Employer shall provide each Member who is actively participating in the Plan with a written statement of the Member's benefits pursuant to the Plan and such other information as may be required by the *Pension Benefits Act*.

(d) Inspection of Documents

A Member or a Member's agent so authorized in writing may inspect and make photocopies of the following documents, which shall be available, upon written request in advance, at the head office of the Employer during regular business hours:

- (i) the provisions of the Plan applicable to the Member;
- (ii) the amendments to the Plan applicable to the Member;
- (iii) the annual information return;
- (iv) an abstract of the actuarial valuation report indicating the official name of the Plan, the employer actuarial normal cost under the Plan for future service, the balance of all unfunded liabilities, the annual special contributions required to liquidate such liabilities and the amortization periods, and the Surplus Assets in the Plan, if any;
- (v) the Plan's financial statements; and
- (vi) such other documents as prescribed by the *Pension Benefits Act*.

Section 12 — General Provisions

12.01 Employment Rights

The establishment and implementation of the Plan shall not constitute an enlargement of any rights which a Member may have as an Employee apart from the Plan. Membership in the Plan does not confer a right on a Member to require the Employer to continue the Member in its employment, and if the service of the Member is terminated before the Member's Normal Retirement Date, such Member has only such rights as are provided for under the Plan. The benefits pursuant to the Plan shall not be used to increase damages in respect of the termination of employment of a Member.

12.02 Non-Assignability and Non-Commutability of Benefits

Any benefit payable pursuant to the Plan shall be for the personal use of the person entitled to receive such benefit, and shall not be given as security or be subject to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, surrender or charge, or to attachment or legal process for debts of the person receiving such benefits, except as specifically provided by paragraph 8502(f) of the regulations to the Income Tax Act, by statute and as provided in Section 12.05 below. In no event shall such benefits confer upon any Member, or any other person, any rights or interest therein which is capable of being surrendered or commuted except as specifically provided by the Plan.

12.03 No Duplication of Benefits

There shall be no duplication of the benefits under any one section of the Plan and the benefits under any other section of the Plan, nor of the benefits under the Plan and the benefits under any other Employer-sponsored retirement plan or any other retirement plan sponsored by an affiliate or subsidiary of the Employer with respect to the same period of service.

12.04 Notices and Elections

Any notice or election to be given, made or communicated pursuant to or for any purpose of the Plan shall be given, made or communicated, as the case may be, in such manner as the Employer shall determine from time to time. Without limiting the generality of the foregoing, any person entitled to any benefit under the Plan shall be responsible for notifying the Employer in writing of his or her mailing address and subsequent changes of mailing address.

R-24 Salaried Employees Pension Plan (*cont'd*)

12.05 Division of Pension Benefits on Marriage Breakdown

In the event the Pension Committee is provided with a certified copy of a court order relating to the entitlement to or payment of a Member's pension benefits upon the marriage breakdown of the Member and the Member's Spouse, or a domestic agreement between the Member and the Member's Spouse which has been certified by a court order relating to the entitlement to or payment of the Member's pension benefits upon the marriage breakdown of the Member and the Member's Spouse, such benefits may be paid or divided pursuant to the terms of such court order or domestic agreement, as the case may be, subject to the *Pension Benefits Act*.

12.06 Applicable Law

The Plan shall be interpreted pursuant to the laws applicable in the province of Newfoundland.

Section 13 — Future of the Plan

13.01 Continuation of the Plan

The Employer intends to maintain the Plan in force indefinitely; however, the Employer reserves the right to terminate the Plan, either in whole or in part, at any time or times in the event that future conditions warrant such action, subject to the *Pension Benefits Act* and the *Income Tax Act*.

13.02 Amendment of the Plan

The Employer reserves the right to amend the Plan from time to time. No amendment to the Plan or other instrument established or entered into for purposes of holding and administering funds contributed hereunder, shall operate to reduce the benefits accrued by members or by their Spouses, Beneficiaries or estates up to the date of the amendment nor shall any amendment be made which would cause or permit any portion of the Pension Fund to be used for purposes other than as prescribed by the provisions of the Plan and the requirements of the *Pension Benefits Act* and the *Income Tax Act*.

13.03 Termination of the Plan

In the event the Plan is terminated, the assets of the Pension Fund, after provision for administrative expenses (including any expenses incurred in the termination of the Plan), shall first be used to provide pension benefits for Members, their respective Spouses, Beneficiaries and estates in an equitable manner to be determined by the Employer, with the recommendation of the Actuary, subject to the *Pension Benefits Act* and the *Income Tax Act*. The rights of all Members and their Spouses, Beneficiaries and estates to benefits accrued to the date of such termination, to extent then funded, are non-forfeitable.

13.04 Wind-Up or Bankruptcy of the Employer

In the event the Employer is wound up or becomes bankrupt, the Plan, unless continued by another employer, shall be deemed terminated and the provisions of Section 13.03 shall apply, except to the extent that any termination or action required to be made thereunder by the Employer, shall in such event, be made by the liquidator or trustee in bankruptcy, as the case may be.

R-24 Salaried Employees Pension Plan (*cont'd*)**13.05 Asset Transfer or Merger**

- (a) The Employer may transfer or merge the assets of the Plan or the Pension Fund or any part thereof, and the liabilities related to such assets, to or with one or more trusts, pension fund societies or corporations, pension or superannuation plans or funds and which may result in one merged or amalgamated entity with or without termination of the entities merged. Subject to the *Pension Benefits Act* and without limiting the generality of the foregoing, the terms of the transfer or merger may provide for the termination or continuation of all or any part of the entities to be merged, the consolidation of the assets and liabilities of the merged entities, with or without any requirement to maintain a separate accounting in respect thereof, and the application of the assets of the fund or any part thereof to the liabilities related to any new participants or the merged entity, provided that any account maintained in respect of a Member shall continue to be maintained in respect of the Member until such time as the Member terminates employment with no vested benefit remaining to be paid.
- (b) In the event of a merger or consolidation of the Plan with, or transfer in whole or in part of the assets and liabilities of the Pension Fund to, another fund relating to any other plan of deferred compensation maintained or to be established for the benefit of all or some of the Members, the assets of the Pension Fund relating to any transferred Members shall be transferred to the other fund provided that:
- (i) each Member would be entitled to (if either the Plan or the other plan is then terminated) receive a pension benefit immediately after the merger, consolidation or transfer equal to or greater than the pension benefit he or she would have been entitled to receive pursuant to the Plan immediately prior to the merger, consolidation or transfer;
 - (ii) the Employer, or any new or successor employer of the affected Members authorizes such transfer of assets; and
 - (iii) such other plan and trust agreement are registered with the applicable regulatory authorities.

13.06 Surplus Assets

If, after all accrued benefits pursuant to the Plan to Members and their respective Spouses, Beneficiaries or estates, as the case may be, have been paid and all expenses pursuant to the Plan have been paid, Surplus Assets remain in the Pension Fund, the Employer shall have legal title to such Surplus Assets, subject to the *Pension Benefits Act*, the *Income Tax Act* and other applicable laws.

Section 14 — Special Provisions for Quebec Employees

14.01 Application

This section applies to Employees who report for work in the Province of Quebec and is included in the Plan in order for the Plan to comply with the *Supplemental Pension Plans Act (Quebec)* (the “SPPA”) and shall supplement all other provisions of the Plan which are not inconsistent and shall replace any other provisions which are inconsistent.

14.02 Quebec Early Retirement

A Quebec Member may elect to retire on the first day of the month following his or her 55th birthday, or on the first day of any succeeding month prior to his Normal Retirement Date, provided the Member has completed at least two years of Continuous Service, the date of such retirement being hereunder described as his or her “Quebec Early Retirement Date”. Such Member shall be entitled, upon such early retirement, to receive a pension determined pursuant to Section 14.03.

14.03 Quebec Early Retirement Pension

A Quebec Member who retires pursuant to Section 14.02 may elect to receive a monthly pension commencing on his or her Quebec Early Retirement Date or at the election of the Quebec Member on the first day of any subsequent month (but not later than his or her Normal Retirement Date), in an amount equal to the Actuarial Equivalent of the pension calculated as in Section 6.01 based on his or her Credited Service to his or her Quebec Early Retirement Date.

14.04 Postponed Retirement

A Quebec Member may postpone his or her retirement beyond his or her Normal Retirement Date.

14.05 Actuarial Adjustment

Upon a Quebec Member's postponed retirement date, which shall be the first day of the month coincident with or next following the date on which the Member retires, the Quebec Member shall be eligible to receive a retirement pension equal to the Actuarial Equivalent of the pension determined pursuant to Section 6.01 based on Credited Service in effect on the Normal Retirement Date. Such Actuarial Equivalent shall be determined as of the date the pension commences and shall be determined on the basis of the method described in Appendix “A” to the Plan entitled “Revalorization of Postponed Retirement Pension”.

14.06 Maximum Deferral of Pension

If a Quebec Member who has elected to postpone retirement after Normal Retirement Date has not effectively retired before his or her 69th birthday, the Member's postponed retirement pension shall commence on December 1st of the calendar year the Quebec Member attains age 69.

14.07 Effect of Maximum Benefit Rule

If a Quebec Member who has elected to postpone retirement after Normal Retirement Date

R-24 Salaried Employees Pension Plan (*cont'd*)

shall become entitled to a postponed retirement pension which, after the revalorization described in Section 14.05 above, becomes equal to the maximum pension described in Section 9.08, the Member's postponed retirement pension shall then commence on the first day of the next calendar month.

14.08 Partial Payment of Pension

If the wages, as defined in the SPPA, of a Quebec Member who has elected to postpone retirement after Normal Retirement Date are reduced, the Member may elect to receive a partial payment of his or her retirement pension. Such election may be made at the time the Member's wages are reduced and each January 1st thereafter. The amount of the partial payment shall be equal to, if the amount of the retirement pension so permits, the amount of reduction in such wages. The remaining balance, if any, of his retirement pension shall be payable on the Member's effective retirement and shall be calculated according to Section 14.05 above.

14.09 Early Commencement of Deferred Vested Pension

A Quebec Member who is entitled to a deferred vested pension pursuant to Section 6.04 may, upon proper application therefor, elect to have the deferred vested pension commence prior to his or her Normal Retirement Date, on the first day of any month subsequent to the Member's 55th birthday, in which event the amount of such pension shall be the Actuarial Equivalent of the deferred pension otherwise payable from such Member's Normal Retirement Date.

14.10 Portability of Benefits

A Quebec Member whose employment with the Employer terminates before attaining age 55 and who is entitled to a deferred vested pension pursuant to the provisions of Section 6.04 may, within 180 days following the date of termination, and subsequently every five years, within 180 days from the date of expiry of each fifth year, elect to transfer an amount equal to the value of the deferred pension to a pension plan governed by the SPPA or to a locked in retirement account or annuity contract as prescribed by the SPPA. Any such transfer shall, however, be subject to such conditions and restrictions as may be prescribed by the SPPA, depending upon the solvency status of the Plan from time to time.

In the event that a portability election is completed pursuant to this Section 14.10, the Member shall have no further rights under the Plan.

14.11 Death in Service After Normal Retirement Date

If a Quebec Member dies subsequent to the Normal Retirement Date while in active employment leaving a surviving Spouse, the Member's Spouse shall be entitled to receive a pension the value of which shall be equal to the greater of:

- (a) the value of the death benefit under Section 8, or
- (b) the value of the pension the Spouse would have been entitled to receive under Section 7 if payment of the postponed pension had begun on the day preceding the death of the Quebec Member.

R-24 Salaried Employees Pension Plan (cont'd)

- (a) the value of the death benefit under Section 8, or
- (b) the value of the pension the Spouse would have been entitled to receive under Section 7 if payment of the postponed pension had begun on the day preceding the death of the Quebec Member.

14.12 Commutation of Pension

If the value of a retirement pension or deferred vested pension payable under the Plan is less than 4% of the YMPE in the year that the Quebec Member retires, terminates employment or dies, or such other amount as may be permitted from time to time by the SPPA, a lump sum amount equal to the value of the benefit shall be paid to the person entitled to such benefit in lieu of any other benefits under this Plan.

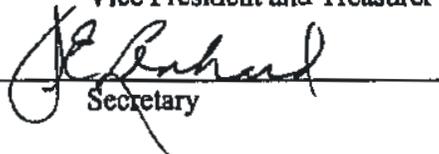
14.13 Temporary Supplementary Benefit

For the purposes of Section 7.03, if the Member was receiving a temporary supplementary benefit pursuant to Section 6.06, such temporary supplementary benefit shall be subject to an actuarial reduction, and such benefit shall continue to be paid to the Member's Spouse ending with the month in which the Member would have attained age 65.

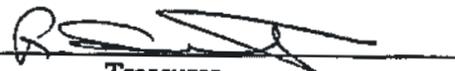
Executed this 14th day of May, 2001.

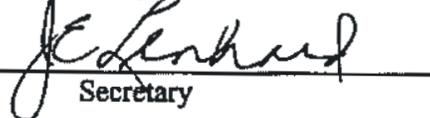
WABUSH MINES, Cliffs Mining Company,
Managing Agent

By: 
Vice President and Treasurer

And: 
Secretary

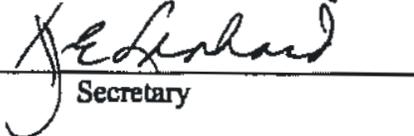
ARNAUD RAILWAY COMPANY

By: 
Treasurer

And: 
Secretary

WABUSH LAKE RAILWAY COMPANY, LIMITED

By: 
Treasurer

And: 
Secretary

Appendix A

Revalorization of Postponed Retirement Pension

The retirement pension of a Quebec Member who has elected to postpone retirement after his or her Normal Retirement Date is revalorized as follows:

1. A notional account is set up for the Quebec Member.
2. There shall be credited to that account the monthly retirement pension that the Quebec Member would have received (up to but not including the date the Member actually begins to receive the retirement pension) if the Member had retired on his or her Normal Retirement Date.
3. There shall be credited to such account the interest earned on such monthly retirement pension from each due date thereof assuming a rate of interest for each calendar month corresponding to the average yield on "5-year personal fixed term deposits" (CANSIM series B14045) as published by the Bank of Canada Review.
4. When the postponement of the retirement pension ceases, a monthly postponed retirement pension shall be calculated based on the accumulated balance then existing in such account.
5. The accumulated balance in the account shall be divided by the present value of an annuity of \$1 per month payable for the Quebec Member's lifetime calculated by the Actuary and based on the following assumptions:
 - (i) 1983 Group Annuity Mortality Table, as published by the Society of Actuaries; and
 - (ii) Interest for the first 15 years at an annual rate equal to the yield on "long-term Government of Canada Bonds" (CANSIM series B14013) for the month preceding as published in the Bank of Canada Review, and interest at 6% per annum thereafter.
6. The Quebec Member's postponed retirement pension shall be calculated by adding:
 - (i) The monthly normal retirement pension that the Quebec Member would have been entitled to receive had the Member retired on his or her Normal Retirement Date; and
 - (ii) the pension calculated pursuant to paragraph 5 above.
7. In the event of a partial payment of the retirement pension after the Normal Retirement Date but before actual retirement (i.e. with different parts of the retirement pension being postponed for different periods), the foregoing procedure shall be applied separately to each part.

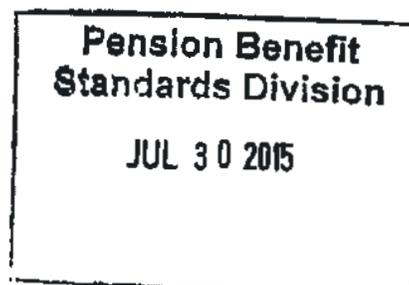
R-24 Salaried Employees Pension Plan (cont'd)

**CERTIFICATE OF ASSISTANT SECRETARY
OF
CLIFFS MINING COMPANY, MANAGER
OF
WABUSH MINES JOINT VENTURE**

I, T. L. Forrester, Assistant Secretary of Cliffs Mining Company, a Delaware corporation (the "Company"), which is the Managing Agent of Wabush Mines, a Joint Venture, comprised of HLE Mining GP Inc. f/b/o HLE Mining Limited Partnership, Wabush Resources Inc., as successors of interest to Stelco Inc. and Dofasco Inc., respectively, and Wabush Iron Co. Limited, the Joint Venturers, do hereby certify that the attached First Amendment to the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, and Wabush Lake Railway Company, Limited, as Amended and Restated Effective as of January 1, 1997 and executed on May 14, 2001, is a true and correct copy.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company, as of the 27th day of June, 2007.


Assistant Secretary



**SALARIED DB PLAN AMENDMENT
NO. 1**

First Amendment to the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited

as Amended and Restated Effective as of January 1, 1997

Amendment No. 1

WHEREAS Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (the "Employer") maintains the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (the "Plan"); and

WHEREAS pursuant to the Wabush Mines Management Agreement, dated January 1, 1987 between Wabush Iron Co. Limited, Stelco Inc., Dofasco Inc. and Cliffs Mining Company (the "Management Agreement"), Cliffs Mining Company is delegated authority as Managing Agent to act on behalf of the Employer; and

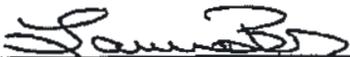
WHEREAS Section 13.02 of the Plan permits the Employer to amend the Plan; and

WHEREAS It is necessary to amend the Plan with regard to the definition of "Employer" and to rename the Plan;

NOW THEREFORE IT IS HEREBY RESOLVED:

1. The Plan is hereby amended as set forth in Exhibit "A" annexed hereto, with effect from the dates shown therein; and
2. Cliffs Mining Company, Managing Agent, pursuant to the Management Agreement, is authorized and directed to sign all documents and to perform all acts necessary or appropriate to give effect to the foregoing resolution and to maintain registration of the Plan with the regulatory authorities having jurisdiction over the Plan and to implement these resolutions, including any additional minor amendments to be made on the advice of counsel or as may be required to maintain such registration.

IN WITNESS WHEREOF Cliffs Mining Company, as Management Agent, authorizes the foregoing Resolutions pursuant to the power granted to it.



L. Brías, Senior Vice President-
C.F.O. and Treasurer
Cliffs Mining Company, Managing
Agent of Wabush Mines

Exhibit "A"

Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited

AMENDMENT No. 1

Effective •:

- 1. The name of the Plan is amended to be the following:**

Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent

- 2. Section 2.18 is deleted and replaced with the following:**

"Employer" means Wabush Mines, Cliffs Mining Company, Managing Agent.

**SALARIED DB PLAN AMENDMENT
NO. 2**

**Pension Benefit
Standards Division**

JUL 30 2015

**CONTRIBUTORY PENSION PLAN FOR
SALARIED EMPLOYEES OF
WABUSH MINES, CLIFFS MINING COMPANY, MANAGING AGENT
AMENDMENT NO. 2**

WHEREAS Wabush Mines, Cliffs Mining Company, Managing Agent (the "Employer") maintains the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (the "Plan");

AND WHEREAS pursuant to the Wabush Mines Management Agreement, dated January 1, 1967, as amended, between Wabush Iron Co. Limited and Cliffs Mining Company (the "Management Agreement"), Cliffs Mining Company has delegated authority to act on behalf of the Employer;

AND WHEREAS pursuant to Section 13.02 of the Plan, the Employer reserves the right to amend the Plan;

AND WHEREAS the Employer wishes to amend the Plan effective May 1, 2007 to increase the contribution rates under the Defined Contribution Provision of the Plan;

AND WHEREAS the Employer wishes to amend the Plan effective June 23, 2008 to update the definition of Earnings;

NOW THEREFORE IT IS HEREBY RESOLVED:

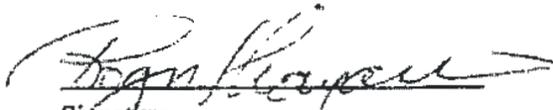
1. The Plan is hereby amended as set forth in Exhibit "A" attached, with effect from the dates shown therein; and
2. Cliffs Mining Company, Managing Agent, pursuant to the Management Agreement, is authorized and directed to sign all documents and to perform all acts necessary or appropriate to give effect to the foregoing resolution and to maintain registration of the Plan with the regulatory authorities having jurisdiction over the Plan and to implement these resolutions, including any additional minor amendments to be made on the advice of counsel or as may be required to maintain such registration.

R-24 Salaried Employees Pension Plan (cont'd)

Contributory Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company,
Managing Agent
Amendment No. 2

Page 2

IN WITNESS WHEREOF Cliffs Mining Company, as Managing Agent, authorizes the foregoing resolution pursuant to the power granted to it.



Signature

ROGER THOMASSIN

Name

H.R. DIRECTOR

Title

Cliffs Mining Company,
Managing Agent of Wabush Mines

Exhibit "A"

**Contributory Pension Plan for Salaried Employees of Wabush Mines,
 Cliffs Mining Company, Managing Agent**

Amendment No. 2

1. Effective May 1, 2007, Section 4.01(b) shall be deleted in its entirety and replaced with the following:

"(b) Defined Contribution Provision

A Member who elects to participate in the Defined Contribution Provision of the Plan shall contribute 3% of Earnings to his or her Account by payroll deduction."

2. Effective May 1, 2007, Section 4.02(b) shall be deleted in its entirety and replaced with the following:

"(b) Defined Contribution Provision

The Employer shall contribute each payroll period to the Account of each Member who participates in the Defined Contribution Provision an amount equal to 6% of the Member's Earnings."

3. Effective June 23, 2008, Section 2.15 shall be deleted in its entirety and replaced with the following:

"2.15 Earnings

"Earnings" means the base salary paid by the Employer to a Member, including taxable income from cost of living adjustments, Sunday, shift and holiday premium payments, regular performance bonuses, the Northern allowance, and special vacation, regular vacation, and out-of-season vacation bonus pay. Earnings excludes lump sum payments paid to an individual as a consequence to the termination of employment of the individual and all other forms of

R-24 Salaried Employees Pension Plan (*cont'd*)

Contributory Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company,
Managing Agent
Amendment No. 2 – Exhibit "A"

Page 2

remuneration, including but not limited to, all non-cash benefits, any remuneration resulting from the exercise of a qualified stock option, incentive stock option or other stock option or appreciation right, overtime pay, and all allowances (except the Northern allowance), including but not limited to, the housing, travel and tax equalization allowances. Notwithstanding the foregoing, for periods prior to June 23, 2008, Earnings shall include overtime pay paid by the Employer to a Member.

In determining the Earnings of a Member during a calendar month, the Earnings in the calendar year shall be divided by twelve."

**SALARIED DB PLAN AMENDMENT
NO. 3**

**CONTRIBUTORY PENSION PLAN FOR
SALARIED EMPLOYEES OF
WABUSH MINES, CLIFFS MINING COMPANY, MANAGING AGENT
AMENDMENT NO. 3**

WHEREAS Wabush Mines, Cliffs Mining Company, Managing Agent (the "Employer") maintains the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (the "Plan");

AND WHEREAS pursuant to the Wabush Mines Management Agreement, dated January 1, 1967, as amended, between Wabush Iron Co. Limited and Cliffs Mining Company (the "Management Agreement"), Cliffs Mining Company has delegated authority to act on behalf of the Employer;

AND WHEREAS pursuant to Section 13.02 of the Plan, the Employer reserves the right to amend the Plan;

AND WHEREAS the Employer wishes to amend the Plan effective November 26, 2010 to change the default investment fund under the Defined Contribution Provision of the Plan;

NOW THEREFORE IT IS HEREBY RESOLVED:

1. The Plan is hereby amended as set forth in Exhibit "A" attached, with effect from the dates shown therein; and
2. Cliffs Mining Company, Managing Agent, pursuant to the Management Agreement, is authorized and directed to sign all documents and to perform all acts necessary or appropriate to give effect to the foregoing resolution and to maintain registration of the Plan with the regulatory authorities having jurisdiction over the Plan and to implement these resolutions, including any additional minor amendments to be made on the advice of counsel or as may be required to maintain such registration.

**Pension Benefit
Standards Division**

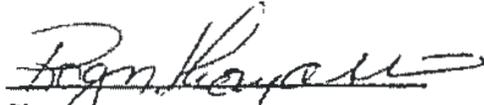
JUL 30 2015

R-24 Salaried Employees Pension Plan (cont'd)

Contributory Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company,
Managing Agent
Amendment No. 3

Page 2

IN WITNESS WHEREOF Cliffs Mining Company, as Managing Agent, authorizes the foregoing resolution pursuant to the power granted to it.


Signature

ROGER THOMASSIN
Name

HR DIRECTOR
Title

Cliffs Mining Company,
Managing Agent of Wabush Mines

Exhibit "A"

**Contributory Pension Plan for Salaried Employees of Wabush Mines,
Cliffs Mining Company, Managing Agent**

Amendment No. 3

1. Effective November 26, 2010, subparagraph 10.04(a)(iii) shall be deleted in its entirety and replaced with the following:

"(iii) If a Member fails to submit an investment option form, the amount in the Member's Account shall be invested in a target retirement date fund offered by the Employer and the Funding Agency pursuant to the Funding Agreement, with such target retirement date fund having a target date which is closest to the earlier of the date on which the Member will first attain 30 years of Continuous Service or age 65."

**SALARIED DB PLAN AMENDMENT
NO. 4**

**CONTRIBUTORY PENSION PLAN FOR SALARIED
EMPLOYEES OF WABUSH MINES, CLIFFS MINING
COMPANY, MANAGING AGENT**

AMENDMENT NO. 4

WHEREAS Wabush Mines, Cliffs Mining Company, Managing Agent (the "Employer") maintains the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (the "Plan");

AND WHEREAS pursuant to the Wabush Mines Management Agreement, dated January 1, 1967, as amended, between Wabush Iron Co. Limited and Cliffs Mining Company (the "Management Agreement"), Cliffs Mining Company has delegated authority to act on behalf of the Employer;

AND WHEREAS pursuant to Section 13.02 of the Plan, the Employer reserves the right to amend the Plan;

AND WHEREAS it is required, in order to maintain registration of the Plan with the regulatory authorities having jurisdiction over the Plan, to amend the Plan to comply with legal mandatory requirements;

NOW THEREFORE IT IS HEREBY RESOLVED:

1. The Plan is hereby amended as set forth in Exhibit "A" attached, with effect from January 1, 2001; and
2. Cliffs Mining Company, Managing Agent, pursuant to the Management Agreement, is authorized and directed to sign all documents and to perform all acts necessary or appropriate to give effect to the foregoing resolution and to maintain registration of the Plan with the regulatory authorities having jurisdiction over the Plan and to implement these resolutions, including any additional minor amendments to be made on the advice of counsel or as may be required to maintain such registration.

**Pension Benefit
Standards Division**

SEP 30 2015

R-24 Salaried Employees Pension Plan (*cont'd*)

IN WITNESS WHEREOF Cliffs Mining Company, as Managing Agent, authorizes the foregoing resolution pursuant to the power granted to it under the Management Agreement.

Signature

Name

Title

Cliffs Mining Company,
Managing Agent of Wabush Mines

Exhibit "A"**Contributory Pension Plan for Salaried Employees of Wabush Mines,
Cliffs Mining Company, Managing Agent****Amendment No. 4**

Effective January 1, 2001, Section 14 is deleted in its entirety and replaced with the following:

Section 14 – Special Provisions for Québec Employees**14.01 Application**

This section applies to Employees who report for work in the Province of Québec and is included in the Plan in order for the Plan to comply with the Supplemental Pension Plans Act (Québec) (the "SPPA") and shall supplement all other provisions of the Plan which are not inconsistent and shall replace any other provisions which are inconsistent.

14.02 Definition of Spouse

Notwithstanding Section 2.35, "Spouse" means, in relation to a Québec Member:

- (a) Subject to paragraphs (b), (c) and (d), in relation to a Member, the person who, at the earlier of the commencement of the Member's pension and the date of the Member's death, meets one of the following eligibility requirements:
 - (i) the person who is married to or in a civil union with the Member; or
 - (ii) where the Member is neither married nor in a civil union, the person who has been living together with the Member in a conjugal relationship:
 - 1. continuously for a period of three years or more; or
 - 2. continuously for a period of one year or more if:
 - a. at least one child is born, or to be born, of their union;
 - b. they have adopted, jointly, at least one child while living together in a conjugal relationship; or

R-24 Salaried Employees Pension Plan (*cont'd*)

- c. one of them has adopted at least one child who is the child of the other, while living together in a conjugal relationship.

For the purposes of subparagraph (ii), the birth or adoption of a child during a marriage, a civil union or a period of conjugal relationship prior to the period of conjugal relationship existing on the day as of which spousal status is established may qualify a person as a Spouse.

- (b) For the purposes of paragraphs (c) and (d) below, "Separation" means in relation to a Member and his Spouse:

- (i) legal separation from bed and board if the Spouse is married to the Member;
- (ii) dissolution or annulment of their civil union; or
- (iii) cessation of conjugal relationship if the Spouse satisfies the eligibility requirement set out in subparagraph (a)(ii).

- (c) If Separation pursuant to subparagraph (b)(i) occurs before the day as of which spousal status is established, the person who would be considered the Member's Spouse in accordance with paragraph (a)(i) shall not be considered as the Member's Spouse when applying any provision of this plan conferring a benefit upon a surviving Spouse.

However, when the Member has notified the Employer in writing that the person should still be considered as the Member's Spouse despite this Separation, such person shall be so considered when applying a provision of this plan purporting to confer a benefit upon a surviving Spouse after the commencement of the Member's pension.

- (d) If, after the commencement of the Member's pension, Separation occurs or the Spouse ceases to be married to or in a civil union with the Member, the person who was the Spouse of the Member on the commencement of the Member's pension shall cease to be the Member's Spouse for the purposes of any contingent pension payable under the form of payment elected by the Member at the time of pension commencement, except where the Member notified the Employer in writing to have such person entitled to the contingent pension despite such Separation or termination of marriage or civil union.

14.03 Transfer of Employment

Notwithstanding Section 3.05, if an Employee who is a Québec Member ceases to be an Employee under this Plan, but remains employed with the Employer, such Member may, as a result of such cessation of active membership,

- (a) elect to transfer the Member's accrued benefits out of the Plan in accordance with the provisions applicable to a Member who terminates employment before Normal Retirement Date or an early retirement date, as if the date on which the cessation of active membership occurred was a Deferred Vested Termination Date; or
- (b) remain eligible to receive the benefits accrued pursuant to the Plan upon the employee's subsequent termination of employment, retirement or death and
 - (i) employment with the Employer in a capacity other than as an Employee shall continue to count as Continuous Service for the purpose of eligibility for retirement and similar matters, but not as Credited Service for benefit calculation purposes pursuant to the Plan;
 - (ii) the employee shall not be authorized to contribute to the Pension Fund in any capacity or in any ways.

14.04 Statutory Early Commencement Date

Notwithstanding Sections 5.02, 5.03 and 5.06, a Québec Member may begin to receive his pension entitlements, on request, from the date the Member's Continuous Service is broken if, on this date, he has attained or exceeded age 55. Such date shall be known as the Member's Statutory Early Commencement Date.

The Member's monthly pension under the Defined Benefits Provision shall be an amount equal to the Actuarial Equivalent of the pension calculated under Section 6.01(a) or 6.01(b)(i), as applicable, based on the Member's Credited Service as at the Statutory Early Commencement Date, plus the benefits arising from excess contributions, if any, as provided under Section 9.09. Under the Defined Contribution Provision, there shall be payable a benefit equal to the amount in the the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

14.05 Continuation of Active Membership after Normal Retirement Date

Notwithstanding Section 5.04 but subject to Section 14.06, if a Québec Member continues to be employed after the Normal Retirement Date and

- (a) the Member does not participate in the Defined Contribution Provision, he may :
 - (i) postpone commencement of his retirement benefits and continue to contribute to the pension fund under the Defined Benefit provision up until his Special Postponed Retirement Date; or
 - (ii) elect to receive payment of all or a portion of the Member's pension determined as at the Normal Retirement Date, but only to the extent necessary to compensate for a reduction in salaries or wages incurred on or after the Normal Retirement Date; the Member may make such an election not more frequently than once every 12 months;
- (b) the Member participates in the Defined Contribution Provision, he may :
 - (i) continue to contribute to his Account and receive Employer contributions in his Account under the Defined Contribution Provision, continue to contribute to the pension fund under the Defined Benefit provision and postpone commencement of his retirement benefits up until his Special Postponed Retirement Date; or,
 - (ii) elect to receive payment of all or a portion of the Member's pension but only to the extent necessary to compensate for a reduction in salaries or wages incurred on or after the Normal Retirement Date; the Member may make such an election not more frequently than once every 12 months;

if the Member makes such an election, a pension shall be purchased for the Member with the amount in the Member's Account; if such pension is not sufficient to compensate for the reduction in the salaries or wages incurred by the Member, an additional pension shall be paid from the

Defined Benefit Provision of the Plan up to lesser of the entitlements accumulated by the Member under this provision and the amount of pension required to compensate fully the Member for the reduction in salaries or wages.

14.06 Postponed Retirement Benefits

(a) Members Who Do Not Participate in the Defined Contribution Provision

Notwithstanding Section 6.01, a Québec Member who does not participate in the Defined Contribution Provision and who retires on a Special Postponed Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the Special Postponed Retirement Date and continuing on the first day of each month thereafter, calculated as the Actuarial Equivalent of the monthly pension that would have commenced at the Normal Retirement Date, determined in accordance with Section 6.01(a) using Credited Service to the Member's Normal Retirement Date.

Such Actuarial Equivalent shall be determined as of the date the pension commences and shall be determined on the basis of the method described in Appendix "A" to the Plan entitled "Revalorization of Postponed Retirement Pension".

In addition to such monthly pension, the Member is entitled to receive:

- 1) any benefits arising from excess contributions, if any, as provided under Section 9.09;
- 2) an additional amount of pension that is the Actuarial Equivalent of the benefits that could be purchased with the member contributions paid during the period between the Normal Retirement Date and the Special Postponed Retirement Date, including accrued interest.

In the event that the Member has elected to receive the payment of all or a portion of the Member's pension prior to the Member's Special Postponed Retirement Date, the retirement income commencing on the Special Postponed Retirement Date shall be decreased to take into account the Actuarial Equivalent of the retirement income received prior to the Member's Special Postponed

R-24 Salaried Employees Pension Plan (*cont'd*)

Retirement Date, with interest thereon at a rate determined by the plan administrator.

(b) Members Who Participate in the Defined Contribution Provision

Notwithstanding Section 6.01, a Québec Member who participates in the Defined Contribution Provision and who retires on a Special Postponed Retirement Date shall be entitled to receive a pension benefit payable in equal monthly instalments commencing on the Special Postponed Retirement Date and continuing on the first day of each month thereafter. The Member's pension shall be determined as follows:

(i) Benefit in Respect of Defined Benefit Provision

The benefit in respect of the Defined Benefit Provision of the Plan shall be calculated as the Actuarial Equivalent of the monthly pension that would have commenced at the Normal Retirement Date, determined in accordance with Section 6.01(b)(i) using Credited Service to the Member's Normal Retirement Date.

Such Actuarial Equivalent shall be determined as of the date the pension commences and shall be determined on the basis of the method described in Appendix "A" to the Plan entitled "Revalorization of Postponed Retirement Pension".

In addition to such monthly pension, the Member is entitled to receive:

- 1) any benefits arising from excess contributions, if any, as provided under Section 9.09;
- 2) an additional amount of pension that is the Actuarial Equivalent of the benefits that could be purchased with the member contributions paid during the period between the Normal Retirement Date and the Special Postponed Retirement Date, including accrued interest.

In the event that the Member has elected to receive the payment of all or a portion of the Member's pension prior to the Member's Special Postponed Retirement Date, the retirement income commencing on the Special Postponed Retirement Date shall be decreased to take into account the Actuarial Equivalent

of the retirement income received prior to the Member's Special Postponed Retirement Date, with interest thereon at a rate determined by the plan administrator.

(ii) Benefit in Respect of Defined Contribution Provision

The benefit in respect of the Defined Contribution Provision shall be the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

14.07 Effect of Maximum Benefit Rule on Postponement of Pension

If a Quebec Member who has elected to postpone retirement after Normal Retirement Date shall become entitled to a postponed retirement pension which, after the revalorization described in Section 14.06 above, becomes equal to the maximum pension described in Section 9.08, the Member's postponed retirement pension shall then commence on the first day of the next calendar month.

14.08 120-Month Guarantee Option

In lieu of the forms of payment described in Sections 7.01 to 7.03, a Québec Member who has become entitled to a pension may elect to receive a reduced monthly pension payable for his life, guaranteed in any event for 10 years.

Where the Québec Member has a Spouse, this option shall be a guaranteed 10-year pension reduced to a joint and survivor pension equal to 60% of the amount of the Québec Member's pension.

The amount of pension payable to the Member shall be the Actuarial Equivalent of the Member's pension pursuant to Section 7.01 and shall take into account the surviving Spouse benefit payable pursuant to Section 7.02.

14.09 Temporary Pension Option

- (a) A Québec Member who elects to receive his retirement income payable under Section 6 prior to his Normal Retirement Date and who files a duly signed form prescribed by the SPPA with the plan administrator prior to the payment of the first instalment of the benefit, may elect to receive his retirement income (except the temporary supplementary benefit payable

R-24 Salaried Employees Pension Plan (*cont'd*)

under Section 6.06 and any temporary minimum benefit payable under the plan, as applicable) in the form of a life annuity plus a temporary annuity ceasing in the month preceding the Member's Normal Retirement Date, both payable in equal monthly instalments. The annual amount of the temporary annuity shall be fixed by the Member before payment begins, but shall not exceed (i) minus (ii), where:

- (i) is the lesser of:
 - (A) 40% of the YMPE in the calendar year of payment commencement; and
 - (B) the maximum annual amount of temporary retirement income permitted by the Income Tax Act; and
 - (ii) is the annual amount of the temporary supplementary benefit payable in accordance with Section 6.06 plus the amount of any temporary minimum benefit payable under the Plan, as applicable.
- (b) If the Member elects the temporary pension option described in paragraph (a), any benefits payable to the Member's Beneficiary or Spouse after the Member's death shall be determined in accordance with such form of payment elected by the Member in accordance with Article 7 or Section 14.08, any guarantee or continuance being applied to the annuity payment pattern resulting from the temporary pension option.
 - (c) The value of the benefits payable under the temporary pension option described in paragraph (a) shall be the Actuarial Equivalent of the benefit which would have been otherwise payable had the Member not elected this temporary pension option.
 - (d) A Spouse who becomes entitled to the payment of a retirement income under the Plan may elect the temporary pension option described in the foregoing provisions of this Section, adapted as required.

14.10 Replacement of Pension by an Annual Lump Sum

A Québec Member who is entitled to a retirement income from the Plan, or the Spouse of the Québec Member who has become entitled to a pension, who has attained or exceeded age 55 but not age 65 is entitled to partially replace his pension before payment begins, by an annual lump sum payment, the amount of which is fixed by him and which meets the following requirements:

- (a) the amount does not exceed 40% of the YMPE for the year in which the application is made, reduced by the total temporary income and other bridge benefits that the Member has received or must receive during the year from any of the following sources :
 - (i) a registered pension plan,
 - (ii) a life income fund,
 - (iii) an annuity contract which is funded by registered pension plan assets;
- (b) the application can only be made once per calendar year and must include a completed declaration in the form prescribed under the SPPA;
- (c) the lifetime pension of the Québec Member or of the Spouse of the Québec Member who has elected such a lump sum replacement benefit will be reduced on an actuarial equivalent basis to take into account the aggregate of the lump sums replacement benefits paid.

14.11 Deferred Vested Termination Date

Notwithstanding Section 5.06, a Québec Member's Deferred Vested Termination Date shall be the date of a Member's termination of employment with the Employer for any reason other than death, prior to the Normal Retirement Date, Early Retirement Date, Statutory Early Commencement Date or Special Early Retirement Date.

14.12 Additional Pension Benefit

The deferred pension payable to a Québec Member under Section 6.04 shall be increased as of his Pension Commencement Date to reflect 50 % of the change in the Consumer Price Index for Canada which occurred during the period between the date of termination of his employment and the date that is 10 years prior to

his Normal Retirement Date. The annualized increase shall not be less than 0% nor greater than 2%.

For the purposes of the above paragraph, "Consumer Price Index" means the Consumer Price Index for Canada, as published by Statistics Canada under the authority of the Statistics Act (Canada).

14.13 Redetermination of Form of Pension

- (a) If a Québec Member receives a pension under a form that provides for the continuance of a portion of his pension to his Spouse after the Member's death and if, after the commencement of the Member's pension, the Member's Spouse ceases to be entitled to the contingent pension by virtue of sub-paragraph (d) of Section 14.02, the Member is entitled, on request to the plan administrator, to a redetermination of the pension. Subject to paragraph (c), the effective date of the redetermination shall be the effective date of the judgment granting the separation from bed and board, the divorce or the annulment of the marriage, or the date of the cessation of the conjugal relationship. The redetermined pension shall be in the same amount and have the same characteristics as the pension that would be payable to the Member at the date of redetermination had the Member not had a Spouse on the date the payment of the pension began.
- (b) Unless the plan administrator has received the notice provided for in sub-paragraph (d) in the definition of Spouse in Section 14.02, the plan administrator shall redetermine the Member's pension in accordance with paragraph (a) if the benefits accrued to the Member under the Plan are partitioned, subsequent to the commencement of the Member's pension, as a result of the break in the marital relationship.
- (c) If the Member requests a redetermination in accordance with paragraph (a) and the effective date of the judgment granting the separation from bed and board, the divorce or the annulment of the marriage, or the date of the cessation of the conjugal relationship, is prior to January 1, 2001, the redetermination shall be effective as of the date of the Member's request.

14.14 Pre-Retirement Death Benefit

Notwithstanding Sections 8.01 and 8.02, if a Québec Member dies while employed with the Employer or after termination of employment with the Employer but prior to payment of benefits pursuant to the Plan, the Member's surviving Spouse shall be entitled to receive

- (a) if the Member participated in the Defined Contribution Provision, a benefit equal to the amount in the Member's Account in either a lump sum cash payment or as a transfer to a non locked-in RRSP, as the Spouse may elect;
- (b) if the Member's has accumulated 15 years of Continuous Service or more as at the date of his death or if he has become eligible to an immediate pension : a pension benefit payable in equal monthly instalments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, equal to the greater of :
 - (i) an amount equal to the Actuarial Equivalent of the pension benefit accrued by the Member and payable as at Normal Retirement Date pursuant to Section 6.04(a) in respect of Credited Service on and after January 1, 1990;
 - (ii) 50% of the amount of the immediate pension benefit accrued by the Member pursuant to Section 6.01(a) or Section 6.01(b)(i), whichever would have been applicable of the Member, or 140\$ per month if greater;
- (c) if the Member has not met the conditions described in paragraph (b): a pension benefit payable in equal monthly instalments commencing on the first day of the month following the date of the Member's death and continuing on the first day of each month thereafter until the first day of the month in which the Spouse dies, equal to an immediate retirement income which correspond to the Actuarial Equivalent of the amount of the pension benefit accrued by the Member and payable as at Normal Retirement Date pursuant to Section 6.04(a) in respect of Credited Service on and after January 1, 1990; if the Spouse so elects, the

Actuarial Equivalent of this benefit may be paid out as a lump sum or transferred out of the Plan pursuant to Section 6.04(c).

- (d) if the Member is not survived by a Spouse, the amount described in paragraph (a) and a lump-sum amount being the Actuarial Equivalent of the pension described in paragraph (b) or (c), as applicable, shall be paid to the Member's Beneficiary or, if none, to the Member's estate.

14.15 Spousal Waiver of Pre-Retirement Death Benefits.

If the Spouse of a Québec Member waives entitlement to the benefits set out in Article 8 or Section 14.14 in the manner and form prescribed by the SPPA, the value of said benefits shall be paid in accordance with paragraph (d) of Section 14.14.

14.16 Death in Service After Normal Retirement Date

If a Québec Member dies after the Normal Retirement Date while in active employment leaving a surviving Spouse, the Member's Spouse is entitled to receive a pension the value of which shall be equal to the greater of:

- (a) the Actuarial Equivalent of the monthly pension that would have commenced at the Normal Retirement Date, determined in accordance with Section 6.01(a) using Credited Service on and after January 1, 1990 up to the Member's Normal Retirement Date; such Actuarial Equivalent shall be determined as of the date the pension commences to be paid to the Member's Spouse, on the basis of the method described in Appendix "A" to the Plan entitled "Revalorization of Postponed Retirement Pension"; such Actuarial Equivalent shall be increased with the amount of excess contributions, if any, as provided under Section 9.09;

- (b) the Actuarial Equivalent of the pension that would have been payable to the Member's Spouse, under the Defined Benefits Provision of the Plan pursuant to Section 7.03, if payment of the postponed defined benefit pension, as determined pursuant to Section 14.06, had begun on the day preceding the death of the Québec Member.

In addition to such benefit, if a Québec Member participated in the Defined Contribution Provision, the Member's Spouse is entitled to a benefit payable in a lump sum equal to the amount in the Member's Account which may be transferred out of the Plan pursuant to Section 6.04(c).

If the Member is not survived by a Spouse, a lump sum amount being the Actuarial Equivalent of the benefit described in paragraph (a) or (b) above and a lump sum amount equal to the amount in the Member's Account, as applicable, shall be paid to the Member's Beneficiary or, if none, to the Member's estate.

14.17 Commutation and Unlocking of Small Benefits

Notwithstanding Section 12.02, if the value of a retirement pension or deferred pension payable under the Plan is less than 20% of the YMPE in the year that the Québec Member retires, terminates employment or dies, or such other amount as may be permitted by the SPPA, from time to time, a lump sum amount equal to the Actuarial Equivalent of the benefit may be paid, on request, to the person entitled to such benefit in lieu of any other benefits under this Plan.

If the requirements set out in the above paragraph are met, the plan administrator may, at his discretion and without the consent of the Member, refund the Québec Member the Actuarial Equivalent of the Member's entitlements, in satisfaction of the Member's rights under the Plan. To this end, the plan administrator must first send a notice to the Member requesting instructions as to the refund formula; where no reply is received within 30 days of the sending of the notice, the plan administrator may make the refund, which possibility shall be mentioned in the notice.

14.18 Refund of Benefits for Non-Residents

A Québec Member who has terminated employment with the Employer and who has not been residing in Canada for at least two years is entitled, whether he has commenced or not to receive a pension under the Plan, to a refund of an amount being the Actuarial Equivalent of the benefits he has accrued under the Plan.



**The Contributory Pension Plan for Salaried
Employees of Wabush Mines, Cliffs Mining
Company, Managing Agent, Arnaud Railway
Company and Wabush Lake Railway Company,
Limited**

Wind-Up Actuarial Valuation as at December 16, 2015

December 2016

Registration numbers: Newfoundland and Labrador: 021314

Canada Revenue Agency: 0343558

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Executive Summary

Purposes of Report

This report presents the results of the actuarial valuation of the wind-up of the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (the "Plan") as at December 16, 2015.

This report was prepared for the following purposes:

- to summarize the members' wind up entitlements under the Plan and to value the Plan's wind-up liabilities as at December 16, 2015 (the "Wind Up Date");
- to establish the value of assets available to provide the entitlements to the Plan members as at the Wind-Up Date;
- to determine the funded position (the wind up deficiency and the wind up funded ratio of the Plan) as at the Wind-Up Date;
- to document the methodology for dealing with any shortfall or surplus in respect of the Plan members; and
- to provide the information and the actuarial opinion required by the Newfoundland and Labrador *Pension Benefits Act, 1997* ("NL PBA"), the Federal Pensions Benefits Standards Act, 1985 ("Federal PBSA") and the *Income Tax Act* (Canada).

The information contained in this report was prepared for filing with Canada Revenue Agency, the Newfoundland and Labrador Superintendent of Pensions' Office and the Office of the Superintendent of Financial Institutions.

The report also provides an update of the financial position to September 30, 2016 (the "Cut-Off Date"). The Cut-Off Date is the date up to which subsequent events have been recognized in this report. September 30, 2016 was selected as the Cut-Off Date as it is reasonably close to the filing date of this report while still allowing time for the calculation of the Plan's liabilities as at that date. Results are presented at the Cut-Off Date as well as the Wind-Up Date as required under the Canadian Institute of Actuaries' Standards of Practice.

Summary of Recent Events

Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (the "Wabush Group"), filed for restructuring proceedings under the Companies' Creditors Arrangement Act (CCAA) in May 2015. As part of the CCAA proceeding, special payments towards the deficit of the Plan have been suspended since May 2015. In addition, Wabush Mines has ceased its operation, with essentially all of its employees laid-off or terminated and the Plan will not continue as a going concern under a new sponsor.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (*cont'd*)

As a result, the Newfoundland and Labrador Superintendent of Pensions (the "Regulator") ordered the termination of the Plan effective as of December 16, 2015.

Wabush Mines ("the Prior Plan Administrator") provided formal notice of the termination of the Plan to all persons affected by the plan termination. These notices were mailed to the last known addresses of all affected members in January 2016.

On March 1, 2016, the Wabush Group (through their legal counsel) requested, in writing, the appointment of a replacement administrator of the Plan. In their communication, and subsequent correspondence dated March 23, 2016, it was stated that Wabush Mines no longer has the resources to act as administrator of the Plan. Based on this request, the Regulator, in their letter dated March 30, 2016 appointment Morneau Shepell ("the Plan Administrator") as the administrator of the Plan.

The settlement date will be determined once the regulatory approval for the termination report has been received. The valuation results are sensitive to the plan's investment policy and to market conditions between the Wind-Up Date and the settlement date. Therefore, the funded status at settlement may differ from that reported in this report.

As instructed by the provincial regulators (Newfoundland and Labrador and Quebec), for retired members and beneficiaries governed by the Newfoundland and Labrador Pension Benefits Act, 1997 ("the NL PBA") and the Quebec Supplemental Pension Plans Act ("the Quebec SPPA"), a preliminary reduction of 25% was applied starting March 1, 2016 to their total monthly pension benefit. The reduction will further be adjusted based on the financial position of the Plan and the Regulator's decisions. At the time of instruction, no members were understood to be governed by the Federal Pension Benefits Standards Act, 1985 ("the Federal PBSA") and, as such, all retired members' and beneficiaries pension benefits were reduced.

The calculations presented herein are based on 100% of the monthly pension benefits payable to retired members and beneficiaries as at the Wind-Up Date.

After the wind-up of the Plan was ordered, Morneau Shepell became aware that some members of the Plan worked in a material capacity on the railway operations of Wabush Mines and should be governed by federal jurisdiction. After discussion with the Company and Regulators, a review was undertaken to look at all employees whom were actively employed on or after June 1, 2013 (the approximate time when the issue of federal jurisdiction first arose as well as when the Pointe Noir Pellet Plan shut down) to determine the nature of their job during their last 12 months of employment. If the nature of their job during this period was materially based on railway operations, they were deemed to be governed by federal jurisdiction. If the nature of their job was not materially based on railway operations then they were deemed to be governed by provincial jurisdiction based on their province of employment. This review identified fourteen federal jurisdiction Plan members.

Although the Plan was never formally registered with OSFI, we are providing OSFI with a copy of the wind-up report for information purposes given that a number of Plan members are now deemed to be governed by federal jurisdiction.

Morneau Shepell requested illustrative annuity quotations from five companies licensed to sell annuities in Canada, three of which responded. The plan members included in the quote were those assumed to be fully or partially settled via annuity purchase. Based on the results collected from the quote, an adjustment factor of 102% has been applied to the annuity purchase windup liabilities (calculated in

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (*cont'd*)

accordance with the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting ("CIA Annuity Purchase Guidance").

Subsection 6.01(c)(i) of the Salaried Plan text, which provides for a minimum benefit when a member has transferred from the Bargaining Unit Plan to the Plan, was interpreted by the Prior Plan Administrator to provide 100% of any bridging benefits payable in respect of combined credited service to impacted members from the Plan. Our interpretation differs and we have made a correction to the bridge benefits being paid from both the Bargaining Unit Plan and the Plan. All figures shown in this report are based on our interpretation. Further information on this issue is available in Appendix G.

A summary of the Plan provisions is provided in Appendix D.

Wind-Up Funded Position

The following table shows the wind-up funded position of the assets and liabilities, as at December 16, 2015:

Wind-Up Financial Position as at December 16, 2015 – Defined Benefit component

		\$
Total Wind-Up Assets (after expense allowance)		82,428,000
Wind-Up Liabilities		109,878,000
Wind-Up Surplus (Shortfall)		(27,450,000)
Wind-Up Funded Percentage		75.0 %

Assets and liabilities in respect of the Defined Contribution component of the Plan were \$3,847,000 as at December 16, 2015.

Taking into consideration investment returns, benefit payments, expenses, survivorship, and changes in interest rates since December 16, 2015, the financial position as at September 30, 2016, is estimated to be as follows:

Wind-Up Financial Position as at September 30, 2016 – Defined Benefit component

		\$
Total Wind-Up Assets (after expense allowance)		86,004,000
Wind-Up Liabilities		110,987,000
Wind-Up Surplus (Shortfall)		(24,983,000)
Wind-Up Funded Percentage		77.5%

Based on the above, the Plan's assets will not be sufficient to cover the Plan's wind-up liabilities at the time of the final distribution.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (*cont'd*)

Subsequent Events

On March 1, 2016, pensions in pay to retirees and survivors were reduced to the estimated funded ratio of 75%.

Between the Wind-Up Date and the Cut-Off Date, the Defined Benefit component of the Plan's assets has returned 8.7% (net of expenses). The annuity proxy rate based on the guidance provided by the Canadian Institute of Actuaries has decreased 0.37% (which increases the obligations to be settled by an annuity purchase). The net impact is a 2.5% increase in the funded percentage of the Defined Benefit component of the Plan as can be seen in the Wind-Up Financial Position as at September 30, 2016, shown above.

The invested assets for the Defined Benefit component of the Plan are held by CIBC Mellon and were managed by SEI as at the Wind-Up Date. Leading up to the wind-up the majority of the funds were invested in fixed income with a small portion left invested in hedge funds. As at the date of this report, the assets were in the process of being moved to TD Asset Management to establish a liability duration matched investment portfolio to protect the Plan's funded position from future changes in interest rates.

To the best of our knowledge there have been no other events subsequent to the Cut-Off Date which, in our opinion, would have a material impact on the results of this valuation.

Section 1 – Wind-Up Financial Position

Wind-Up Financial Position

The wind-up financial position of the Plan as at December 16, 2015 is as follows:

Financial Position as at December 16, 2015 – Defined Benefit component

	Newfoundland and Labrador	Quebec	Federal	Total Plan
	\$	\$	\$	\$
Assets (before Wind-Up Expense)	41,930,000	40,580,000	568,000	83,078,000
Estimated Wind-Up Expenses	(329,000)	(317,000)	(4,000)	(650,000)
Total Wind-Up Assets	41,601,000	40,263,000	564,000	82,428,000
Wind-Up Liabilities				
Pending Death Benefits	-	35,000	-	35,000
Deferred Members	10,546,000	10,593,000	751,000	21,890,000
Retired Members and Beneficiaries	44,911,000	43,042,000	-	87,953,000
Total Wind-Up Liability	55,457,000	53,670,000	751,000	109,878,000
Wind-Up Surplus (Shortfall)	(13,587,000)	(13,407,000)	(187,000)	(27,450,000)
Wind-Up Funded Percentage	75.0%	75.0%	75.0%	75.0%

Figures may not add due to rounding.

Assets and liabilities in respect of the Defined Contribution component of the Plan were \$3,847,000 as at December 16, 2015.

There are no members who potentially qualify for consent benefits as a result of the wind-up.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Taking into consideration investment returns, changes in annuity purchase interest rates, survivorship, and cash flow since December 16, 2015, the financial position as at September 30, 2016 is estimated as follows:

Wind-Up Financial Position as at September 30, 2016 – Defined Benefit component

	Newfoundland and Labrador	Quebec	Federal	Total Plan
	\$	\$		\$
Assets (before Wind-Up Expense)	43,694,000	42,068,000	617,000	86,379,000
In-transits ¹	77,000	1,000	-	78,000
Estimated Wind-Up Expenses	(229,000)	(221,000)	(3,000)	(453,000)
Total Wind-Up Assets	43,542,000	41,848,000	614,000	86,004,000
Wind-Up Liabilities				
Pending Death Benefits	-	35,000	-	35,000
Deferred Members	11,022,000	10,726,000	778,000	22,526,000
Retired Members and Beneficiaries	45,377,000	43,049,000	-	88,426,000
Total Wind-Up Liability	56,399,000	53,810,000	778,000	110,987,000
Wind-Up Surplus (Shortfall)	(12,857,000)	(11,962,000)	(164,000)	(24,983,000)
Wind-Up Funded Percentage	77.2%	77.8%	78.9%	77.5%

Figures may not add due to rounding.

1 The in-transits shown in the above table relates to a correction of bridge benefits being paid to retired Plan members. More information can be found in Appendix G.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Reconciliation of Financial Position

The Plan had a wind-up shortfall of \$10,719,000 as at January 1, 2014 (based on the January 1, 2014 valuation report prepared by Towers Watson) versus a wind-up shortfall of \$27,450,000 as at the Wind-Up Date. The table below reconciles, on an approximate basis, the change in financial position of the Plan since January 1, 2014.

Reconciliation of Financial Position – Defined Benefit component

	\$	\$
Wind-Up Surplus (Shortfall) as at January 1, 2014		(10,719,000)
Interest (3.70% per annum) on Shortfall	(790,000)	
Special Payments with Interest	4,538,000	
Expected Wind-Up Surplus (Shortfall) as at December 16, 2015		(6,971,000)
Plan Experience		
Net Investment Experience	1,122,000	
Liability Gains / (Losses)	(1,313,000)	
Due to difference in solvency incremental cost and Normal Cost	(819,000)	
Total Plan Experience		(1,010,000)
Assumption and Data Changes		
Change in Expense Assumption	(450,000)	
Change in Commuted Value & Annuity Purchase Bases	(17,977,000)	
Data Changes	430,000	
Addition of 2% Annuity Purchase Load	(1,946,000)	
Benefits for Deferred Members beyond Normal Retirement Age	(280,000)	
Reallocation of Bridge Benefits between Bargaining and Salaried Plans	754,000	
Total Assumption and Data Changes		(19,469,000)
Wind-Up Surplus (Shortfall) as at December 16, 2015		(27,450,000)

Section 2 –Treatment of Shortfall and Methods of Allocating and Distributing Assets

Defined Benefit component of the Plan

Treatment of Shortfall

Based on the financial position of the Plan as at the Wind-up Date, the Plan's assets will not be sufficient to cover the Plan's wind-up liabilities at the time of the final distribution. While the Plan Administrator will be submitting a claim for the full amount of the wind-up shortfall in the CCAA proceedings, for purposes of the valuation, we have assumed that no further amounts will be deposited into the Plan.

Plan member benefits will be settled at the wind-up funded percentage applicable to them at the time of settlement based on their jurisdiction. The actual funded status at settlement may differ from that contained in this report.

Factors That Will Impact Shortfall

The ultimate surplus or shortfall will not be known with certainty until all Plan member benefits are settled. Many factors may affect the ultimate surplus or shortfall including:

- > Cost to purchase annuities from an insurance company to settle benefits;
- > Investment return on assets;
- > Member's pension entitlement elections (lump sum transfer versus annuity purchase);
- > Data corrections;
- > Member experience; and
- > Actual costs to administer wind-up.

Methods of Allocating and Distributing Assets

The Plan assets are distributed between the jurisdictions as at the wind-up date in proportion to the wind-up liability applicable to each jurisdiction. When determining the wind-up liability for this purpose, the pension and bridging benefits included in the calculation are those provided for by the Plan terms, the NL PBA, the Quebec SPPA and the Federal PBSA. We note that no Plan member is entitled to additional pension or bridging benefits as a result of applying section 17 of the Federal PBSA.

Defined Contribution component of the Plan

The liability for the Defined Contribution component of the Plan is equal to the total of all Defined Contribution account balances. As such, no shortfall or surplus will exist at the wind-up date or at the time of settlement. Members are entitled to their Defined Contribution account balance.

Section 3 – Member Options

The following summarizes the options Plan members have with regard to the method of settlement of benefits under the Wind-Up.

In accordance with pension legislation, no payments (other than ongoing pensions and other payments approved through request under Section 62(2) of the NL PBA) will be made to members until approval is received from the Newfoundland and Labrador Superintendent of Pensions.

Defined Benefit component of the Plan

Non-Retired Members (Newfoundland and Labrador and Federal)

Members not in receipt of a monthly pension on December 16, 2015 and who were employed in Newfoundland and Labrador will have the option of:

- > An immediate (if eligible) or a deferred annuity (under the same terms as the Plan) purchased from an insurance company; or
- > A commuted value transfer (on a locked-in basis, subject to ITA 8517 limits) to one of the following retirement arrangements:
 - A RPP;
 - A LIRA;
 - A LIF; or
 - The purchase an annuity from an insurance company.

If the “small benefit rule” applies to a member, the member will have the value of their benefit paid in cash, less withholding taxes.

Non-Retired Members (Quebec)

Members not in receipt of a monthly pension on December 16, 2015 and who were employed in Quebec will receive a commuted value transfer (on a locked-in basis, subject to ITA 8517 limits) to one of the following retirement arrangements:

- A RPP;
- A LIRA;
- A LIF;
- Locked-in portion of a VRSP; or
- The purchase an annuity from an insurance company.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (*cont'd*)

If the "small benefit rule" applies to a member, the member will have the option of transferring their benefit to a non-locked-in RRSP or the non-locked-in portion of a VRSP, or to be paid in cash, less withholding taxes.

Retired Members (Newfoundland and Labrador and Federal)

Members in receipt of a monthly pension on December 16, 2015, will have an annuity (under the same terms as the Plan) purchased from an insurance company on the date of settlement. The annuity purchased will be in proportion to the funded percentage of the Plan at the time of settlement, adjusted for any over or under payments received since the Wind-Up Date.

Retired Members (Quebec)

Members in receipt of a monthly pension on December 16, 2015, will have the option of, an annuity (under the same terms as the Plan) purchased from an insurance company on the date of settlement, or transferring their entitlement to the Retraite Quebec. The annuity purchased will be in proportion to the funded percentage of the Plan at the time of settlement, adjusted for any over or under payments received since the Wind-Up Date.

Interest on Commuted Value Settlements

Members whose benefits are settled through a commuted value will have their commuted value adjusted with interest from the Wind-Up Date to the first day of the month in which payment is made. The rate of interest applied will be consistent with the interest rate used in the determination of their commuted value. For Quebec and Federal Plan members, this interest rate will be 2.10%. For Newfoundland and Labrador Plan members, this rate will be either 2.10% or 2.86%, depending on whether the commuted value or annuity purchase basis with interest produces the highest value at the settlement date.

Defined Contribution component of the Plan

Members are required to transfer their Defined Contribution account balance out of the Plan.

Future Steps

Within 60 days of the approval of this report by the Newfoundland and Labrador Superintendent of Pensions election statements will be issued to all non-retired members and Quebec retired members providing the settlement options listed above. Members must return their election forms within 90 days. Transfers and annuity purchases will be processed as soon as possible thereafter.

We will provide an update after the transfers and annuity purchases are complete.

Section 4 – Actuarial Opinion

With respect to the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (the “Plan”), the valuation thereof was performed as at December 16, 2015, in accordance with the Newfoundland and Labrador *Pension Benefits Act, 1997* and based on the Plan provisions and data as at that date. There are no modifications nor any extraordinary changes to the membership other than those listed in this report which would materially affect the results of this actuarial valuation.

We hereby certify that, in our opinion, as at December 16, 2015:

- > In respect of the Defined Benefit component of the Plan, on the Wind-Up Date, the total wind-up liabilities (\$109,878,000) exceed the market value of Plan assets (\$82,428,000 after wind-up expenses).
- > In respect of the Defined Benefit component of the Plan, after allowing for estimated wind-up expenses, the wind-up funded percentage as of the Wind-Up Date is 75.0%. At the Cut-Off Date (September 30, 2016), the funded percentage is estimated to be 77.5%.
- > In respect of the Defined Contribution component of the Plan, on the Wind-Up Date, the total wind-up liability (\$3,847,000) equals the market value of Plan assets (\$3,847,000).

In our opinion:

- The membership data on which the valuation is based are sufficient and reliable for the purposes of the valuation.
- The assumptions are appropriate for the purposes of the valuation.
- The methods employed in the valuation are appropriate for the purposes of the valuation.

This report has been prepared, and our opinions given, in accordance with accepted actuarial practice in Canada.

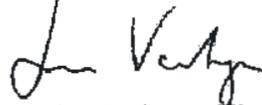
The recommendations and opinions are given exclusively from a financial viewpoint. This valuation report does not constitute a legal opinion on the rights or duties of the Plan Administrator, the employer or the members over the pension funds.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (*cont'd*)

Actuarial valuations are performed based on assumptions and methods that are in accordance with sound actuarial principles. Emerging experience differing from these assumptions may result in gains or losses, which may affect future funding percentages.



Paul Chang, FCIA
Partner



Jessica Vandorpe, FCIA
Actuarial Consultant

Morneau Shepell
December 2016

Appendix A – Wind-Up Actuarial Basis

Asset Valuation Method

Total assets are equal to the market value adjusted for estimated wind-up expenses.

Please refer to Appendix B for further details related to the market value of assets.

Actuarial Cost Method

In respect of the Defined Benefit component of the Plan, the wind-up liability is determined using the Accrued Benefit (or Unit Credit) Actuarial Cost Method and is equal to the actuarial present value of all benefits earned by members for service prior to the valuation date understanding that the Plan is wound up on the valuation date.

In respect of the Defined Contribution component of the Plan, the wind-up liability is equal to the Defined Contribution account balances.

All members are treated as fully vested.

Actuarial Assumptions – Defined Benefit Component

The wind-up liability represents the value of the Members' benefits assuming they were fully settled on the valuation date. We have made assumptions regarding which members would elect to have the value of their benefits transferred from the Plan based on commuted value standards and which members would elect to have annuities purchased directly from an insurance company.

On wind-up, all members are considered fully vested in their accrued pension benefits.

The primary actuarial assumptions employed for the wind-up actuarial valuation are summarized in the following table. All rates and percentages are annualized unless otherwise noted.

The assumptions used are best estimates as at the date of valuation.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Wind-Up Actuarial Assumptions

	December 16, 2015
Discount rates for members assumed to elect a transfer value	2.10% for the next 10 years and 3.70% per annum thereafter
Discount rates for members assumed to elect an annuity purchase	2.86% per annum
Member Elections ¹	Federal and Newfoundland and Labrador Deferred Members as at December 16, 2015: Under age 55: 100% commuted value Age 55 and over: 100% annuity purchase Quebec Deferred members as at December 16, 2015: 100% commuted value Retired members and beneficiaries as at December 16, 2015: 100% annuity purchase
Salary increases	None
Maximum pension per year of service	\$2,818.89 for all years
Mortality (post-retirement only)	CPM2014 (no size adjustment) with generational projection using improvement scale CPM-B Quebec and Newfoundland and Labrador Members: Sex distinct Federal Members: 97.2% male/2.8% female
Adjustment Factor ²	1.02
Termination of employment	N/A
Disability	N/A
Retirement age	Age that maximizes the value of the pension.
Provision for Adverse Deviations	None
Wind-Up Expense Assumption	\$650,000

- 1 *The liability for each Newfoundland and Labrador Deferred Member assumed to elect a commuted value was valued by taking the maximum of the liability calculation using the discount rate for transfer values and the liability calculation using the discount rate for annuity purchases.*
- 2 *Marneau Shepell conducted an annuity survey in July 2016 for the members assumed to elect an annuity purchase in July 2016. Based on the results of this survey, annuity purchase premiums are expected to be 2% higher than the liabilities determined using the Canadian Institute of Actuaries annuity purchase proxy.*

Assumptions at September 30, 2016 that vary from the Assumptions Provided Above are as Follows:

	September 30, 2016
Discount rates for members assumed to elect an annuity purchase	2.49%
Wind-Up Expense Assumption ¹	\$453,000

- 1 *The Wind-Up Expense Assumption has been adjusted for expenses paid between the Wind-Up Date and the Cut-Off Date.*

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (*cont'd*)

We have calculated the transfer values effective December 16, 2015 using discount rates determined in accordance with Section 3500 of the Standards of Practice of the Canadian Institute of Actuaries.

For the purchase of annuities, the discount rate as of December 16, 2015 was based on the Canadian Institute of Actuaries' ("CIA") Educational Note Supplement: Guidance for Assumptions for Hypothetical Wind-Up and Solvency Valuations Update – Effective September 30, 2015 and Applicable to Valuations with Effective Dates between September 30, 2015, and December 30, 2015 and equals the long term Government of Canada bonds' yield (series V39062) plus 83 basis points. This results in a discount rate of 2.86% per annum (2.03% + 0.83%).

The annuity proxy discount rate as of September 30, 2016 was based on Educational Note Supplement: Guidance for Assumptions for Hypothetical Wind-Up and Solvency Valuations with Effective Dates between September 30, 2016 and December 30, 2016 and results in a discount rate of 2.49% per annum for September 30, 2016 (1.55% plus 94 basis points).

Based on an annuity quote requested in July 2016 for this Plan, actual annuity purchase costs will be 2% higher than the basis described in the CIA Educational Note Supplement. As such, we have adjusted all liabilities (as determined based on the CIA Educational Note Supplement) for members assumed to be settled by an annuity purchase by a factor of 1.02.

Appendix B – Assets

Description of Plan Assets

The invested assets for the Defined Benefit component of the Plan are held by CIBC Mellon and were managed by SEI as at the Wind-Up Date. Leading up to the wind-up the majority of the funds were invested in fixed income with a small portion left invested in hedge funds. As at the date of this report, the assets were in the process of being moved to TD Asset Management to establish a liability duration matched investment portfolio to protect the Plan's funded position from future changes in interest rates.

The invested assets for the Defined Contribution component of the Plan are held by Sunlife. The assets are invested based on individual Member instruction for their account.

We have relied upon the information provided to us by CIBC Mellon, SEI and Sunlife, following tests of reasonableness with respect to contributions, benefit payments and investment income.

Statement of Market Value

In respect of the Defined Benefit component of the plan, the assets held in the pension fund, on a market value basis, as at December 16, 2015 were \$83,078,318. Assets as at that date were invested as follows:

Table B.1 - Assets at Market Value – Defined Benefit component

	16-Dec-15
Invested assets	
> Cash and short-term	-
> Bonds	74,866,827
> Equities	-
> Hedge Funds	8,211,490
Total Invested assets	83,078,317
Net receivables and payable (excluding accrued investment income)	-
Total market value of assets	83,078,317

** Figures may not add up exactly due to rounding.*

In respect of the Defined Contribution component of the plan, the assets held in the pension fund, on a market value basis, as at December 16, 2015 were \$3,847,000. Assets as at that date were invested based on individual Member instruction for their account.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Changes To Plan Assets – Defined Benefit component

The following table shows changes to the Defined benefit component of the Plan assets since the last filed valuation, based on market values. The reconciliation is based on the statements issued by CIBC Mellon and information provided by SEI.

Table B.2 - Asset Reconciliation

	January 1, 2015 to December 16, 2015	January 1, 2014 to December 31, 2014
Market Value of Assets at beginning of period	90,738,980	84,252,190
Receipts:		
> Employee contributions	-	-
> Employer normal cost contributions	361,264	1,536,141
> Employer special contributions	1,092,871	3,278,613
> Investment income and change in market value	(823,137)	8,778,328
Total receipts	630,998	13,593,082
Disbursements:		
> Pensions paid	6,282,141	6,220,831
> Commuted value and cash payments	1,675,721	480,442
> Plan expenses	333,799	405,019
Total disbursements	8,291,661	7,106,292
Market Value of Assets at end of period	83,078,317	90,738,980

* Figures may not add up exactly due to rounding.

Appendix C – Membership Data

Description of Membership Data

Our valuation of the Plan is based on data provided to us by the Company, updated to take into account known data changes.

We have taken the following steps to review the data to ensure its completeness, accuracy and consistency with the data used in the previous valuation:

- > the pensions being paid as shown in the financial statements were compared with the values provided in the data;
- > a reconciliation was prepared in order to account for the active members, retirees and vested members who were included in the last valuation;
- > basic data checks were performed to ensure that age, salary and service data were reasonable for the purposes of the valuation.

Further, we have distributed individual data confirmation statements to members who were requested to report back any errors. We are in the process of compiling the member responses and will make any necessary corrections prior to settling member benefits.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Summary of Membership Data

The following table summarizes the data.

Summary of Membership Data – as at December 16, 2015

Pending Death Benefit Payout	Number		1
	Pending Death Benefit		\$34,606
Deferred Members	Number		325
	Average age		48.2
	Average annual pension ¹		\$5,973
Retirees and Beneficiaries	Number with lifetime pension		330
	Average age		72.8
	Average annual lifetime pension		\$18,183
	Average annual temporary pension		\$354
Total Membership			656

¹ The average annual pension shown does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

As at the wind-up date, 77 Members also have an entitlement under the Defined Contribution component of the Plan.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

The following table reconciles the changes in Plan membership since the last actuarial valuation.

Changes in Plan Membership

	Active Members	Deferred Members	Pending Benefits	Retirees and Beneficiaries	Total
Members at January 1, 2014	188	183	0	324	695
Data corrections ¹		(7)		(1)	(8)
New members					0
Deaths	(1)		1	(23)	(23)
Survivors/Beneficiaries				11	11
Retirements	(13)	(5)		18	0
Terminations:					
Deferred pensions or pending	(152)	152			0
Non-vested or lump sums	(22)	(5)			(27)
Data Adjustments at Jan. 1, 2014 ²		7		1	8
Members at December 16, 2015	0	325	1	330	656

¹ The January 1, 2014 valuation data included 8 members that should not have been valued as they no longer had an entitlement under the Plan.

² Seven members in the previous valuation had deferred and active benefits and one retired member had a retirement and beneficiary benefit. Each benefit is now counted separately.

A detailed listing showing the individual membership and their entitlements is included in Appendix E.

Appendix D – Summary of Plan Provisions

The following is an outline of the principal features of the Plan which are of financial significance to valuing the plan benefits. This summary is based on the amended and restated Plan document as of January 1, 1997 and Plan amendments no. 1, 2, 3, and 4. The Plan amendments were received by the Newfoundland and Labrador Superintendent of Pensions on July 30, 2015. Given the fact that the amendments were submitted shortly before the wind-up of the Plan, these amendments have not yet been individually registered by the Newfoundland and Labrador Superintendent of Pensions. This valuation report assumes that the contents of the amendments, to the extent that they impact the benefits provided by the Plan, are acceptable to the regulators and the results herein reflect the benefits provided by the amendments. For a detailed description of the benefits, please refer to the plan document.

Plan Effective Date

The Plan was restated effective January 1, 1997. Predecessor arrangements date back to July 1, 1963.

Definitions

Credited Service

Service while a member of the Plan.

Pensionable Earnings

Basic remuneration, including overtime (for periods prior to June 23, 2008), shift premiums and cash bonuses. Excludes stock options, severance payments and all other non-cash benefits.

Plan Participation

All employees who are not within the Bargaining Unit are required to join the Plan on their date of employment.

Normal Retirement

Eligibility

Age 65.

Effective January 1, 1997 existing plan members were offered a one-time choice between two pension options, Option A or B. All future new hires from January 1, 1997 onward must enrol under Option B. As at January 1, 2011, there are no remaining members in active status, with coverage under Option A.

Option B offers a combination of Defined Benefit coverage (for past service and future service) and Defined Contribution coverage (for future service, from January 1, 1997 onward), as follows:

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (*cont'd*)**Basic Annual Pension, Defined Benefit**

The annual pension benefit payable on normal retirement is the sum of (i) and (ii):

- (i) the sum of 1.5% of highest 5-year average earnings up to the YMPE plus 1.6% of highest 5-year average earnings over the YMPE, for each year of credited service prior to January 1, 1997;
- (ii) 1.0% of highest 5-year average earnings for each year of credited service after December 31, 1996.

However, the pension payable on normal retirement will not be less than the amount that would be payable, if the member had been a member of Option B of the Bargaining Unit plan sponsored by the company instead of the Plan, plus the amount of pension which could be purchased with the employee's required contributions with interest.

In addition, a "make-up benefit" is payable to salaried employees who have a frozen monthly lifetime benefit under the Bargaining Unit plan (in respect of a period of Bargaining Unit credited service prior to becoming a salaried employee). The make-up benefit is based on the difference between the Bargaining Unit plan's current lifetime benefit rates under Option B and the benefit rates that were in effect at the time of the employee's transfer to salaried status.

Member Contributions

Prior to January 1, 1997, 1.2% of earnings up to the YMPE and 3.0% of earnings above the YMPE.

Effective January 1, 1997, employees covered under Option B ceased contributing toward the Defined Benefit component of the plan; from 1997 onward, employees covered under Option B contribute 2% of earnings per annum to a Defined Contribution component of the Plan, and are entitled to a contribution made by the Company of 3% of earnings per annum. Effective May 1, 2007, contributions to the Defined Contribution component of the Plan were increased to 3% of earnings from the employees and 6% of earnings from the Company.

The Defined Contribution account balance, including investment earnings thereon, will be used at retirement to provide additional pension income.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (*cont'd*)**Early Retirement**

Members are eligible to retire at the earliest of the following dates:

- > "30 and out" early retirement
 - 30+ years of continuous service
 - Unreduced benefit
- > "55 and 15" early retirement
 - Age 55 with 15+ years of continuous service
 - 6% reduction per annum pre-65 applied (but no more than actuarial equivalent reduction)
- > "70/80" special early retirement
 - Age 55 with 15+ years of continuous service, or
 - 80+ age/service points with 15+ years of continuous service
 - Upon permanent shutdown of operations, permanent disability or with company consent: unreduced benefit (Note: Any employee who left employment on or after November 1, 2014 potentially qualifies under the permanent shutdown provision).
- > Statutory early retirement
 - Age 55 with 2+ years of continuous service (no service requirement for Quebec employees)
 - Actuarial reduction applied

In addition to lifetime retirement benefits, employees who retire early from active status will receive a monthly supplement, payable to age 65, of \$18.00 per year of service (to a maximum of 40 years of service). The \$18.00 multiplier is increased to \$27.00, for employees who retire from active status at age 60 or later with 30 or more years of credited service, or at any age with 35 or more years of credited service.

Postponed Retirement**Eligibility**

Up to age 71 if continued employment with the Company.

Benefit

Continued accrual of benefits for non-Quebec members. Revalorized pension determined for Quebec members.

Termination of Employment

Eligibility

All active plan members in Newfoundland are vested (in respect of their Defined Benefit entitlements) after two years of plan membership. All active plan members in Quebec are vested immediately (in accordance with Bill 102). In addition, on wind-up, all members are considered fully vested in their accrued pension benefits.

Defined Contribution entitlements are immediately vested, regardless of the number of years of service.

Benefit

Defined Benefit pension at normal retirement date, based on service at termination. Upon earlier retirement, the pension is actuarially reduced (or, if it produces a higher pension, is subject to a 6% reduction per annum pre-65, with 15 or more years of continuous service). Effective January 1, 2001, for terminating active Quebec members, the pension for post-2000 credited service is subject to adjustment, in accordance with Quebec Bill 102. In lieu of the monthly benefit, the participant may transfer the commuted value of the benefit to a locked-in RRSP or other registered vehicle.

Defined Contribution account balances may be transferred to a locked-in RRSP or other registered vehicle.

Death While Active - Surviving Spouse Coverage

Eligibility

15 years of service, with spouse.

Benefit

Benefit payable is 50% (before any reduction) of the accrued monthly Defined Benefit or \$140 if greater, and is payable during the spouse's remaining lifetime.

Minimum Death Benefit

Eligibility

Two or more years of plan membership.

Benefit

The commuted value of the Defined Benefit earned after January 1, 1990 to the date of death is payable to the spouse or, if applicable, designated beneficiary. If the spouse is the recipient, the spouse will have the option of taking the commuted value in the form of a monthly pension.

If less than two years of plan membership, refund of Defined Benefit member contributions with interest. Effective January 1, 2001, immediate vesting is provided upon the death of active Quebec members, in accordance with Bill 102.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (*cont'd*)

In addition, the full Defined Contribution account balance, with investment earnings, will be vested, regardless of the number of years of service.

Forms of Payment*Normal Form*

Annuity for life, with 50% of the lifetime benefit continuing to the spouse if the retired employee dies before age 65; refund of any contributions with interest in excess of benefits paid out.

Optional Forms

For married participants, the automatic option is a reduced 60% joint and survivor pension, actuarially equivalent to the normal form. Other options are also available on an actuarially equivalent basis.

Disability Benefit

While benefits are payable from the LTD plan, pension benefits continue to accrue under the Defined Benefit provisions based on the earnings rate at the time of disability. Company contributions continue under the Defined Contribution provisions, if the member elects to contribute.

Plan Interpretation

Subsection 6.01(c)(i) of the Salaried Plan text, which provides for a minimum benefit when a member has transferred from the Bargaining Unit Plan to the Plan, was interpreted by the Prior Plan Administrator to provide 100% of any bridging benefits payable in respect of combined credited service to impacted members from the Plan. Our interpretation differs and we have made a correction to the bridge benefits being paid from both the Bargaining Unit Plan and the Plan. Further information on this issue is available in Appendix G.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Appendix E – Member Summary – Defined Benefit Component

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV001	Deferred	NL	60.9	26	\$ 2,523	\$ -	\$ -	\$ -	\$ 36,847
DV002	Deferred	NL	55.3	40	\$ 3,523	\$ -	\$ -	\$ -	\$ 44,390
DV003	Deferred	NL	53.5	41	\$ 4,078	\$ -	\$ -	\$ -	\$ 49,046
DV004	Deferred	FED	58.6	30	\$ 2,754	\$ -	\$ -	\$ -	\$ 37,996
DV005	Deferred	NL	46.6	85	\$ 11,285	\$ -	\$ -	\$ -	\$ 110,609
DV006	Deferred	NL	45.0	101	\$ 11,940	\$ -	\$ -	\$ -	\$ 112,157
DV007	Deferred	NL	45.0	107	\$ 9,165	\$ -	\$ -	\$ -	\$ 87,938
DV008	Deferred	NL	45.8	31	\$ 2,866	\$ -	\$ -	\$ -	\$ 28,064
DV009	Deferred	NL	43.0	57	\$ 5,269	\$ -	\$ -	\$ -	\$ 48,056
DV010	Deferred	NL	44.0	28	\$ 2,944	\$ -	\$ -	\$ -	\$ 27,500
DV011	Deferred	NL	51.0	66	\$ 6,998	\$ -	\$ -	\$ -	\$ 76,675
DV012	Deferred	NL	42.6	21	\$ 2,235	\$ -	\$ -	\$ -	\$ 20,109
DV013	Deferred	NL	40.9	67	\$ 6,531	\$ -	\$ -	\$ -	\$ 54,806
DV014	Deferred	NL	54.6	20	\$ 1,980	\$ -	\$ -	\$ -	\$ 24,526
DV015	Deferred	NL	38.1	30	\$ 3,034	\$ -	\$ -	\$ -	\$ 24,168
DV016	Deferred	NL	50.0	73	\$ 6,701	\$ -	\$ -	\$ -	\$ 72,606
DV017	Deferred	QC	50.7	82	\$ 8,950	\$ -	\$ -	\$ -	\$ 92,742
DV018	Deferred	QC	40.2	20	\$ 1,550	\$ -	\$ -	\$ -	\$ 12,513
DV019	Deferred	QC	40.2	38	\$ 3,387	\$ -	\$ -	\$ -	\$ 26,595
DV020	Deferred	QC	46.8	37	\$ 3,431	\$ -	\$ -	\$ -	\$ 32,363
DV021	Deferred	QC	49.0	56	\$ 4,465	\$ -	\$ -	\$ -	\$ 45,344
DV022	Deferred	QC	48.8	60	\$ 4,848	\$ -	\$ -	\$ -	\$ 48,426
DV023	Deferred	QC	49.6	84	\$ 7,979	\$ -	\$ -	\$ -	\$ 81,577
DV024	Deferred	QC	38.1	89	\$ 9,853	\$ -	\$ -	\$ -	\$ 73,820
DV025	Deferred	NL	49.6	177	\$ 20,731	\$ -	\$ -	\$ -	\$ 224,758
DV026	Deferred	NL	48.4	151	\$ 14,470	\$ -	\$ -	\$ -	\$ 152,021
DV027	Deferred	NL	56.2	129	\$ 9,288	\$ -	\$ -	\$ -	\$ 128,596

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV028	Deferred	NL	49.7	294	\$ 41,672	\$ -	\$ -	\$ -	\$ 452,738
DV029	Deferred	NL	55.2	197	\$ 21,174	\$ -	\$ -	\$ -	\$ 266,259
DV030	Deferred	NL	58.6	204	\$ 17,123	\$ 3,662	\$ -	\$ -	\$ 235,876
DV031	Deferred	NL	43.7	184	\$ 23,606	\$ -	\$ -	\$ -	\$ 218,648
DV032	Deferred	NL	61.1	188	\$ 15,262	\$ 3,387	\$ -	\$ -	\$ 224,181
DV033	Deferred	NL	57.8	190	\$ 34,403	\$ 3,437	\$ -	\$ -	\$ 703,848
DV034	Deferred	NL	60.4	168	\$ 15,391	\$ -	\$ -	\$ -	\$ 221,536
DV035	Deferred	NL	46.4	153	\$ 17,531	\$ -	\$ -	\$ -	\$ 186,228
DV036	Deferred	NL	49.6	119	\$ 13,624	\$ -	\$ -	\$ -	\$ 147,789
DV037	Deferred	NL	54.5	114	\$ 8,881	\$ -	\$ -	\$ -	\$ 117,256
DV038	Deferred	NL	50.4	108	\$ 10,752	\$ -	\$ -	\$ -	\$ 119,224
DV039	Deferred	NL	50.0	107	\$ 11,196	\$ -	\$ -	\$ -	\$ 122,593
DV040	Deferred	NL	50.3	159	\$ 19,214	\$ -	\$ -	\$ -	\$ 210,916
DV041	Deferred	NL	51.5	182	\$ 19,399	\$ -	\$ -	\$ -	\$ 221,366
DV042	Deferred	NL	49.0	166	\$ 22,768	\$ -	\$ -	\$ -	\$ 242,219
DV043	Deferred	NL	43.5	103	\$ 10,147	\$ -	\$ -	\$ -	\$ 98,806
DV044	Deferred	NL	35.1	108	\$ 12,304	\$ -	\$ -	\$ -	\$ 90,656
DV045	Deferred	QC	53.4	321	\$ 46,417	\$ 5,764	\$ -	\$ -	\$ 1,047,978
DV046	Deferred	QC	50.2	316	\$ 45,930	\$ -	\$ -	\$ -	\$ 502,883
DV047	Deferred	QC	54.2	290	\$ 29,309	\$ -	\$ -	\$ -	\$ 348,359
DV048	Deferred	QC	55.2	227	\$ 24,222	\$ -	\$ -	\$ -	\$ 297,028
DV049	Deferred	QC	44.1	205	\$ 18,109	\$ -	\$ -	\$ -	\$ 156,276
DV050	Deferred	QC	46.2	212	\$ 28,490	\$ -	\$ -	\$ -	\$ 262,611
DV051	Deferred	QC	43.6	176	\$ 19,552	\$ -	\$ -	\$ -	\$ 168,595
DV052	Deferred	QC	48.8	168	\$ 18,262	\$ -	\$ -	\$ -	\$ 184,140
DV053	Deferred	FED	50.9	171	\$ 30,236	\$ -	\$ -	\$ -	\$ 318,427
DV054	Deferred	QC	57.9	121	\$ 11,024	\$ -	\$ -	\$ -	\$ 147,315
DV055	Deferred	QC	60.0	127	\$ 11,550	\$ -	\$ -	\$ -	\$ 164,314
DV056	Deferred	QC	35.6	119	\$ 11,770	\$ -	\$ -	\$ -	\$ 87,355
DV057	Deferred	QC	47.1	129	\$ 8,453	\$ -	\$ -	\$ -	\$ 84,899
DV058	Deferred	QC	47.0	176	\$ 16,890	\$ -	\$ -	\$ -	\$ 160,045
DV059	Deferred	QC	46.6	140	\$ 14,472	\$ -	\$ -	\$ -	\$ 136,092
DV060	Deferred	QC	48.3	195	\$ 27,479	\$ -	\$ -	\$ -	\$ 270,324

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV061	Deferred	QC	53.2	168	\$ 19,886	\$ -	\$ -	\$ -	\$ 228,236
DV062	Deferred	NL	63.8	40	\$ 3,958	\$ -	\$ -	\$ -	\$ 62,506
DV063	Deferred	NL	47.7	78	\$ 4,445	\$ -	\$ -	\$ -	\$ 48,850
DV064	Deferred	NL	47.3	96	\$ 8,560	\$ -	\$ -	\$ -	\$ 87,122
DV065	Deferred	NL	39.5	83	\$ 6,394	\$ -	\$ -	\$ -	\$ 52,952
DV066	Deferred	NL	37.9	80	\$ 6,721	\$ -	\$ -	\$ -	\$ 53,384
DV067	Deferred	NL	60.8	79	\$ 7,877	\$ -	\$ -	\$ -	\$ 114,766
DV068	Deferred	NL	45.5	82	\$ 8,203	\$ -	\$ -	\$ -	\$ 79,585
DV069	Deferred	QC	38.7	91	\$ 7,396	\$ -	\$ -	\$ -	\$ 59,230
DV070	Deferred	QC	40.1	114	\$ 8,545	\$ -	\$ -	\$ -	\$ 70,672
DV071	Deferred	QC	54.3	95	\$ 8,141	\$ -	\$ -	\$ -	\$ 98,029
DV072	Deferred	NL	49.8	32	\$ 3,121	\$ -	\$ -	\$ -	\$ 33,992
DV073	Deferred	NL	44.9	69	\$ 6,489	\$ -	\$ -	\$ -	\$ 61,720
DV074	Deferred	QC	42.1	55	\$ 5,169	\$ -	\$ -	\$ -	\$ 42,764
DV075	Deferred	NL	45.9	75	\$ 4,502	\$ -	\$ -	\$ -	\$ 47,268
DV076	Deferred	NL	30.7	72	\$ 6,053	\$ -	\$ -	\$ -	\$ 39,625
DV077	Deferred	NL	44.5	84	\$ 8,365	\$ -	\$ -	\$ -	\$ 79,148
DV078	Deferred	NL	47.7	71	\$ 6,967	\$ -	\$ -	\$ -	\$ 71,791
DV079	Deferred	NL	44.1	43	\$ 3,980	\$ -	\$ -	\$ -	\$ 37,270
DV080	Deferred	NL	33.3	68	\$ 6,536	\$ -	\$ -	\$ -	\$ 45,939
DV081	Deferred	NL	47.4	67	\$ 5,760	\$ -	\$ -	\$ -	\$ 58,742
DV082	Deferred	NL	61.9	67	\$ 6,750	\$ -	\$ -	\$ -	\$ 101,600
DV083	Deferred	NL	37.0	64	\$ 5,124	\$ -	\$ -	\$ -	\$ 42,225
DV084	Deferred	NL	32.8	59	\$ 5,032	\$ -	\$ -	\$ -	\$ 34,933
DV085	Deferred	NL	38.0	46	\$ 3,763	\$ -	\$ -	\$ -	\$ 29,940
DV086	Deferred	NL	43.5	62	\$ 4,717	\$ -	\$ -	\$ -	\$ 46,325
DV087	Deferred	QC	56.2	44	\$ 6,105	\$ -	\$ -	\$ -	\$ 77,668
DV088	Deferred	QC	50.2	79	\$ 6,616	\$ -	\$ -	\$ -	\$ 69,269
DV089	Deferred	QC	59.8	79	\$ 7,041	\$ -	\$ -	\$ -	\$ 99,847
DV090	Deferred	QC	45.2	79	\$ 7,499	\$ -	\$ -	\$ -	\$ 67,834
DV091	Deferred	QC	36.0	76	\$ 6,894	\$ -	\$ -	\$ -	\$ 49,268
DV092	Deferred	QC	41.0	84	\$ 7,341	\$ -	\$ -	\$ -	\$ 58,944
DV093	Deferred	QC	34.5	81	\$ 7,355	\$ -	\$ -	\$ -	\$ 49,867

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV094	Deferred	QC	29.9	70	\$ 4,958	\$ -	\$ -	\$ -	\$ 31,746
DV095	Deferred	QC	47.3	77	\$ 4,569	\$ -	\$ -	\$ -	\$ 46,788
DV096	Deferred	QC	40.9	89	\$ 5,927	\$ -	\$ -	\$ -	\$ 50,207
DV097	Deferred	QC	56.4	78	\$ 6,535	\$ -	\$ -	\$ -	\$ 83,082
DV098	Deferred	QC	48.1	76	\$ 4,929	\$ -	\$ -	\$ -	\$ 51,598
DV099	Deferred	QC	39.5	77	\$ 9,725	\$ -	\$ -	\$ -	\$ 74,962
DV100	Deferred	QC	42.2	67	\$ 5,659	\$ -	\$ -	\$ -	\$ 47,282
DV101	Deferred	QC	37.7	53	\$ 7,773	\$ -	\$ -	\$ -	\$ 57,591
DV102	Deferred	FED	55.2	55	\$ 5,150	\$ -	\$ -	\$ -	\$ 65,075
DV103	Deferred	FED	31.3	56	\$ 5,678	\$ -	\$ -	\$ -	\$ 30,020
DV104	Deferred	QC	62.7	47	\$ 3,812	\$ -	\$ -	\$ -	\$ 58,521
DV105	Deferred	QC	52.5	50	\$ 4,425	\$ -	\$ -	\$ -	\$ 50,440
DV106	Deferred	NL	62.3	55	\$ 5,176	\$ -	\$ -	\$ -	\$ 78,622
DV107	Deferred	QC	46.2	59	\$ 5,234	\$ -	\$ -	\$ -	\$ 51,359
DV108	Deferred	QC	57.3	60	\$ 5,695	\$ -	\$ -	\$ -	\$ 74,298
DV109	Deferred	QC	46.3	58	\$ 5,788	\$ -	\$ -	\$ -	\$ 54,174
DV110	Deferred	NL	33.3	17	\$ 1,704	\$ -	\$ -	\$ -	\$ 11,929
DV111	Deferred	NL	47.8	34	\$ 3,431	\$ -	\$ -	\$ -	\$ 35,443
DV112	Deferred	NL	39.3	32	\$ 3,108	\$ -	\$ -	\$ -	\$ 27,311
DV113	Deferred	QC	28.3	30	\$ 2,172	\$ -	\$ -	\$ -	\$ 12,583
DV114	Deferred	QC	50.9	38	\$ 3,148	\$ -	\$ -	\$ -	\$ 34,025
DV115	Deferred	QC	33.7	32	\$ 2,670	\$ -	\$ -	\$ -	\$ 17,778
DV116	Deferred	NL	49.2	16	\$ 1,628	\$ -	\$ -	\$ -	\$ 17,451
DV117	Deferred	QC	33.7	27	\$ 2,739	\$ -	\$ -	\$ -	\$ 18,411
DV118	Deferred	NL	54.4	37	\$ 3,716	\$ -	\$ -	\$ -	\$ 48,991
DV119	Deferred	NL	33.1	24	\$ 1,839	\$ -	\$ -	\$ -	\$ 13,632
DV120	Deferred	NL	28.4	32	\$ 2,187	\$ -	\$ -	\$ -	\$ 14,309
DV121	Deferred	NL	28.4	40	\$ 2,806	\$ -	\$ -	\$ -	\$ 18,350
DV122	Deferred	NL	41.6	39	\$ 6,394	\$ -	\$ -	\$ -	\$ 55,991
DV123	Deferred	NL	28.3	33	\$ 2,607	\$ -	\$ -	\$ -	\$ 15,980
DV124	Deferred	NL	50.3	33	\$ 2,697	\$ -	\$ -	\$ -	\$ 31,764
DV125	Deferred	NL	55.2	31	\$ 3,096	\$ -	\$ -	\$ -	\$ 38,921
DV126	Deferred	NL	39.9	28	\$ 2,812	\$ -	\$ -	\$ -	\$ 23,593

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV127	Deferred	NL	56.9	29	\$ 2,852	\$ -	\$ -	\$ -	\$ 37,583
DV128	Deferred	NL	51.4	35	\$ 4,350	\$ -	\$ -	\$ -	\$ 52,714
DV129	Deferred	NL	29.6	34	\$ 2,611	\$ -	\$ -	\$ -	\$ 16,587
DV130	Deferred	NL	30.3	27	\$ 2,122	\$ -	\$ -	\$ -	\$ 14,578
DV131	Deferred	NL	27.6	27	\$ 1,915	\$ -	\$ -	\$ -	\$ 11,528
DV132	Deferred	FED	42.3	46	\$ 2,562	\$ -	\$ -	\$ -	\$ 19,991
DV133	Deferred	QC	50.9	38	\$ 3,319	\$ -	\$ -	\$ -	\$ 37,969
DV134	Deferred	QC	49.8	40	\$ 5,567	\$ -	\$ -	\$ -	\$ 61,437
DV135	Deferred	QC	36.6	30	\$ 2,924	\$ -	\$ -	\$ -	\$ 22,475
DV136	Deferred	QC	48.0	30	\$ 3,636	\$ -	\$ -	\$ -	\$ 35,777
DV137	Deferred	QC	47.6	38	\$ 3,768	\$ -	\$ -	\$ -	\$ 36,461
DV138	Deferred	QC	28.6	22	\$ 1,529	\$ -	\$ -	\$ -	\$ 9,500
DV139	Deferred	QC	29.9	33	\$ 2,591	\$ -	\$ -	\$ -	\$ 15,616
DV140	Deferred	FED	53.8	32	\$ 3,056	\$ -	\$ -	\$ -	\$ 35,634
DV141	Deferred	QC	42.9	31	\$ 2,883	\$ -	\$ -	\$ -	\$ 24,525
DV142	Deferred	QC	38.6	31	\$ 2,303	\$ -	\$ -	\$ -	\$ 17,484
DV143	Deferred	QC	34.9	29	\$ 2,306	\$ -	\$ -	\$ -	\$ 15,841
DV144	Deferred	FED	36.7	23	\$ 1,957	\$ -	\$ -	\$ -	\$ 12,505
DV145	Deferred	QC	48.2	31	\$ 3,152	\$ -	\$ -	\$ -	\$ 31,191
DV146	Deferred	FED	61.8	31	\$ 3,390	\$ -	\$ -	\$ -	\$ 50,981
DV147	Deferred	QC	26.7	30	\$ 2,079	\$ -	\$ -	\$ -	\$ 12,170
DV148	Deferred	QC	35.5	23	\$ 2,245	\$ -	\$ -	\$ -	\$ 15,778
DV149	Deferred	QC	26.0	39	\$ 3,027	\$ -	\$ -	\$ -	\$ 17,222
DV150	Deferred	FED	56.2	29	\$ 3,148	\$ -	\$ -	\$ -	\$ 40,697
DV151	Deferred	FED	45.6	17	\$ 1,743	\$ -	\$ -	\$ -	\$ 15,239
DV152	Deferred	FED	43.5	28	\$ 2,788	\$ -	\$ -	\$ -	\$ 22,641
DV153	Deferred	FED	50.6	20	\$ 2,122	\$ -	\$ -	\$ -	\$ 22,151
DV154	Deferred	NL	56.8	61	\$ 6,391	\$ -	\$ -	\$ -	\$ 83,810
DV155	Deferred	NL	44.1	41	\$ 2,993	\$ -	\$ -	\$ -	\$ 26,306
DV156	Deferred	NL	45.8	37	\$ 4,136	\$ -	\$ -	\$ -	\$ 38,323
DV157	Deferred	NL	35.3	21	\$ 1,581	\$ -	\$ -	\$ -	\$ 11,467
DV158	Deferred	QC	38.9	62	\$ 5,203	\$ -	\$ -	\$ -	\$ 40,039
DV159	Deferred	QC	39.4	67	\$ 5,457	\$ -	\$ -	\$ -	\$ 42,730

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV160	Deferred	QC	60.9	29	\$ 1,841	\$ -	\$ -	\$ -	\$ 25,762
DV161	Deferred	NL	51.5	101	\$ 7,397	\$ -	\$ -	\$ -	\$ 84,507
DV162	Deferred	NL	51.5	23	\$ 2,390	\$ -	\$ -	\$ -	\$ 27,307
DV163	Deferred	NL	50.0	114	\$ 6,982	\$ -	\$ -	\$ -	\$ 76,446
DV164	Deferred	NL	54.6	99	\$ 7,857	\$ -	\$ -	\$ -	\$ 97,308
DV165	Deferred	NL	44.9	115	\$ 7,363	\$ -	\$ -	\$ -	\$ 75,228
DV166	Deferred	NL	48.1	85	\$ 7,420	\$ -	\$ -	\$ -	\$ 77,256
DV167	Deferred	NL	45.6	62	\$ 4,650	\$ -	\$ -	\$ -	\$ 45,326
DV168	Deferred	NL	62.7	100	\$ 5,919	\$ -	\$ -	\$ -	\$ 90,990
DV169	Deferred	NL	41.1	33	\$ 2,049	\$ -	\$ -	\$ -	\$ 17,693
DV170	Deferred	NL	45.2	76	\$ 6,708	\$ -	\$ -	\$ -	\$ 64,787
DV171	Deferred	NL	57.1	45	\$ 3,200	\$ -	\$ -	\$ -	\$ 42,462
DV172	Deferred	NL	54.1	35	\$ 2,738	\$ -	\$ -	\$ -	\$ 33,441
DV173	Deferred	NL	66.3	31	\$ 2,486	\$ -	\$ -	\$ -	\$ 42,250
DV174	Deferred	NL	62.3	44	\$ 3,053	\$ -	\$ -	\$ -	\$ 46,371
DV175	Deferred	NL	34.7	25	\$ 1,486	\$ -	\$ -	\$ -	\$ 10,850
DV176	Deferred	NL	35.0	26	\$ 1,559	\$ -	\$ -	\$ -	\$ 11,453
DV177	Deferred	NL	58.0	93	\$ 11,027	\$ -	\$ -	\$ -	\$ 149,874
DV178	Deferred	NL	45.5	55	\$ 4,887	\$ -	\$ -	\$ -	\$ 45,989
DV179	Deferred	NL	47.3	26	\$ 2,207	\$ -	\$ -	\$ -	\$ 21,579
DV180	Deferred	NL	46.0	34	\$ 2,466	\$ -	\$ -	\$ -	\$ 24,234
DV181	Deferred	QC	45.1	155	\$ 8,839	\$ -	\$ -	\$ -	\$ 79,798
DV182	Deferred	QC	48.4	213	\$ 19,304	\$ -	\$ -	\$ -	\$ 191,149
DV183	Deferred	QC	53.0	164	\$ 13,762	\$ -	\$ -	\$ -	\$ 160,726
DV184	Deferred	QC	54.7	124	\$ 8,591	\$ -	\$ -	\$ -	\$ 107,706
DV185	Deferred	QC	64.6	131	\$ 7,019	\$ -	\$ -	\$ -	\$ 113,433
DV186	Deferred	QC	46.5	181	\$ 22,505	\$ -	\$ -	\$ -	\$ 211,776
DV187	Deferred	QC	53.6	95	\$ 7,287	\$ -	\$ -	\$ -	\$ 89,626
DV188	Deferred	QC	40.1	103	\$ 3,801	\$ -	\$ -	\$ -	\$ 32,834
DV189	Deferred	QC	54.9	112	\$ 8,742	\$ -	\$ -	\$ -	\$ 110,619
DV190	Deferred	QC	39.0	89	\$ 5,069	\$ -	\$ -	\$ -	\$ 40,702
DV191	Deferred	QC	46.2	100	\$ 6,537	\$ -	\$ -	\$ -	\$ 67,035
DV192	Deferred	QC	62.7	77	\$ 6,349	\$ -	\$ -	\$ -	\$ 97,537

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² The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV193	Deferred	QC	44.4	102	\$ 6,803	\$ -	\$ -	\$ -	\$ 62,157
DV194	Deferred	QC	46.8	69	\$ 3,892	\$ -	\$ -	\$ -	\$ 39,474
DV195	Deferred	FED	41.3	98	\$ 8,727	\$ -	\$ -	\$ -	\$ 65,448
DV196	Deferred	QC	53.3	10	\$ 611	\$ -	\$ -	\$ -	\$ 7,733
DV197	Deferred	QC	53.3	21	\$ 1,357	\$ -	\$ -	\$ -	\$ 16,845
DV198	Deferred	QC	56.3	59	\$ 3,685	\$ -	\$ -	\$ -	\$ 48,834
DV199	Deferred	QC	37.2	48	\$ 2,965	\$ -	\$ -	\$ -	\$ 22,924
DV200	Deferred	QC	37.2	14	\$ 1,065	\$ -	\$ -	\$ -	\$ 8,012
DV201	Deferred	QC	60.6	24	\$ 1,492	\$ -	\$ -	\$ -	\$ 22,330
DV202	Deferred	QC	54.4	56	\$ 3,190	\$ -	\$ -	\$ -	\$ 40,021
DV203	Deferred	QC	54.4	28	\$ 2,129	\$ -	\$ -	\$ -	\$ 26,056
DV204	Deferred	QC	56.3	21	\$ 1,555	\$ -	\$ -	\$ -	\$ 21,045
DV205	Deferred	QC	37.9	86	\$ 7,495	\$ -	\$ -	\$ -	\$ 56,938
DV206	Deferred	QC	65.4	14	\$ 1,549	\$ -	\$ -	\$ 646	\$ 25,738
DV207	Deferred	QC	52.5	40	\$ 2,794	\$ -	\$ -	\$ -	\$ 33,018
DV208	Deferred	QC	44.2	89	\$ 7,579	\$ -	\$ -	\$ -	\$ 69,094
DV209	Deferred	QC	40.4	104	\$ 9,597	\$ -	\$ -	\$ -	\$ 75,855
DV210	Deferred	QC	46.3	75	\$ 5,858	\$ -	\$ -	\$ -	\$ 56,692
DV211	Deferred	NL	66.8	110	\$ 2,374	\$ -	\$ -	\$ 2,898	\$ 27,303
DV212	Deferred	NL	63.7	25	\$ 483	\$ -	\$ -	\$ -	\$ 4,178
DV213	Deferred	NL	64.7	26	\$ 973	\$ -	\$ -	\$ -	\$ 9,528
DV214	Deferred	NL	60.3	62	\$ 1,142	\$ -	\$ -	\$ -	\$ 12,779
DV215	Deferred	QC	78.9	50	\$ 126	\$ -	\$ -	\$ 1,757	\$ 2,926
DV216	Deferred	QC	67.9	65	\$ 1,573	\$ -	\$ -	\$ 3,504	\$ 21,540
DV217	Deferred	QC	63.9	79	\$ 1,428	\$ -	\$ -	\$ -	\$ 19,209
DV218	Deferred	QC	66.4	60	\$ 1,015	\$ -	\$ -	\$ 999	\$ 12,082
DV219	Deferred	NL	45.6	22	\$ 1,376	\$ -	\$ -	\$ -	\$ 13,463
DV220	Deferred	NL	45.6	49	\$ 4,674	\$ -	\$ -	\$ -	\$ 45,716
DV221	Deferred	QC	53.4	49	\$ 3,268	\$ -	\$ -	\$ -	\$ 41,297
DV222	Deferred	NL	73.5	134	\$ 3,532	\$ -	\$ -	\$ 30,313	\$ 72,510
DV223	Deferred	NL	71.0	126	\$ 2,103	\$ -	\$ -	\$ 12,617	\$ 40,495
DV224	Deferred	NL	68.5	154	\$ 1,942	\$ -	\$ -	\$ 6,797	\$ 35,106
DV225	Deferred	NL	64.9	173	\$ 15,824	\$ -	\$ -	\$ -	\$ 256,233

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R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV226	Deferred	NL	56.9	169	\$ 19,161	\$ -	\$ -	\$ -	\$ 270,346
DV227	Deferred	NL	55.7	44	\$ 2,929	\$ -	\$ -	\$ -	\$ 37,477
DV228	Deferred	NL	51.2	167	\$ 13,116	\$ -	\$ -	\$ -	\$ 148,685
DV229	Deferred	NL	51.1	41	\$ 1,749	\$ -	\$ -	\$ -	\$ 19,728
DV230	Deferred	NL	48.3	32	\$ 5,391	\$ -	\$ -	\$ -	\$ 56,571
DV231	Deferred	NL	55.1	119	\$ 9,069	\$ -	\$ -	\$ -	\$ 114,090
DV232	Deferred	NL	58.1	94	\$ 6,783	\$ -	\$ -	\$ -	\$ 92,179
DV233	Deferred	NL	45.6	51	\$ 2,252	\$ -	\$ -	\$ -	\$ 23,481
DV234	Deferred	NL	46.7	61	\$ 3,144	\$ -	\$ -	\$ -	\$ 31,656
DV235	Deferred	NL	45.5	29	\$ 1,500	\$ -	\$ -	\$ -	\$ 14,606
DV236	Deferred	NL	55.5	92	\$ 6,690	\$ -	\$ -	\$ -	\$ 84,865
DV237	Deferred	NL	38.0	41	\$ 2,231	\$ -	\$ -	\$ -	\$ 17,748
DV238	Deferred	NL	46.5	51	\$ 2,300	\$ -	\$ -	\$ -	\$ 22,966
DV239	Deferred	NL	45.3	57	\$ 3,024	\$ -	\$ -	\$ -	\$ 29,181
DV240	Deferred	NL	49.2	41	\$ 2,221	\$ -	\$ -	\$ -	\$ 25,396
DV241	Deferred	NL	54.8	57	\$ 3,671	\$ -	\$ -	\$ -	\$ 45,650
DV242	Deferred	NL	66.8	57	\$ 3,894	\$ -	\$ -	\$ 6,814	\$ 66,974
DV243	Deferred	NL	42.8	67	\$ 4,171	\$ -	\$ -	\$ -	\$ 37,703
DV244	Deferred	NL	48.0	55	\$ 4,020	\$ -	\$ -	\$ -	\$ 41,731
DV245	Deferred	NL	54.4	51	\$ 3,513	\$ -	\$ -	\$ -	\$ 43,330
DV246	Deferred	NL	51.5	45	\$ 2,935	\$ -	\$ -	\$ -	\$ 35,791
DV247	Deferred	NL	55.5	32	\$ 2,176	\$ -	\$ -	\$ -	\$ 27,644
DV248	Deferred	QC	81.8	153	\$ 1,368	\$ -	\$ -	\$ 22,922	\$ 33,543
DV249	Deferred	QC	69.7	154	\$ 378	\$ -	\$ -	\$ 1,762	\$ 7,099
DV250	Deferred	QC	68.4	258	\$ 17,880	\$ -	\$ -	\$ 61,090	\$ 324,742
DV251	Deferred	QC	76.6	132	\$ 2,458	\$ -	\$ -	\$ 28,675	\$ 54,415
DV252	Deferred	QC	63.0	136	\$ 3,954	\$ -	\$ -	\$ -	\$ 61,145
DV253	Deferred	QC	76.1	240	\$ 8,653	\$ -	\$ -	\$ 96,627	\$ 189,331
DV254	Deferred	QC	68.4	56	\$ 5,571	\$ -	\$ -	\$ 19,036	\$ 101,245
DV255	Deferred	QC	56.8	47	\$ 2,483	\$ -	\$ -	\$ -	\$ 33,407
DV256	Deferred	QC	56.2	57	\$ 3,650	\$ -	\$ -	\$ -	\$ 49,804
DV257	Deferred	QC	46.8	39	\$ 1,911	\$ -	\$ -	\$ -	\$ 20,884
DV258	Deferred	QC	43.0	31	\$ 1,928	\$ -	\$ -	\$ -	\$ 18,022

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R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV259	Deferred	QC	51.0	23	\$ 1,381	\$ -	\$ -	\$ -	\$ 16,528
DV260	Deferred	QC	39.4	20	\$ 1,830	\$ -	\$ -	\$ -	\$ 14,657
DV261	Deferred	NL	60.2	92	\$ 8,792	\$ -	\$ -	\$ -	\$ 126,425
DV262	Deferred	NL	47.4	74	\$ 6,733	\$ -	\$ -	\$ -	\$ 68,862
DV263	Deferred	NL	38.9	52	\$ 2,908	\$ -	\$ -	\$ -	\$ 25,280
DV264	Deferred	NL	36.6	33	\$ 2,475	\$ -	\$ -	\$ -	\$ 18,954
DV265	Deferred	NL	61.2	29	\$ 5,325	\$ -	\$ -	\$ -	\$ 78,576
DV266	Deferred	QC	49.9	30	\$ 2,162	\$ -	\$ -	\$ -	\$ 23,746
DV267	Deferred	QC	44.4	35	\$ 2,198	\$ -	\$ -	\$ -	\$ 20,292
DV268	Deferred	QC	59.3	25	\$ 1,890	\$ -	\$ -	\$ -	\$ 27,034
DV269	Deferred	QC	34.1	15	\$ 868	\$ -	\$ -	\$ -	\$ 6,174
DV270	Deferred	QC	66.1	21	\$ 1,609	\$ -	\$ -	\$ 1,743	\$ 27,240
DV271	Deferred	QC	39.0	31	\$ 1,815	\$ -	\$ -	\$ -	\$ 15,373
DV272	Deferred	QC	56.4	9	\$ 569	\$ -	\$ -	\$ -	\$ 7,583
DV273	Deferred	QC	52.6	35	\$ 2,628	\$ -	\$ -	\$ -	\$ 31,029
DV274	Deferred	QC	52.3	55	\$ 6,578	\$ -	\$ -	\$ -	\$ 75,441
DV275	Deferred	QC	57.3	13	\$ 912	\$ -	\$ -	\$ -	\$ 12,344
DV276	Deferred	QC	42.2	41	\$ 2,906	\$ -	\$ -	\$ -	\$ 25,171
DV277	Deferred	QC	35.6	19	\$ 1,039	\$ -	\$ -	\$ -	\$ 7,732
DV278	Deferred	QC	46.8	21	\$ 1,154	\$ -	\$ -	\$ -	\$ 12,349
DV279	Deferred	NL	47.3	32	\$ 3,189	\$ -	\$ -	\$ -	\$ 32,564
DV280	Deferred	NL	42.5	37	\$ 3,175	\$ -	\$ -	\$ -	\$ 28,510
DV281	Deferred	NL	52.2	28	\$ 2,749	\$ -	\$ -	\$ -	\$ 32,010
DV282	Deferred	NL	59.5	29	\$ 2,892	\$ -	\$ -	\$ -	\$ 40,811
DV283	Deferred	QC	33.5	38	\$ 2,649	\$ -	\$ -	\$ -	\$ 19,100
DV284	Deferred	QC	46.9	64	\$ 4,762	\$ -	\$ -	\$ -	\$ 45,821
DV285	Deferred	QC	64.5	11	\$ 593	\$ -	\$ -	\$ -	\$ 9,572
DV286	Deferred	QC	64.5	30	\$ 2,328	\$ -	\$ -	\$ -	\$ 37,577
DV287	Deferred	QC	39.9	70	\$ 5,114	\$ -	\$ -	\$ -	\$ 42,739
DV288	Deferred	QC	37.9	42	\$ 3,526	\$ -	\$ -	\$ -	\$ 26,987
DV289	Deferred	QC	34.1	30	\$ 1,778	\$ -	\$ -	\$ -	\$ 12,196
DV290	Deferred	QC	42.1	15	\$ 994	\$ -	\$ -	\$ -	\$ 8,527
DV291	Deferred	QC	44.6	35	\$ 1,809	\$ -	\$ -	\$ -	\$ 17,194

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R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV292	Deferred	QC	45.1	33	\$ 2,533	\$ -	\$ -	\$ -	\$ 23,012
DV293	Deferred	QC	31.5	24	\$ 1,595	\$ -	\$ -	\$ -	\$ 10,233
DV294	Deferred	QC	41.3	35	\$ 2,895	\$ -	\$ -	\$ -	\$ 23,765
DV295	Deferred	QC	60.1	23	\$ 1,603	\$ -	\$ -	\$ -	\$ 22,862
DV296	Deferred	QC	41.3	35	\$ 2,508	\$ -	\$ -	\$ -	\$ 20,663
DV297	Deferred	QC	44.6	38	\$ 4,562	\$ -	\$ -	\$ -	\$ 40,657
DV298	Deferred	QC	52.2	8	\$ 387	\$ -	\$ -	\$ -	\$ 4,472
DV299	Deferred	QC	30.7	38	\$ 2,966	\$ -	\$ -	\$ -	\$ 18,353
DV300	Deferred	QC	44.1	16	\$ 1,259	\$ -	\$ -	\$ -	\$ 11,263
DV301	Deferred	QC	29.2	35	\$ 1,276	\$ -	\$ -	\$ -	\$ 8,216
DV302	Deferred	QC	35.0	14	\$ 1,071	\$ -	\$ -	\$ -	\$ 7,524
DV303	Deferred	NL	59.1	31	\$ 3,283	\$ -	\$ -	\$ -	\$ 45,884
DV304	Deferred	QC	68.3	7	\$ 431	\$ -	\$ -	\$ 1,436	\$ 7,815
DV305	Deferred	QC	38.7	6	\$ 296	\$ -	\$ -	\$ -	\$ 2,492
DV306	Deferred	QC	43.2	3	\$ 121	\$ -	\$ -	\$ -	\$ 1,144
DV307	Deferred	QC	35.8	6	\$ 490	\$ -	\$ -	\$ -	\$ 3,593
DV308	Deferred	QC	52.9	3	\$ 228	\$ -	\$ -	\$ -	\$ 2,717
DV309	Deferred	QC	37.2	7	\$ 670	\$ -	\$ -	\$ -	\$ 4,940
DV310	Deferred	QC	41.4	6	\$ 501	\$ -	\$ -	\$ -	\$ 4,173
DV311	Deferred	QC	48.7	29	\$ 2,092	\$ -	\$ -	\$ -	\$ 22,405
DV312	Deferred	QC	45.7	20	\$ 2,202	\$ -	\$ -	\$ -	\$ 20,463
DV313	Deferred	QC	52.3	24	\$ 1,792	\$ -	\$ -	\$ -	\$ 20,302
DV314	Deferred	QC	45.7	20	\$ 1,694	\$ -	\$ -	\$ -	\$ 15,726
DV315	Deferred	QC	36.1	25	\$ 2,006	\$ -	\$ -	\$ -	\$ 14,345
DV316	Deferred	QC	39.9	16	\$ 2,150	\$ -	\$ -	\$ -	\$ 17,012
DV317	Deferred	QC	60.8	24	\$ 2,268	\$ -	\$ -	\$ -	\$ 32,978
DV318	Deferred	FED	35.3	21	\$ 2,324	\$ -	\$ -	\$ -	\$ 14,131
DV319	Deferred	QC	57.6	21	\$ 2,501	\$ -	\$ -	\$ -	\$ 33,146
DV320	Deferred	QC	30.6	12	\$ 947	\$ -	\$ -	\$ -	\$ 5,875
DV321	Deferred	QC	33.5	12	\$ 1,189	\$ -	\$ -	\$ -	\$ 7,960
DV322	Deferred	QC	41.2	12	\$ 1,022	\$ -	\$ -	\$ -	\$ 8,374
DV323	Deferred	QC	57.2	11	\$ 869	\$ -	\$ -	\$ -	\$ 11,358
DV324	Deferred	QC	47.3	8	\$ 742	\$ -	\$ -	\$ -	\$ 7,225

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R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
DV325	Deferred	QC	30.6	22	\$ 1,489	\$ -	\$ -	\$ -	\$ 9,229
DEFERRED TOTALS		325			\$ 1,941,323	\$ 16,250	\$ -	\$ 302,949	\$ 21,890,287
P001			QC				\$ 34,606		\$ 34,606
PENDING TOTALS		1			\$ -	\$ -	\$ 34,606	\$ -	\$ 34,606
RET001	Retired	NL	67.9		\$ 221	\$ -	\$ -	\$ -	\$ 3,616
RET002	Retired	NL	55.3		\$ 3,796	\$ 818	\$ -	\$ -	\$ 106,011
RET003	Retired	NL	53.4		\$ 3,621	\$ 2,098	\$ -	\$ -	\$ 103,303
RET004	Retired	QC	66.5		\$ 182	\$ -	\$ -	\$ -	\$ 3,269
RET005	Retired	QC	65.2		\$ 183	\$ -	\$ -	\$ -	\$ 3,530
RET006	Retired	NL	63.7		\$ 38,489	\$ 7,020	\$ -	\$ -	\$ 729,928
RET007	Retired	NL	65.4		\$ 22,978	\$ -	\$ -	\$ -	\$ 372,885
RET008	Retired	NL	66.9		\$ 14,632	\$ -	\$ -	\$ -	\$ 254,653
RET009	Retired	NL	69.2		\$ 41,504	\$ -	\$ -	\$ -	\$ 813,834
RET010	Retired	NL	61.1		\$ 40,550	\$ 6,257	\$ -	\$ -	\$ 901,490
RET011	Retired	NL	63.9		\$ 27,399	\$ 6,480	\$ -	\$ -	\$ 468,815
RET012	Retired	NL	66.8		\$ 29,375	\$ -	\$ -	\$ -	\$ 535,476
RET013	Retired	NL	63.5		\$ 31,183	\$ 5,815	\$ -	\$ -	\$ 671,045
RET014	Retired	NL	57.6		\$ 37,311	\$ 5,551	\$ -	\$ -	\$ 773,472
RET015	Retired	NL	68.3		\$ 29,639	\$ -	\$ -	\$ -	\$ 477,668
RET016	Retired	NL	73.5		\$ 15,517	\$ -	\$ -	\$ -	\$ 238,328
RET017	Retired	NL	72.9		\$ 13,297	\$ -	\$ -	\$ -	\$ 207,411
RET018	Retired	NL	62.1		\$ 11,394	\$ 2,181	\$ -	\$ -	\$ 225,639
RET019	Retired	NL	68.9		\$ 12,481	\$ -	\$ -	\$ -	\$ 205,225
RET020	Retired	NL	71.8		\$ 13,665	\$ -	\$ -	\$ -	\$ 216,585
RET021	Retired	NL	73.3		\$ 2,514	\$ -	\$ -	\$ -	\$ 31,464
RET022	Retired	NL	69.8		\$ 4,360	\$ -	\$ -	\$ -	\$ 60,821
RET023	Retired	NL	57.9		\$ 3,228	\$ -	\$ -	\$ -	\$ 66,618
RET024	Retired	NL	59.8		\$ 1,461	\$ 278	\$ -	\$ -	\$ 32,040
RET025	Retired	NL	58.4		\$ 7,982	\$ 3,029	\$ -	\$ -	\$ 200,007
RET026	Retired	NL	60.4		\$ 7,621	\$ 2,458	\$ -	\$ -	\$ 174,170
RET027	Retired	NL	53.3		\$ 10,201	\$ 3,701	\$ -	\$ -	\$ 283,113

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R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET028	Retired	NL	53.5		\$ 10,161	\$ 4,474	\$ -	\$ -	\$ 293,995
RET029	Retired	NL	54.1		\$ 13,073	\$ 3,361	\$ -	\$ -	\$ 311,041
RET030	Retired	QC	64.6		\$ 62,802	\$ 6,497	\$ -	\$ -	\$ 1,099,437
RET031	Retired	QC	63.1		\$ 39,826	\$ 6,517	\$ -	\$ -	\$ 774,094
RET032	Retired	QC	59.2		\$ 36,945	\$ 6,497	\$ -	\$ -	\$ 732,743
RET033	Retired	QC	70.9		\$ 76,512	\$ -	\$ -	\$ -	\$ 1,242,006
RET034	Retired	QC	72.7		\$ 46,020	\$ -	\$ -	\$ -	\$ 681,499
RET035	Retired	QC	70.7		\$ 38,290	\$ -	\$ -	\$ -	\$ 622,267
RET036	Retired	QC	69.8		\$ 17,841	\$ -	\$ -	\$ -	\$ 298,190
RET037	Retired	QC	65.8		\$ 12,517	\$ -	\$ -	\$ -	\$ 235,604
RET038	Retired	QC	62.8		\$ 27,290	\$ 4,987	\$ -	\$ -	\$ 547,035
RET039	Retired	QC	67.7		\$ 12,328	\$ -	\$ -	\$ -	\$ 224,091
RET040	Retired	QC	63.9		\$ 10,925	\$ -	\$ -	\$ -	\$ 184,366
RET041	Retired	QC	71.0		\$ 9,748	\$ -	\$ -	\$ -	\$ 129,445
RET042	Retired	QC	64.8		\$ 3,793	\$ -	\$ -	\$ -	\$ 62,270
RET043	Retired	QC	66.0		\$ 3,475	\$ -	\$ -	\$ -	\$ 55,116
RET044	Retired	NL	80.4		\$ 32,944	\$ -	\$ -	\$ -	\$ 273,717
RET045	Retired	NL	76.2		\$ 12,472	\$ -	\$ -	\$ -	\$ 147,383
RET046	Retired	NL	84.8		\$ 28,753	\$ -	\$ -	\$ -	\$ 178,886
RET047	Retired	NL	87.7		\$ 13,502	\$ -	\$ -	\$ -	\$ 68,004
RET048	Retired	NL	77.6		\$ 20,195	\$ -	\$ -	\$ -	\$ 237,229
RET049	Retired	NL	74.2		\$ 34,356	\$ -	\$ -	\$ -	\$ 398,606
RET050	Retired	NL	77.3		\$ 21,630	\$ -	\$ -	\$ -	\$ 256,588
RET051	Retired	NL	72.4		\$ 29,151	\$ -	\$ -	\$ -	\$ 436,435
RET052	Retired	NL	71.6		\$ 50,920	\$ -	\$ -	\$ -	\$ 752,056
RET053	Retired	NL	71.1		\$ 24,008	\$ -	\$ -	\$ -	\$ 386,390
RET054	Retired	NL	76.2		\$ 16,809	\$ -	\$ -	\$ -	\$ 228,236
RET055	Retired	NL	85.3		\$ 4,996	\$ -	\$ -	\$ -	\$ 35,557
RET056	Retired	NL	94.1		\$ 2,244	\$ -	\$ -	\$ -	\$ 8,115
RET057	Retired	NL	72.1		\$ 29,903	\$ -	\$ -	\$ -	\$ 418,218
RET058	Retired	NL	79.5		\$ 22,169	\$ -	\$ -	\$ -	\$ 261,690
RET059	Retired	NL	74.3		\$ 18,552	\$ -	\$ -	\$ -	\$ 238,126
RET060	Retired	NL	69.8		\$ 39,731	\$ -	\$ -	\$ -	\$ 660,724

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- ² The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RETO61	Retired	NL	71.8		\$ 48,811	\$ -	\$ -	\$ -	\$ 725,924
RETO62	Retired	NL	72.3		\$ 43,216	\$ -	\$ -	\$ -	\$ 628,770
RETO63	Retired	NL	68.5		\$ 35,214	\$ -	\$ -	\$ -	\$ 607,208
RETO64	Retired	NL	82.7		\$ 10,808	\$ -	\$ -	\$ -	\$ 90,821
RETO65	Retired	NL	70.5		\$ 36,217	\$ -	\$ -	\$ -	\$ 659,267
RETO66	Retired	NL	72.7		\$ 45,727	\$ -	\$ -	\$ -	\$ 660,054
RETO67	Retired	NL	70.5		\$ 37,162	\$ -	\$ -	\$ -	\$ 643,528
RETO68	Retired	NL	71.4		\$ 43,823	\$ -	\$ -	\$ -	\$ 735,433
RETO69	Retired	NL	72.2		\$ 33,138	\$ -	\$ -	\$ -	\$ 419,736
RETO70	Retired	NL	70.7		\$ 46,547	\$ -	\$ -	\$ -	\$ 732,909
RETO71	Retired	NL	68.7		\$ 33,984	\$ -	\$ -	\$ -	\$ 603,226
RETO72	Retired	NL	75.9		\$ 18,444	\$ -	\$ -	\$ -	\$ 243,940
RETO73	Retired	NL	70.4		\$ 17,766	\$ -	\$ -	\$ -	\$ 321,681
RETO74	Retired	NL	70.2		\$ 32,342	\$ -	\$ -	\$ -	\$ 539,135
RETO75	Retired	NL	65.6		\$ 31,142	\$ -	\$ -	\$ -	\$ 573,688
RETO76	Retired	NL	67.3		\$ 35,061	\$ -	\$ -	\$ -	\$ 685,124
RETO77	Retired	NL	82.7		\$ 34,311	\$ -	\$ -	\$ -	\$ 311,278
RETO78	Retired	NL	65.9		\$ 28,493	\$ -	\$ -	\$ -	\$ 510,123
RETO79	Retired	NL	75.7		\$ 37,878	\$ -	\$ -	\$ -	\$ 408,707
RETO80	Retired	NL	61.4		\$ 35,891	\$ 6,480			\$ 807,809
RETO81	Retired	NL	71.4		\$ 31,181	\$ -	\$ -	\$ -	\$ 406,983
RETO82	Retired	NL	71.9		\$ 24,734	\$ -	\$ -	\$ -	\$ 395,730
RETO83	Retired	NL	69.3		\$ 33,184	\$ -	\$ -	\$ -	\$ 600,438
RETO84	Retired	NL	72.2		\$ 35,153	\$ -	\$ -	\$ -	\$ 524,304
RETO85	Retired	NL	70.9		\$ 28,612	\$ -	\$ -	\$ -	\$ 436,438
RETO86	Retired	NL	73.1		\$ 38,878	\$ -	\$ -	\$ -	\$ 472,080
RETO87	Retired	NL	66.0		\$ 41,044	\$ -	\$ -	\$ -	\$ 699,186
RETO88	Retired	NL	74.8		\$ 15,174	\$ -	\$ -	\$ -	\$ 191,455
RETO89	Retired	NL	69.1		\$ 35,631	\$ -	\$ -	\$ -	\$ 586,403
RETO90	Retired	NL	73.2		\$ 16,967	\$ -	\$ -	\$ -	\$ 228,106
RETO91	Retired	NL	72.1		\$ 33,130	\$ -	\$ -	\$ -	\$ 420,399
RETO92	Retired	NL	70.4		\$ 32,182	\$ -	\$ -	\$ -	\$ 580,766
RETO93	Retired	NL	76.2		\$ 10,843	\$ -	\$ -	\$ -	\$ 134,986

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2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET094	Retired	NL	67.5		\$ 20,850	\$ -	\$ -	\$ -	\$ 361,373
RET095	Retired	NL	69.7		\$ 26,376	\$ -	\$ -	\$ -	\$ 419,742
RET096	Retired	NL	68.1		\$ 28,638	\$ -	\$ -	\$ -	\$ 422,295
RET097	Retired	NL	66.1		\$ 34,339	\$ -	\$ -	\$ -	\$ 607,663
RET098	Retired	NL	65.5		\$ 34,475	\$ -	\$ -	\$ -	\$ 553,782
RET099	Retired	NL	71.9		\$ 11,965	\$ -	\$ -	\$ -	\$ 169,163
RET100	Retired	NL	81.4		\$ 10,984	\$ -	\$ -	\$ -	\$ 117,205
RET101	Retired	NL	71.7		\$ 30,472	\$ -	\$ -	\$ -	\$ 477,008
RET102	Retired	NL	71.5		\$ 29,970	\$ -	\$ -	\$ -	\$ 441,501
RET103	Retired	NL	67.7		\$ 32,653	\$ -	\$ -	\$ -	\$ 563,722
RET104	Retired	NL	79.7		\$ 12,200	\$ -	\$ -	\$ -	\$ 106,061
RET105	Retired	NL	65.2		\$ 25,114	\$ -	\$ -	\$ -	\$ 448,625
RET106	Retired	NL	65.3		\$ 29,454	\$ -	\$ -	\$ -	\$ 568,593
RET107	Retired	NL	65.2		\$ 24,368	\$ -	\$ -	\$ -	\$ 486,868
RET108	Retired	NL	78.5		\$ 28,270	\$ -	\$ -	\$ -	\$ 262,884
RET109	Retired	NL	65.2		\$ 27,028	\$ -	\$ -	\$ -	\$ 437,142
RET110	Retired	NL	68.6		\$ 12,256	\$ -	\$ -	\$ -	\$ 193,466
RET111	Retired	NL	73.0		\$ 20,720	\$ -	\$ -	\$ -	\$ 267,927
RET112	Retired	NL	82.3		\$ 18,322	\$ -	\$ -	\$ -	\$ 83,613
RET113	Retired	NL	61.8		\$ 3,548	\$ 1,026	\$ -	\$ -	\$ 66,216
RET114	Retired	QC	78.0		\$ 30,470	\$ -	\$ -	\$ -	\$ 290,593
RET115	Retired	QC	78.7		\$ 26,742	\$ -	\$ -	\$ -	\$ 246,587
RET116	Retired	QC	74.4		\$ 22,539	\$ -	\$ -	\$ -	\$ 304,264
RET117	Retired	QC	89.4		\$ 15,856	\$ -	\$ -	\$ -	\$ 90,783
RET118	Retired	QC	75.6		\$ 23,580	\$ -	\$ -	\$ -	\$ 256,179
RET119	Retired	QC	71.3		\$ 59,406	\$ -	\$ -	\$ -	\$ 779,613
RET120	Retired	QC	88.9		\$ 9,694	\$ -	\$ -	\$ -	\$ 53,339
RET121	Retired	QC	83.7		\$ 18,106	\$ -	\$ -	\$ -	\$ 154,020
RET122	Retired	QC	75.0		\$ 31,362	\$ -	\$ -	\$ -	\$ 348,833
RET123	Retired	QC	73.9		\$ 31,715	\$ -	\$ -	\$ -	\$ 373,865
RET124	Retired	QC	83.7		\$ 19,276	\$ -	\$ -	\$ -	\$ 129,699
RET125	Retired	QC	78.7		\$ 45,688	\$ -	\$ -	\$ -	\$ 421,288
RET126	Retired	QC	85.1		\$ 12,057	\$ -	\$ -	\$ -	\$ 73,159

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R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET127	Retired	QC	83.2		\$ 19,852	\$ -	\$ -	\$ -	\$ 188,724
RET128	Retired	QC	74.4		\$ 35,653	\$ -	\$ -	\$ -	\$ 410,027
RET129	Retired	QC	74.1		\$ 8,570	\$ -	\$ -	\$ -	\$ 110,862
RET130	Retired	QC	70.6		\$ 28,207	\$ -	\$ -	\$ -	\$ 416,852
RET131	Retired	QC	80.2		\$ 21,118	\$ -	\$ -	\$ -	\$ 256,217
RET132	Retired	QC	80.9		\$ 12,034	\$ -	\$ -	\$ -	\$ 97,470
RET133	Retired	QC	77.9		\$ 22,610	\$ -	\$ -	\$ -	\$ 217,861
RET134	Retired	QC	82.1		\$ 17,049	\$ -	\$ -	\$ -	\$ 127,112
RET135	Retired	QC	76.6		\$ 18,084	\$ -	\$ -	\$ -	\$ 229,281
RET136	Retired	QC	67.3		\$ 39,388	\$ -	\$ -	\$ -	\$ 693,583
RET137	Retired	QC	89.7		\$ 9,882	\$ -	\$ -	\$ -	\$ 42,238
RET138	Retired	QC	75.7		\$ 37,693	\$ -	\$ -	\$ -	\$ 407,012
RET139	Retired	QC	79.6		\$ 27,851	\$ -	\$ -	\$ -	\$ 244,167
RET140	Retired	QC	78.9		\$ 21,070	\$ -	\$ -	\$ -	\$ 245,057
RET141	Retired	QC	79.1		\$ 13,305	\$ -	\$ -	\$ -	\$ 119,306
RET142	Retired	QC	76.2		\$ 20,904	\$ -	\$ -	\$ -	\$ 257,206
RET143	Retired	QC	87.6		\$ 13,500	\$ -	\$ -	\$ -	\$ 68,117
RET144	Retired	QC	93.0		\$ 3,820	\$ -	\$ -	\$ -	\$ 15,179
RET145	Retired	QC	72.5		\$ 48,417	\$ -	\$ -	\$ -	\$ 696,357
RET146	Retired	QC	89.8		\$ 9,228	\$ -	\$ -	\$ -	\$ 61,523
RET147	Retired	QC	78.7		\$ 28,426	\$ -	\$ -	\$ -	\$ 262,560
RET148	Retired	QC	91.6		\$ 12,056	\$ -	\$ -	\$ -	\$ 53,723
RET149	Retired	QC	71.4		\$ 41,564	\$ -	\$ -	\$ -	\$ 620,581
RET150	Retired	QC	77.9		\$ 28,905	\$ -	\$ -	\$ -	\$ 366,284
RET151	Retired	QC	73.0		\$ 45,650	\$ -	\$ -	\$ -	\$ 711,843
RET152	Retired	QC	74.6		\$ 30,465	\$ -	\$ -	\$ -	\$ 346,878
RET153	Retired	QC	71.7		\$ 59,270	\$ -	\$ -	\$ -	\$ 767,299
RET154	Retired	QC	73.8		\$ 28,081	\$ -	\$ -	\$ -	\$ 453,875
RET155	Retired	QC	72.7		\$ 46,773	\$ -	\$ -	\$ -	\$ 690,458
RET156	Retired	QC	72.8		\$ 36,622	\$ -	\$ -	\$ -	\$ 452,054
RET157	Retired	QC	87.0		\$ 5,246	\$ -	\$ -	\$ -	\$ 33,107
RET158	Retired	QC	75.3		\$ 31,436	\$ -	\$ -	\$ -	\$ 416,135
RET159	Retired	QC	87.7		\$ 17,377	\$ -	\$ -	\$ -	\$ 86,998

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R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET160	Retired	QC	85.1		\$ 17,882	\$ -	\$ -	\$ -	\$ 108,788
RET161	Retired	QC	68.7		\$ 41,539	\$ -	\$ -	\$ -	\$ 701,656
RET162	Retired	QC	67.3		\$ 36,650	\$ -	\$ -	\$ -	\$ 618,414
RET163	Retired	QC	72.7		\$ 32,910	\$ -	\$ -	\$ -	\$ 407,891
RET164	Retired	QC	66.0		\$ 43,944	\$ -	\$ -	\$ -	\$ 756,407
RET165	Retired	QC	76.8		\$ 22,996	\$ -	\$ -	\$ -	\$ 337,111
RET166	Retired	QC	74.2		\$ 30,502	\$ -	\$ -	\$ -	\$ 411,963
RET167	Retired	QC	72.8		\$ 37,480	\$ -	\$ -	\$ -	\$ 619,731
RET168	Retired	QC	72.6		\$ 34,615	\$ -	\$ -	\$ -	\$ 527,973
RET169	Retired	QC	76.0		\$ 30,831	\$ -	\$ -	\$ -	\$ 405,559
RET170	Retired	QC	69.4		\$ 26,418	\$ -	\$ -	\$ -	\$ 442,681
RET171	Retired	QC	73.8		\$ 38,277	\$ -	\$ -	\$ -	\$ 452,800
RET172	Retired	QC	78.1		\$ 16,442	\$ -	\$ -	\$ -	\$ 218,396
RET173	Retired	QC	73.4		\$ 34,441	\$ -	\$ -	\$ -	\$ 414,218
RET174	Retired	QC	73.6		\$ 23,535	\$ -	\$ -	\$ -	\$ 333,138
RET175	Retired	QC	72.7		\$ 39,686	\$ -	\$ -	\$ -	\$ 492,443
RET176	Retired	QC	79.2		\$ 19,752	\$ -	\$ -	\$ -	\$ 176,392
RET177	Retired	QC	68.1		\$ 38,251	\$ -	\$ -	\$ -	\$ 700,951
RET178	Retired	QC	70.9		\$ 34,209	\$ -	\$ -	\$ -	\$ 536,224
RET179	Retired	QC	65.3		\$ 37,716	\$ -	\$ -	\$ -	\$ 609,696
RET180	Retired	QC	70.8		\$ 38,763	\$ -	\$ -	\$ -	\$ 519,814
RET181	Retired	QC	71.4		\$ 14,592	\$ -	\$ -	\$ -	\$ 228,009
RET182	Retired	QC	72.9		\$ 39,787	\$ -	\$ -	\$ -	\$ 546,077
RET183	Retired	QC	76.0		\$ 20,017	\$ -	\$ -	\$ -	\$ 212,398
RET184	Retired	QC	75.1		\$ 21,450	\$ -	\$ -	\$ -	\$ 237,948
RET185	Retired	QC	71.7		\$ 43,769	\$ -	\$ -	\$ -	\$ 566,059
RET186	Retired	QC	65.9		\$ 38,670	\$ -	\$ -	\$ -	\$ 713,580
RET187	Retired	QC	71.0		\$ 36,011	\$ -	\$ -	\$ -	\$ 478,133
RET188	Retired	QC	79.3		\$ 12,591	\$ -	\$ -	\$ -	\$ 160,251
RET189	Retired	QC	76.8		\$ 23,810	\$ -	\$ -	\$ -	\$ 326,521
RET190	Retired	QC	76.7		\$ 23,951	\$ -	\$ -	\$ -	\$ 298,864
RET191	Retired	QC	66.6		\$ 36,704	\$ -	\$ -	\$ -	\$ 668,355
RET192	Retired	QC	70.3		\$ 29,655	\$ -	\$ -	\$ -	\$ 502,878

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R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET193	Retired	QC	70.2		\$ 15,048	\$ -	\$ -	\$ -	\$ 246,768
RET194	Retired	QC	76.5		\$ 34,749	\$ -	\$ -	\$ -	\$ 360,219
RET195	Retired	QC	84.7		\$ 13,819	\$ -	\$ -	\$ -	\$ 86,766
RET196	Retired	QC	79.7		\$ 20,957	\$ -	\$ -	\$ -	\$ 240,306
RET197	Retired	QC	80.8		\$ 25,668	\$ -	\$ -	\$ -	\$ 209,644
RET198	Retired	QC	80.5		\$ 22,766	\$ -	\$ -	\$ -	\$ 188,144
RET199	Retired	NL	76.1		\$ 188	\$ -	\$ -	\$ -	\$ 2,867
RET200	Retired	QC	80.2		\$ 246	\$ -	\$ -	\$ -	\$ 2,070
RET201	Retired	QC	65.1		\$ 79	\$ -	\$ -	\$ -	\$ 1,596
RET202	Retired	NL	76.6		\$ 2,299	\$ -	\$ -	\$ -	\$ 23,762
RET203	Retired	NL	73.7		\$ 1,252	\$ -	\$ -	\$ -	\$ 19,237
RET204	Retired	NL	77.5		\$ 1,543	\$ -	\$ -	\$ -	\$ 15,210
RET205	Retired	NL	71.3		\$ 1,932	\$ -	\$ -	\$ -	\$ 32,503
RET206	Retired	NL	76.2		\$ 487	\$ -	\$ -	\$ -	\$ 5,129
RET207	Retired	NL	71.0		\$ 1,625	\$ -	\$ -	\$ -	\$ 26,760
RET208	Retired	NL	69.2		\$ 796	\$ -	\$ -	\$ -	\$ 14,613
RET209	Retired	NL	71.0		\$ 12,777	\$ -	\$ -	\$ -	\$ 191,496
RET210	Retired	NL	71.8		\$ 5,670	\$ -	\$ -	\$ -	\$ 90,403
RET211	Retired	NL	73.6		\$ 813	\$ -	\$ -	\$ -	\$ 12,815
RET212	Retired	NL	75.5		\$ 1,024	\$ -	\$ -	\$ -	\$ 14,059
RET213	Retired	NL	71.1		\$ 2,257	\$ -	\$ -	\$ -	\$ 32,756
RET214	Retired	NL	76.8		\$ 5,043	\$ -	\$ -	\$ -	\$ 58,221
RET215	Retired	NL	68.1		\$ 15,644	\$ -	\$ -	\$ -	\$ 250,476
RET216	Retired	NL	78.1		\$ 1,610	\$ -	\$ -	\$ -	\$ 23,224
RET217	Retired	NL	66.0		\$ 2,240	\$ -	\$ -	\$ -	\$ 40,425
RET218	Retired	NL	66.1		\$ 444	\$ -	\$ -	\$ -	\$ 8,133
RET219	Retired	NL	77.2		\$ 1,592	\$ -	\$ -	\$ -	\$ 15,919
RET220	Retired	NL	74.6		\$ 500	\$ -	\$ -	\$ -	\$ 8,381
RET221	Retired	NL	71.5		\$ 589	\$ -	\$ -	\$ -	\$ 7,682
RET222	Retired	QC	75.3		\$ 2,646	\$ -	\$ -	\$ -	\$ 32,645
RET223	Retired	QC	66.4		\$ 35,319	\$ -	\$ -	\$ -	\$ 551,344
RET224	Retired	QC	83.0		\$ 3,588	\$ -	\$ -	\$ -	\$ 37,817
RET225	Retired	QC	71.9		\$ 4,593	\$ -	\$ -	\$ -	\$ 76,048

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R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET226	Retired	QC	77.4		\$ 4,896	\$ -	\$ -	\$ -	\$ 48,533
RET227	Retired	QC	82.0		\$ 606	\$ -	\$ -	\$ -	\$ 5,346
RET228	Retired	QC	81.2		\$ 4,510	\$ -	\$ -	\$ -	\$ 41,321
RET229	Retired	QC	72.3		\$ 292	\$ -	\$ -	\$ -	\$ 6,078
RET230	Retired	QC	71.6		\$ 73	\$ -	\$ -	\$ -	\$ 948
RET231	Retired	QC	71.3		\$ 1,582	\$ -	\$ -	\$ -	\$ 26,254
RET232	Retired	QC	73.8		\$ 686	\$ -	\$ -	\$ -	\$ 8,114
RET233	Retired	QC	79.8		\$ 1,659	\$ -	\$ -	\$ -	\$ 23,075
RET234	Retired	QC	71.2		\$ 1,934	\$ -	\$ -	\$ -	\$ 25,444
RET235	Retired	QC	70.9		\$ 903	\$ -	\$ -	\$ -	\$ 18,897
RET236	Retired	QC	67.5		\$ 1,375	\$ -	\$ -	\$ -	\$ 24,006
RET237	Retired	NL	76.0		\$ 3,881	\$ -	\$ -	\$ -	\$ 48,867
RET238	Retired	NL	79.6		\$ 20,996	\$ -	\$ -	\$ -	\$ 210,769
RET239	Retired	NL	80.2		\$ 6,062	\$ -	\$ -	\$ -	\$ 58,631
RET240	Retired	NL	84.5		\$ 3,180	\$ -	\$ -	\$ -	\$ 20,268
RET241	Retired	NL	80.9		\$ 1,945	\$ -	\$ -	\$ -	\$ 18,208
RET242	Retired	NL	75.4		\$ 2,240	\$ -	\$ -	\$ -	\$ 35,763
RET243	Retired	NL	81.5		\$ 1,500	\$ -	\$ -	\$ -	\$ 13,548
RET244	Retired	NL	72.0		\$ 2,322	\$ -	\$ -	\$ -	\$ 29,543
RET245	Retired	NL	81.4		\$ 5,093	\$ -	\$ -	\$ -	\$ 46,260
RET246	Retired	NL	86.2		\$ 3,814	\$ -	\$ -	\$ -	\$ 21,467
RET247	Retired	NL	81.9		\$ 1,093	\$ -	\$ -	\$ -	\$ 9,664
RET248	Retired	NL	76.3		\$ 5,042	\$ -	\$ -	\$ -	\$ 52,798
RET249	Retired	NL	86.0		\$ 4,114	\$ -	\$ -	\$ -	\$ 27,749
RET250	Retired	NL	78.7		\$ 1,597	\$ -	\$ -	\$ -	\$ 18,563
RET251	Retired	NL	76.4		\$ 6,872	\$ -	\$ -	\$ -	\$ 138,253
RET252	Retired	NL	72.4		\$ 4,172	\$ -	\$ -	\$ -	\$ 63,712
RET253	Retired	NL	72.2		\$ 2,680	\$ -	\$ -	\$ -	\$ 39,069
RET254	Retired	NL	68.9		\$ 4,429	\$ -	\$ -	\$ -	\$ 74,390
RET255	Retired	NL	74.9		\$ 1,185	\$ -	\$ -	\$ -	\$ 13,307
RET256	Retired	NL	85.4		\$ 3,289	\$ -	\$ -	\$ -	\$ 19,602
RET257	Retired	NL	73.9		\$ 4,252	\$ -	\$ -	\$ -	\$ 55,733
RET258	Retired	NL	75.4		\$ 3,042	\$ -	\$ -	\$ -	\$ 37,271

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R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Data ²	Wind-Up Liability
RET259	Retired	NL	72.2		\$ 3,394	\$ -	\$ -	\$ -	\$ 51,922
RET260	Retired	NL	73.3		\$ 2,072	\$ -	\$ -	\$ -	\$ 29,285
RET261	Retired	NL	75.2		\$ 3,688	\$ -	\$ -	\$ -	\$ 40,802
RET262	Retired	NL	77.1		\$ 5,090	\$ -	\$ -	\$ -	\$ 57,782
RET263	Retired	NL	68.8		\$ 1,865	\$ -	\$ -	\$ -	\$ 2,797
RET264	Retired	NL	68.8		\$ 1,314	\$ -	\$ -	\$ -	\$ 20,626
RET265	Retired	NL	75.7		\$ 3,719	\$ -	\$ -	\$ -	\$ 45,076
RET266	Retired	NL	71.7		\$ 17,666	\$ -	\$ -	\$ -	\$ 228,520
RET267	Retired	NL	72.9		\$ 1,331	\$ -	\$ -	\$ -	\$ 16,389
RET268	Retired	NL	60.8		\$ 6,867	\$ -	\$ -	\$ -	\$ 125,059
RET269	Retired	NL	65.8		\$ 7,884	\$ -	\$ -	\$ -	\$ 145,292
RET270	Retired	NL	42.0		\$ 1,324	\$ -	\$ -	\$ -	\$ 33,254
RET271	Retired	NL	88.4		\$ 3,210	\$ -	\$ -	\$ -	\$ 18,335
RET272	Retired	QC	89.4		\$ 1,767	\$ -	\$ -	\$ -	\$ 9,364
RET273	Retired	QC	80.8		\$ 4,675	\$ -	\$ -	\$ -	\$ 43,980
RET274	Retired	QC	95.6		\$ 6,504	\$ -	\$ -	\$ -	\$ 20,738
RET275	Retired	QC	83.7		\$ 2,932	\$ -	\$ -	\$ -	\$ 20,371
RET276	Retired	QC	83.6		\$ 3,180	\$ -	\$ -	\$ -	\$ 25,294
RET277	Retired	QC	83.1		\$ 2,833	\$ -	\$ -	\$ -	\$ 19,838
RET278	Retired	QC	75.7		\$ 7,791	\$ -	\$ -	\$ -	\$ 94,505
RET279	Retired	QC	71.2		\$ 1,980	\$ -	\$ -	\$ -	\$ 26,289
RET280	Retired	QC	78.9		\$ 7,716	\$ -	\$ -	\$ -	\$ 80,150
RET281	Retired	QC	75.3		\$ 2,682	\$ -	\$ -	\$ -	\$ 46,510
RET282	Retired	QC	83.4		\$ 4,667	\$ -	\$ -	\$ -	\$ 32,026
RET283	Retired	QC	82.4		\$ 5,895	\$ -	\$ -	\$ -	\$ 50,237
RET284	Retired	QC	82.5		\$ 4,740	\$ -	\$ -	\$ -	\$ 34,646
RET285	Retired	QC	73.7		\$ 2,036	\$ -	\$ -	\$ -	\$ 24,190
RET286	Retired	QC	73.1		\$ 7,343	\$ -	\$ -	\$ -	\$ 89,153
RET287	Retired	QC	67.9		\$ 46,042	\$ -	\$ -	\$ -	\$ 685,414
RET288	Retired	QC	68.5		\$ 2,596	\$ -	\$ -	\$ -	\$ 37,881
RET289	Retired	QC	73.4		\$ 1,321	\$ -	\$ -	\$ -	\$ 15,903
RET290	Retired	QC	65.6		\$ 3,075	\$ -	\$ -	\$ -	\$ 49,213
RET291	Retired	QC	87.1		\$ 12,666	\$ -	\$ -	\$ -	\$ 66,249

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET292	Retired	QC	71.0		\$ 2,107	\$ -	\$ -	\$ -	\$ 34,063
RET293	Retired	QC	70.9		\$ 4,818	\$ -	\$ -	\$ -	\$ 83,345
RET294	Retired	QC	66.7		\$ 1,552	\$ -	\$ -	\$ -	\$ 25,959
RET295	Retired	QC	86.3		\$ 5,919	\$ -	\$ -	\$ -	\$ 60,143
RET296	Retired	QC	74.1		\$ 2,577	\$ -	\$ -	\$ -	\$ 41,455
RET297	Retired	QC	60.4		\$ 10,339	\$ -	\$ -	\$ -	\$ 202,190
RET298	Retired	QC	69.9		\$ 6,759	\$ -	\$ -	\$ -	\$ 93,674
RET299	Retired	QC	66.4		\$ 9,819	\$ -	\$ -	\$ -	\$ 155,675
RET300	Retired	QC	60.4		\$ 3,943	\$ -	\$ -	\$ -	\$ 88,011
RET301	Retired	NL	67.7		\$ 10,648	\$ -	\$ -	\$ -	\$ 172,998
RET302	Retired	NL	71.2		\$ 18,608	\$ -	\$ -	\$ -	\$ 269,236
RET303	Retired	NL	76.5		\$ 8,240	\$ -	\$ -	\$ -	\$ 96,290
RET304	Retired	NL	84.5		\$ 4,863	\$ -	\$ -	\$ -	\$ 36,509
RET305	Retired	NL	59.1		\$ 6,726	\$ -	\$ -	\$ -	\$ 135,359
RET306	Retired	NL	74.3		\$ 3,881	\$ -	\$ -	\$ -	\$ 49,944
RET307	Retired	QC	82.3		\$ 3,553	\$ -	\$ -	\$ -	\$ 30,579
RET308	Retired	QC	89.2		\$ 10,614	\$ -	\$ -	\$ -	\$ 56,864
RET309	Retired	NL	66.2		\$ 2,297	\$ -	\$ -	\$ -	\$ 41,154
RET310	Retired	NL	62.5		\$ 69,913	\$ 11,520	\$ -	\$ -	\$ 1,336,529
RET311	Retired	NL	57.0		\$ 21,160	\$ 3,764	\$ -	\$ -	\$ 509,357
RET312	Retired	NL	56.1		\$ 24,702	\$ 4,300	\$ -	\$ -	\$ 604,388
RET313	Retired	NL	66.8		\$ 14,363	\$ -	\$ -	\$ -	\$ 322,416
RET314	Retired	NL	64.3		\$ 11,003	\$ -	\$ -	\$ -	\$ 216,994
RET315	Retired	NL	65.1		\$ 12,066	\$ -	\$ -	\$ -	\$ 233,264
RET316	Retired	NL	69.8		\$ 10,320	\$ -	\$ -	\$ -	\$ 161,311
RET317	Retired	QC	54.0		\$ 48,828	\$ 5,749	\$ -	\$ -	\$ 1,179,970
RET318	Retired	QC	56.7		\$ 29,534	\$ 5,068	\$ -	\$ -	\$ 744,472
RET319	Retired	QC	65.2		\$ 19,352	\$ -	\$ -	\$ -	\$ 313,455
RET320	Retired	NL	58.2		\$ 5,768	\$ -	\$ -	\$ -	\$ 129,642
RET321	Retired	NL	63.2		\$ 1,407	\$ -	\$ -	\$ -	\$ 27,252
RET322	Retired	QC	80.7		\$ 8,160	\$ -	\$ -	\$ -	\$ 77,116
RET323	Retired	QC	76.1		\$ 11,622	\$ -	\$ -	\$ -	\$ 137,957
RET324	Retired	NL	84.4		\$ 2,708	\$ -	\$ -	\$ -	\$ 20,434
RET325	Retired	QC	67.7		\$ 18,736	\$ -	\$ -	\$ -	\$ 304,553

1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.

2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Participant ID	Status	Jurisdiction	Age at Wind-Up	Credited Service (Months) at Wind-Up	Annual Lifetime Benefit ¹	Annual Temporary Benefit	Lump Sum Benefit	Total Benefits beyond Normal Ret. Date ²	Wind-Up Liability
RET326	Retired	QC	58.5		\$ 8,642	\$ -	\$ -	\$ -	\$ 136,664
RET327	Retired	NL	69.4		\$ 16,515	\$ -	\$ -	\$ -	\$ 254,004
RET328	Retired	QC	70.2		\$ 13,949	\$ -	\$ -	\$ -	\$ 209,113
RET329	Retired	NL	65.8		\$ 2,698	\$ -	\$ -	\$ -	\$ 46,250
RET330	Retired	QC	50.3		\$ 11,511	\$ -	\$ -	\$ -	\$ 18,202
PENDING TOTALS		330			\$ 6,000,506	\$ 116,926	\$ -	\$ -	\$ 87,953,316
GRAND TOTALS		656			\$ 7,941,829	\$ 133,175	\$ 34,606	\$ 302,949	\$ 109,878,209

- 1 The annual lifetime benefit shown above does not include the value of any pre-retirement indexing provided to Quebec Plan members as a result of applying Bill 102.
- 2 The Plan requires deferred vested members to start their pension at age 65. For all deferred vested members who are beyond age 65 at the Wind-Up Date, we have included the value of pension payments from age 65 to the Wind-Up Date in the liabilities.

Appendix F – Defined Contribution Wind-Up Report

Appendix G – Regulator Correspondence

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)



Morneau Shepell is the only human resources consulting and technology company that takes an integrative approach to employee assistance, health, benefits, and retirement needs. The Company is the leading provider of employee and family assistance programs, the largest administrator of retirement and benefits plans and the largest provider of integrated absence management solutions in Canada. Through health and productivity, administrative, and retirement solutions, Morneau Shepell helps clients reduce costs, increase employee productivity and improve their competitive position. Established in 1966, Morneau Shepell serves approximately 20,000 clients, ranging from small businesses to some of the largest corporations and associations in North America. With almost 4,000 employees, Morneau Shepell provides services to organizations across Canada, in the United States, and around the globe. Morneau Shepell is a publicly-traded company on the Toronto Stock Exchange (TSX: MSI). For more information, visit morneaushepell.com.

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TERMINATION REPORT

FOR

Contributory Pension Plan for Salaried Employees

of Wabush Mines, Cliffs Mining Company,

Managing Agent, Arnaud Railway Company and

Wabush Lake Railway Company Limited

Newfoundland and Labrador Registration Number: 0021314

Canada Revenue Agency Registration Number: 0343558

Sun Life's Plan Reference Id: C09Z503

Terminated Effective: December 16, 2015

Date this report was completed: June 30, 2016

Date this revised report was completed: November 7, 2016

Completed By: Sarah Wamil 

Telephone Number: (519) 888-3900 Ext 341-3088

Address: Sun Life Financial Inc.
Group Retirement Services
PO Box 2025 STN Waterloo
Waterloo ON N2J 0B4

INDEX

1. Plan Termination Details
2. Member Benefits at Plan Termination
3. Member Option
4. Member Statement

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

PLAN TERMINATION DETAILS

- Contributions under this policy were discontinued effective December 16, 2015
- Plan Assets at December 16, 2015 were \$3,847,084.39
- The account was paid in full as of the date that contributions were discontinued, and there were no amounts outstanding. The final contributions were processed as of December 10, 2015 for the period November 30, 2015 to December 13, 2015 in the amount of \$4,605.14
- The Amendment indicating all contributions have ceased, the Plan is being wound-up, and the effective date of the wind-up is being handled by Morneau Shepell.
- The affected members of this pension plan were notified effective January 26, 2016. This notification was handled by Wabush Mines
- The reason for this full plan wind up is that the Newfoundland and Labrador Superintendent of Pensions ordered a plan wind up effective December 16, 2015.
- All members are entitled to 100% vesting, and the locking-in requirements of the Contract and the Pension Benefits Act, 1997 and the Federal Pension Benefits standards Act, 1985 have been met.
- The credit of \$0.00 available upon the Plan's discontinuance,
 - Will be used to pay outstanding termination invoice in the amount
 - Remaining amount will be re-allocated to the Plan members on an equal basis.
- All members will be provided with Option Statements which will provide the option of purchasing guaranteed annuity benefits, cash refunds (where available), transfers to other Registered Pension Plans, or transfers to Registered Retirement Savings Plans, Locked In Registered Retirement Savings Plan, Life Income Fund, Registered Retirement Income Fund.
- The asset values shown under the 'Member Benefits at Plan termination' schedule have been calculated as follows:
 - Each member's assets held under market funds is valued based on the unit value of the applicable fund(s) as at December 16, 2015
 - Each member's assets held under guaranteed Interest Account(s) is valued as market or book value, based on the Interest rates existing as of December 16, 2015. Market value adjustments, if any, are in accordance with this Plan's funding Contract.
 - There are 3 members who hold assets in Member Locked In Transfer
 - There are no members who hold assets in Member Voluntary and/or Voluntary Non Locked Transfer in
- Morneau Shepell is aware of the Final AIR required for the period of January 1, 2015 to December 16, 2015 and have submitted it.
- Canada Revenue Agency will be informed and provided with a copy of this Report as soon as we receive an approval from both, the Newfoundland Pension Benefits Division and The Office of the Superintendent of Financial Institutions.

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)



Sun Life Assurance Company of Canada
Group Retirement Services
PO Box 11001 STN Centre-Ville
Montreal QC H3C 3P3

Member Name
Member Address Line 1
Member Address Line 2

RE: Windup of your Employer Sponsored Group Plan. Your action is required regarding your Pension Plan for Salaried employees of Wabush Mines (GA 12200) Group Plan

Client ID: 925 03

Dear Plan Member:

We have received notification that your group plan is being wound up effective December 16, 2015. You have full ownership of both the employer contributions made to the plan and your own contributions. As your group plan is in the process of winding up, you'll need to transfer your assets out of your current employer-sponsored group plan into your own individual account.

At Sun Life Financial, we are here to help make some of the decisions easier for you.

This Settlement Option package provides you with current information about your account and a list of the options available to you as you transition out of your group plan. More details about each option are provided on the enclosed Information Reference Page. Please complete the Settlement Option form(s) and return to us in the self-addressed envelope.

You may keep your funds with Sun Life Financial by transferring to the **Group Choices Plan** or choose from the options listed on the enclosed Settlement Option Form(s). There is an option form for each of the retirement savings products you currently hold.

Our Group Choices Plan is a fast and easy way to transition from your group plan and to continue to receive many of the same benefits. More details on the Group Choices Plan are included in this package. Here are some of the benefits of joining the **Group Choices Plan**:

- **Low Cost** - Continue to benefit from no loads and lower investment management fees that are typically not available to individual retail investors and avoid transfer/withdrawal fees that could be applicable to your plan. (To review the fees you pay, sign into mysunlife.ca, (our Plan Member Services website), using your access ID and password, select your retirement account on the **Home** page followed by **Account Fees** under the **Accounts** drop-down menu.)
- **Continued contributions** - Continue making monthly contributions by pre-authorized debit from your bank account through our automatic cheque plan or making lump sum contributions at any time.
- **Investment Choice** - Continue to enjoy many of the same or similar funds as you did in your group plan.

Sun Life Assurance Company of Canada
is a member of the Sun Life Financial group of companies.
www.sunlife.ca

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

- **24/7 Access** - Internet access and Call Centre servicing will continue. Obtain information or process transactions when it's convenient for you.

Please make an election within 90 days. If you fail to choose an option, your assets may be moved to a separate Sun Life Financial account. Note, fees may be charged to you directly to hold assets in this account.

Whatever your decision may be, our Client Solutions Centre is here to help you during the transition from your plan.

To enrol in the Group Choices Plan, sign into mysunlife.ca using your access ID and password and select **Leaving the plan** under the **Requests** dropdown menu.

OR

Call our Client Solutions Centre at 1-877-893-9893

OR

Complete the enclosed Settlement Option Form and return it by fax or in the enclosed envelope.

We look forward to hearing from you soon.

Thank you,

Group Retirement Services
Sun Life Financial

Encl: Settlement Option Form(s)
Group Choices Plan brochure
Group Choices Plan (National Accounts) investment Options
Defined Contribution Pension Plan (DCPP) information
Return Envelope

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Defined Contribution Pension Plan – Settlement Option Form

Member Name
Member Address Line 1
Member Address Line 2

Client id: 925 03
Member Number:

Pension Plan Registration Number: 021314-000 Newfoundland
Province of Employment:
Pension plan funded by Policy No: 66535-G
Years of service:
Years of membership in the plan:

Date of Plan Wind Up: December 16, 2015
Date of Employment:
Date of plan membership:
Date of birth:

Account Balance as at XXXXXXXXXX: Not locked-in: \$0.00
Locked-in: \$0.00

The account balances reported on this option form are as of the date shown and the value will fluctuate with the markets. Details of your specific transactions can be found on mysunlife.ca, (our Plan Member Services website) or alternatively, you can call our Client Solutions Centre toll free 1-877-893-9893.

Please select from the following options:

Select	Options
<input type="checkbox"/>	Transfer my funds to the Sun Life Financial Group Choices Plan (C0H49). I understand that if any of my current investment options are not available in the Group Choices Plan, the funds in these investments will be transferred to one of the following funds unless I provide Sun Life with alternate instructions: <ul style="list-style-type: none"> • RRSP/LIRA - Sun Life Financial Granite™ Conservative Fund with the target date closest to, without exceeding, your 65th birthday or the Sun Life Financial Granite™ Retirement Segregated Fund if you are over age 65 • NREG/TFSA - Sun Life Financial Money Market Segregated Fund I understand the funds above will apply to any investments that default on or after July 1, 2016, despite any earlier communication to the contrary. I also understand the funds above are subject to future change by Sun Life Financial and/or my former Group Plan Sponsor.
<input type="checkbox"/>	Transfer my assets to a locked-in RRSP or LIRA (attach T2151 and locked-in form)*
<input type="checkbox"/>	Transfer my assets to another Pension Plan (attach T2151)*
<input type="checkbox"/>	Transfer my assets to a LIF, LRIF or RLIF, in the pension jurisdiction where this is available under legislation (attach T2151 and locked-in form)*
<input type="checkbox"/>	I elect to receive an annuity from Sun Life Financial (subject to a minimum of \$5,000.00)
<input type="checkbox"/>	I elect to receive an annuity from another Canadian Insurer*

* Note: These requests may be subject to a fee.

I certify that the information provided above is complete and true to the best of my knowledge.

Date _____ Signature _____

If further clarification of my option selection is required, I can be reached at:

Daytime phone number () _____ - _____

Alternate phone number () _____ - _____

R-25 Salaried Employees Pension Plan Wind-Up Report, December 2016 (cont'd)

Please return this form within 90 days to:

Sun Life Financial
Group Retirement Services
PO Box 11001 STN Centre-Ville
Montreal QC H3C 3P3
Fax (514) 954-2077

SAMPLE

WillisTowersWatson 

**Pension Plan for Bargaining Unit
Employees of Wabush Mines, Cliffs Mining
Company, Managing Agent, Arnaud
Railway
Company and Wabush Lake Railway
Company, Limited
Plan Termination as at December 16, 2015**

December 14, 2016

Registration Numbers:

Office of the Superintendent of Financial Institutions Canada: 57777
Newfoundland and Labrador Superintendent of Pensions: 024699
Canada Revenue Agency: 0555201

This document is being filed with the Newfoundland and Labrador Superintendent of Pensions, the Office of the Superintendent of Financial Institutions Canada and the Canada Revenue Agency as required by statute and contains confidential financial information regarding the plan, the plan sponsor, and the plan members. Therefore, pursuant to subsection 20(1)(b) of the Access to Information Act (Canada), or a corresponding provision under any comparable federal or provincial legislation, a government institution shall not disclose this document to any party as a result of a request under the Access to Information Act (Canada) or other applicable legislation.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Amax Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

1

Introduction

Purpose

This report with respect to the Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (the "Plan") has been prepared for Wabush Mines (the "Company"), in its capacity as the prior plan administrator up to March 29, 2016 and for Momeau Shepell which has been appointed as the plan administrator effective March 30, 2016, and presents the results of the termination valuation as at December 16, 2015 (the "Termination Date").

The principal purposes of the report are:

- to present information on the financial position of the Plan as at the Termination Date;
- to provide the basis for Company contributions; and
- to provide the information and actuarial opinion required by the Office of the Superintendent of Financial Institutions Canada, the Newfoundland and Labrador Superintendent of Pensions and the Canada Revenue Agency.

Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (the "Wabush Group"), filed for restructuring proceedings under the Companies' Creditors Arrangement Act (CCAA) in May 2015. As part of the CCAA proceeding, special payments towards the deficit of the Plan have been suspended since May 2015. In addition, Wabush Mines has ceased its operation, with essentially all of its employees laid-off or terminated and the Plan will not continue as a going concern under a new sponsor.

As a result, the Newfoundland and Labrador Superintendent of Pensions and the Office of the Superintendent of Financial Institutions Canada (the "Regulators") have separately ordered the termination of the Plan effective as of December 16, 2015.

The prior plan administrator provided formal notice of the termination of the Plan to all persons affected by the plan termination. These notices were mailed to the last known addresses of all affected members in January 2016. The plan administrator has confirmed that the detailed member statements will be sent to all members of the Plan upon approval of the termination report by the Regulators or by any other date as prescribed by the applicable pension legislation.

On March 1, 2016, the Wabush Group (through their legal counsel) requested, in writing, the appointment of a replacement administrator of the Plan. In their communication, and subsequent correspondence dated March 23, 2016, it was stated that Wabush Mines no longer has the resources to act as administrator of the Plan. Based on this request, the Regulators, in their letter dated

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (*cont'd*)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
 2 Plan Termination as at December 16, 2015

March 30, 2016, have separately appointed Momeau Shepall as the administrator of the Plan effective March 30, 2016.

The settlement date will be determined once the regulatory approval for the termination report has been received. The valuation results are sensitive to the plan's investment policy and to market conditions between the Termination Date and the settlement date. Therefore, the funded status at settlement may differ from that reported in this report. Additional detail regarding the sensitivity of the valuation results is contained in this report.

This report summarizes the results of the actuarial valuation and contains an actuarial opinion as an integral part of the report. The supporting detailed information on assets, actuarial basis, membership data and plan provisions is contained in the Appendices.

The calculation date is December 16, 2015. The cut-off date for recognizing membership updates and events for the purposes of determining the financial condition of the plan is November 22, 2016. Any subsequent events after the cut-off date will be recognized in the next valuation.

The information contained in this report was prepared for the plan administrator, for its internal use and for filing with the Office of the Superintendent of Financial Institutions Canada, the Newfoundland and Labrador Superintendent of Pensions and the Canada Revenue Agency, in connection with Willis Towers Watson's actuarial valuation of the Plan. This report is not intended nor necessarily suitable for other purposes. Further distribution of all or part of this report to other parties (except where such distribution is required by applicable legislation) or other use of this report is expressly prohibited without Willis Towers Watson's prior written consent.

Significant Events Since Previous Actuarial Valuation

Actuarial Basis

The previous actuarial valuation of the plan was prepared as at January 1, 2015. Since the previous actuarial valuation, the windup actuarial basis have been updated to reflect market conditions at the valuation date as outlined in this report.

Plan Provisions

This valuation reflects the plan provisions as at December 16, 2015 and does not make any provisions for the possibility that a change or action (retroactive or otherwise) could be imposed by order of a regulatory body or a court as we were not aware of any definitive events that would require such change or action at the time this valuation was completed.

Unless otherwise specified in this report and with the exception of the definition of pensionable age, there have been no changes to the plan provisions since the previous actuarial valuation.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Legislative and Actuarial Standards Updates

Since the previous actuarial valuation, the Standards of Practice for Pension Commuted Values published by the Canadian Institute of Actuaries effective February 1, 2011 were revised to provide for, effective February 1, 2014, updates to the mortality assumption as promulgated from time to time by the Actuarial Standards Board (ASB). On June 9, 2015, the ASB decided to promulgate the use of the mortality rates underlying the 2014 Canadian Pensioners Mortality Table (CPM2014) combined with the mortality improvement scale CPM Improvement Scale B (CPM-B) for calculations, effective October 1, 2015. The revised mortality rates have been reflected in the actuarial valuation.

Subsequent Events

We completed this valuation on December 14, 2016.

As instructed by the provincial regulators (Newfoundland and Labrador and Quebec), for retired members and beneficiaries governed by the Newfoundland and Labrador Pension Benefits Act, 1997 (NFL PBA) and the Quebec Supplemental Pension Plans Act (Quebec SPPA), a preliminary reduction of 21% was applied starting March 1, 2016 to their total monthly pension benefit. The reduction will further be adjusted based on the financial position of the Plan and the Regulators' decisions.

As instructed by the Federal regulator, for retired members and beneficiaries subject to the Pension Benefits Standards Act, 1985 (Canada) (Federal PBSA), no preliminary reduction was applied to their monthly pension benefit. Consequently, all members' benefit will be adjusted with a slightly larger reduction based on the financial position of the Plan and the Regulators' decision to compensate for the fact that their monthly pension payments were unreduced from the Termination Date to the date of the approval of this report.

The calculations presented herein are based on 100% of the monthly pension benefits payable to retired members and beneficiaries as at the Termination Date.

The plan administrator has requested illustrative annuity quotations from five companies licensed to sell annuities in Canada, four of which responded. The plan members included in the quote were those assumed to be fully or partially settled via annuity purchase. Based on the results collected from the quote, the plan administrator instructed that an adjustment factor of 98 % should be applied to the annuity purchase windup liabilities (calculated in accordance with the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting (CIA Annuity Purchase Guidance)).

The plan administrator has confirmed that some retirees and beneficiaries as at the Termination Date were receiving bridge benefits that should have been subject to the maximum bridge benefit payable under the Income Tax Act (ITA). This issue has been raised to the Canada Revenue Agency in a letter dated May 13, 2016. The plan administrator has received communication from the Canada Revenue Agency on this matter (copy of the correspondence can be found in Appendix I) and has developed an

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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approach in response which is reflected in this report. The bridge benefits will be reduced prospectively from March 1, 2017 in order to comply with ITA limits. The windup liabilities presented herein does not reflect such potential adjustment to the bridge amounts. However, we have calculated separately (as a contingent asset) the impact of the potential reduction to bridge amounts.

The plan administrator has confirmed that some retirees and beneficiaries as at the Termination Date who transferred from the Plan to the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, Wabush Lake Railway Company, Limited (the "Salaried Plan") were incorrectly receiving temporary supplemental benefits (as per Sections 6.01(a) and 6.01(b) and Section 6.06 of the Plan document) from the Salaried Plan. In fact, a portion of the temporary supplemental benefits based on the credited service in the Plan should have been paid from the Plan instead. Correspondence from the plan administrator to the Regulators on this related matter can be found in Appendix I. The windup liabilities presented herein reflect the adjustment to the bridge amounts for the affected members.

As the plan sponsor is insolvent, no contributions are anticipated to be made to the Plan to fund the deficit identified in this report and members' benefits must be reduced (as per NFL PBA Section 66, Federal PBSA Section 29(9) and Quebec SPPA Section 218). In discussions with the plan sponsor and the Union, and in accordance with subsection 13.03 of the plan text, the benefit priority has been determined as follows:

- Priority no. 1 benefits: to provide, for commuted value transfer or annuity purchase, the pension and bridging benefits provided for by the plan terms, the NFL PBA, Quebec SPPA and Federal PBSA, excluding those benefits provided under Section 17 of the Federal PBSA; and
- Priority no. 2 benefits: to provide, for commuted value transfer or annuity purchase, the pension and bridging benefits provided by Section 17 of the Federal PBSA.

Assets will first be used to pay Priority no. 1 benefits and any remaining assets will then be used to pay Priority no. 2 benefits. For purposes of the valuation, the windup liabilities presented in this report exclude the Priority no. 2 benefits. However, we have indicated in Section 2 of the report, the windup liability of such benefits.

To the best of our knowledge and on the basis of our discussions with the plan administrator, no other events which would have a material impact on the results of the valuation occurred between the Termination Date and the date this valuation was completed.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Section 1: Summary of Termination Benefit Entitlements and Settlement Options and General Termination Administration

Benefit entitlements will be determined and the settlement of benefits will be made in accordance with the terms of the Plan in effect at the Termination Date and the windup provisions of the NFL PBA and the Federal PBSA. A summary of the plan provisions is provided in Appendix E.

The benefit entitlements and settlement options for members are provided below.

1.1 General Benefit Entitlements

Defined Benefit Provisions

Immediately prior to the plan termination, the Plan had 167 actives/laid-off/disabled members, 665 terminated vested members and 900 retired members and beneficiaries. All members of the Plan were affected by the plan termination and all are fully vested in their pension benefit entitlements.

The Plan has Newfoundland and Labrador, Quebec and Federal members. Newfoundland and Labrador members are subject to the NFL PBA, Quebec members are subject to the Quebec SPPA, and Federal members are subject to the Federal PBSA. All members' benefits payable by the Plan comply with applicable legislation. Since the last actuarial valuation, the legislation applicable for each member has changed for certain members following due diligence work performed by the plan administrator and discussions with the Company and the Regulators. This data has been provided by the plan administrator. Section 2.2 of this report provides details on how the assets are to be distributed among the applicable legislations.

Active, laid-off, disabled, transferred and terminated vested members not governed by the Quebec SPPA, who were eligible to elect an early retirement as per the plan provisions as of the Termination Date, are being offered to either commence their pension immediately with appropriate pension reduction, elect a deferred pension or to transfer the commuted value of their benefit entitlement out of the Plan.

Active, laid-off, disabled, transferred and terminated vested members not governed by the Quebec SPPA, who were not eligible to commence their pension immediately as of the Termination date, are being given the option to either transfer the commuted value of their benefit entitlement out of the Plan or elect a deferred pension.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (*cont'd*)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Active, laid-off, disabled, transferred and terminated vested members governed by the Quebec SPPA are required to transfer the commuted value of their benefit entitlement out of the Plan.

Retired members and beneficiaries as of December 16, 2015 will continue to be entitled to and receive their monthly pension payments, but their payments will be reduced to reflect the financial position of the Plan as at December 16, 2015.

The benefits for all retired members and beneficiaries currently receiving payments, along with those who elect an immediate or deferred pension will be settled by annuity purchase.

Defined Contribution Provisions

Members are required to transfer their account balance in respect of their defined contribution benefits out of the Plan.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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1.2 General Comments

- All affected members are 100% vested in their pension benefits.
- This report indicates that the Plan has a deficit as at the Termination Date. Given the financial situation of the Company, it is uncertain if further contributions will be remitted to the Plan to cover the deficit. Benefits payable by the Plan may have to be reduced in order for their total value not to exceed the Plan's available assets.
- Lump sum commuted values may not be paid, and annuities may not be purchased, until applicable regulatory approval has been received.
- The lump sum commuted values have been calculated at the Termination Date. These values must be adjusted with interest from the Termination Date to the first day of the month in which payment is made at the rate of :
 - For members subject to the NFL PBA whose commuted value is maximized by using the annuity purchase discount rates, 3.10%;
 - 2.10% for all other members.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Section 2: Financial Position

The financial position of the Plan as at the Termination Date is set out on the following page.

As stipulated in the Subsequent Events section of this report, the windup liability relative to the pension and bridging benefits covered by Section 17 of the Federal PBSA (Priority no. 2 benefits) are excluded from the windup liabilities presented in Section 2.1, Section 2.2 and Section 2.3 of this report.

The information contained in the table on the following page indicates that the Plan has a deficit of \$27,486,548 as at the Termination Date after an allowance of \$950,000 for windup expenses. The Company is required to amortize the windup deficit by making monthly payments in arrears over a period not to exceed five years from the Termination Date. However, considering the financial position of the Company, it is uncertain if further contributions will be remitted to the Plan to cover the deficit.

The funded status upon settlement of all benefits may differ from the funded status as at the Termination Date presented in this report. Factors which may have a significant effect on the funded status described in this report include:

- the uncertain remittance of additional Company contributions;
- the annuity purchase rates at the dates annuities are actually purchased;
- the difference between actual settlement elections and the assumed settlement elections as described in Appendix C;
- the difference between the actual investment return on the plan's assets subsequent to the Termination Date and the return assumed in the termination report;
- the difference between actual expenses incurred in respect of the plan windup and the estimated expenses disclosed in the termination report; and
- the difference between actual and expected mortality among plan members between the Termination Date and the dates annuities are purchased.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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2.1 Statement of Financial Position

	December 16, 2015	January 1, 2015
Windup Value of Assets		
<i>Defined Benefit Provision</i>		
Market value of assets	\$ 132,380,383	\$ 141,422,169
Provision for plan windup expenses	(950,000)	(400,000)
Total	<u>\$ 131,430,383</u>	<u>\$ 141,022,169</u>
<i>Defined Contribution Provision</i>	<u>17,018,462</u>	<u>36,344,910</u>
Total Windup Value of Assets	\$ 148,448,845	\$ 177,367,079
Windup Liability		
<i>Defined Benefit Provision</i>		
Active, laid-off and disabled members	\$ 0	\$ 10,011,715
Retired members and beneficiaries	135,420,799	141,875,928
Terminated vested members	24,494,760	13,578,207
Contingent assets	(998,628)	0
Total	<u>\$ 158,916,931</u>	<u>\$ 165,465,850</u>
<i>Defined Contribution Provision</i>	<u>17,018,462</u>	<u>36,344,910</u>
Total Windup Liability	\$ 175,935,393	\$ 201,810,760
Windup Surplus (Unfunded Windup Liability)	\$ (27,486,548)	\$ (24,443,681)
Windup Funded Ratio	0.827	0.852

Comments:

- The financial position of the Plan on a windup basis is determined by comparing the value of assets to the windup liability (the actuarial present value of accrued benefits, calculated on the Termination Date).
- The NFL PBA permits certain benefits to be excluded from the windup liability, without requiring the employer to make an election. Also, the Federal PBA permits benefits that are genuinely subject to employer consent to be excluded from the liability. While such consent benefits exist under the plan, the plan administrator has directed that consent for the "62 and 10" early retirement provision (described in Appendix C) will not be granted. The "70/75" special early retirement provision (described in Appendix C) has been included in the windup liability.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Amax Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 18, 2015

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- The plan administrator has confirmed that some retirees and beneficiaries as at the Termination Date were receiving bridge benefits that should have been subject to the maximum bridge benefit payable under the Income Tax Act (ITA). The Plan administrator has raised this issue to the Canada Revenue Agency in their letter dated May 13, 2016. The plan administrator has received communication from the Canada Revenue Agency on this matter and has developed an approach in response which is reflected in this report. The bridge benefits will be reduced prospectively from March 1, 2017 in order to comply with ITA limits. The impact of this potential reduction in bridge benefits is reflected as a contingent asset of \$998,628 as shown in the above table.
- An amount of \$2,349,912 relative to deferred vested members subject to the Federal PBSA to provide for the pension and bridging benefits covered by Section 17 of the Federal PBSA (Priority no. 2 benefits as explained in the Subsequent Events section of this report) are excluded from the windup liabilities shown above.
- The increase in the windup liability as at December 18, 2015 that would result from a 1% decrease in the assumed liability discount rate assumption is \$23,261,883. For purposes of this calculation, no other changes were made to any of the other actuarial assumptions and actuarial methods.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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2.2 Statement of Financial Position – Defined Benefit By Legislation

	Newfoundland	Quebec	Federal
Windup Value of Assets			
<i>Defined Benefit Provision</i>			
Market value of assets	\$ 79,898,485	\$ 47,942,003	\$ 4,539,895
Provision for plan windup expenses	(573,374)	(344,046)	(32,580)
Total	\$ 79,325,111	\$ 47,597,957	\$ 4,507,315
Windup Liability			
<i>Defined Benefit Provision</i>			
Active, laid-off and disabled members	\$ 0	\$ 0	\$ 0
Retired members and beneficiaries	84,462,965	47,990,100	2,967,734
Terminated vested members	12,375,815	9,615,877	2,503,068
Contingent assets	(924,101)	(53,673)	(20,854)
Total	\$ 95,914,679	\$ 57,552,304	\$ 5,449,948
Windup Surplus (Unfunded Windup Liability)	\$ (16,589,568)	\$ (9,954,347)	\$ (942,633)
Windup Funded Ratio	0.827	0.827	0.827

Comment:

- An amount of \$2,349,912 relative to deferred vested members subject to the Federal PBSA to provide for the pension and bridging benefits covered by Section 17 of the Federal PBSA (Priority no. 2 benefits) are excluded from the windup liabilities shown above.
- The assets are distributed among the legislations in proportion of the windup liability (excluding Priority no. 2 benefits) applicable for each legislation.
- Assets will first be used to pay Priority no. 1 benefits and any remaining assets will then be used to pay Priority no. 2 benefits.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway
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2.3 Reconciliation of Financial Position

Windup surplus (unfunded windup liability) as at January 1, 2015		\$ (24,443,681)
Net special payments		1,573,348
Expected interest on:		
■ Windup surplus (unfunded windup liability)	\$ (582,987)	
■ Net special payments	<u>31,296</u>	(551,691)
Plan experience:		
■ Investment gains (losses)	\$ (3,270,543)	
■ Non-Investment expenses gains (losses)	0	
■ Liability gains (losses)	<u>(999,868)</u>	(4,270,411)
Due to difference in solvency incremental cost and going concern normal cost		(409,384)
Due to application of annuity purchase proxy of 98%		2,885,065
Due to application of contingent assets		998,628
Change in actuarial assumptions		<u>(3,268,422)</u>
Windup surplus (unfunded windup liability) as at December 16, 2015		\$ (27,486,548)

Comment:

- The change in actuarial assumptions reflect the change in the reserve for plan windup expenses, the change in discount rates, the change in mortality table and the change in the percentage of members assumed to receive settlement by commuted values as outlined in Appendix C. For liabilities assumed to be settled by annuity purchase, the change in mortality table is offset to a certain extent by an increase in the discount rate.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Section 3: Contribution Requirements

3.1 Contributions

The unfunded windup liability is \$27,486,548 and must be liquidated by employer amortization payments at least equal to the amounts, payable in arrears, and for the periods set forth below in order to comply with the Regulations to the NFL PBA and the Regulations to the Federal PBSA. Given the financial situation of the Company, it is uncertain if further contributions will be remitted to the Plan to cover the deficit.

Effective date	Month of last payment	Annual amortization payment	Present value as at December 16, 2015 (at 3.00% per annum)
January 1, 2016	December 2020	\$ 5,920,836	\$ 27,486,548

Section 4: Actuarial Certification and Opinion

4.1 Actuarial Certification

Based on the results of this valuation, we hereby certify that, in our opinion, as at December 16, 2015:

- The unfunded windup liability, determined by comparing the windup liability (excluding the Priority no. 2 benefits as explained in the Subsequent Events Section of this report) to the windup value of assets is \$27,486,548.
- In order to comply with the Regulations to the NFL PBA and the Regulations to the Federal PBSA, the employer is required to contribute \$5,920,836 in annual windup special payments until the next actuarial opinion is filed. Given the financial situation of the Company, it is unlikely that further contributions will be remitted to the Plan to cover the deficit.
- The solvency ratio, as defined in the Regulations to the NFL PBA and the Federal PBSA, is 82.7%.
- In accordance with the Regulations to the NFL PBA and the Regulations to the Federal PBSA, the next valuation of the Plan for the purposes stated in this report must be performed with a valuation date no later than December 16, 2016.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (*cont'd*)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 18, 2015

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4.2 Actuarial Opinion

In our opinion:

- the membership data on which the valuation is based are sufficient and reliable for purposes of this valuation.
- the assumptions are appropriate for the purposes of this valuation, and
- the methods employed in the valuation are appropriate for the purposes of this valuation.

This report has been prepared, and our opinion has been given, in accordance with accepted actuarial practice in Canada. The valuation has been conducted in accordance with our understanding of the solvency standards prescribed by the NFL PBA and Regulation thereto, the Federal PBSA and Regulations thereto, and in accordance with our understanding of the requirements of the Income Tax Act (Canada) and Regulations thereto. This actuarial opinion forms an integral part of the report.

The results presented in this report have been developed using a particular set of prescribed actuarial assumptions. Other results could have been developed by selecting different actuarial assumptions. The results presented in this report may not be appropriate for purposes other than for which the report was prepared.

Société Towers Watson Canada inc.



Cynthia Gaudreault
Fellow of the Canadian Institute of Actuaries



Charbel Abi-Assal
Fellow of the Canadian Institute of Actuaries

*Montreal, Quebec
December 14, 2016*

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
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Appendix A: Significant Terms of Engagement

For purposes of preparing this valuation report, the plan administrator has directed that:

- The "70/75" special early retirement provision (described in Appendix C), which provides enhanced early retirement benefits upon the shutdown of the mines, is included in the valuation.
- The consent for the "62 and 10" early retirement provision (described in Appendix C), will not be granted.
- The assets to be distributed among the legislations in proportion of the windup liability applicable for each legislation, but excluding the windup liabilities with respect to Section 17 of the Federal PBSA.
- The bridge benefits for some retirees and beneficiaries be reduced prospectively from March 1, 2017 in order to comply with the Income Tax Act limits.
- An adjustment factor of 98% of the annuity purchase windup liabilities calculated in accordance with the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting be reflected in the valuation.
- This report is to be prepared on the basis that, following the termination of the plan all expenses related to the plan windup are assumed to be paid from the pension fund.

Should these directions from the plan administrator be amended or withdrawn, Willis Towers Watson reserves the right to amend or withdraw this report.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Appendix B: Assets

Statement of Market Value

	December 16, 2015	January 1, 2015
Defined Benefit Provision		
Invested assets:		
■ Pooled funds	\$ 132,380,383	\$ 141,422,169
Net outstanding amounts:		
■ Contributions receivable	\$ 0	\$ 0
■ Benefits payable	0	0
■ Expenses and other payables	0	0
■ Total net outstanding amounts	\$ 0	\$ 0
Total	\$ 132,380,383	\$ 141,422,169
Defined Contribution Provision		
Invested assets	\$ 17,018,462	\$ 36,344,910
Net outstanding amounts	0	0
Total	\$ 17,018,462	\$ 36,344,910
Total Assets	\$ 149,398,845	\$ 177,767,079

Comments:

- The invested assets under the defined benefit provision are held by CIBC Mellon under account WHMF20000002.
- The invested assets under the defined contribution provision are held by Sun Life Financial under policy 66500.
- The data relating to the defined benefit invested assets are based on the estimated market values as at December 16, 2015 provided by SEI. As at the Termination Date, the assets are allocated to 13% Canadian Fixed Income fund and 87% Canadian long duration bond fund. The data relating to the defined contribution are based on the Defined Contribution Termination Report provided by the plan administrator. All such data have been relied upon by Willis Towers Watson following tests of reasonableness with respect to contributions, benefit payments and investment income. However, Willis Towers Watson has not independently audited or verified these data.
- As part of the CCAA proceedings, special payments toward the deficit of the Plan have been suspended since May 2015 through the Termination Date.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Reconciliation of Invested Assets (Market Value) – Defined Benefit Provision

Assets as at January 1, 2015		\$	141,422,169
Receipts:			
■ Contributions			
– Employer normal actuarial cost in respect of benefits	\$	510,807	
– Employer special payments		1,573,348	
– Transfer deficiency payments		0	\$ 2,084,155
■ Investment return, net of all expenses			7,763
■ Total receipts			\$ 2,091,918
Disbursements:			
■ Benefit payments			
– Pension payments	\$	11,133,704	
– Lump sum settlements		0	
■ Total disbursements			\$ 11,133,704
Assets as at December 16, 2015		\$	132,380,383

Comments:

- This reconciliation is based on the estimated market values as at December 16, 2015 provided by SEI and the December 31, 2015 financial statements issued by CIBC Mellon. All such data have been relied upon by Willis Towers Watson following tests of reasonableness with respect to contributions, benefit payments and investment income. However, Willis Towers Watson has not independently audited or verified these data.
- The rate of return earned on the market value of assets, net of all expenses, from January 1, 2015 to December 16, 2015 is approximately 0% p.a.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
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Appendix C: Actuarial Basis

Asset Valuation Method

The market value of assets has been used for the windup valuation. The resulting value has been reduced by a provision for plan windup expenses.

Liability Calculation Method

The windup liabilities for active, laid-off and disabled members were calculated as the actuarial present value of all benefits accrued up to the Termination Date.

The windup liabilities for retired members and beneficiaries and transferred and terminated vested members were calculated as the actuarial present value of their respective benefits.

Other Considerations

Consistent with the Canadian Institute of Actuaries' Practice-Specific Standards for Pension Plans, the windup assumptions do not include a margin for adverse deviations.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
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Actuarial Assumptions – Defined Benefit Provision

	December 16, 2015	January 1, 2015
Economic Assumptions (per annum)		
Liability discount rate		
■ Annuity purchase	3.10%	2.50%
■ Commuted value transfers	2.10% for 10 years, 3.70% thereafter	2.40% for 10 years, 3.70% thereafter
■ Commuted value transfers (for benefits subject to pre-Retirement indexation) ¹	1.70% for 10 years, 2.80% thereafter	1.80% for 10 years, 2.60% thereafter
Discount rate for determining amortization payments ²	3.00%	2.49%
Escalation of Income Tax Act (Canada) maximum pension limitation ³	Nil	Nil
Demographic Assumptions		
Mortality	2014 Canadian Pensioners' Mortality Table projected generationally using Scale B (Federal deferred vested members: unisex 100% Male, Other members: sex distinct)	1994 Uninsured Pensioner Mortality Table, projected generationally using Scale AA
Withdrawal	N/A	N/A
Disability incidence/recovery	N/A	N/A
Retirement/pension commencement	Refer to retirement/pension commencement below	Refer to previous valuation report
Other		
Annuity purchase proxy	98% of CIA Annuity Purchase Guidance	N/A
Percentage of terminated vested members with eligible spouses at pension commencement and electing joint and survivor pension form	85%	85%
Years male spouse older than female spouse for terminated vested members	3	3
Percentage of members receiving settlement by commuted value	Refer to Table 1	Refer to Table 2
Provision for windup expenses	\$950,000	\$400,000

Notes:

¹ Applied only for post-2000 service related benefits for Quebec terminated vested members in respect of indexation from date of termination to age 55.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 *(cont'd)*

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
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- ² Equal to the liability weighted average of the liability discount rates for settlement by commuted value transfer (rate in effect for the first 10 years) and annuity purchase.
- ³ The Income Tax Act (Canada) maximum pension limit is \$2,818.89 per year of service as at December 16, 2015.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway
Company and Wabush Lake Railway Company, Limited
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Table 1 – Percentage of members receiving settlement by commuted value as at December 16, 2015

■ Terminated vested members (Federal)	50%
■ Terminated vested members (Quebec)	100%
■ Terminated vested members (whose windup liability is maximized by commuted value liability discount rates, Newfoundland)	100%
■ Terminated vested members (whose windup liability is maximized by annuity purchase liability discount rates, Newfoundland)	0%
■ Retired members and beneficiaries	0%

Table 2 – Percentage of members receiving settlement by commuted value as at January 1, 2015

■ Active, laid-off and disabled members (eligible for statutory early retirement, Newfoundland and Federal)	50%
■ Terminated vested members (eligible for statutory early retirement, Newfoundland and Federal)	50%
■ Retired members and beneficiaries	0%
■ Other members	100%

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Rationale for Actuarial Assumptions

The rationale for the material actuarial assumptions used in the windup valuation is summarized below.

The actuarial assumptions used in the windup valuation do not include margins for adverse deviations.

Liability discount rates

It is expected that a portion of the liability will be settled by a group annuity purchase and the balance of the liability will be settled by commuted value transfers.

For the calculation of the portion of the windup liability relating to the benefits that are expected to be settled by a group annuity purchase, the liability discount rate corresponds to an approximation of the annuity purchase rates as at the Termination Date following application of the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting (CIA Annuity Purchase Guidance). The guidance provides that the approximation of the annuity purchase rate varies in accordance with the duration of the liabilities for non-indexed benefits assumed to be settled by group annuity purchase. The duration of the liabilities assumed to be settled through the purchase of non-indexed annuities is 12.2.

For the calculation of the portion of the windup liability relating to the benefits that are expected to be settled by commuted value transfers, the liability discount rates have been determined in accordance with the Standards of Practice for Pension Commuted Values published by the Canadian Institute of Actuaries effective April 1, 2009 and revised effective October 1, 2015. For this actuarial valuation, the December 2015 rates have been used.

For the calculation of the portion of the windup liability relating to benefits subject to pre-retirement indexation that are expected to be settled by commuted value transfers, the liability discount rates have been determined as the interest rate for pensions indexed at 50% of the increases in the Consumer Price Index (maximum of 2% per annum) in accordance with the Canadian Institute of Actuaries' Standards of Practice for Pension Commuted Values.

Escalation of Income Tax Act (Canada) maximum pension limitation

The Income Tax Act (Canada) maximum pension limitation specified in the Act as at the actuarial valuation date is applied without consideration for future scheduled increases, as pension entitlements are determined as at the Termination Date.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Mortality

For the benefits that are expected to be settled by a group annuity purchase, the assumption has been set following application of the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting.

For benefits that are expected to be settled by commuted value transfers, the assumption has been determined in accordance with the Standards of Practice for Pension Commuted Values published by the Canadian Institute of Actuaries effective April 1, 2009 and revised effective October 1, 2015.

No pre-retirement mortality has been assumed in order to approximate the value of the pre-retirement death benefits for defined benefit earned after January 1, 1990 (and prior to January 1, 1990 for federally regulated members).

Retirement/pension commencement

- The normal pensionable age under the plan is age 65 (on the basis that the provisions relative to Section 17 of the Federal PPSA are not taken into account for purposes of the valuation).
- An unreduced benefit is provided upon completing 30 years of continuous service ("30 and out") or upon reaching the "70/75" special early retirement provision (described below). Members who attained these conditions are assumed to retire immediately. All other members are assumed to retire on their normal pensionable age since actuarial reduction applies under early retirement.

The Federal PPSA permits benefits that are genuinely subject to employer consent to be excluded from the windup liability. While such consent benefits exist under the Plan, the plan administrator has directed that consent for the "62 and 10" early retirement provision (described below) will not be granted.

Following is a summary of the plan's early retirement provisions, and how they are reflected in the windup valuation.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Plan Provision	Treatment of Plan Provision, for Plan Termination
<ul style="list-style-type: none"> ■ "30 and out" early retirement <ul style="list-style-type: none"> — 30+ years of continuous service — unreduced benefit 	<ul style="list-style-type: none"> ■ Included in the valuation.
<ul style="list-style-type: none"> ■ "62 and 10" early retirement <ul style="list-style-type: none"> — age 62+ with 10+ years of continuous service — with company consent: unreduced benefit — without company consent: actuarial reduction applied 	<ul style="list-style-type: none"> ■ Plan administrator has directed that consent is not granted. Excluded from the valuation.
<ul style="list-style-type: none"> ■ "55 and 15" early retirement <ul style="list-style-type: none"> — age 55+ with 15+ years of continuous service — actuarial reduction applied 	<ul style="list-style-type: none"> ■ Included in the valuation.
<ul style="list-style-type: none"> ■ "70/75" special early retirement <ul style="list-style-type: none"> — age 55+ with 15+ years of continuous service, or — 75+ age/service points with 15+ years of continuous service — upon shut-down: unreduced benefit 	<ul style="list-style-type: none"> ■ Included in the valuation.
<ul style="list-style-type: none"> ■ Statutory early retirement <ul style="list-style-type: none"> — age 55+ with 2+ years of continuous service (no service requirement for Quebec employees) — actuarial reduction applied 	<ul style="list-style-type: none"> ■ Included in the valuation.
<ul style="list-style-type: none"> ■ Deferred vested early retirement <ul style="list-style-type: none"> — termination of service prior to retirement eligibility — \$50 "add on" benefit excluded — actuarial reduction applied 	<ul style="list-style-type: none"> ■ Included in the valuation.

Annuity Purchase Proxy

The plan administrator has requested illustrative annuity quotations from five companies licensed to sell annuities in Canada, four of which responded. The plan members included in the quote were those assumed to be fully or partially settled via annuity purchase. Based on the results collected from the quote, the plan administrator instructed that an adjustment factor of 98 % should be applied to the annuity purchase windup liabilities (calculated in accordance with the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting (CIA Annuity Purchase Guidance)).

Percentage of members with eligible spouses at pension commencement and electing joint and survivor pension form

The actual data on the spouse and form of payment were used for retired members. For other members, the assumed percentage of members with a spouse is based on the percentages for the general population.

Years male spouse older than female spouse

The actual data on the spouse were used for retired members. For other members, the assumption is based on surveys of the age difference in the general population.

Percentage of liability settlement by commuted value

This assumption has been determined by considering the benefit provisions of the Plan, legislative requirements to offer specific settlement options to various classes of members, and, in particular, the options to be provided to members upon plan termination.

Provision for windup expenses

Allowance was made for normal administrative, actuarial, legal and other costs which are expected to be incurred (excluding costs relating to investment and custodial expenses and the resolution of surplus or deficit issues). In establishing the allowance for the plan termination costs, we have assumed that all reasonable costs incurred as a result of the plan termination are payable from the pension fund.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Appendix D: Membership Data

Summary of Membership Data – Defined Benefit Provisions

Active, laid-off and disabled members

	December 16, 2015	January 1, 2015
■ Number	0	184
■ Average age	n.a.	43.8
■ Average credited service	n.a.	13.1

Retired members and beneficiaries

	December 16, 2015 ¹	January 1, 2015
■ Number	900	896
■ Average age	70.1	69.7
■ Total annual lifetime pension	\$ 8,304,540	\$ 8,384,943
■ Total annual temporary pension to age 65	\$ 2,561,550	\$ 2,825,147
■ Average annual lifetime pension	\$ 9,227	\$ 9,358

Terminated vested members

	December 16, 2015	January 1, 2015
■ Number	832	629
■ Average age	43.1	42.7
■ Total annual pension	\$ 2,634,135 ²	\$ 1,724,160
■ Average annual pension	\$ 3,166	\$ 2,741
■ Total annual temporary pension to age 65	\$ 34,128 ³	N/A

¹ Reflect five retired members who deceased after December 16, 2015, two of whom have a surviving spouse.

² Reflect pre-retirement indexation from date of termination to the Plan Termination Date for post-2000 service related benefits for Quebec Members. Exclude \$32,400 of annual pension to provide for benefits covered by Section 17 of the Federal PBSA.

³ Exclude \$139,078 of annual bridge benefits to provide for benefits covered by Section 17 of the Federal PBSA.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 *(cont'd)*

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 18, 2015

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Comments:

- Detailed individual membership data and liabilities have been disclosed in Appendix F of this report.
- Based on the December 31, 2015 statements provided by Sun Life Financial, 315 defined contribution accounts remain open with Sun Life Financial.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Amaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Review of Membership Data – Defined Benefit Provisions

The membership data as at December 16, 2015 with respect to the defined benefit provision were supplied by Wabush Mines and Morneau Shepell (acting as the plan administrator starting March 30, 2016).

The membership data have been relied upon by Willis Towers Watson following tests of reasonableness and found to be sufficient and reliable for the purposes of the valuation. However, Willis Towers Watson has not independently audited or verified these data. Elements of the data review included the following:

- ensuring that the data were intelligible (i.e., that an appropriate number of records was obtained, that the appropriate data fields were provided and that the data fields contained valid information);
- preparation and review of membership reconciliations to ascertain whether the complete membership of the plan appeared to be accounted for;
- review of consistency of individual data items and statistical summaries between the current actuarial valuation and the previous actuarial valuation;
- review of reasonableness of individual data items, statistical summaries and changes in such information since the previous actuarial valuation date; and
- comparison of the membership data and the plan's financial statements for consistency.

However, the tests conducted as part of the membership data review may not have captured certain deficiencies in the data. If the data provided by the plan administrator were not complete and accurate, Willis Towers Watson reserves the right to modify the results disclosed in this report.

Membership Reconciliation – Defined Benefit Provisions

	Active, laid-off and disabled members	Retired members and beneficiaries*	Transferred and terminated vested members	Total
As at January 1, 2015	184	896	629	1,709
■ New entrants (including re-employed)	-	-	-	-
■ Non-vested termination	-	-	-	-
■ Vested termination	(172)	-	172	-
■ Settlement	-	-	(1)	(1)
■ Transfer	-	-	-	-
■ Retirement	(12)	17	(5)	-
■ New beneficiaries	-	8	-	8
■ Deceased (with beneficiary)	-	(8)	-	(8)
■ Deceased (without beneficiary)	-	(9)	(1)	(10)
■ Deceased (settlement)	-	-	-	-
■ Data correction	-	(4)	38	34
■ Net change	(184)	4	203	23
As at December 16, 2015	-	900	832	1,732

* Reflect five retired members who deceased after December 16, 2015, two of whom have a surviving spouse.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Appendix E: Summary of Plan Provisions

The following is an outline of the principal features of the Plan which are of financial significance to valuing the plan benefits. This summary is based on the amended and restated Plan document as of March 1, 1996 and Plan amendments no. 1, 2, 3, 4 and 5. The Plan amendments were received by the Newfoundland and Labrador Superintendent of Pensions on July 30, 2015. Given the complexity of the amendments and the fact that they were submitted shortly before the wind-up of the Plan, these amendments have not yet been individually registered by the Newfoundland and Labrador Superintendent of Pensions. This valuation report assumes that the contents of the amendments, to the extent that they impact the benefits provided by the Plan, are acceptable to the regulators and the results herein reflect the benefits provided by the amendments. For a detailed description of the benefits, please refer to the plan document.

Plan Registration

Effective December 13, 2013, in addition to being registered with the Newfoundland and Labrador Superintendent of Pensions, the Plan is also registered with the Office of the Superintendent of Financial Institutions Canada.

Eligibility for Participation

All employees within the bargaining unit covered by the Plan.

Eligibility for Retirement Benefits

Normal

Age 65.

Pensionable Age

Earlier of:

- age 65,
- 30 years of continuous service,
- "55 and 15" early retirement, or
- "70/75" special early retirement.

Early and Special Early Retirement

Please refer to the summary in Appendix C.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (*cont'd*)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
34 Plan Termination as at December 16, 2015

Postponed Retirement

Members may continue to work beyond the normal retirement date on a year-to-year basis, but not beyond age 71.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Pension Benefits

Effective March 1, 1996 existing plan members were offered a choice between two pension options, Option A or B. All future new hires must enrol under Option B. For retirements on or after March 1, 2010, the basic monthly pension is determined as follows.

Option A provides Defined Benefit coverage only. The multipliers are:

Monthly lifetime pension, per year of service:

■ For the first 15 years of service	\$ 33.00
■ For the next 15 years of service	\$ 34.00
■ For service after 30 years	\$ 35.00

Monthly supplement, payable to age 65, per year of service (to a maximum of 40 years of service):*	\$ 27.00
---	----------

Note:

* Only for members who retire on special early or early retirement; not applicable upon early pension commencement from deferred vested status.

Option B offers a combination of Defined Benefit coverage and Defined Contribution coverage (for future service, from March 1, 1996 onward). The pension benefits are determined as follows:

Monthly lifetime pension, per year of service:

■ For the first 15 years of service	\$ 33.00
■ For the next 15 years of service	\$ 34.00
■ For service after 30 years	\$ 35.00

Monthly supplement, payable to age 65, per year of service (to a maximum of 40 years of service):*	\$ 27.00
---	----------

Note:

* Only for members who retire on special early or early retirement; not applicable upon early pension commencement from deferred vested status.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Armaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Effective March 1, 2010, employees covered under Option B contribute \$3,000 per annum to a Defined Contribution component of the plan while actively at work, and are entitled to the following Company Defined Contributions while actively at work:

Annual company contribution:	2015
■ For employees with less than 10 years of service	\$ 2,200
■ For employees with 10 to 19 years of service	\$ 3,500
■ For employees with 20 to 29 years of service	\$ 4,800
■ For employees with 30 to 31 years of service	\$ 4,800
■ For employees with 32 or more years of service	\$ 5,700

The Defined Contribution account balance, including investment earnings thereon, will be used at retirement to provide additional pension income.

An additional monthly lifetime pension of \$50.00 is offered to employees who retire from active status under either Option A or B.

Option A and B members with 30 or more years of credited service, who retire from active status on or after March 1, 2014 and on or before December 16, 2015 (February 28, 2015 for Newfoundland members), are guaranteed to receive a monthly Company-paid pension amount from retirement until age 65 (under the normal form of pension, and taking into account all applicable Company-paid pension plan provisions), and providing the employee meets the requirements to be entitled to the regular supplement, as follows:

- For retirements in 2014 to 2015: \$3,200/month
- For Option B members, the portion of an employee's pension which is derived from his own contributions under the Defined Contribution plan does not count towards meeting the guaranteed benefit levels described above; the employee-paid Defined Contribution pension is in addition to the guaranteed amounts.

For Option B members, the guaranteed monthly pension amounts only apply to employees who have been covered under Option B since it was first established in 1996. The employee must have invested at least 50% of his or her Defined Contribution account balance in the bond fund, treasury bill fund and/or G.I.C. fund for a two-year period prior to retirement.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Disability

Benefit

For employees with eight or more years of continuous service when they become eligible for LTD benefits, the Defined Benefit continues to accrue (up to a maximum of 30 years of credited service), while the employee is under age 65 and is disabled.

Under Option B, the plan member can choose to continue to contribute \$3,000 per year to the Defined Contribution plan, or can contribute a lower amount. The Company's Defined Contribution will be proportional to the employee's Defined Contribution.

Termination

Eligibility

All active plan members in Newfoundland are vested (in respect of their Defined Benefit entitlements) after two years of plan membership (immediate vesting upon plan termination). All active plan members in Quebec or federally regulated are vested immediately.

Defined Contribution entitlements are immediately vested, regardless of the number of years of service.

Benefit

Defined Benefit pension payable at normal retirement date, based on service at termination. Upon early retirement, the pension is actuarially reduced. Effective January 1, 2001, for Quebec members, the pension for post-2000 credited service is subject to indexation up to age 55 at 50% of CPI, maximum 2%. In lieu of the monthly benefit, the participant may transfer the commuted value of the benefit to a locked-in RRSP or other registered vehicle.

Defined Contribution account balances may be transferred to a locked-in RRSP or other registered vehicle.

Minimum Death Benefit

Eligibility

Two or more years of plan membership.

Immediate for active Quebec members and for active federally regulated members.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Benefit

The commuted value of the Defined Benefit earned after January 1, 1990 (and prior to January 1, 1990 for federally regulated members) to date of death is payable to the spouse or, if applicable, designated beneficiary. If the spouse is the recipient, the spouse will have the option of taking the commuted value in form of a monthly pension.

If the member dies while in active status and while eligible for an unreduced pension, the surviving spouse will receive the commuted value of the Defined Benefit, which can be converted to a monthly pension. Alternatively, if greater in value, a lifetime pension is payable to the spouse, equal to 60% of the pension the member would have received if he had retired on the previous day and elected a J&S 60% form of pension.

In addition, the full Defined Contribution account balance, with investment earnings, will be vested – regardless of the number of years of service.

Normal Form of Pension

If eligible for an early retirement or special early retirement, annuity for life, with 50% of the lifetime benefit continuing to the spouse if the retired employee dies before age 65. Otherwise, annuity for life.

Optional Forms of Pensions

For married participants, the automatic option is a reduced 60% joint and survivor pension, actuarially equivalent to the normal form. Other options are also available on an actuarially equivalent basis.

Special Provisions on Mine Shut-Down

The special benefits payable on shut-down of the mine are described in Appendix C.

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

Appendix G: Certificate of the Plan Administrator

I hereby certify that to the best of my knowledge and belief:

- the formal notice of the termination of the Plan were sent to all persons affected by the plan termination. These notices were mailed to the last known addresses of all affected members in January 2016;
- the significant terms of engagement contained in Appendix A of this report are accurate and reflect the plan administrator's judgement of the plan provisions and/or an appropriate basis for the actuarial valuation of the plan;
- the summary of plan provisions contained in Appendix E of this report is accurate; and
- there have been no events, other than the one outlined in the introduction section of this report, which occurred subsequent to the Termination Date that would materially change the Plan's financial position on or after the Termination Date.



Signature

PAUL Cotanko

Name

DEC 2/2016

Date

PREMIER, MORNING STAPEL IN ROLE

Title OF PLAN ADMINISTRATOR

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Appendix H: Defined Contribution Termination Report

TERMINATION REPORT

FOR

Pension Plan for Bargaining Unit Employees of

Wabush Mines, Cliffs Mining Company, Managing

Agent, Arnaud Railway Company and Wabush

Lake Railway Company, Limited

Newfoundland and Labrador Registration Number: 0024699

Office of The Superintendent of Financial Institutions Canada Registration Number: 57777

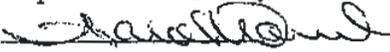
Canada Revenue Agency Registration Number: 0555201

Sun Life's Plan Reference Id: C09Z501

Terminated Effective: December 16, 2015

Date this report was completed: June 30, 2016

Date this revised report was completed: November 7, 2016

Completed By: Sarah Wamil 

Telephone Number: (519) 888-3900 Ext 341-3088

Address: Sun Life Financial Inc.
Group Retirement Services
PO Box 2025 STN Waterloo
Waterloo ON N2J 0B4

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1. Plan Termination Details
2. Member Benefits at Plan Termination
3. Member Option
4. Member Statement

PLAN TERMINATION DETAILS

- Contributions under this policy were discontinued effective December 16, 2015
- Plan Assets at December 16, 2015 were \$17,018,462.03
- The account was paid in full as of the date that contributions were discontinued, and there were no amounts outstanding. The final contributions were processed as of December 18, 2015 for the period November 30, 2015 to December 13, 2015 in the amount of \$3,349.87
- The Amendment indicating all contributions have ceased, the Plan is being wound-up, and the effective date of the wind-up is being handled by Morneau Shepell.
- The affected members of this pension plan were represented by Unions, and were notified effective January 26, 2016. This notification was handled by Wabush Mines.
- The reason for this full plan wind up is that the Newfoundland and Labrador Superintendent of Pensions and the Office of the Superintendent of Financial Institutions ordered a plan wind up effective December 16, 2015.
- All members are entitled to 100% vesting, and the locking-in requirements of the Contract and the Pension Benefits Act, 1997 and the Federal Pension Benefits standards Act, 1985 have been met.
- The credit of \$0.00 available upon the Plan's discontinuance,
 - Will be used to pay outstanding termination invoice in the amount
 - Remaining amount will be re-allocated to the Plan members on an equal basis.
- All members will be provided with Option Statements which will provide the option of purchasing guaranteed annuity benefits, cash refunds (where available), transfers to other Registered Pension Plans, or transfers to Registered Retirement Savings Plans, Locked In Registered Retirement Savings Plan, Life Income Fund, Registered Retirement Income Fund.
- The asset values shown under the 'Member Benefits at Plan termination' schedule have been calculated as follows:
 - Each member's assets held under market funds is valued based on the unit value of the applicable fund(s) as at December 16, 2015
 - Each member's assets held under guaranteed Interest Account(s) is valued as market or book value, based on the Interest rates existing as of December 16, 2015. Market value adjustments, if any, are in accordance with this Plan's funding Contract.
 - There are no members who hold assets in Member Voluntary and/or Voluntary Transfers in.
- Morneau Shepell is aware of the AIR required for the period of January 1, 2015 to December 16, 2015 and have submitted it.
- Canada Revenue Agency will be informed and provided with a copy of this Report as soon as we receive an approval from both, the Newfoundland Pension Benefits Division and The Office of the Superintendent of Financial Institutions.



Sun Life Assurance Company of Canada
Group Retirement Services
PO Box 11001 STN Centre-Ville
Montreal QC H3C 3P3

Member Name
Member Address Line 1
Member Address Line 2

RE: Windup of your Employer Sponsored Group Plan. Your action is required regarding your Pension Plan for Bargaining Unit Employees of Wabush Mines (GA 12200) Group Plan

Client ID: 925 01

Dear Plan Member:

We have received notification that your group plan is being wound up effective December 16, 2015. You have full ownership of both the employer contributions made to the plan and your own contributions. As your group plan is in the process of winding up, you'll need to transfer your assets out of your current employer-sponsored group plan into your own individual account.

At Sun Life Financial, we are here to help make some of the decisions easier for you.

This Settlement Option package provides you with current information about your account and a list of the options available to you as you transition out of your group plan. More details about each option are provided on the enclosed Information Reference Page. Please complete the Settlement Option form(s) and return to us in the self-addressed envelope.

You may keep your funds with Sun Life Financial by transferring to the **Group Choices Plan** or choose from the options listed on the enclosed Settlement Option Form(s). There is an option form for each of the retirement savings products you currently hold.

Our **Group Choices Plan** is a fast and easy way to transition from your group plan and to continue to receive many of the same benefits. More details on the **Group Choices Plan** are included in this package. Here are some of the benefits of joining the **Group Choices Plan**:

- **Low Cost** - Continue to benefit from no loads and lower investment management fees that are typically not available to individual retail investors and avoid transfer/withdrawal fees that could be applicable to your plan. (To review the fees you pay, sign into mysunlife.ca (our Plan Member Services website), using your access ID and password, select your retirement account on the **Home** page followed by **Account Fees** under the **Accounts** drop-down menu.)
- **Continued contributions** - Continue making monthly contributions by pre-authorized debit from your bank account through our automatic cheque plan or making lump sum contributions at any time.
- **Investment Choice** - Continue to enjoy many of the same or similar funds as you did in your group plan.
- **24/7 Access** - Internet access and Call Centre servicing will continue. Obtain information or process transactions when it's convenient for you.

Sun Life Assurance Company of Canada
is a member of the Sun Life Financial group of companies.
www.sunlife.ca

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Please make an election within 90 days. If you fail to choose an option, your assets may be moved to a separate Sun Life Financial account. Note, fees may be charged to you directly to hold assets in this account.

Whatever your decision may be, our Client Solutions Centre is here to help you during the transition from your plan.

To enrol in the Group Choices Plan, sign into mysunlife.ca using your access ID and password and select Leaving the plan under the Requests drop-down menu.

OR

Call our Client Solutions Centre at 1-877-893-9893

OR

Complete the enclosed Settlement Option Form and return it by fax or in the enclosed envelope.

We look forward to hearing from you soon.

Thank you,

Group Retirement Services
Sun Life Financial

Encl: Settlement Option Form(s)
Group Choices Plan brochure
Group Choices Plan (National Accounts) Investment Options
Defined Contribution Pension Plan (DCPP) information
Group Retirement Income Plan
Statement
Return Envelope

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Defined Contribution Pension Plan – Settlement Option Form

Member Name
Member Address Line 1
Member Address Line 2

Client id: 925 01
Member Number:

Pension Plan Registration Number: 024699-000 Newfoundland
Province of Employment:
Pension plan funded by Policy No: 66500-G
Years of service: 36
Years of membership in the plan: 18

Date of Plan Wind Up: December 16, 2015
Date of Employment:
Date of plan membership:
Date of birth:
Date of Pension Commencement:

Account Balance as at XXXXXXXX: Not locked-in: \$0.00
Locked-in: \$0.00

The account balances reported on this option form are as of the date shown and the value will fluctuate with the markets. Details of your specific transactions can be found on mysunlife.ca, (our Plan Member Services website) or alternatively, you can call our Client Solutions Centre toll free at 1-877-893-9893.

Please select from the following options:

Select	Options
<input type="checkbox"/>	Transfer my funds to the Sun Life Financial Group Choices Plan (C0H49). I understand that if any of my current investment options are not available in the Group Choices Plan, the funds in these investments will be transferred to one of the following funds unless I provide Sun Life with alternate instructions: <ul style="list-style-type: none"> RRSP/LIRA - Sun Life Financial Granite™ Conservative Fund with the target date closest to, without exceeding, your 65th birthday or the Sun Life Financial Granite™ Retirement Segregated Fund if you are over age 65 RRSP/TFSA - Sun Life Financial Money Market Segregated Fund I understand the funds above will apply to any investments that default on or after July 1, 2016, despite any earlier communication to the contrary. I also understand the funds above are subject to future change by Sun Life Financial and/or my former Group Plan Sponsor
<input type="checkbox"/>	Transfer my assets to a locked-in RRSP or LIRA (attach T2151 and locked-in form)*
<input type="checkbox"/>	Transfer my assets to another Pension Plan (attach T2151)*
<input type="checkbox"/>	Transfer my assets to a LIF, LRIF or RLIF, in the pension jurisdiction where this is available under legislation (attach T2151 and locked-in form)*
<input type="checkbox"/>	I elect to receive an annuity from Sun Life Financial (subject to a minimum of \$5,000.00)
<input type="checkbox"/>	I elect to receive an annuity from another Canadian Insurer*

* Note: These requests may be subject to a fee.

<input type="checkbox"/>	Transfer my assets to the Sun Life Financial Group Retirement Income Plan (refer to the enclosed "Group Registered Retirement Income Plan" brochure)
--------------------------	--

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

I certify that the information provided above is complete and true to the best of my knowledge.

Date _____ Signature _____

If further clarification of my option selection is required, I can be reached at:

Daytime phone number () _____ - _____

Alternate phone number () _____ - _____

Please return this form within 90 days to:

Sun Life Financial
Group Retirement Services
PO Box 11001 STN Centre-Ville
Montreal QC H3C 3P3
Fax (514) 954-2077

SAMPLE

Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited
Plan Termination as at December 16, 2015

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Appendix I: Correspondences Regarding Corrections to Bridge Benefits

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

11/30/2016 09:22 FAX 613 952 0199

Registered Plans Div.

0002/0002



Canada Revenue Agency
Agence du revenu du Canada

November 29, 2016

Plan Number
0555201

Morneau Shepell Ltd.
Suite 3007
7071 Bayers Road
Halifax NS B3L 2C2

Nikita Buffone
Tel. 613-954-1098

Attention: Jessica Vanderpe

Dear Ms. Vanderpe:

Re: Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, Wabush Lake Railway Company, Limited (the "Plan")

We are in receipt of a letter from Paula Boyd, sent May 13, 2016, in regards to the bridging benefits being paid in excess of the *Income Tax Regulations* limits.

The interpretation and application of bridging benefits under paragraph 8503(2)(b) of the Regulations that was outlined in the letter is correct. Bridging benefits that have been paid and are currently being paid to members, have exceed the formula under subparagraph 8503(2)(b)(ii), and the Plan is in a revocable position. We will not exercise our discretion to give notice of intent to revoke the registration of the Plan, if the following are completed by the administrator:

1. The Plan administrator is not required to action repayments from affected members currently receiving the excess bridge amount or members past age 65; unless the administrator decides to do so.
2. Members currently receiving bridging benefits in excess of the maximum allowable under the Regulations will have their payments reduced, going forward, to reflect the bridging limits.
3. Members who are currently not in receipt of bridging benefits are subject to the limits under paragraph 8503(2)(b).

We stress that this decision should not be taken as a precedent as any similar situation would have to be judged on its own set of facts.

Sincerely,

for Director General

Registered Plans Directorate, Ottawa ON K1A 0L5
www.cra.gc.ca/rpd



Memo

Date: November 22, 2016 **Code:** WABUSH

To: Michael Delaney, Pension Benefit Standards Division
Chuck Saab, Benoit Briere, Office of the Superintendent of Financial Institutions

From: Paul Chang, Jessica Vandorpe Morneau Shepell

CC: Marthe Brodeur, Cliffs Natural Resources

Re: Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, Wabush Lake Railway Company, Limited ("the Bargaining Plan")
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company, Wabush Lake Railway Company, Limited ("the Salaried Plan")
– Benefits for members who transferred from the Bargaining Plan to the Salaried Plan

In our review of the Salaried Plan valuation data, we found a number of retirees receiving benefits under subsection 6.01(c)(i) of the Salaried Plan text, which provides for a minimum benefit when a member has transferred from the Bargaining Plan to the Salaried Plan.

There are two Bargaining Plan benefits being triggered under subsection 6.01(c)(i) of the Salaried Plan text:

1. The temporary supplemental benefit under section 6.06 of the Bargaining Plan text
 - This benefit is payable when a member qualifies for a pension benefit commencing on an Early Retirement Date or Special Early Retirement Date.
2. The minimum monthly retirement income benefit under subsections 6.01(a) and 6.01(b) of the Bargaining Plan text
 - This benefit is payable when a member has 30 years of Credited Service at their retirement date.

In the situation where a member has transferred from the Bargaining Plan to the Salaried Plan, 100% of the above-noted benefits are currently being paid out of the Salaried Plan assets. We have a different interpretation of the Salaried Plan provision:

Temporary Supplemental

Regarding the temporary supplemental benefit, subsection 2.08 of the Bargaining Plan text states that a transfer of employment shall not constitute a break in continuous service for determining eligibility for benefits. As such, on retirement any period of continuous service under the Salaried Plan would be considered under the Bargaining Plan and, should this additional service cause a member to be eligible for the temporary supplemental benefit, the supplemental benefit in respect of Bargaining Plan Credited Service should be payable from the Bargaining Plan.

Minimum Monthly Income

Regarding the minimum monthly retirement income, it appears that the intent was to provide this benefit based on the combined Credited Service under the Bargaining Plan and Salaried Plan. We believe that the Salaried Plan text is not clear as subsection 6.01(c)(i) only refers to the term Credited Service (i.e., Credited Service under the Salaried Plan, rather than combined credited service between the 2 plans). Based on the language of the Salaried Plan text, a transferred employee would need 30 years Credited Service under the Salaried Plan after the transfer to receive the minimum benefit. We acknowledge that the company would most likely want to provide the benefit based on the combined credited service to facilitate employee transfers and ideally, we would not take away this benefit from any affected members who are currently receiving it.

To our knowledge, there was no corresponding asset transfer from the Bargaining Plan to the Salaried Plan upon the affected members' retirement. Combined with the fact that none of the members would have qualified for the benefit based on the language in the Salaried Plan, it is not appropriate that the Salaried Plan pay for the full amount of the minimum benefit. We believe that the appropriate solution is to allow members to retain the benefit, but split the cost of the benefit between the two plans rather than being paid 100% from the Salaried Plan.

Intended Approach

If the plans were ongoing, the underfunding would be resolved through company special contributions over time. As the plan is being wound-up, it is important to correctly attribute obligations to each plan at the wind-up date. Our intended approach to resolve the above issues is to:

- a) pay the Bargaining Plan temporary supplemental benefit (in respect of Bargaining Plan Credited Service) from the Bargaining Plan assets, and
- b) to split the minimum monthly retirement income benefit between the Bargaining Plan and Salaried Plan in proportion to the first 30 years of credited service accrued under the plans.

These changes would be made retroactive to the wind-up date. Due to fact that employer special contributions up to the wind-up date would have been made based on the plan's funded positions, we do not intend to correct the situation with respect to payments prior to the wind-up date. The intended approach will result in approximately a \$700,000 reduction in the Salaried Plan wind-up liability and a corresponding increase in the Bargaining Plan wind-up liability.

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

ACTUARIAL INFORMATION SUMMARY

Please see the instructions for completing this form. If an item does not apply, enter "N/A".

Part I – Plan Information and Contributions

A. 001. Name of registered pension plan
Pension Plan for Bargaining Unit Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited

B. 002. Registration number
 Canada Revenue Agency: 0555204 Other: NLSP: 024699 / OSFI: 57777

C. 003. Is this plan a designated plan? Yes No

D. 004. Valuation date of report
 YYYY MM DD
 2 0 1 5 1 2 1 6

E. 006. End date of period covered by report
 YYYY MM DD
 2 0 1 6 1 2 1 6

F. 006. Purpose of the report (indicate all reasons for which the report was prepared)

Initial report for a newly established plan
 Regular (triennial or annual) report for an ongoing plan
 Interim report in respect of an amendment to an ongoing plan
 Partial Termination
 Termination
 Conversion
 Other (please explain)

G. Contributions (prior to application of any credits or surplus) for covered period

Periods (see instructions)	Period 1	Period 2	Period 3	Period 4
	YYYY MM DD	YYYY MM DD	YYYY MM DD	YYYY MM DD
007. Period start date	2 0 1 5 1 2 1 6			
008. Period end date	2 0 1 6 1 2 1 6			
Normal cost (defined benefit provision) 009. Members	\$0.00			
010. Employer	\$0.00			
010a. Explicit expense allowance included in employer normal cost above	\$0.00			
Normal cost (money purchase provision) 011. Members	\$0.00			
012. Employer	\$0.00			
Special payments 013. Special payments for going-concern unfunded liability and/or solvency deficiency	\$5,920,836.00			
Fixed contributions 014. Estimated dollar amounts of fixed employer and, if applicable, member contributions (defined benefit provision)	\$0.00			
014a. Estimated dollar amounts of fixed employer and, if applicable, member contributions (money purchase provision)	\$0.00			

Part II – Membership and Actuarial Information

H. Membership Information

	Number	Average Age	Average Pensionable Service	Average Salary	Average Annual Pension
015. Active members	0				
016. Retired members	900	70.1	N/A	N/A	\$9,227.00
017. Other Participants	832	43.1	N/A	N/A	\$3,166.00

I. Actuarial basis for going-concern valuation (see instructions)

020. Asset valuation method
 Market Smoothed Market Book Book and Market combination Other

021. Liability valuation method
 Accrued benefit (unit credit) Entry age normal Individual level premium Aggregate
 Other (specify)

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Protected B when completed

I. Actuarial basis for going-concern valuation (cont'd)

Selected actuarial assumptions
Where a first rate is used, enter the rate under "Ultimate rate" and "NIA" under "Initial rate" and "Number of years."¹

	Initial rate	Number of years ¹	Ultimate rate
025. Active members	%		%
026. Retired members	%		%
027. Rate of indexation	%		%
028. Rate of general wage and salary increase	%		%
029. YMPE escalation rate	%		%
030. Income Tax Regulations' maximum pension limit escalation	%		%
031. Rate of CPI increase	%		%

¹ from valuation date before ultimate rate becomes effective

035. Year Income Tax Regulations' maximum pension limit escalation commences

036. Mortality table

1994 GAM Static 1994 Group Annuity Reserving (GAR) 1994 UP

80% of 1983 GAM Other (specify) _____

036a. Generational Mortality Table
Has an assumption of generational mortality improvements been made? Yes No

036b. Projected Mortality Table
Has a projection of mortality improvements been made? Yes No

036b.(1) If yes, what is the year to which the mortality improvements have been projected (see instructions)?

037. Allowance for promotion, seniority and merit increases

Included in (line 036) above Separate scale based on age or service No allowance

038. Allowance for expenses

038a. Allowance for investment expenses

Implicit Explicit

038b. Allowance for administrative expenses

Implicit Explicit

039. If a multi-employer plan, number of hours of work per member per plan year

040. Was a withdrawal scale used? Yes No

041. Were variable retirement rates used? Yes No

042. If no, what is the assumed retirement age? _____

J. Actuarial basis for solvency valuation

	Initial rate	Select period	Ultimate rate
045. Benefits to be settled by lump sum transfer	2.1 %	10	3.7 %
046. Benefits to be settled by purchase of deferred annuity	%		3.1 %
047. Benefits to be settled by purchase of immediate annuity	%		3.1 %
048. Rate of indexation	0.39 %	10	0.88 %

049. Mortality table 1994 UP Generational 1994 UP Other (specify) CPM-2014 Gen

049a. Year of projection (see instructions)

K. Balance sheet information (DB provisions, see instructions)

050. Market value of assets, adjusted for receivables and payables \$132,380,383.00

051. Amount of contributions receivable included in market value above \$0.00

Going-concern valuation

052. Going-concern assets _____

053. Optional ancillary contributions account balance included in going-concern assets above for a flexible pension plan (if applicable) _____

Going-concern liabilities

050. For active members _____

051. For retired members _____

052. For other participants _____

053. For optional ancillary benefits to be provided under a flexible pension plan (if applicable) _____

054. Other reserve _____

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

K. Balance sheet information (DB provisions, see instructions) (cont'd)	Protected B when completed						
070. Net funded position—surplus/deficit	_____						
071. Additional voluntary contributions	_____						
072. Money purchase assets (if applicable)	_____						
Solvency Valuation							
Complete lines 080 to 100 only if the report contains an explicit solvency valuation							
Solvency Assets							
080. Solvency assets with adjustment for expense provision, if any	\$131,430,383.00						
081. Amount of wind-up expense provision reflected in line 080	\$950,000.00						
082. Optional ancillary contributions account balance included in solvency assets above for a flexible pension plan (if applicable)	\$0.00						
Solvency Liabilities							
080. For active members	\$0.00						
091. For retired members	\$135,420,799.00						
092. For other participants	\$24,494,760.00						
093. For optional ancillary benefits to be provided under a flexible pension plan (if applicable)	\$0.00						
094. Other reserves	- 5898,628.00						
100. Net solvency position—surplus/deficit	- \$27,486,548.00						
If the plan provides benefit increases coming into effect during the period covered by the report but after the valuation date, have these increases been reflected in:							
102. The going-concern liabilities in lines 060 to 064?	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> Yes <input type="checkbox"/> No						
103. The solvency liabilities in lines 080 to 084?	<input checked="" type="checkbox"/> N/A <input type="checkbox"/> Yes <input type="checkbox"/> No						
L. Actuarial gains or losses							
110. Was a gain or loss analysis done?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						
111. If line 110 is yes, indicate the date of the last filed funding valuation report and the net funded position as at that date	<table border="1" style="display: inline-table; border-collapse: collapse;"> <tr> <td style="text-align: center;">YYYY</td> <td style="text-align: center;">MM</td> <td style="text-align: center;">DD</td> </tr> <tr> <td style="text-align: center;">2 0 1 6</td> <td style="text-align: center;">0 1</td> <td style="text-align: center;">0 1</td> </tr> </table> - \$24,443,681.00	YYYY	MM	DD	2 0 1 6	0 1	0 1
YYYY	MM	DD					
2 0 1 6	0 1	0 1					
If line 110 is yes, indicate amount of gain or loss due to:							
112. Interest on surplus (unfunded liability)	- \$551,691.00						
113. special payments made	\$1,573,348.00						
114. amounts used for contribution holiday	\$0.00						
115. change in actuarial assumptions	- \$3,268,422.00						
116. change in the asset valuation method	\$0.00						
117. change in liability valuation method	\$0.00						
118. plan amendments/changes	\$0.00						
119. investment experience	- \$3,270,543.00						
120. retirement experience	\$0.00						
121. mortality experience	\$0.00						
122. withdrawal experience	\$0.00						
123. salary increase experience	\$0.00						
124. optional ancillary contributions forfeited	\$0.00						
Are there major contributing sources other than lines 112 to 124 above (if yes, specify)							
125. Liability Experience	- \$999,868.00						
126. Due to application of annuity purchase proxy of 98%	\$2,885,085.00						
127. all other sources (combined)	\$689,244.00						
M. Subsequent events							
135. Are there any subsequent event(s) that have not been reflected in the valuation? (refer to the SOP)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						
N. Statements of opinion							
136. Does the report include the statements of opinion required by the SOP (data, assumptions, methods, accepted actuarial practice)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No						
136a. Are any of the actuary's statements of opinion qualified?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No						

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Protected B when completed

Part III – Information required by the Financial Services Commission of Ontario

Financial Services Commission of Ontario  Commission des services financiers de l'Ontario

O. Additional valuation information

Going-concern valuation

140. Have escalated adjustments been included in going-concern liabilities? N/A Yes No

Solvency valuation

141. Have any of the excludable benefits been excluded? N/A Yes No

142. If line 141 is yes, enter the total amount of liabilities being excluded

143. With respect to the type of benefits provided under the plan for service after the valuation date, complete the following table:

Provision Type	Benefit Accruals for Service After Valuation Date (Yes/No)	Closed (Yes/No)
Defined Benefit		
Defined Contribution		

144. (I) Has an averaging method been applied to the market value of assets in determining the solvency asset adjustment? Yes No

a. If line (I) is yes, indicate the positive or negative amount by which the solvency assets are adjusted as a result of applying the averaging method

(II) Has the averaging method used in determining the solvency asset adjustment changed since the last valuation? Yes No

If line (II) is yes, complete (II)a or (II)b, as appropriate:

a. The change in method increases solvency asset adjustment by the amount of

b. The change in method decreases solvency asset adjustment by the amount of

P. Miscellaneous

145. Prior year credit balance

146. Transfer ratio (express in decimal format)

Guarantee fund assessment

147. PBGF liabilities

148. PBGF assessment base

149. Amount of additional liability for plant closure and/or permanent layoff benefits as described in clause 37(4)(a)(i)(A) of Regulation 809, R.R.O. 1990, as amended

149a. Number of Ontario plan beneficiaries

Part IV – Information required by the Office of the Superintendent of Financial Institutions Canada

 Office of the Superintendent of Financial Institutions Canada Bureau du surintendant des institutions financières du Canada

Q. Additional solvency valuation information

149a. Adjusted Solvency Ratio at the valuation date	000.83
150b. Adjusted Solvency Ratio one year prior (the prior valuation date)	000.86
150c. Adjusted Solvency Ratio two years prior (the prior second valuation date)	000.96
151. Average Solvency Ratio	
152a. Solvency Liabilities	\$158,916,931.00
152b. Adjusted Solvency Asset Amount	\$131,430,383.00
152c. Solvency Deficiency	\$27,486,548.00
153. Value of the Letters of Credit Included in solvency assets on the valuation date	\$0.00
150. Solvency ratio (express in decimal format)	0.83
162. Liability for active members who are within 10 years of pensionable age and whose entitlement is valued at an interest rate basis stated on line 045	\$0.00
163. Liability for active members who are within 10 years of pensionable age and whose entitlement is valued at an interest rate basis stated on line 046	\$0.00
164. Liability for active members who are not within 10 years of pensionable age	\$0.00

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Protected B when completed

165. Pensionable age:

a. May a member become entitled – with no employer consent required – to an unroduced retirement pension prior to the normal retirement age? Yes No

b. If yes to a., state the applicable age and service conditions:

Active members	Age requirement	Service requirement	Deferred vested members	Age requirement	Service requirement
1) _____	_____	_____	1) _____	065	000
2) _____	_____	_____	2) _____	000	030
3) _____	_____	_____	3) _____	055	015
4) _____	_____	_____	4) _____	075 <i>points</i>	015
5) _____	_____	_____	5) _____	_____	_____

c. Are these benefits reflected in the solvency valuation? N/A Yes No

166. Do the liabilities determined in the report include the impact of one or several plan amendments that affect the value of benefits having accrued prior to the report's valuation date, and which were not included in the prior report? Yes No

167. Does the report account for one or several plan amendments that affect only the cost of benefits that will accrue after the report's valuation date, and which were not included in the prior report? Yes No

168. If the answer to either question 166 or 167 is yes, provide the amendment number and effective date.

Amendment number									
	YYYY	MM	DD						
	Effective date								

Part V – Information required by the Canada Revenue Agency

R. Additional Information

173. Surplus/deficit determined at the valuation date as per the instructions:

173a. Going-concern basis	
173b. Wind-up basis	- \$27,488,548.00
173c. For designated plans, maximum funding valuation basis	

174. Excess surplus determined at the valuation date:

174a. Going-concern basis	
174b. For designated plans, maximum funding valuation basis	

175. For designated plans, employer normal cost determined under the maximum funding valuation basis:

Period 1	
Period 2	
Period 3	
Period 4	

176. Minimum surplus required under applicable pension benefit legislation before contribution holiday:

176a. Going-concern basis	
176b. Wind-up basis	

177. Maximum amount that could be claimed as eligible employer contribution(s) – defined benefit provisions – under subsection 147.2(2) of the *Income Tax Act*:

177a. Unfunded liability	- \$27,488,548.00
177b. Normal cost:	
Period 1	\$0.00
Period 2	
Period 3	
Period 4	

R-26 Unionized Employees Pension Plan Wind-Up Report, December 14, 2016 (cont'd)

Protected B when completed
Retraite Québec

Part VI – Information required by Retraite Québec

S. Additional information

185. Date on which the valuation report was prepared: _____

186. Value of additional obligations arising from an amendment on a funding basis: _____

187. Value of additional obligations arising from an amendment on a solvency basis: _____

188. Surplus assets that can be appropriated to the payment of employer contributions: _____

189. Special amortization payments: _____

190. Total of the letters of credit taken into account in the assets on a solvency basis: _____

191. Pensions insured by an insurer taken into account in the actuarial valuation on a solvency basis: _____

T. Additional information for plans whose employer is a municipality, a municipal housing bureau, an educational institution at the university level, or a childcare service

195. Reserve on a funding basis: _____

196. Provision for adverse deviations on a funding basis: _____

	Present Value	Amortization Payments		
		Period 1	Period 2	Period 3
197. Technical funding deficiency				
198. Improvement funding deficiency				

U. Additional information pertaining to pension plans other than those mentioned in section T

200. Reserve on a solvency basis: _____

201. Provision for adverse deviations on a solvency basis: _____

	Present Value	Amortization Payments		
		Period 1	Period 2	Period 3
202. Funding deficiency				
203. Technical solvency deficiency				
204. Improvement solvency deficiency				

Part VII – Certification by Actuary

As the actuary who signed the funding valuation report (the report), I certify that this completed form accurately reflects the information provided in the report.

Dated this 14 day of 12, 2016

(day) (month) (year)

Signature of actuary

Charbel Abi-Assal
Print or type name of actuary

Société Towers Watson Inc.
Name of firm

514-882-2878
Telephone number

Charbel.Abi-Assal@willistowerswatson.com
Email address*

* Optional information. The Canada Revenue Agency will not communicate on plan specific matters with clients by email, since we cannot guarantee the confidentiality of emailed information.

Personal information is collected under the authority of section 147.2 of the Income Tax Act and is used for the administration of a registered pension plan. It may also be used for any purpose related to the administration or enforcement of the Act such as audit and compliance. Information may also be shared or verified under information-sharing agreements to the extent authorized by law. Under the Privacy Act, individuals have the right to access their personal information and request correction if there are errors or omissions. Refer to Info Source www.cra.gc.ca/sncy/tp/mfsc/mfsc-eng.html, personal information bank CRA PPU 226.

OP-1 Letter from Koskie Minsky to Blakes, August 14, 2015

**KOSKIE
MINSKY** LLP
BARRISTERS & SOLICITORS

August 14, 2015

Via E-Mail

Blake, Cassels & Graydon LLP
600 de Maisonneuve Blvd. W, Suite 2200
Montreal, QC H3A 3J2

**Attention: Bernard Boucher (Montreal)
Milly Chow (Toronto)
Steven Weisz (Toronto)**

Andrew J. Hatnay
Direct Dial: 416-595-2083
Direct Fax: 416-204-2872
ahatnay@kmlaw.ca

Dear Counsel:

**Re: Wabush Mines (CCAA), Québec Court File No. 500-11-048114-157
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining
Company, Managing Agent Arnaud Railway Company and Wabush Lake Railway
Company, Limited Newfoundland Registration Number 021314-000 (the “Salaried
Plan”)
Our File No. 15/1359**

We are the court-appointed Representative Counsel to all non-union employees and retirees of Wabush Mines in its CCAA proceedings. These individuals are also members of the Salaried Plan.

As you are aware, the company reported that as at January 1, 2015, the Salaried Plan is underfunded on a wind up basis by approximately \$18.2 million.

Further, the company has reported that it owes amounts to the Salaried Plan referred to as “Monthly Amortization Payments” in the amount of \$273,218.58 per month, and a “Yearly Catch-Up Amortization Payment” of approximately \$5.5 million (for both the Salaried and Union Plans) which was due for payment in July, 2015.

In the decision of Mr. Justice Hamilton dated June 26, 2015, the court approved the company’s request to not make the Monthly Amortization Payments nor the Yearly Catch-Up Amortization Payment going forward.

Accordingly, the amount of the Monthly Amortization Payments and the proportionate share of the Yearly Catch-Up Amortization Payment attributable to the Salaried Plan are therefore owing to the Salaried Plan and have not been paid by the company.

Statutory deemed trust priorities for members of the Salaried Plan

The Salaried Plan is registered in Newfoundland and thus subject to the Newfoundland *Pension Benefits Act*, 1997, SNL 1996 c.P-4.01 s.1 (“PBA”). It is also our understanding that certain members of the Salaried Plan may be subject to federal jurisdiction making the federal *Pension Benefits Standards Act*, 1985 (R.S.C., 1985, c.32 (2nd Supp.)) (“PBSA”) also applicable.

Both the PBA and the PBSA contain statutory protections for members of underfunded pension plans.

The PBA states:

Amounts to be held in trust

32. (1) An employer ... shall ensure, with respect to a pension plan, that

...

(b) an amount equal to the aggregate of

(i) the normal actuarial cost, and

(ii) any special payments prescribed by the regulations, that have accrued to date; and

(c) all

...

(ii) other amounts due under the plan from the employer that have not been remitted to the pension fund

are kept separate and apart from the employer's own money, *and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.*

(2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from *and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.*

(3) *Where a pension plan is terminated in whole or in part, an employer who is required to pay contributions to the pension fund shall hold in trust for the member or former member or other person with an entitlement under the plan an amount of money equal to employer contributions due under the plan to the date of termination.*

(4) *An administrator of a pension plan has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) and (3).* [emphasis added]

The PBSA states:

8. (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, ***and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:***

...

(b) an amount equal to the aggregate of the following payments that have accrued to date:

- (i) the prescribed payments, and
- (ii) the payments that are required to be made under a workout agreement; and

(c) all of the following amounts that have not been remitted to the pension fund:

...

- (ii) other amounts due to the pension fund from the employer, including any amounts that are required to be paid under subsection 9.14(2) or 29(6).

...

29(6) If the whole of a pension plan is terminated, the employer shall, without delay, pay into the pension fund all amounts that would otherwise have been required to be paid to meet the prescribed tests and standards for solvency referred to in subsection 9(1) and, without limiting the generality of the foregoing, the employer shall pay into the pension fund

(a) ***an amount equal to the normal cost*** that has accrued to the date of the termination;

(b) ***the amounts of any prescribed special payments*** that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(c) the amounts of payments that are required to be made under a workout agreement that are due on termination or would otherwise have become due between the date of the termination and the end of the plan year in which the pension plan is terminated;

(d) all of the following amounts that have not been remitted to the pension fund at the date of the termination:

(i) the amounts deducted by the employer from members' remuneration, and

(ii) other amounts due to the pension fund from the employer; [emphasis added]

As the Monthly Amortization Payments and the proportionate share of the Yearly Catch-Up Amortization Payments have not been paid by Wabush, those amounts are now subject to the deemed trust priorities pursuant to both section 32 of the PBA and section 8 of the PBSA in favour of the Salaried Plan members.

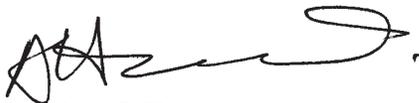
Furthermore, in the event the Salaried Plan is wound up, which we expect to be highly likely in the company's current circumstances, the amount the company owes to the Salaried Plan in respect of the wind up liability is also subject to the PBA deemed trust priority in favour of the plan members.

We are writing to confirm that the above-noted priorities will be asserted on behalf of the Salaried Plan members in respect of the amounts owing by the company to the Salaried Plan and are to be paid from the company's assets ahead of the claims of other creditors (after payment of the court-ordered CCAA charges). As a trust claim, the amounts owing to the Salaried Plan that are subject to the PBA and PBSA deemed trusts have priority over any secured claim that may be claimed by another creditor. Please bear that in mind should any bidder in the current sales process applicable to Wabush seek to assert a "credit bid" predicated on its assertion that it is a first priority secured creditor of Wabush.

Should you have any questions with respect to the above, please do not hesitate to contact the undersigned. Thank you for your attention to this matter.

Yours truly,

KOSKIE MINSKY LLP



Andrew J. Hatnay
AJH:vdI

cc. Nigel Meakin, Steven Bissell, *FTI Consulting* (Monitor)
Sylvain Rigaud, Chrystal Ashby, *Norton Rose Fulbright LLP* (Counsel for the Monitor)
Matthew Gottlieb, *Lax O'Sullivan LLP* (Independent Counsel for the Board of Directors of the Petitioners)
Louis Dumont, *Dentons LLP*, Counsel to Cliffs Mining Company (the DIP Lender)
Grant Moffat, *Thornton Grout Finnigan LLP*, Counsel for Cliffs Mining Company (the DIP Lender)
Pierre Lecavalier, *Department of Justice, Attorney General of Canada* (Counsel to OSFI)
Doug Mitchell, Leslie-Anne Wood, *Irving Mitchell Kalichman* (Counsel to Superintendent of Pensions, Newfoundland and Labrador)
Jean-Francois Beaudry, *Philon Leblanc Beaudry*, (Counsel to Syndicat des Metallos, Section Locale 6285)
Gerry Apostolatos, Langlois Kronstrom Desjardins, (Creditors Quebec North Shore and Labrador Railway Company Inc., Air Inuit Ltd., Metso Shared Services Ltd., Iron Ore Company of Canada, and WSP Canada)

**KOSKIE
MINSKY**^{LLP}
BARRISTERS & SOLICITORS

Inc.)
Nicholas Scheib, *Scheib Legal*
Ari Kaplan, *Koskie Minsky LLP*
Service List



February 11, 2014

Cliffs Natural Resources Inc. Announces Significant Reduction in 2014 Capital Expenditures



- Bloom Lake Mine Expansion Capital Curtailed; Cliffs to Run Phase I Operation Only
- Company Will Idle Wabush Mine by End of First-Quarter 2014
- Cash Flow Priorities to Drive Near-term Capital Allocation Decisions

CLEVELAND - Feb. 11, 2014 - Cliffs Natural Resources Inc. (NYSE: CLF) (Paris: CLF) announced today it expects its full-year 2014 capital expenditures to be in a range of \$375 - \$425 million, a greater than 50% year-over-year reduction from its full-year 2013 capital spending of \$862 million. This decrease is driven by a significant reduction in the Company's expansion and tailings and water management capital spending at its Bloom Lake Mine in Québec. Cliffs also announced that it will idle production at its Wabush Mine in the Province of Newfoundland and Labrador by the end of the first quarter of 2014.

Gary Halverson, president and chief operating officer, said, "Sharper capital allocation must drive our decisions. Today's announcement to reduce overall capital spending is an important first step." Mr. Halverson further noted that, "Bloom Lake's ore body is well suited for a global market that increasingly values quality and diversification of supply, but it also requires time and capital to be properly developed, built out, and operated to realize its full potential. Ultimately we must extract the highest value from Bloom Lake for our shareholders and operating Phase I preserves all possible options for this asset. Given the wide range of outlooks for iron ore prices, we reduced our 2014 capital expenditures at Bloom Lake Mine as we evaluate the best alternatives for this asset as part of our overall focus on enhancing value for shareholders."

Bloom Lake Mine

In the current pricing environment, Cliffs expects to produce and sell 5.5 - 6.5 million tons from Bloom Lake Mine's first phase in 2014, which is in line with full-year 2013 results. Cliffs expects Bloom Lake Mine's full-year 2014 cash costs to be \$85 - \$90 per ton versus fourth-quarter 2013's results of \$89 per ton. Cliffs indicated that it would idle Phase I if pricing significantly decreased for an extended period of time. With the Phase II expansion indefinitely suspended, the Company has made adjustments to various components of the mine plan, largely in the project's tailings and water management strategy. This has enabled Cliffs to defer and lower its year-over-year capital spending while continuing to operate Phase I.

Cliffs expects Bloom Lake Mine's full-year 2014 capital expenditures to be approximately \$200 million. This is comprised of \$65 million in carryover capital spending from 2013, with required license-to-operate and sustaining capital expenditures making up the remainder.

Wabush Mine

Cliffs' Wabush Scully Mine in Newfoundland and Labrador will be idled by the end of the first quarter of 2014. With costs unsustainably high, including fourth-quarter 2013 cash costs of \$143 per ton, it is not economically viable to continue running this operation. As previously disclosed, Cliffs idled Wabush Mine's Pointe Noire pellet plant in June of 2013. Approximately 500 employees at both the Wabush Scully Mine and the Pointe Noire rail and port operation in Québec will be impacted by these actions.

Gary Halverson continued, "Over the past three years we have seen pricing drop and Wabush Mine's costs escalate all while we have made significant capital investments into the operation. This is a regrettable but necessary decision. We simply cannot continue operating a high-cost mine while pricing and freight markets are so volatile. We do value the hard work of all our employees and are committed to easing the transition for the people and communities, including providing severance and

REPS-1 Press Releases by Cliffs Natural Resources, 2014-2015 (cont'd)

other support services as a result of this decision."

Cliffs anticipates incurring idle costs related to Wabush Mine of approximately \$100 million in 2014. Also, due to the idling of Wabush Mine, Cliffs' will record impairment and write-off charges of approximately \$183 million, which will be reflected in its fourth-quarter 2013 results. Cliffs will continue operating the port at Pointe Noire in Sept-Îles, Québec.

2014 Capital Allocation

Cliffs expects its full-year 2014 consolidated capital expenditures to be \$375 - \$425 million. This includes approximately \$100 million in cash-carryover capital, with the remainder primarily comprised of sustaining and license-to-operate capital. The first priority for any additional cash generated in excess of consolidated capital expenditures and dividend payments during the year will be to lower the Company's net debt position. Cliffs is in the process of evaluating a range of options for the next best use of the capital, all of which must have attractive return rates and drive long-term shareholder value.

Mr. Halverson added, "We will adhere to a return-driven approach to allocating capital. This will establish a prudent balance among key priorities relating to liquidity management, business investment, and capital allocation initiatives that provide for a more direct return to enhance long-term shareholder value."

Conference Call Information

As previously disclosed, Cliffs Natural Resources Inc. intends on announcing its fourth-quarter and full-year 2013 results after-market close on Thursday, Feb. 13, 2014. Cliffs will host a conference call to discuss the results at 10:00 a.m. ET on Friday, Feb. 14, 2014. The call will be broadcast live and archived on Cliffs' website: www.cliffsnaturalresources.com.

About Cliffs Natural Resources Inc.

Cliffs Natural Resources Inc. is an international mining and natural resources company. A member of the S&P 500 Index, the Company is a major global iron ore producer and a significant producer of high- and low-volatile metallurgical coal. Cliffs' strategy is to continually achieve greater scale and diversification in the mining industry through a focus on serving the world's largest and fastest growing steel markets. Driven by the core values of social, environmental and capital stewardship, Cliffs associates across the globe endeavor to provide all stakeholders operating and financial transparency.

The Company is organized through a global commercial group responsible for sales and delivery of Cliffs' products and a global operations group responsible for the production of the minerals the Company markets. Cliffs operates iron ore and coal mines in North America and an iron ore mining complex in Western Australia.

Forward-Looking Statements

This release contains forward-looking statements within the meaning of the federal securities laws. Although the Company believes that its forward-looking statements are based on reasonable assumptions, such statements are subject to risks and uncertainties relating to Cliffs' operations and business environment that are difficult to predict and may be beyond Cliffs' control. Such uncertainties and factors may cause actual results to differ materially from those expressed or implied by forward-looking statements for a variety of reasons including without limitation: trends affecting our financial condition, results of operations or future prospects, particularly the continued volatility of iron ore and coal prices; uncertainty or weaknesses in global economic conditions, including downward pressure on prices, reduced market demand, increases in supply and any slowing of the economic growth rate in China; our ability to successfully identify and consummate any strategic investments or capital projects and complete planned divestitures; our ability to successfully integrate acquired companies into our operations and achieve post-acquisition synergies, including without limitation, Cliffs Quebec Iron Mining Limited (formerly Consolidated Thompson Iron Mining Limited); our ability to cost effectively achieve planned production rates or levels; changes in sales volume or mix; the outcome of any contractual disputes with our customers, joint venture partners or significant energy, material or service providers or any other litigation or arbitration; the impact of price-adjustment factors on our sales contracts; the ability of our customers and joint venture partners to meet their obligations to us on a timely basis or at all; our ability to reach agreement with our iron ore customers regarding modifications to sales contract pricing escalation provisions to reflect a shorter-term or spot-based pricing mechanism; our actual economic iron ore and coal reserves or reductions in current mineral estimates, including whether any mineralized material qualifies as a reserve; the impact of our customers using other methods to produce steel or reducing their steel production; events or circumstances that could impair or adversely impact the viability of a mine and the carrying value of associated assets, as well as any resulting impairment charges; the results of prefeasibility and feasibility studies in relation to development projects; impacts of existing and increasing governmental regulation and related costs and liabilities, including failure to receive or maintain required operating and environmental permits, approvals, modifications or other authorization of, or from, any governmental or regulatory entity and costs related to implementing improvements to ensure compliance with regulatory changes; uncertainties associated with natural disasters, weather conditions, unanticipated geological conditions, supply or price of energy, equipment failures and other unexpected events; adverse changes in currency values, currency exchange rates, interest rates and tax laws; availability of capital and our ability to maintain adequate liquidity and successfully implement our financing plans; our ability to maintain appropriate relations with

REPS-1 Press Releases by Cliffs Natural Resources, 2014-2015 (cont'd)

unions and employees and enter into or renew collective bargaining agreements on satisfactory terms; risks related to international operations; the potential existence of significant deficiencies or material weakness in our internal controls over financial reporting; problems or uncertainties with leasehold interests, productivity, tons mined, transportation, mine-closure obligations, environmental liabilities, employee-benefit costs and other risks of the mining industry; and other factors and risks that are set forth in the Company's most recently filed reports with the Securities and Exchange Commission. The information contained herein speaks as of the date of this release and may be superseded by subsequent events. Except as may be required by applicable securities laws, we do not undertake any obligation to revise or update any forward-looking statements contained in this release.

Important Additional Information

Cliffs, its directors and certain of its executive officers may be deemed to be participants in the solicitation of proxies from Cliffs stockholders in connection with the matters to be considered at Cliffs' 2014 Annual Meeting. Cliffs intends to file a proxy statement with the U.S. Securities and Exchange Commission (the "SEC") in connection with any such solicitation of proxies from Cliffs stockholders. **CLIFFS STOCKHOLDERS ARE STRONGLY ENCOURAGED TO READ ANY SUCH PROXY STATEMENT AND ACCOMPANYING WHITE PROXY CARD WHEN THEY BECOME AVAILABLE AS THEY WILL CONTAIN IMPORTANT INFORMATION.** Information regarding the ownership of Cliffs' directors and executive officers in Cliffs stock, restricted stock and options is included in their SEC filings on Forms 3, 4 and 5. More detailed information regarding the identity of potential participants, and their direct or indirect interests, by security holdings or otherwise, will be set forth in the proxy statement and other materials to be filed with the SEC in connection with Cliffs' 2014 Annual Meeting. Information can also be found in Cliffs' Annual Report on Form 10-K for the year ended Dec. 31, 2012, filed with the SEC on Feb. 12, 2013. Stockholders will be able to obtain any proxy statement, any amendments or supplements to the proxy statement and other documents filed by Cliffs with the SEC for no charge at the SEC's website at www.sec.gov. Copies will also be available at no charge at Cliffs' website at www.cliffsnr.com or by contacting Carolyn Cheverine, Vice President, General Counsel & Secretary at (216) 694-7605.

SOURCE: Cliffs Natural Resources Inc.

News releases and other information on the Company are available on the Internet at:
<http://www.cliffsnaturalresources.com>

Follow Cliffs on Twitter at: <http://twitter.com/CliffsNR>.

INVESTOR RELATIONS AND GLOBAL COMMUNICATIONS CONTACTS:

Jessica Moran	Patricia Persico
Director, Investor Relations	Director, Global Communications
(216) 694-6532	(216) 694-5316 office

EASTERN CANADA MEDIA RELATIONS CONTACTS:

Arlène Beaudin	Annie Desrosiers
District Manager, Public Affairs	Directeur Développement durable et Relation avec les communautés
Directrice, affaires publiques	Manager, Sustainability and Community Relations
T 418.964.3041	Annie.Desrosiers@CliffsNR.com
C 418.965.0287	P 418.287.2000 extension 2002
	C 709.280.5702

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NEWS RELEASE**Cliffs Natural Resources Inc. to Pursue Exit Options
for its Eastern Canadian Operations**

CLEVELAND – Nov. 19, 2014 – Cliffs Natural Resources Inc. (NYSE: CLF) announced today that it is pursuing exit options for its Eastern Canadian iron ore operations which may result in the closure of the Bloom Lake mine.

Lourenco Goncalves, Cliffs' Chairman, President and Chief Executive Officer said, "Despite the continued interest of the prospective equity partners in Bloom Lake and in its high quality ore, the potential investment is not achievable within a time frame acceptable to Cliffs. With expansion no longer viable, we have shifted our focus to executing an exit option for Eastern Canadian operations that minimizes the cash outflows and associated liabilities."

The Company previously disclosed that to make Bloom Lake viable, the development of the mine's Phase 2 was necessary. The investment was estimated to cost \$1.2 billion. In the event of a closure, the estimated closure costs are expected to be in the range of \$650 million to \$700 million in the next five years.

Cliffs stated also that the Company's subsidiary, Cliffs Quebec Iron Mining Limited, along with Bloom Lake General Partner Limited and The Bloom Lake Iron Ore Limited Partnership, recently lost an arbitration claim they filed against a former Bloom Lake customer relating to the August 2011 termination of an iron ore sales agreement. In November 2014, the arbitrators decided in favor of the former customer and awarded it damages in an amount of approximately \$71 million as well as attorneys' fees and accrued interest from the date of termination of the offtake agreement in August 2011. Cliffs Quebec Iron Mining Limited is currently reviewing the award to determine appropriate next steps.

About Cliffs Natural Resources Inc.

Cliffs Natural Resources Inc. is a leading mining and natural resources company. The Company is a major iron ore producer in the Great Lakes region and a significant producer of high-and low-volatile metallurgical coal in the U.S. Additionally, Cliffs operates iron ore mines in Eastern Canada and an iron mining complex in Western Australia. Driven by the core values of social, environmental and capital stewardship, Cliffs' employees endeavor to provide all stakeholders

operating and financial transparency. News releases and other information on the Company are available at: <http://www.cliffsnaturalresources.com>.

Forward-Looking Statements

This release contains forward-looking statements within the meaning of the federal securities laws. Although the Company believes that its forward-looking statements are based on reasonable assumptions, such statements are subject to risks and uncertainties relating to Cliffs' operations and business environment that are difficult to predict and may be beyond Cliffs' control. Such uncertainties and factors may cause actual results to differ materially from those expressed or implied by forward-looking statements for a variety of reasons including without limitation: our ability to successfully execute an exit option for Bloom Lake mine that minimizes the cash outflows and associated liabilities of our Canadian operations; trends affecting our financial condition, results of operations or future prospects, particularly the continued volatility of iron ore and coal prices; our actual levels of capital spending; uncertainty or weaknesses in global economic conditions, including downward pressure on prices, reduced market demand and any slowing of the economic growth rate in China; our ability to successfully integrate acquired companies into our operations and achieve post-acquisition synergies; our ability to successfully identify and consummate any strategic investments and complete planned divestitures; the outcome of any contractual disputes with our customers, joint venture partners or significant energy, material or service providers or any other litigation or arbitration; the ability of our customers and joint venture partners to meet their obligations to us on a timely basis or at all; our ability to reach agreement with our iron ore customers regarding any modifications to sales contract provisions; the impact of price-adjustment factors on our sales contracts; changes in sales volume or mix; our actual economic iron ore and coal reserves or reductions in current mineral estimates, including whether any mineralized material qualifies as a reserve; the impact of our customers using other methods to produce steel or reducing their steel production; events or circumstances that could impair or adversely impact the viability of a mine and the carrying value of associated assets; the results of prefeasibility and feasibility studies in relation to projects; impacts of existing and increasing governmental regulation and related costs and liabilities, including failure to receive or maintain required operating and environmental permits, approvals, modifications or other authorization of, or from, any governmental or regulatory entity and costs related to implementing improvements to ensure compliance with regulatory changes; our ability to cost-effectively achieve planned production rates or levels; uncertainties associated with natural disasters, weather conditions, unanticipated geological conditions, supply or price of energy, equipment failures and other unexpected events; adverse changes in currency values, currency exchange rates, interest rates and tax laws; availability of capital and our ability to maintain adequate liquidity and successfully implement our financing plans; our ability to maintain appropriate relations with unions and employees and enter into or renew collective bargaining agreements on satisfactory terms; risks related to international operations; availability of capital equipment and component parts; the potential existence of significant deficiencies or material weakness in our internal control over financial reporting; problems or uncertainties with productivity, tons mined, transportation, mine-closure obligations, environmental liabilities, employee-benefit costs and other risks of the mining industry; and other factors and risks that are set forth in the Company's most recently filed reports with the

REPS-1 Press Releases by Cliffs Natural Resources, 2014-2015 (*cont'd*)

3

U.S. Securities and Exchange Commission (the "SEC"). The information contained herein speaks as of the date of this release and may be superseded by subsequent events. Except as may be required by applicable securities laws, we do not undertake any obligation to revise or update any forward-looking statements contained in this release.

Contact:

Patricia Persico
Director, Global Communications
(216) 694-5316

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For Immediate Release

Cliffs Natural Resources Inc. Announces Decision on Bloom Lake Mine

Commences Formal Canadian Restructuring Proceedings

CLEVELAND – Jan. 27, 2015 – Cliffs Natural Resources Inc. (**NYSE: CLF**) announced today that Bloom Lake General Partner Limited and certain of its affiliates, including Cliffs Quebec Iron Mining ULC (collectively, “Bloom Lake Group”) commenced restructuring proceedings in Montreal, Quebec, under the Companies’ Creditors Arrangement Act (Canada) (“CCAA”). The Bloom Lake Group had recently suspended operations and for several months has been exploring options to sell certain of its Canadian assets, among other initiatives.

The decision to seek protection under the CCAA was based on a thorough legal and financial analysis of the options available to the Bloom Lake Group. The Bloom Lake Group is no longer generating any revenues and is not able to meet its obligations as they come due. The Initial CCAA Order will address the Bloom Lake Group’s immediate liquidity issues and permit the Bloom Lake Group to preserve and protect its assets for the benefit of all stakeholders while restructuring and sale options are explored.

As part of the CCAA process, the Court has appointed FTI Consulting Canada Inc. as the Monitor. The Monitor’s role in the CCAA process is to monitor the activities of the Bloom Lake Group and provide assistance to the Bloom Lake Group and its stakeholders in respect of the CCAA process.

Lourenco Goncalves, Chairman of the Board, President and Chief Executive Officer of Cliffs Natural Resources Inc. said, “For several months, we have been seeking equity investors and exploring sale options for Bloom Lake including working collaboratively with Investissement Québec. We support the decision by the directors of the Bloom Lake Group to conduct a restructuring process under the supervision of the Court.”

Cliffs Natural Resources Inc. will file a Current Report on Form 8-K that provides pro forma financial information reflecting the deconsolidation of the Bloom Lake Group. Additional information regarding CCAA proceedings will be available on the Monitor’s website at <http://cfcanada.fticonsulting.com/bloomlake>.

About Cliffs Natural Resources Inc.

Cliffs Natural Resources Inc. is a leading mining and natural resources company. The Company is a major supplier of iron ore pellets to the U.S. steel industry from its mines and pellet plants located in Michigan and Minnesota. Cliffs also produces low-volatile metallurgical coal in the U.S. from its mines located in West Virginia and Alabama. Additionally, Cliffs operates an iron ore mining complex in Western Australia and owns two non-operating iron ore mines in Eastern

Canada. Driven by the core values of social, environmental and capital stewardship, Cliffs' employees endeavor to provide all stakeholders operating and financial transparency.

News releases and other information on the Company are available at:
<http://www.cliffsnaturalresources.com>.

Forward-Looking Statements

This release contains forward-looking statements within the meaning of the federal securities laws. Although the Company believes that its forward-looking statements are based on reasonable assumptions, such statements are subject to risks and uncertainties relating to Cliffs' operations and business environment that are difficult to predict and may be beyond Cliffs' control. Such uncertainties and factors may cause actual results to differ materially from those expressed or implied by forward-looking statements for a variety of reasons including without limitation: our ability to successfully execute an exit option for Bloom Lake mine that minimizes the cash outflows and associated liabilities of our Canadian operations including the CCAA process; trends affecting our financial condition, results of operations or future prospects, particularly the continued volatility of iron ore and coal prices; our actual levels of capital spending; uncertainty or weaknesses in global economic conditions, including downward pressure on prices, reduced market demand and any slowing of the economic growth rate in China; our ability to successfully identify and consummate any strategic investments and complete planned divestitures; the outcome of any contractual disputes with our customers, joint venture partners or significant energy, material or service providers or any other litigation or arbitration; the ability of our customers and joint venture partners to meet their obligations to us on a timely basis or at all; our ability to reach agreement with our iron ore customers regarding any modifications to sales contract provisions; the impact of price-adjustment factors on our sales contracts; changes in sales volume or mix; our actual economic iron ore and coal reserves or reductions in current mineral estimates, including whether any mineralized material qualifies as a reserve; the impact of our customers using other methods to produce steel or reducing their steel production; events or circumstances that could impair or adversely impact the viability of a mine and the carrying value of associated assets; the results of prefeasibility and feasibility studies in relation to projects; impacts of existing and increasing governmental regulation and related costs and liabilities, including failure to receive or maintain required operating and environmental permits, approvals, modifications or other authorization of, or from, any governmental or regulatory entity and costs related to implementing improvements to ensure compliance with regulatory changes; our ability to cost-effectively achieve planned production rates or levels; uncertainties associated with natural disasters, weather conditions, unanticipated geological conditions, supply or price of energy, equipment failures and other unexpected events; adverse changes in currency values, currency exchange rates, interest rates and tax laws; availability of capital and our ability to maintain adequate liquidity and successfully implement our financing plans; our ability to maintain appropriate relations with unions and employees and enter into or renew collective bargaining agreements on satisfactory terms; risks related to international operations; availability of capital equipment and component parts; the potential existence of significant deficiencies or material weakness in our internal control over financial reporting; problems or uncertainties with productivity, tons mined, transportation, mine-closure obligations, environmental liabilities, employee-benefit costs and other risks of the mining industry; and other factors and risks that are set forth in the Company's most recently filed reports with the U.S. Securities and Exchange Commission. The information contained herein speaks as of the date of this release and may be superseded by subsequent events. Except as may be required by applicable securities laws, we do not undertake any obligation to revise or update any forward-looking statements contained in this release.

REPS-1 Press Releases by Cliffs Natural Resources, 2014-2015 (*cont'd*)

Contact:

Patricia Persico
Director, Global Communications
(216) 694-5316

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REPS-3 Pension Plan Annual Information Return, 2013-2014



Form 2
Registered Pension Plan
Annual Information Return
 (Please read the instructions for Annual Information Returns before completing the Return)

Service NL
 Pension Benefit Standards Division
 2nd Floor, West Block, Confederation Bldg
 P. O. Box 8700
 St. John's, NL, A1B 4J6
 Telephone: (709) 729-1039
 Facsimile: (709) 729-3205

1 Title of pension plan and registration number

A. Official name of plan CONTRIBUTORY PENSION PLAN FOR SALARIED EMPLOYEES OF WABUSH MINES, CLIFFS MENING COMPANY, MANAGING AGENT	
B. Carrier and policy or trust number, if any CIBC MELLON TRUST COMPANY ACCT WHMF100-000 AND SUNLIFE ASSURANCE CO. #66534 AND #66535	
C. Provincial registration number 021314-000	D. Canada Revenue Agency registration number 0343558

2 Name and address of plan administrator (see instructions)

A. Name PENSION COMMITTEE		
B. Contact name KURT J. HOLLAND, DIRECTOR - COMPENSATION AND BENEFITS		
C. Address of head office C/O CLIFFS NATURAL RESOURCES INC. 200 B PUBLIS SQUARE, SUITE 3300		
City CLEVELAND	Province STATE: OH	Postal code 44114-2315
D. Mailing address in Canada if other than 2C		
City	Province	Postal code
E. Telephone number US: 216-694-5505, CAN: 418-964-3011	F. Email Address KURT.HOLLAND@CLIFFS.NR.COM	

3 Location of books and records, same as 2C above, or

Address		
City	Province	Postal code

4 End of plan year under review (see instructions)

A. YYYY / MM / DD 2013 / 12 / 31	B. Number of months in the plan year: 12 months <input checked="" type="checkbox"/> Other <input type="checkbox"/> _____ (not to exceed 12 months)
-------------------------------------	---

5 Number of employers in the plan

How many employers participated in the plan at the end of the plan year? 3

6 Changes in the list of participating employers

A. Have there been any changes to the list of employers covered by this pension plan since the last annual information return (or since the application for registration, if this is the first annual information return)?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
B. If "yes", enter, in the appropriate subdivision below, the name and address of each employer and indicate whether it is an "addition" or "deletion".		
(i) Employers associated through ownership		
(ii) Employers associated only through nature of business		

PRIVACY NOTICE

Under authority of the Pension Benefits Act, 1997, personal information is collected by the Pension Benefit Standards Division in order to perform annual supervision of pension plans. This information is kept confidential and handled as required by the Access to Information and Protection of Privacy (ATIPP) Act. If you have any questions about the collection or use of this information please contact us at: Service NL, Pension Benefit Standards Division, P. O. Box 8700, St. John's, NL A1B 4J6 or by calling (709) 729-1039.

Continued on Page 2

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REPS-3 Pension Plan Annual Information Return, 2013-2014 (cont'd)

7 Plan amendments

A. Were any amendments made to this pension plan or fund during the plan year under review?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
B. If "yes", have the amendments been submitted to the department? (see instructions if pension plan is established by virtue of a collective agreement or decree.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C. Have all eligible employees, members and affected former members been informed of plan amendments?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
D. If "no", please explain		

8 Cessation of contributions/benefit accrual

A. Did a cessation of contributions or benefit accrual occur during the plan year?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
If "yes", what is: B. Effective date of cessation Y Y Y Y M M D D C. Date of final distribution of funds Y Y Y Y M M D D		
D. Has the plan membership been affected by the discontinuation or sale of all or part of an employer's business operations? Yes <input type="checkbox"/> No <input type="checkbox"/>		

9 Current service cost (see instructions)

	DC	DB	DC
A. Member contributions accrued	\$ 700,535	\$ 2,060,387	1,401,070
B. Additional voluntary contributions	\$	\$ ()	
C. Member amounts accrued in previous years and remitted in current year	\$	\$	
D. Member amounts accrued in current year but not remitted by year end	\$	\$	
E. Employer contributions accrued			
F. Less: Amounts credited from surplus or forfeitures (explain)			
G. Employer amounts accrued in previous years and remitted in current year			
H. Employer amounts accrued in current year but not remitted by year end			
I. Remarks:			

10 Special payments for defined benefit plans (see instructions)

Amount of special payments paid into the pension plan or fund during the plan year (not applicable to money purchase pension plans)	
A. Unfunded liability payments remitted \$ 0	B. Solvency deficiency payments remitted \$ 1,703,743

11 Contribution sufficiency (see instructions)

A. Were the payments shown in sections 9 and 10 above in accordance with the plan terms or the last actuarial report filed with the department?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
B. If "no", please explain		

12 Reconciliation of plan assets (see instructions)

	DB	DC	TOTAL
A. Market value of plan assets at beginning of the plan year	\$ 76,212,036	11,835,143	88,047,179
B. Amount transferred in from other registered plans	\$ -	-	-
C. Total employer contributions remitted (sum of 9E to 9G, less 9H, plus 10A and 10B)	\$ 3,764,130	1,401,070	5,165,200
D. Total member contributions remitted (sum of 9A to 9C, less 9D)	\$ -	700,535	700,535
E. Investment earnings (losses) net of all expenses	\$ 10,533,776	1,591,108	12,124,884
F. Less: Benefits paid directly from the plan	\$ (6,257,752)	809,901	(7,067,653)
G. Less: Benefits transferred to other registered plans	\$ (-)	1,267,504	(1,267,504)
H. Market value of plan assets at plan year end (sum of A to G)	\$ 84,252,190	13,450,451	97,702,641
I. Book value of plan assets at plan year end	\$ 82,777,352	13,430,451	46,227,803

REPS-3 Pension Plan Annual Information Return, 2013-2014 (cont'd)

13 Reconciliation of plan members (see instructions)

A. Number of plan members at previous plan year end	240
B. Add: New entrants, i.e., employees joining the plan during the plan year	0
C. Subtract: Retirements during the plan year	(4)
D. Subtract: Deaths during the plan year	(0)
E. Subtract: Terminations during the plan year	(46)
F. Number of plan members at plan year end (sum of A to E)	190

14 Plan membership by area of employment (see instructions)

Area of employment	Plan members		Number of members from columns (a) and (b) working in "included employment"
	(a) Male	(b) Female	
Newfoundland and Labrador	81	20	101
Prince Edward Island			
Nova Scotia			
New Brunswick			
Québec	70	19	89
Ontario			
Manitoba			
Saskatchewan			
Alberta			
British Columbia			
Yukon			
Northwest Territories			
Nunavut			
Outside Canada			
Total	151	39	190

15 Former members (see instructions)

Number of former members who have ceased membership or retired (excluding persons for whom individual annuities have been purchased)	
A. Pensioners and beneficiaries	320
B. Vested former members entitled to deferred pensions	177

**Defined benefit plans – complete questions 16 – 17
All other plans – go to Canada Revenue Agency Schedule**

16 Adjustments to pension benefits (see instructions)

Have adjustments been made to pensions in pay or deferred pension benefits during the plan year under review?

A. No

B. Yes - (in accordance with a requirement of the plan for regular adjustment of benefits)

C. Yes - (pursuant to a collective agreement)

D. Yes - (voluntarily by the employer)

E. Yes - other (describe) BILL 102 INDEXATION FOR QC MEMBERS OF THE PLAN

17 Basis for adjustment (see instructions)

A. Full Consumer Price Index (CPI)

B. Partial CPI

C. Based on excess interest earnings

D. Percentage increase _____ % (not based on CPI)

E. Flat dollar increase \$ _____ annually

F. Other method (specify) _____

REPS-3 Pension Plan Annual Information Return, 2013-2014 (cont'd)

	Canada Revenue Agency Agence du revenu du Canada	<h2 style="margin: 0;">Canada Revenue Agency Schedule</h2>														
1	How many active members at plan year end were persons connected with the employer? <u>0</u>															
Specified multi-employer plans and multi-employer plans, go to question 5. Other plans, continue with question 2.																
2	Did any member of this plan participate: in any other Registered Pension Plan (RPP) or Deferred Profit-sharing Plan (DPSP) provided by this plan sponsor? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> or; in an RPP or DPSP of any other sponsor who does not deal at arm's length with this sponsor? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>															
3	Have any connected persons joined or left the plan in the plan year? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>															
4	In the plan year, has a person or group acquired control of the corporation that is sponsoring the pension plan? N/A <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>															
5	Actuarial liabilities resulting from plan obligations DB: 81,414,283 DC: 10,620,112															
6	Date of actuarial liability assessment <table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td>Y</td><td>Y</td><td>Y</td><td>M</td><td>M</td><td>D</td><td>D</td> </tr> <tr> <td>2</td><td>0</td><td>1</td><td>1</td><td>0</td><td>1</td><td>1</td> </tr> </table>		Y	Y	Y	M	M	D	D	2	0	1	1	0	1	1
Y	Y	Y	M	M	D	D										
2	0	1	1	0	1	1										
Money purchase plans and specified multi-employer plans, go to "certification". Other plans, continue with question 7.																
7	Were any plan members provided with Post-1989 Past-Service Benefits in the plan year? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>															
8	Have any plan members who are connected persons been provided with Pre-1992 Past-Service Benefits in the plan year? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>															

Certification

As an authorized officer of the administrator of the pension plan noted above, I hereby certify that to the best of my knowledge and belief,

- the contributions paid to the plan have been at least equal to those required by the applicable pension benefits legislation.
- the plan and fund have been administered in accordance with the terms of the applicable pension benefits legislation.
- the administrator has established a written statement of investment policies and procedures in accordance with Section 39 of the *Pension Benefits Act Regulations*.
- the statement of investment policies and procedures complies with Section 39 of the *Pension Benefits Act Regulations*.
- during the plan year under review, the assets of the pension plan were invested in accordance with Section 39 of the *Pension Benefits Act Regulations*.
- the administrator has reviewed the statement of investment policies and procedures during the plan year under review.
- the details entered on this Annual Information Return are true, correct and complete.
- the plan complies with and is administered in accordance with sections 147.1, 147.2, and 147.3 of the *Income Tax Act* (Canada) and the related Regulations.

_____ **KURT J. HOLLAND** _____
 Signature Name in Block Letters Date

DIRECTOR - COMPENSATION AND BENEFITS **CLIFFS MENDING COMPANY, MANAGING AGENT OF**
 Title of Person Company **WABASH MENDING**

NUMBER OF PLAN MEMBERS * 0 - 19 20 - 999 1,000 AND OVER	FEE PAYABLE \$150.00 \$7.50 PER MEMBER \$7,500.00
*Number of Plan Members means the total number of plan members employed in any province or territory of Canada, excluding former members.	

For Office Use Only

Remittance: \$ _____	Date of Receipt: _____
Receipt No: _____	Processed By: _____

REPS-3 Pension Plan Annual Information Return, 2013-2014 (cont'd)



Form 2
Registered Pension Plan
Annual Information Return
 (Please read the instructions for Annual Information Returns before completing the Return)

Service NL
 Pension Benefit Standards Division
 2nd Floor, West Block, Confederation Bldg
 P. O. Box 8700
 St. John's, NL, A1B 4J6
 Telephone: (709) 729-1039
 Facsimile: (709) 729-3205

1 Title of pension plan and registration number

A. Official name of plan Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent	
B. Carrier and policy or trust number, if any CIBC Mellon Trust Company Acct WHMF100-000 and Sun Life Assurance Co # 66534 and # 66535	
C. Provincial registration number 021314-000	D. Canada Revenue Agency registration number 0343558

2 Name and address of plan administrator (see instructions)

A. Name Pension Committee		
B. Contact name Kurt J. Holland, Director - Compensation and Benefits		
C. Address of head office c/o Cliffs Natural Resource Inc. 200 Public Square, Suite 3300		
City Cleveland	Province State: OH	Postal code 44114-2544
D. Mailing address in Canada if other than 2C		
City	Province	Postal code
E. Telephone number US: 216-694-5505	F. Email Address Kurt.Holland@CliffsNR.com	

3 Location of books and records, same as 2C above, or

Address		
City	Province	Postal code

4 End of plan year under review (see instructions)

A. YYYY / MM / DD 2014 / 12 / 31	B. Number of months in the plan year: 12 months <input checked="" type="checkbox"/> Other <input type="checkbox"/> (not to exceed 12 months)
-------------------------------------	---

5 Number of employers in the plan

How many employers participated in the plan at the end of the plan year? 1

6 Changes in the list of participating employers

A. Have there been any changes to the list of employers covered by this pension plan since the last annual information return (or since the application for registration, if this is the first annual information return)? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
B. If "yes", enter, in the appropriate subdivision below, the name and address of each employer and indicate whether it is an "addition" or "deletion".
(i) Employers associated through ownership
(ii) Employers associated only through nature of business

PRIVACY NOTICE

Under authority of the Pension Benefits Act, 1997, personal information is collected by the Pension Benefit Standards Division in order to perform annual supervision of pension plans. This information is kept confidential and handled as required by the Access to Information and Protection of Privacy (ATIP) Act. If you have any questions about the collection or use of this information please contact us at: Service NL, Pension Benefit Standards Division, P. O. Box 8700, St. John's, NL A1B 4J6 or by calling (709) 729-1039.

Continued on Page 2

REPS-3 Pension Plan Annual Information Return, 2013-2014 (cont'd)

7 Plan amendments

A. Were any amendments made to this pension plan or fund during the plan year under review?	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
B. If "yes", have the amendments been submitted to the department? (see instructions if pension plan is established by virtue of a collective agreement or decree.)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
C. Have all eligible employees, members and affected former members been informed of plan amendments?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
D. If "no", please explain		

8 Cessation of contributions/benefit accrual

A. Did a cessation of contributions or benefit accrual occur during the plan year?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If "yes", what is:	B. Effective date of cessation Y Y Y Y M M D D	C. Date of final distribution of funds Y Y Y Y M M D D
D. Has the plan membership been affected by the discontinuation or sale of all or part of an employer's business operations?		
Yes <input type="checkbox"/> No <input type="checkbox"/>		

9 Current service cost (see instructions)

	DC	DB		DC	DB
A. Member contributions accrued	\$ 399,879	0	E. Employer contributions accrued	\$ 799,757	1,536,131
B. Additional voluntary contributions	\$		F. Less: Amounts credited from surplus or forfeitures (explain)	\$ ()	
C. Member amounts accrued in previous years and remitted in current year	\$		G. Employer amounts accrued in previous years and remitted in current year	\$	
D. Member amounts accrued in current year but not remitted by year end	\$		H. Employer amounts accrued in current year but not remitted by year end	\$	
i. Remarks:					

10 Special payments for defined benefit plans (see instructions)

Amount of special payments paid into the pension plan or fund during the plan year (not applicable to money purchase pension plans)	
A. Unfunded liability payments remitted \$ 644,028	B. Solvency deficiency payments remitted \$ 2,634,595

11 Contribution sufficiency (see instructions)

A. Were the payments shown in sections 9 and 10 above in accordance with the plan terms or the last actuarial report filed with the department?	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
B. If "no", please explain		

12 Reconciliation of plan assets (see instructions)

	DB	DC	Total
A. Market value of plan assets at beginning of the plan year	\$ 84,252,190	13,450,451	97,702,641
B. Amount transferred in from other registered plans	\$		
C. Total employer contributions remitted (sum of 9E to 9G, less 9H, plus 10A and 10B)	\$ 4,814,754	799,757	5,614,511
D. Total member contributions remitted (sum of 9A to 9C, less 9D)	\$ 0	399,879	399,879
E. Investment earnings (losses) net of all expenses	\$ 8,373,309	1,391,420	9,764,729
F. Less: Benefits paid directly from the plan	\$ (6,701,272)	4,166,004	(2,535,268)
G. Less: Benefits transferred to other registered plans	\$ ()	1,526,873	(1,526,873)
H. Market value of plan assets at plan year end (sum of A to G)	\$ 90,738,981	10,348,630	101,087,611
I. Book value of plan assets at plan year end	\$ 86,616,640	10,348,630	96,965,270

REPS-3 Pension Plan Annual Information Return, 2013-2014 (cont'd)

13 Reconciliation of plan members (see Instructions)

A. Number of plan members at previous plan year end	190
B. Add: New entrants, i.e., employees joining the plan during the plan year	0
C. Subtract: Retirements during the plan year	(8)
D. Subtract: Deaths during the plan year	(0)
E. Subtract: Terminations during the plan year	(136)
F. Number of plan members at plan year end (sum of A to E)	46

14 Plan membership by area of employment (see Instructions)

Area of employment	Plan members		Number of members from columns (a) and (b) working in "included employment"
	(a) Male	(b) Female	
Newfoundland and Labrador	9	1	
Prince Edward Island			
Nova Scotia			
New Brunswick			
Québec	27	9	
Ontario			
Manitoba			
Saskatchewan			
Alberta			
British Columbia			
Yukon			
Northwest Territories			
Nunavut			
Outside Canada			
Total	36	10	

15 Former members (see Instructions)

Number of former members who have ceased membership or retired (excluding persons for whom individual annuities have been purchased)	
A. Pensioners and beneficiaries	326
B. Vested former members entitled to deferred pensions	292

**Defined benefit plans – complete questions 16 – 17
All other plans – go to Canada Revenue Agency Schedule**

16 Adjustments to pension benefits (see Instructions)

Have adjustments been made to pensions in pay or deferred pension benefits during the plan year under review?

A. No

B. Yes - (in accordance with a requirement of the plan for regular adjustment of benefits)

C. Yes - (pursuant to a collective agreement)

D. Yes - (voluntarily by the employer)

E. Yes - other (describe) Bill 102 Indexation for QC Members of the Plan

17 Basis for adjustment (see instructions)

A. Full Consumer Price Index (CPI)

B. Partial CPI

C. Based on excess interest earnings

D. Percentage increase _____ % (not based on CPI)

E. Flat dollar increase \$ _____ annually

F. Other method (specify) _____

CLIFFS NATURAL RESOURCES INC.

**CONTRIBUTORY PENSION PLAN FOR SALARIED EMPLOYEES
OF WABUSH MINES, CLIFFS MINING COMPANY, MANAGING
AGENT**

Actuarial Valuation as at January 1, 2014

September 12, 2014

Registration Numbers:

Newfoundland and Labrador Superintendent of Pensions: 021314
Canada Revenue Agency: 0343558

This document is being filed with the Newfoundland and Labrador Superintendent of Pensions and the Canada Revenue Agency as required by statute and contains confidential financial information regarding the plan, the plan sponsor, and the plan members. Therefore, pursuant to subsection 20(1)(b) of the *Access to Information Act (Canada)*, or a corresponding provision under any comparable federal or provincial legislation, a government institution shall not disclose this document to any party as a result of a request under the *Access to Information Act (Canada)* or other applicable legislation.

TOWERS WATSON 

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial Valuation as at January 1, 2014

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REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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Introduction

Purpose

This report with respect to the Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent has been prepared for Wabush Mines, the plan administrator, and Cliffs Natural Resources Inc., the owner of Wabush Mines, and presents the results of the actuarial valuation of the plan as at January 1, 2014.

The principal purposes of the report are:

- to present information on the financial position of the plan on both going concern and solvency bases;
- to review the hypothetical windup status of the plan;
- to provide the basis for employer contributions; and
- to provide certain additional information required for the administration of the plan.

This report outlines the changes in the plan's financial situation since the previous actuarial valuation at January 1, 2011, provides the information and the actuarial opinion required by the *Pension Benefits Act, 1997 (Newfoundland and Labrador)* and Regulation thereto and provides the information required to maintain plan registration under the *Income Tax Act (Canada)* and Regulations thereto.

This report summarizes the results of the actuarial valuation and contains an actuarial opinion as an integral part of the report. Supporting detailed information on the significant terms of engagement, assets, actuarial basis, membership data and plan provisions is contained in the Appendices.

The information contained in this report was prepared for Cliffs Natural Resources Inc., for its internal use and for filing with the Newfoundland and Labrador Superintendent of Pensions and the Canada Revenue Agency, in connection with the actuarial valuation of the plan prepared by Société Towers Watson Canada inc. ("Towers Watson"). This report is not intended, nor necessarily suitable, for other parties or for other purposes. Further distribution of all or part of this report to other parties (except where such distribution is required by applicable legislation) or other use of this report is expressly prohibited without Towers Watson's prior written consent. Towers Watson is available to provide additional information with respect to this report to the above-mentioned intended users upon request.

The numbers in this report are not rounded. The fact that numbers are not rounded does not imply a greater level of precision than if the numbers had been rounded.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

Significant Events Since Previous Actuarial Valuation

Actuarial Basis

Since the previous actuarial valuation, the solvency and hypothetical windup actuarial assumptions have been updated to reflect market conditions at the valuation date. In addition, there have been changes to the going concern actuarial basis, as follows:

- Increase in the liability discount rate from 6.00% to 6.25%;
- Decrease in the rate of escalation of YMPE under Canada/Québec Pension Plan from 4.50% to 3.50%;
- Decrease in the rate of escalation of *Income Tax Act (Canada)* maximum pension limitation from 4.50% to 3.50%; and
- Change in the mortality assumption.

Plan Provisions

This actuarial valuation reflects the plan provisions as at January 1, 2014 and does not make any provision for the possibility that a change or action (retroactive or otherwise) may be imposed by order of a regulatory body or a court as we were not aware of any definitive events that would require such change or action at the time this actuarial valuation was completed.

There have been no changes to the plan provisions since the previous actuarial valuation that affect the actuarial valuation's results.

Legislative and Actuarial Standards Updates

Since the previous actuarial valuation, the *Standards of Practice for Pension Commuted Values* published by the Canadian Institute of Actuaries effective April 1, 2009 provide for, effective February 1, 2011, an update to the mortality assumption. Such update has been reflected for purposes of the solvency and hypothetical windup valuations.

Subsequent Events

We completed this actuarial valuation on August 27, 2014.

Effective February 11, 2014, Cliffs Natural Resources Inc. made the decision to idle the Scully Mine. The idling of the Scully Mine will result in a reduction in active membership.

The financial impact of the event has not been reflected in this report but will, together with other subsequent experience, be reflected in the next actuarial valuation. However, the normal cost contribution rule reflects the expected reduction in membership resulting from the idling. To the best of our knowledge and on the basis of our discussions with Cliffs Natural Resources Inc., no other events

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (*cont'd*)

Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

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which would have a material financial effect on the actuarial valuation occurred between the actuarial valuation date and the date this actuarial valuation was completed.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

Section 1: Going Concern Financial Position

1.1 Statement of Financial Position

	January 1, 2014	January 1, 2011
Going Concern Value of Assets		
Defined benefit provision	\$ 79,802,299	\$ 81,551,580
Defined contribution provision	<u>13,450,451</u>	<u>10,620,112</u>
Total going concern value of assets	\$ 93,252,750	\$ 92,171,692
Actuarial Liability		
Defined Benefit Provision		
Active and disabled members	\$ 17,367,021	\$ 13,810,681
Retired members and beneficiaries	64,954,532	64,992,930
Transferred and terminated vested members	<u>3,809,146</u>	<u>2,615,672</u>
Total	\$ 86,130,699	\$ 81,419,283
Defined Contribution Provision	<u>13,450,451</u>	<u>10,620,112</u>
Total Actuarial Liability	\$ 99,581,150	\$ 92,039,395
Actuarial Surplus (Unfunded Actuarial Liability)	\$ (6,328,400)	\$ 132,297

Comments:

- The financial position of the plan on a going concern basis is determined by comparing the going concern value of assets to the actuarial liability and is a reflection of the assets available for the benefits accrued in respect of credited service prior to the actuarial valuation date assuming the plan continues indefinitely.
- The increase in the defined benefit actuarial liability as at January 1, 2014, which would result from a 1% decrease in the assumed liability discount rate, is \$10,367,078. For purposes of this calculation, no changes were made to any of the other actuarial assumptions or actuarial methods.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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1.2 Reconciliation of Financial Position

Actuarial surplus (unfunded actuarial liability) as at January 1, 2011		\$	132,297
Net special payments			5,111,229
Expected interest on:			
● Actuarial surplus (unfunded actuarial liability)	\$	25,271	
● Net amortization payments and transfer deficiency payments		<u>466,843</u>	492,114
Plan experience:			
● Investment gains (losses), net of all expenses	\$	(7,233,535)	
● Salary gains (losses)		90,364	
● Retirement gains (losses)		(609,607)	
● Termination gains (losses)		1,725,927	
● Mortality gains (losses)		(786,201)	
● New entrant gains (losses)		(2,185,605)	
● Data corrections gains (losses)		(192,096)	
● Gains (losses) from miscellaneous sources		<u>239,397</u>	(8,951,356)
Change in actuarial basis:			
● Economic assumptions	\$	1,453,935	
● Demographic assumptions		(4,566,619)	(3,112,684)
Change in plan provisions			<u>0</u>
Actuarial surplus (unfunded actuarial liability) as at January 1, 2014		\$	(6,328,400)

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Cliffs Natural Resources Inc.
Actuarial valuation as at January 1, 2014

Section 2: Solvency and Hypothetical Windup Financial Position

2.1 Statement of Solvency Financial Position

	January 1, 2014	January 1, 2011
Solvency Value of Assets		
<i>Defined Benefit Provision</i>		
Market value of assets	\$ 83,733,274	\$ 77,584,053
Provision for plan windup expenses	(200,000)	(200,000)
Total	\$ 83,533,274	\$ 77,384,053
<i>Defined Contribution Provision</i>	13,450,451	10,620,112
Total Solvency Value of Assets	\$ 96,983,725	\$ 88,004,165
Solvency Liability		
<i>Defined Benefit Provision</i>		
Active and disabled members	\$ 13,082,660	\$ 8,487,081
Retired members and beneficiaries	75,183,832	73,122,162
Transferred and terminated vested members	5,738,114	3,394,035
Total	\$ 94,004,606	\$ 85,003,278
<i>Defined Contribution Provision</i>	13,450,451	10,620,112
Total Solvency Liability	\$ 107,455,057	\$ 95,623,390
Solvency Surplus (Unfunded Solvency Liability)	\$ (10,471,332)	\$ (7,619,225)

Comments:

- The financial position of the plan on a solvency basis is determined by comparing the solvency value of assets to the solvency liability (the actuarial present value of benefits accrued in respect of credited service prior to the actuarial valuation date, calculated as if the plan were wound up on that date).

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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- The solvency actuarial valuation results presented in this report are determined under a scenario where, following a plan windup, the employer continues its operations and there is no closure of the mine.
- The Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)* permits certain benefits to be excluded from the solvency liability, without requiring the employer to make an election. The plan administrator has directed that consent for the "70/80 special early retirement" provision (described in Appendix D) will not be granted. Consistent with the scenario used for the solvency valuation, the "70/80 special early retirement" provision has been excluded from the solvency liability.
- The increase in the defined benefit solvency liability as at January 1, 2014, which would result from a 1% decrease in the assumed liability discount rate, is \$11,949,638. For purposes of this calculation, no changes were made to any of the other actuarial assumptions or actuarial methods.

2.2 Hypothetical Windup Financial Position

The hypothetical windup valuation results presented in this report are determined under a scenario in which the plan is wound up and the mine is shut down.

If the plan were to be wound up on the actuarial valuation date, the hypothetical windup value of assets would be equal to the solvency value of assets. Consistent with the scenario used for the hypothetical windup valuation, no benefits have been excluded from the hypothetical windup liability. Therefore, the hypothetical windup liability is \$94,251,745 as at January 1, 2014. Consequently, the hypothetical windup surplus (unfunded hypothetical windup liability) as at the actuarial valuation date is (\$10,718,471).

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

2.3 Solvency Incremental Cost

Defined Benefit Provision

The solvency incremental cost for a given year represents the present value, at the valuation date, of the expected aggregate change in the solvency liability during the year, increased for expected benefit payments during the year. The solvency incremental cost in respect of each year between January 1, 2014 and January 1, 2017, the next valuation date, are derived from the projection of the solvency liability, as follows:

	Year		
	2014	2015	2016
Solvency liability as at beginning of year	\$ 94,004,606	\$ 93,282,267	\$ 92,647,605
Solvency incremental cost for the year ^{1,2}	2,170,560	2,257,372	2,679,545
Interest on projected solvency liability, solvency incremental cost and expected benefit payments	3,433,804	3,388,560	3,342,974
Expected benefit payments during year ²	<u>(6,326,703)</u>	<u>(6,280,594)</u>	<u>(6,145,238)</u>
Projected solvency liability as at end of year ²	\$ 93,282,267	\$ 92,647,605	\$ 92,524,886

Notes:

¹ These amounts are as at the beginning of the year. The solvency incremental cost, adjusted with interest as at January 1, 2014 is \$2,177,032 for 2015 and \$2,492,833 for 2016.

² These amounts do not reflect the estimated membership reduction resulting from the idling of the Scully Mine as at February 11, 2014.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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2.4 Determination of the Statutory Solvency Excess (Statutory Solvency Deficiency)

The minimum funding requirements under the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)* are based on the statutory solvency excess (statutory solvency deficiency) as at the actuarial valuation date. In calculating the statutory solvency excess (statutory solvency deficiency), various adjustments can be made to the solvency financial position including:

- recognition of the present value of existing amortization payments, including any going concern amortization payments established at the actuarial valuation date, due to be paid within the periods prescribed by the Regulation.

To the extent that there exists a statutory solvency deficiency, after taking account of these adjustments, additional amortization payments must be made. If there is no statutory solvency deficiency, the statutory solvency excess may be used to reduce the period of any existing solvency amortization payments.

Statutory Solvency Excess (Statutory Solvency Deficiency)

	January 1, 2014	January 1, 2011
Solvency surplus (unfunded solvency liability)	\$ (10,471,332)	\$ (7,619,225)
Adjustments to solvency position:		
• Present value of existing amortization payments	<u>6,221,792</u>	<u>0</u>
Statutory solvency excess (statutory solvency deficiency)	\$ (4,249,540)	\$ (7,619,225)

Comments:

- The present value of existing amortization payments reflects any changes made in this actuarial valuation to going concern amortization schedules.
- Further details on the present value of existing amortization payments at January 1, 2014 are provided below.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
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Details of Present Value of Existing Amortization Payments

Type of payment	Effective date	Month of last payment recognized in calculation	Annual amortization payment	Present value as at January 1, 2014 (at 3.70% per annum)
Going Concern	Jan 1, 2014	Dec. 2018	\$ 644,028	\$ 2,940,135
Solvency	Jan. 1, 2011	Dec. 2015	<u>1,703,743</u>	<u>3,281,657</u>
Total			<u>\$ 2,347,771</u>	<u>\$ 6,221,792</u>

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
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Section 3: Contribution Requirements

3.1 Contribution for Current Service (Ensuing Year)

	January 1, 2014	January 1, 2011
Employer Normal Actuarial Cost		
Defined Benefit Provision		
Estimated contribution	\$ 1,524,956 ¹	\$ 1,719,998
Estimated payroll	19,359,779 ¹	22,638,017
% of payroll	7.88%	7.60%
Defined Contribution Provision		
Estimated contribution	\$ 1,161,587 ¹	\$ 1,358,281
Estimated payroll	19,359,779 ¹	22,638,017
% of payroll	6.00%	6.00%
Estimated Member Contributions		
Defined contribution provision	\$ 580,794 ¹	\$ 679,141

Note:

¹ Reflect estimated membership reduction resulting from the idling of the Scully Mine as at February 11, 2014.

Comments:

- The employer defined benefit normal actuarial cost rate changed by 0.22% of payroll due to the change in membership profile and by 0.06% of payroll due to the change in actuarial basis since the previous valuation.
- The increase in the employer defined benefit normal actuarial cost rate between the actuarial valuation date and the next actuarial valuation date, which would result from a 1% decrease in the assumed liability discount rate, is 2.08% of payroll. For purposes of this calculation, no changes were made to any of the other actuarial assumptions or actuarial methods.

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Cliffs Natural Resources Inc.
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3.2 Contributions for Past Service

Going Concern Amortization Payments

The unfunded actuarial liability is \$6,328,400 and must be liquidated by employer amortization payments at least equal to the amounts, payable monthly in arrears, and for the periods set forth below in order to comply with the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*.

Effective date	Month of last payment	Annual amortization payment	Present value as at January 1, 2014 (at 6.25% per annum)
January 1, 2014	Dec. 2028	\$ 644,028	\$ 6,328,400

Solvency Amortization Payments

The statutory solvency deficiency revealed at this actuarial valuation is \$4,249,540. This statutory solvency deficiency together with the remaining statutory solvency deficiency from the previous actuarial valuation must be liquidated by employer amortization payments at least equal to the amounts, payable monthly in arrears, and for the periods set forth below in order to comply with the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*.

Effective date	Month of last payment	Annual amortization payment	Present value as at January 1, 2014 (at 3.70% per annum)
January 1, 2011	Dec. 2015	\$ 1,703,743	\$ 3,281,657
January 1, 2014	Dec. 2018	930,852	4,249,540
Total		\$ 2,634,595	\$ 7,531,197

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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3.3 Estimated Minimum Employer Contribution (Ensuing Year)

	January 1, 2014	January 1, 2011
Employer Normal Actuarial Cost		
Defined benefit provision	\$ 1,524,956	\$ 1,719,998
Defined contribution provision	<u>1,161,587</u>	<u>1,358,281</u>
Total	\$ 2,686,543	\$ 3,078,279
Amortization Payments		
Going concern	\$ 644,028	\$ 0
Solvency	<u>2,634,595</u>	<u>1,703,743</u>
Total	\$ 3,278,623	\$ 1,703,743
Estimated Minimum Employer Contribution	\$ 5,965,166	\$ 4,782,022

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3.4 Estimated Maximum Employer Contribution (Ensuing Year)

	January 1, 2014	January 1, 2011
Employer Normal Actuarial Cost		
Defined benefit provision	\$ 1,524,956	\$ 1,719,998
Defined contribution provision	<u>1,161,587</u>	<u>1,358,281</u>
Total	\$ 2,686,543	\$ 3,078,279
Greater of the Unfunded Actuarial Liability and the Unfunded Hypothetical Windup Liability	<u>10,718,471</u>	<u>7,619,225</u>
Estimated Maximum Employer Contribution	\$ 13,405,014	\$ 10,697,504

Comment:

- The *Income Tax Act (Canada)* permits the employer to make contributions up to the above amount less the amortization payments made in respect of periods since January 1, 2014, provided that all assumptions made for the purposes of the hypothetical windup valuation remain reasonable at the time each contribution is made. In addition, the maximum employer contribution is to be adjusted with interest for the period between the actuarial valuation date and the date each contribution is made.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (*cont'd*)

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3.5 Timing of Contributions

To satisfy the requirements of Newfoundland and Labrador pension legislation, the employer defined benefit normal actuarial cost and amortization payments must be paid quarterly and within 30 days of the month to which they pertain, the employer defined contribution normal actuarial cost and members' contributions must be remitted to the fund monthly and within 30 days of the month to which they pertain.

In addition, within 60 days after this report is filed with the Newfoundland and Labrador Superintendent of Pensions, the employer must make a special contribution equal to the excess, if any, of:

- the amount of employer contributions (employer normal actuarial cost and amortization payments) that should have been paid after January 1, 2014 according to the minimum contribution requirements revealed by this report, over
- the actual amount of employer contributions in respect of periods after January 1, 2014.

Interest must be added to this excess, with such interest determined by reference to the going concern discount rate for payments in respect of employer normal actuarial cost or going concern amortization payments and the solvency discount rate for payments in respect of solvency amortization payments.

To satisfy the requirements of the *Income Tax Act (Canada)*, employer contributions that are remitted to the plan in the taxation year or within 120 days after the end of such taxation year are deductible in such taxation year provided they were made to fund benefits in respect of periods preceding the end of the taxation year.

3.6 Other Statutory Contributions

Additional contributions may be required in respect of the transfer values for members who terminate employment or active plan membership. Where applicable, such additional contributions must be remitted before the related transfer value may be paid in full to the terminated member. Details are provided in Appendix G.

3.7 Future Contribution Levels

Future contribution levels may change as a result of future changes in the actuarial methods and assumptions, the membership data, the plan provisions and the legislative rules, or as a result of future experience gains or losses, none of which has been anticipated at this time. Emerging experience, differing from the assumptions, will result in gains or losses that will be revealed in future actuarial valuations.

Section 4: Actuarial Certification and Opinion

4.1 Actuarial Certification

Based on the results of these actuarial valuations, we hereby certify that, in our opinion, as at January 1, 2014:

- The actuarial surplus (unfunded actuarial liability), determined by comparing the actuarial liability, the measure of obligations of the plan on a going concern basis, to the going concern value of assets, is \$(6,328,400).
- The unfunded actuarial liability is \$6,328,400 and must be liquidated by employer amortization payments at least equal to the amounts and for the periods set forth in Section 3 in order to comply with the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*.
- The solvency surplus (unfunded solvency liability), determined by comparing the solvency liability, as defined in the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*, to the solvency value of assets, is \$(10,471,332).
- The statutory solvency excess (statutory solvency deficiency) revealed at this actuarial valuation is \$(4,249,540). This statutory solvency deficiency together with the remaining statutory solvency deficiency from the previous actuarial valuation must be liquidated by employer amortization payments at least equal to the amounts and for the periods set forth in Section 3 in order to comply with the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*.
- The hypothetical windup surplus (unfunded hypothetical windup liability), determined by comparing the hypothetical windup liability, the measure of the obligations of the plan on a hypothetical windup basis including the value of any potential obligations that may have been excluded for purposes of the solvency valuation, to the hypothetical windup value of assets, is \$(10,718,471).
- The excess actuarial surplus, pursuant to section 147.2(2) of the *Income Tax Act (Canada)*, is \$0.
- The rule for computing the employer defined benefit normal actuarial cost is 7.88% of payroll. Based on the plan membership used for this actuarial valuation, the normal actuarial cost for the next three years is estimated to be:

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Defined Benefit Provision

	Year		
	2014	2015 ^{1,2}	2016 ^{1,2}
Estimated employer normal actuarial cost	\$ 1,524,956	\$ 1,169,261	\$ 1,227,724

Notes:

- ¹ Assumes the employer normal actuarial cost increases by 5% each year following the valuation date based on expected payroll increases.
- ² Reflect estimated membership reduction resulting from the idling of the Scully Mine as at February 11, 2014.

The rule for computing the employer defined contribution normal actuarial cost is stipulated in the plan. Based on the plan membership used in this actuarial valuation, the defined contribution requirement for the next three years is estimated to be:

Defined Contribution Provision

	Year		
	2014	2015 ^{1,2}	2016 ^{1,2}
Estimated employer normal actuarial cost^{2,3}	\$ 1,161,587	\$ 823,106	\$ 864,261
Estimated member contributions	\$ 580,794	\$ 411,553	\$ 432,131

Notes:

- ¹ Assumes the employer normal actuarial cost increases by 5% each year following the valuation date based on expected payroll increases.
- ² Reflect estimated membership reduction resulting from the idling of the Scully Mine as at February 11, 2014.
- ³ Prior to any application of non-vested forfeitures.

The employer is required to make normal actuarial cost contributions to the plan in accordance with the above rules until the effective date of the next actuarial opinion.

- The maximum employer contributions permissible under the *Income Tax Act (Canada)* are described in Section 3.
- The solvency ratio, as defined in the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*, is 0.89.
- In accordance with the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*, the next actuarial valuation should be performed with an effective date not later than

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (*cont'd*)

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January 1, 2017. The basis for employer contributions presented in this report is effective until the next actuarial opinion is filed.

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4.2 Actuarial Opinion

In our opinion:

- the membership data on which the actuarial valuations are based are sufficient and reliable for the purposes of the going concern, solvency and hypothetical windup valuations,
- the assumptions are appropriate for the purposes of the going concern, solvency and hypothetical windup valuations, and
- the methods employed in the actuarial valuation are appropriate for the purposes of the going concern, solvency and hypothetical windup valuations.

This report has been prepared, and our opinion has been given, in accordance with accepted actuarial practice in Canada. The actuarial valuations have been conducted in accordance with our understanding of the funding and solvency standards prescribed by the *Pension Benefits Act 1997 (Newfoundland and Labrador)* and Regulation thereto, and in accordance with our understanding of the requirements of the *Income Tax Act (Canada)* and Regulations thereto. This actuarial opinion forms an integral part of the report.

The results presented in this report have been developed using a particular set of actuarial assumptions. Other results could have been developed by selecting different actuarial assumptions. The results presented in this report are reasonable actuarial results based on actuarial assumptions reflecting our expectation of future events.

Société Towers Watson Canada inc.

Julie Simard
Fellow of the Canadian Institute of Actuaries

Pierre Charette
Associate of the Canadian Institute of Actuaries

Montréal, QC
September 12, 2014

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Appendix A: Significant Terms of Engagement

For purposes of preparing this actuarial valuation report, the plan administrator has directed that:

- The actuarial valuation is to be prepared as at January 1, 2014.
- For purposes of the going concern valuation, the terms of engagement require the use of the margins for adverse deviations mentioned in Appendix C.
- For purposes of determining the going concern liability discount rate, the target asset class distribution is to be established in accordance with the investment policy dated July 1, 2013 which is the most up to date version.
- For purposes of determining the going concern financial position of the plan, the going concern value of assets is to be determined using the averaging technique described in the Asset Valuation Method section in Appendix C.
- This report is to be prepared on the basis that there will be no retroactive changes to previously filed partial windup reports, if any, and neither the applicable pension regulator nor the plan sponsor will order/declare any partial plan windup with an effective date prior to the actuarial valuation date.
- The hypothetical windup valuation results presented in this report are to be determined under a scenario where the employer continues to operate and certain expenses are paid from the pension fund (consistent with past practice) while the employer pays other plan expenses.
- This report is to be prepared on the basis that the employer is entitled to apply the actuarial surplus, if any, revealed in an actuarial valuation report to meet its contribution requirements under the plan while the plan remains a going concern, to the extent permitted by applicable pension legislation. (This report does not address the disposition of any surplus assets remaining in the event of plan windup.) If an applicable pension regulator or other entity with jurisdiction directs otherwise, certain financial measures contained in this report, including contribution requirements, may be affected.

Should these directions from the plan administrator be amended or withdrawn, Towers Watson reserves the right to amend or withdraw this report.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
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Appendix B: Assets

Statement of Market Value

	January 1, 2014	January 1, 2011
Defined Benefit Provision		
Invested assets:		
● Pooled funds	\$ 84,252,190	\$ 77,584,053
Net outstanding amounts:		
● Contributions receivable	\$ 0	\$ 0
● Benefits payable	(518,916)	0
● Expenses and other payables	0	0
● Total net outstanding amounts	\$ (518,916)	\$ 0
Total	\$ 83,733,274	\$ 77,584,053
Defined Contribution Provision		
Invested assets	\$ 13,450,451	\$ 10,620,112
Net outstanding amounts	0	0
Total	\$ 13,450,451	\$ 10,620,112
Total Assets	\$ 97,183,725	\$ 88,204,165

Comments:

- The invested assets in respect of the plan's defined benefit provision are held by CIBC Mellon under account WHMF10000002. The invested assets in respect of the plan's defined contribution provision are held by Sun Life Financial under policy 66535.
- The data relating to the invested assets are based on the financial statements issued by CIBC Mellon and Sun Life Financial. The data relating to net outstanding amounts were furnished by Cliffs Natural Resources Inc. All such data has been relied upon by Towers Watson following tests of reasonableness with respect to contributions, benefit payments and investment income. However, Towers Watson has not independently audited or verified this data.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Asset Class Distribution

The following table shows the target asset allocation stipulated by the plan's defined benefit component investment policy in respect of various major asset classes and the actual asset allocation as at January 1, 2014.

	Target asset allocation ¹	Asset allocation as at January 1, 2014 ²
Canadian Equity	30%	31%
Foreign Equity	30%	31%
Fixed Income	30%	27%
Hedge Fund	10%	10%
Cash & Other	0%	1%
Total	100%	100%

Notes:

¹ This information was obtained from the investment policy in effect for the plan as at January 1, 2014.

² This information was obtained from Cliffs Natural Resources Inc. All such data has been relied upon by Towers Watson and compared against the target asset allocation to assess reasonableness. However, Towers Watson has not independently audited or verified this data.

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**Reconciliation of Invested Assets (Market Value) —
 Defined Benefit Provision**

Assets as at January 1, 2011			\$ 77,584,053
Receipts:			
● Contributions:			
– Employer normal actuarial cost	5,872,563		
– Employer amortization payments	5,111,229		
– Employer transfer deficiency payments	0		\$ 10,983,792
● Investment return, net of investment expenses			15,427,253
● Other receipts			0
● Total receipts			\$ 26,411,045
Disbursements:			
● Benefit payments:			
– Pension payments	\$ 19,081,546		
– Lump sum settlements	661,362		
– Other benefit payments	0		\$ 19,742,908
● Other disbursements			0
● Total disbursements			\$ 19,742,908
Assets as at January 1, 2014			\$ 84,252,190

Comments:

- This reconciliation is based on the financial statements issued by CIBC Mellon. All such data has been relied upon by Towers Watson following tests of reasonableness with respect to contributions, benefit payments and investment income. However, Towers Watson has not independently audited or verified this data.
- The rate of return earned on the market value of assets, net of all expenses, from January 1, 2011 to January 1, 2014 is approximately 6.58% p.a.

Actuarial Value of Assets – Defined Benefit Provision

	2013	2012	2011	2010
Market value of assets, January 1	\$ 76,212,036	\$ 73,769,910	\$ 77,584,053	\$ 75,627,186
Contributions from January 1 to December 31	3,764,130	3,845,662	3,374,000	957,000
Benefit payments from January 1 to December 31	(6,257,752)	(6,654,471)	(6,830,685)	(6,342,870)
Expected net investment earnings at going concern discount rate applicable for the year	<u>4,497,914</u>	<u>4,341,930</u>	<u>4,551,343</u>	<u>4,740,726</u>
Expected market value of assets, December 31	\$ 78,216,328	\$ 75,303,031	\$ 78,678,711	\$ 74,982,042
Actual market value of assets, December 31	<u>84,252,190</u>	<u>76,212,036</u>	<u>73,769,910</u>	<u>77,584,053</u>
(Gain) loss on assets during the year	\$ (6,035,862)	\$ (909,005)	\$ 4,908,801	\$ (2,602,011)
Asset Value Adjustment	Original Amount of (Gain) Loss	(Gain) Loss Admitted in Prior Years	(Gain) Loss Admitted at January 1, 2014	(Gain) Loss to be Admitted in Future Years
Year				
2010	\$ (2,602,011)	\$ (1,561,207)	\$ (502,402)	\$ (502,402)
2011	4,908,801	1,963,520	981,761	1,963,520
2012	(909,005)	(181,801)	(181,801)	(545,403)
2013	(6,035,862)	0	(1,207,172)	<u>(4,828,690)</u>
Total				\$ (3,930,975)
Actual market value of assets, January 1, 2014				84,252,190
Contribution in transit at January 1, 2014				<u>(518,916)</u>
Market value of assets, January 1, 2014 (including contributions in transit)				\$ 83,733,274
Adjustment to market value of assets for (gain) loss to be admitted in future years				<u>(3,930,975)</u>
Actuarial value of assets, January 1, 2014 (including contributions in transit)				\$ 79,802,299

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Comments:

- The asset valuation method is described in Appendix C.
- The starting value of each column is the actual market value of invested assets at the indicated date.
- Net cash flow was calculated as contributions less benefit payments on a cash basis during the year.
- The rate of return earned on the going concern value of assets, net of all expenses, from January 1, 2011 to January 1, 2014 is approximately 2.94% p.a.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (*cont'd*)

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Appendix C: Actuarial Basis – Going Concern Valuation

Methods

Defined Benefit Provision

Asset Valuation Method

The going concern value of assets was calculated using a five-year average of market values. Under this method, realized and unrealized gains and losses were recognized at 20% in the year of occurrence and an additional 20% in each of the subsequent four years. Gains and losses for a given year are determined relative to expected investment income, calculated using the going concern liability discount rate in effect for that year. Finally, the going concern value of assets was further adjusted for net outstanding amounts.

The objective of the asset valuation method is to produce a smoother pattern of going-concern surplus (deficit) and hence a smoother pattern of contributions, consistent with the long-term nature of a going concern valuation.

Such smoothing is achieved by use of an averaging process which systematically recognizes investment returns different from expectations over a four-year period, with 20% recognized at the actuarial valuation date and the remainder at a rate of 20% per year. This method will be expected to average periods of outperformance with periods of underperformance.

Actuarial Cost Method

The actuarial liability and the normal actuarial cost were calculated using the projected unit credit cost method.

Prospective benefits were calculated for each active and disabled member according to the plan provisions and actuarial assumptions. The actuarial liability was calculated as the actuarial present value of the member's prospective benefits accrued for credited service to date (the benefit accrual method).

The actuarial liability for retired members and beneficiaries and transferred and terminated vested members was calculated as the actuarial present value of their respective benefits.

The normal actuarial cost for each active and disabled member was calculated as the actuarial present value of the member's prospective benefits accruing in respect of credited service in the

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
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ensuing year. The normal actuarial cost rate determined by the projected unit credit cost method will be stable over time if the demographic characteristics of the active and disabled members remain stable from actuarial valuation to actuarial valuation. All other things being equal, a population of active members whose average age increases (decreases) between actuarial valuations will result in an increasing (decreasing) normal actuarial cost rate.

Defined Contribution Provision

For the purposes of the going concern valuation, the determination of the actuarial liability and normal actuarial cost for the defined contribution provision does not involve the use of an actuarial cost method, nor does it involve actuarial assumptions. By definition, the actuarial liability under the defined contribution provision corresponds with the market value of the members' defined contribution accounts at the actuarial valuation date.

The employer normal actuarial cost for each active and disabled member was calculated as the expected employer contribution to be made to the member's defined contribution accounts in the year following the actuarial valuation date. The expected contribution to be made to each member's defined contribution account was determined by increasing the actual contributions made in 2013 by 5.0%, the salary increase assumption on a going concern basis. The expected contribution was further adjusted to reflect the estimated membership reduction resulting from the idling of the Sully Mine as at February 11, 2014.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Actuarial Assumptions — Defined Benefit Provision

	January 1, 2014	January 1, 2011
Economic Assumptions (per annum)		
Liability discount rate	6.25%	6.00%
Rate of salary increase	5.00% (nil for disabled members)	5.00% (nil for disabled members)
Escalation of YMPE under Canada/Québec Pension Plan ¹	3.50%	4.50%
Escalation of <i>Income Tax Act (Canada)</i> maximum pension limitation ²	3.50%	4.50%
Rate of inflation	2.50%	2.50%
Pre-retirement indexation ³	1.25%	1.25%
Demographic Assumptions		
Mortality	2014 Canadian Pensioners' Mortality Table, projected generationally using Scale B	1994 Uninsured Pensioner Mortality Table, projected generationally using Scale AA
Withdrawal	Service-related rates (refer to Table 1) for Newfoundland members; nil for Quebec members	Service-related rates (refer to Table 1) for Newfoundland members; nil for Quebec members
Disability incidence/recovery	Nil	Nil
Retirement from active membership	Age-related rates (see Table 2)	Age-related rates (see Table 2)
Pension commencement after termination of employment	Age 65	Age 65
Other		
Percentage of members with eligible spouses at pension commencement and electing joint and survivor pension form	85%	85%
Years male spouse older than female spouse	3	3
Provision for non-investment expenses	None; return on plan assets is net of all expenses	None; return on plan assets is net of all expenses

Notes:

- ¹ The YMPE of \$52,500 for 2014 is the starting value for the YMPE projection as at the current actuarial valuation and is indexed starting in 2015.
- ² The *Income Tax Act (Canada)* maximum pension limit of \$2,770.00 per year of service in 2014 is the starting value for maximum pension limit projection as at the current valuation and is indexed starting in 2015.
- ³ Applied only for post-2000 service related benefits for Québec members in respect of indexation from date of termination to age 55.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Table 1 — Non-disabled Withdrawals for 1,000 Participants

Completed Years of Service	Male	Completed Years of Service	Male
0	198	15	44
1	181	16	39
2	165	17	35
3	150	18	32
4	136	19	28
5	123	20	25
6	112	21	23
7	101	22	20
8	91	23	18
9	82	24	16
10	74	25	14
11	67	26	13
12	60	27	11
13	54	28	10
14	49	29	9
		30+	0

Table 2 — Assumed Retirement Pattern

Assumed Retirement Age

- 75% retire as soon as eligible for an unreduced pension, but not earlier than age 60.
- 25% retire as soon as eligible for an unreduced pension, but not earlier than age 52.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Rationale for Actuarial Assumptions

The rationale for the material actuarial assumptions used in the going concern valuation is summarized below.

The going concern assumptions do not include margins for adverse deviations, except as noted below.

Liability discount rate

The assumption is an estimate of the expected long-term return on plan assets, net of a provision for non-investment expenses expected to be paid from the plan of 0.18% of invested assets, less a 0.50% margin for adverse deviations. The expected long-term return is based on returns for each major asset class in which the plan is expected to be invested (net of investment expenses), the plan's investment policy with consideration of the effects of diversification and periodic rebalancing to maintain the target mix of the plan's investment policy. We have assumed that additional returns associated with employing an active investment management strategy would equal the additional expenses associated with employing such strategy. Consequently, we have disregarded any potential additional returns.

In carrying out the plan's investment policy, the plan administrator has opted to invest the plan's assets in a diversified portfolio, which includes certain asset classes subject to risk that provide potential for higher return. The expected long-term return for asset classes subject to risk includes an estimated risk premium. Based on historical experience, assets invested in instruments subject to risk are normally expected to yield higher returns in the long-run than assets invested in low-risk investments, but these returns may fluctuate significantly from year to year and not necessarily in line with changes in the plan's liabilities over long periods of time. As a result, investing in riskier asset classes will generally increase the potential for future asset-liability mismatch, which could lead to greater volatility in the plan's financial position and minimum contribution requirements.

Rate of salary increase

The assumption reflects an assumed rate of inflation of 2.50% per annum, plus an allowance of 1.0% per annum for the effect of real economic growth and productivity gains in the economy. In addition, an allowance of 1.5% per annum has been made to reflect the average expected increase as a result of individual employee merit and promotion. The merit/promotion assumption is based on discussions with Cliffs Natural Resources Inc. management concerning their future expectations.

Escalation of YMPE under Canada/Québec Pension Plan

The YMPE is indexed annually based on increases in the Industrial Aggregate Wage index for Canada. The assumption reflects an assumed rate of inflation of 2.50% per annum, plus an allowance of 1.0% per annum for the effect of real economic growth and productivity gains in the economy.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (*cont'd*)

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Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

Escalation of Income Tax Act (Canada) maximum pension limitation

The maximum pension limitation under the *Income Tax Act (Canada)* is scheduled to be indexed annually based on assumed increases in the Industrial Aggregate Wage index. The assumption reflects an assumed rate of inflation of 2.50% per annum, plus an allowance of 1.0% per annum for the effect of real economic growth and productivity gains in the economy.

Rate of inflation

The assumption reflects an estimate of future rates of inflation considering economic and financial market conditions at the actuarial valuation date.

Pre-retirement indexation

The pre-retirement indexation assumption represents 50% of the inflation assumption, up to a maximum of 2% per annum.

Mortality

The 2014 Canadian Pensioners' Mortality Table (CPM2014) is based on a mortality experience study for calendar years 1999 to 2008 conducted by the Canadian Institute of Actuaries on a sample of Canadian registered pension plans. The CPM2014 table includes potential adjustments to the mortality rates based on pension size and/or industry classification. Improvement Scale B (CPM-B) is a two-dimensional scale developed by the Canadian Institute of Actuaries based primarily on the mortality experience of pensioners under the Canada Pension Plan (CPP) and the Québec Pension Plan (QPP) up to 2007 as well as the assumptions used in the 26th CPP Actuarial Report.

Base mortality rates from the CPM2014 table are considered reasonable for the actuarial valuation of the plan given that the mortality experience of the plan membership is insufficient to assess plan-specific experience, and there is no reason to expect the mortality experience of the plan to differ significantly from that of other pension plans covering membership groups with similar characteristics. Applying improvement scale CPM-B generationally provides allowance for improvements in mortality after 2014 and is considered reasonable for projecting mortality experience into the future.

No allowance has been made for mortality prior to retirement with respect to terminated vested members in order to approximate the value of pre-retirement death benefits.

At the previous actuarial valuation, the 1994 Uninsured Pensioner Mortality Table projected generationally using Scale AA was used.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
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Withdrawal

Withdrawal rates are typically developed taking into account the past experience of the plan. However, based on discussions with management, recent withdrawal experience is not considered appropriate for assessing the future incidence of withdrawal. Accordingly, the rates of withdrawal are based on the Society of Actuaries 2003 Pension Plan Termination and Retirement Study (using the table for small plans – 1,000 lives or less – with turnover by service), following discussions with management concerning their future expectations and our experience with other similar plans.

Disability incidence/recovery

There are no disability benefits under the plan other than the accrual of retirement income (earnings remain constant) during disability. Consequently, the assumption of no incidence of disability or recovery therefrom makes an appropriate allowance, in combination with the other assumptions, for such continued accruals.

Retirement from active membership

Retirement rates are typically developed taking into account the past experience of the plan. However, based on discussions with Cliffs Natural Resources Inc. management, recent retirement experience is not considered appropriate for predicting the future incidence of retirement. Accordingly, rates of retirement were developed based on discussions with Cliffs Natural Resources Inc. management concerning their future expectations, the plan provisions and our experience with other similar plans. All members are assumed to commence their pension at retirement date.

Pension commencement after termination of employment

All transferred and terminated members are assumed to commence their pension at the normal retirement age of 65, as the plan's termination benefit provides for either an actuarially reduced benefit or a 6% per year reduction upon pension commencement prior to normal retirement age.

Percentage of members with eligible spouses at pension commencement and electing joint and survivor pension form

When provided, the actual data on the spouse and form of payment were used for retired members. For other members, the assumed percentage of members with a spouse is based on the percentages for the general population. All members with eligible spouses were assumed to elect a joint and survivor pension form.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

Years male spouse older than female spouse

When provided, the actual data on the spouse were used for retired members. For other members, the assumption is based on surveys of the age difference in the general population and an assessment of future expectations for members of the plan.

Provision for non-investment expenses

The liability discount rate is net of all expenses (with the exception of any fees associated with employing an active investment management strategy). The assumed level of expenses reflected in the liability discount rate is based on recent experience of the plan and an assessment of future expectations.

Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

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Appendix D: Actuarial Basis – Solvency and Hypothetical Windup Valuations

Methods

Defined Benefit Provision

Asset Valuation Method

The market value of assets, adjusted for net outstanding amounts, has been used for the solvency and hypothetical windup valuations. The resulting value has been reduced by a provision for plan windup expenses.

Liability Calculation Method

The solvency and hypothetical windup liabilities for active and disabled members were calculated as the actuarial present value of all benefits accrued up to the actuarial valuation date (treating all members as if vested).

The solvency and hypothetical windup liabilities for retired members and beneficiaries and transferred and terminated vested members were calculated as the actuarial present value of their respective benefits.

Other Considerations

The solvency and hypothetical windup valuations have been prepared on a hypothetical basis. In the event of an actual plan windup, the plan assets may have to be allocated between various classes of plan members or beneficiaries as required by applicable pension legislation. Such potential allocation has not been performed as part of these solvency and hypothetical windup valuations.

Defined Contribution Provision

For the purposes of the solvency and hypothetical windup valuations, the determination of the liability for the defined contribution provision does not involve the use of a liability calculation method, nor does it involve actuarial assumptions. By definition, the solvency and hypothetical windup liability under the defined contribution provision corresponds with the market value of the members' defined contribution accounts at the actuarial valuation date.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

Solvency Incremental Cost Actuarial Method

Defined Benefit Provision

The solvency incremental cost for a given year represents the present value, at the actuarial valuation date, of the expected aggregate change in the defined benefit solvency liability during the year, increased for expected benefit payments during the year.

The solvency incremental cost reflects expected decrements and related changes in membership status, accrual of service, any expected changes in benefits, entitlements, pension formula or increases in the maximum pension limits, and projected pensionable earnings during the year.

The solvency incremental cost has been calculated for each year until the next actuarial valuation date as the projected solvency liability at the end of the year, minus the solvency liability at the beginning of the year, increased for expected benefit payments during the year. Each of these amounts is discounted to the actuarial valuation date using the projected solvency liability discount rate.

The method used to calculate the projected solvency liability at the end of the year is the same as used in the solvency valuation.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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Actuarial Assumptions — Defined Benefit Provision

	January 1, 2014	January 1, 2011
Economic Assumptions (per annum)		
Liability discount rate		
● Annuity purchase	3.80%	4.50%
● Commuted value transfers	3.10% for 10 years, 4.60% thereafter	3.70% for 10 years, 5.00% thereafter
● Commuted value transfers (for benefits subject to pre-retirement indexation) ¹	2.40% for 10 years, 3.50% thereafter	2.80% for 10 years, 3.70% thereafter
Discount rate for determining amortization payments ²	3.70%	4.42%
Escalation of <i>Income Tax Act (Canada)</i> maximum pension limitation ³	Nil	Nil
Rate of inflation		
● Commuted value transfers	1.36% for 10 years, 2.12% thereafter	1.76% for 10 years, 2.50% thereafter
Demographic Assumptions		
Mortality	1994 Uninsured Pensioner Mortality Table, projected generationally using Scale AA	1994 Uninsured Pensioner Mortality Table, projected to 2020 using Scale AA
Withdrawal	N/A	N/A
Disability incidence/recovery	N/A	N/A
Retirement/pension commencement	Described in detail on page D-7	Described in detail on page D-7
Other		
Percentage of members with eligible spouses at pension commencement and electing joint and survivor pension form	85%	85%
Years male spouse older than female spouse	3	3

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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 Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

	January 1, 2014	January 1, 2011
Percentage of members receiving settlement by commuted value transfer ⁴		
● Retired members and beneficiaries	0%	0%
● Active members (eligible for immediate retirement; not in Quebec)	0%	0%
● Other members	100%	100%
Provision for expenses		
● Solvency	\$200,000	\$200,000
● Hypothetical windup	\$200,000	\$200,000

Notes:

¹ Applied only to post-2000 service related benefits for Québec members.

² Equal to the liability-weighted average of the liability discount rates for settlements by commuted value transfer (rate in effect for the first 10 years) and annuity purchase.

³ The *Income Tax Act (Canada)* maximum pension limit is \$2,770.00 per year of service as at January 1, 2014.

⁴ The balance are assumed to receive settlement by annuity purchase.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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Rationale for Actuarial Assumptions

The rationale for the material actuarial assumptions used in the solvency and hypothetical windup valuations is summarized below.

The actuarial assumptions used in the solvency and hypothetical windup valuations do not include margins for adverse deviations.

Liability discount rate

In the event of a plan windup, it is expected that a portion of the liabilities will be settled by a group annuity purchase and the balance of the liabilities will be settled by commuted value transfers.

For the calculation of the portion of the solvency and hypothetical windup liabilities relating to the benefits that are expected to be settled by a group annuity purchase, the liability discount rate corresponds to an approximation of the annuity purchase rates as at the actuarial valuation date following application of the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting. Effective June 30, 2013, the guidance was revised to reflect the duration of the liabilities for non-indexed benefits assumed to be settled by group annuity purchase in the approximation of the annuity purchase rate. The duration of the liabilities assumed to be settled through the purchase of non-indexed annuities is 9.4.

For the calculation of the portion of the solvency and hypothetical windup liabilities relating to the benefits that are expected to be settled by commuted value transfers, the liability discount rates have been determined in accordance with the *Standards of Practice for Pension Commuted Values* published by the Canadian Institute of Actuaries effective April 1, 2009 and revised effective February 1, 2011. For this actuarial valuation, the January 2014 rates have been used.

For the calculation of the portion of the solvency and hypothetical windup liability relating to benefits subject to pre-retirement indexation that are expected to be settled by commuted value transfers, the liability discount rates have been determined as the interest rate for pensions indexed at 50% of the increases in the Consumer Price Index (maximum of 2% per annum) in accordance with the Canadian Institute of Actuaries' *Standards of Practice for Pension Commuted Values*.

Escalation of Income Tax Act (Canada) maximum pension limitation

The *Income Tax Act (Canada)* maximum pension limitation specified in the Act as at the actuarial valuation date is applied without consideration for future scheduled increases, as pension entitlements are determined as at the actuarial valuation date.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (*cont'd*)

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Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

Rate of inflation

For benefits that are expected to be settled by commuted value transfers, the assumption has been determined in accordance with the Canadian Institute of Actuaries' *Standards of Practice for Pension Commuted Values*.

Mortality

For benefits that are expected to be settled by commuted value transfers, the assumption has been determined in accordance with the *Standards of Practice for Pension Commuted Values* published by the Canadian Institute of Actuaries effective April 1, 2009 and revised effective February 1, 2011. For the benefits that are expected to be settled by a group annuity purchase, the assumption has been set following application of the relevant guidance on assumptions for solvency and hypothetical windup valuations issued by the Canadian Institute of Actuaries' Committee on Pension Plan Financial Reporting. No pre-retirement mortality has been assumed in order to approximate the value of pre-retirement death benefits.

Retirement/pension commencement

- Members eligible to retire: pension commences at the age that produces the highest value (among the retirement age options for which the member qualifies upon termination of employment).
- Other members: pension commences at age 65.

For benefits that are expected to be settled by commuted value transfers, this assumption is in accordance with the Canadian Institute of Actuaries' *Standards of Practice for Pension Commuted Values*. For the benefits that are expected to be settled by a group annuity purchase, this is consistent with the expected assumption that will be used by insurers to price the group annuity.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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Following is a summary of the plan's early retirement provisions, and how they are reflected in the solvency valuation.

Plan Provision	Treatment of Plan Provision, for Solvency Valuation
<ul style="list-style-type: none"> ● "30 and out" early retirement <ul style="list-style-type: none"> – 30+ years of continuous service – unreduced benefit 	<ul style="list-style-type: none"> ● Included in solvency valuation.
<ul style="list-style-type: none"> ● "55 and 15" early retirement <ul style="list-style-type: none"> – age 55+ with 15+ years of continuous service – 6% reduction per annum pre-65 applied 	<ul style="list-style-type: none"> ● Included in solvency valuation.
<ul style="list-style-type: none"> ● "70/80" special early retirement <ul style="list-style-type: none"> – age 55+ with 15+ years of continuous service, <u>or</u> – 80+ age/service points with 15+ years of continuous service – upon shutdown or permanent disability or with company consent: unreduced benefit 	<ul style="list-style-type: none"> ● Company has never granted consent in the past, in individual situations. ● Company has used the provision in the past, for targeted downsizings in 1981, 1987, 1991, and 2002. ● Management indicated consent would not be granted if the pension plan were to be terminated. ● Statutory solvency funding rules focus on pension plan termination, not shutdown of the mine. ● Scenario for solvency valuation assumes that the employer continues its operations and there is no closure of the mine. ● Conditions for including this provision in the solvency valuation are therefore not met; excluded from solvency valuation, in accordance with directions from the plan administrator.
<ul style="list-style-type: none"> ● Statutory early retirement <ul style="list-style-type: none"> – age 55+ with 2+ years of continuous service (no service requirement for Quebec employees) – actuarial reduction applied 	<ul style="list-style-type: none"> ● Included in solvency valuation.
<ul style="list-style-type: none"> ● Deferred vested early retirement <ul style="list-style-type: none"> – termination of service prior to retirement eligibility – with 15+ years of continuous service: 6% reduction per annum pre-65 applied – less than 15 years of continuous service: actuarial reduction applied 	<ul style="list-style-type: none"> ● Included in solvency valuation.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

Percentage of members with eligible spouses at pension commencement and electing joint and survivor pension form

See rationale for going concern assumptions in Appendix C.

Years male spouse older than female spouse

See rationale for going concern assumptions in Appendix C.

Percentage of members receiving settlement by commuted value transfer

This assumption has been determined by considering the benefit provisions of the plan, legislative requirements to offer specific settlement options to various classes of members, and, in particular, the options to be provided to members upon plan windup.

The assumption also reflects the expectation that members further from retirement are more likely to elect to settle their pension benefit by a commuted value transfer, while members closer to retirement are more likely to elect to settle their pension benefit through a group annuity purchase where this option is available.

Provision for expenses

Allowance was made for normal administrative, actuarial, legal and other costs which would be incurred if the plan were to be wound up (excluding costs relating to the resolution of surplus or deficit issues). The actuarial valuation is premised on a scenario in which the employer continues to operate after the windup date. In establishing the allowance for plan windup costs, certain administrative costs were assumed to be paid from the pension fund (consistent with past practice) while other costs were assumed to be borne directly by the employer.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (*cont'd*)

Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
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Solvency Incremental Cost Actuarial Assumptions

Demographic and Benefit Projection Actuarial Assumptions

Except as noted below, the projected population and benefits valued in the solvency liability projection are based on the demographic and benefit projection assumptions used for the going concern valuation described in Appendix C.

New entrants

No allowance has been made for new entrants between the current actuarial valuation date and next actuarial valuation date in the demographic projections on the basis that the plan is closed to new entrants.

Solvency Liability Projection Actuarial Assumptions

The solvency liability projections for purposes of calculating the solvency incremental cost are based on the assumptions used for the solvency valuation described previously.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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Appendix E: Membership Data

Summary of Membership Data

Active and disabled members

	January 1, 2014	January 1, 2011
Defined Benefit Provision		
● Number	188	186
● Average age	45.2	44.4
● Average credited service	6.9	7.7
● Annual payroll	\$ 25,654,389	\$ 22,638,017
● Average salary	\$ 136,460	\$ 121,710
Defined Contribution Provision		
● Number	259	229

The following distribution relates to active and disabled members under the defined benefit provision. The following meanings have been assigned to age and credited service:

- Age Age as at January 1, 2014
- Credited Service Credited service as at January 1, 2014

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

Age	Credited Service							Total	
	0 - 4	5 - 9	10 - 14	15 - 19	20 - 24	25 - 29	30 - 34		35 +
< 25	2								2
25 - 29	12	2							14
30 - 34	9	5							14
35 - 39	12	10							22
40 - 44	18	7	6	4			1		36
45 - 49	17	13	9	2	2				43
50 - 54	15	4	2	3	3	1			28
55 - 59	7	5	3	2					17
60 - 64	5		3	1				2	11
65 +		1							1
Total	97	47	23	12	5	2			188

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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Retired members and beneficiaries

	January 1, 2014	January 1, 2011
● Number	324	314
● Average age	72.1	70.2
● Total annual lifetime pension	\$ 5,907,882	\$ 5,880,593
● Total annual temporary pension to age 65	\$ 336,435	\$ 272,110
● Average annual pension (lifetime plus temporary)	\$ 18,234	\$ 19,595

Transferred and terminated vested members

	January 1, 2014	January 1, 2011
● Number	183	132
● Average age	49.1	49.4
● Total annual pension	\$ 708,349	\$ 504,185
● Average annual pension	\$ 3,871	\$ 3,820

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

Review of Membership Data

The membership data with respect to the defined benefit provision were supplied by Cliffs Natural Resources Inc. as at January 1, 2014. The membership data with respect to the defined contribution provision were supplied by Sun Life Financial as at January 1, 2014.

The membership data have been relied upon by Towers Watson following tests for reasonableness and found to be sufficient and reliable for the purposes of the actuarial valuation. Elements of the data review included the following:

- ensuring that the data were intelligible (i.e., that an appropriate number of records was obtained, that the appropriate data fields were provided and that the data fields contained valid information);
- preparation and review of membership reconciliations to ascertain whether the complete membership of the plan appeared to be accounted for;
- review of consistency of individual data items and statistical summaries between the current actuarial valuation and the previous actuarial valuation;
- review of reasonableness of individual data items, statistical summaries and changes in such information since the previous actuarial valuation date; and
- comparison of the membership data and the plan's financial statements for consistency.

However, the tests conducted as part of the membership data review may not have captured certain deficiencies in the data. We have also relied on the certification of the plan administrator as to the quality of the data.

Membership Reconciliation

	Active and disabled members	Retired members and beneficiaries	Transferred and terminated vested members
As at January 1, 2011	186	314	132
<ul style="list-style-type: none"> ● New entrants (including re-employed) 107 ● Non-vested termination (23) ● Vested termination (63) 63 ● Settlement (4) (5) ● Transfer ● Retirement (14) 21 (7) ● New beneficiaries 6 ● Deceased (with beneficiary) (6) ● Deceased (without beneficiary) (15) ● Deceased (settlement) (1) ● Data correction 4 ● Net change <u>2</u> <u>10</u> <u>51</u> 			
As at January 1, 2014	188	324	183

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (*cont'd*)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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Appendix F: Summary of Plan Provisions

The following is an outline of the principal features of the plan which are of financial significance to valuing the plan benefits. For a detailed description of the benefits, please refer to the plan document.

Plan Effective Date

The Plan was restated effective January 1, 1997. Predecessor arrangements date back to July 1, 1963.

Date of Last Amendment

November 26, 2010 (update to defined contribution default investment option). The plan will be further amended to reflect regulatory updates since the last restatement of the text and the closing of the plan to new members, effective January 1, 2013.

Definitions

Credited Service

Service while a member of the Plan.

Pensionable Earnings

Basic remuneration, including overtime (for periods prior to June 23, 2008), shift premiums and cash bonuses. Excludes stock options, severance payments and all other non-cash benefits.

Plan Participation

All employees who are not within the bargaining unit are required to join the Plan on their date of employment.

Normal Retirement

Eligibility

Age 65.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

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Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

Effective January 1, 1997 existing plan members were offered a one-time choice between two pension options, Option A or B. All future new hires from January 1, 1997 onward must enrol under Option B. As at January 1, 2011, there are no remaining members in active status, with coverage under Option A.

Option B offers a combination of Defined Benefit coverage (for past service and future service) and Defined Contribution coverage (for future service, from January 1, 1997 onward), as follows:

Basic Annual Pension, Defined Benefit

The annual pension benefit payable on normal retirement is the sum of (i) and (ii):

- (i) the sum of 1.5% of highest 5-year average earnings up to the YMPE plus 1.6% of highest 5-year average earnings over the YMPE, for each year of credited service prior to January 1, 1997;
- (ii) 1.0% of highest 5-year average earnings for each year of credited service after December 31, 1996.

However, the pension payable on normal retirement will not be less than the amount that would be payable, if the member had been a member of Option B of the Bargaining Unit plan sponsored by the company instead of this salaried employees plan, plus the amount of pension which could be purchased with the employee's required contributions with interest.

In addition, a "make-up benefit" is payable to salaried employees who have a frozen monthly lifetime benefit under the Bargaining Unit plan (in respect of a period of Bargaining Unit credited service prior to becoming a salaried employee). The make-up benefit is based on the difference between the Bargaining Unit plan's current lifetime benefit rates under Option B and the benefit rates that were in effect at the time of the employee's transfer to salaried status.

Member Contributions

Prior to January 1, 1997, 1.2% of earnings up to the YMPE and 3.0% of earnings above the YMPE.

Effective January 1, 1997, employees covered under Option B ceased contributing toward the Defined Benefit component of the plan; from 1997 onward, employees covered under Option B contribute 2% of earnings per annum to a Defined Contribution component of the Plan, and are entitled to a contribution made by the Company of 3% of earnings per annum. Effective May 1, 2007, contributions to the Defined Contribution component of the Plan were increased to 3% of earnings from the employees and 6% of earnings from the Company.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

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The Defined Contribution account balance, including investment earnings thereon, will be used at retirement to provide additional pension income.

Early Retirement

Please refer to the summary in Appendix D.

In addition to lifetime retirement benefits, employees who retire early from active status will receive a monthly supplement, payable to age 65, of \$18.00 per year of service (to a maximum of 40 years of service). The \$18.00 multiplier is increased to \$27.00, for employees who retire from active status at age 60 or later with 30 or more years of credited service, or at any age with 35 or more years of credited service.

Postponed Retirement

Eligibility

Up to age 71 if continued employment with the Company.

Benefit

Continued accrual of benefits for non-Quebec members. Revalorized pension determined for Quebec members.

Termination of Employment

Eligibility

All active plan members in Newfoundland are vested (in respect of their Defined Benefit entitlements) after two years of plan membership. All active plan members in Quebec are vested immediately (in accordance with Bill 102).

Defined Contribution entitlements are immediately vested, regardless of the number of years of service.

Benefit

Defined Benefit pension at normal retirement date, based on service at termination. Upon earlier retirement, the pension is actuarially reduced (or is subject to a 6% reduction per annum pre-65, with 15 or more years of continuous service). Effective January 1, 2001, for terminating active Quebec

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

F-4 Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

members, the pension for post-2000 credited service is subject to adjustment, in accordance with Quebec Bill 102. In lieu of the monthly benefit, the participant may transfer the commuted value of the benefit to a locked-in RRSP or other registered vehicle.

Defined Contribution account balances may be transferred to a locked-in RRSP or other registered vehicle.

Death While Active – Surviving Spouse Coverage

Eligibility

15 years of service, with spouse.

Benefit

Benefit payable is 50% (before any reduction) of the accrued monthly Defined Benefit or \$140 if greater, and is payable during the spouse's remaining lifetime.

Death While Active – Optional Pre-Pension Spouse Coverage

Eligibility

Age 55 and 15 years of service, with spouse, and member has elected coverage.

Benefit

Benefit payable is 50% (before any reduction) of the accrued monthly Defined Benefit, and is payable during the spouse's remaining lifetime. If the member subsequently survives to retirement, his retirement benefit will be reduced by 0.68% for each year this coverage was in effect.

Minimum Death Benefit

Eligibility

Two or more years of plan membership.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (*cont'd*)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

F-5

Benefit

The commuted value of the Defined Benefit earned after January 1, 1990 to the date of death is payable to the spouse or, if applicable, designated beneficiary. If the spouse is the recipient, the spouse will have the option of taking the commuted value in the form of a monthly pension.

If less than two years of plan membership, refund of Defined Benefit member contributions with interest. Effective January 1, 2001, immediate vesting is provided upon the death of active Quebec members, in accordance with Bill 102.

In addition, the full Defined Contribution account balance, with investment earnings, will be vested, regardless of the number of years of service.

Forms of Payment

Normal Form

Annuity for life, with 50% of the lifetime benefit continuing to the spouse if the retired employee dies before age 65; refund of any contributions with interest in excess of benefits paid out.

Optional Forms

For married participants, the automatic option is a reduced 60% joint and survivor pension, actuarially equivalent to the normal form. Other options are also available on an actuarially equivalent basis.

Disability Benefit

While benefits are payable from the LTD plan, pension benefits continue to accrue under the Defined Benefit provisions based on the earnings rate at the time of disability. Company contributions continue under the Defined Contribution provisions, if the member elects to contribute.

Special Provisions on Mine Shut-Down

The special benefits payable on shut-down of the mine are described in Appendix D.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

G-1

Appendix G: Solvency Ratio

Solvency Ratio

	January 1, 2014
Solvency value of assets	\$ 83,533,274
Solvency liability	\$ 94,004,606
Solvency ratio	89%

Comments:

- The solvency value of assets reflects net outstanding amounts.
- For purposes of calculating the solvency ratio, the solvency value of assets and the solvency liability exclude assets under the defined contribution provision.
- As the degree of solvency is less than 1.00, transfer deficiencies must be paid over a maximum period of five years unless the cumulative transfer deficiencies are within the limits prescribed by the Regulation to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)* or the employer remits additional contributions in respect of the transfer deficiencies. Pursuant to Regulations 15(4) or 15(5) to the *Pension Benefits Act, 1997 (Newfoundland and Labrador)*, approval of the Superintendent will be required to make commuted value transfers if there has been a significant decline in the solvency ratio after the valuation date.

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (*cont'd*)

Cliffs Natural Resources Inc.
 Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
 Actuarial valuation as at January 1, 2014

H-1

Appendix H: Certificate of the Plan Administrator

I hereby certify that to the best of my knowledge and belief:

- the significant terms of engagement contained in Appendix A of this report are accurate and reflect the plan administrator's judgement of the plan provisions and/or an appropriate basis for the actuarial valuation of the plan;
- the information on plan assets forwarded to Société Towers Watson Canada inc. and summarized in Appendix B of this report is complete and accurate;
- the data forwarded to Société Towers Watson Canada inc. and summarized in Appendix E of this report are a complete and accurate description of all persons who are members of the plan, including beneficiaries who are in receipt of a retirement income, in respect of service up to the date of the actuarial valuation;
- the summary of plan provisions contained in Appendix F of this report is accurate; and
- except as noted in the Introduction of the report, there have been no events which occurred between the actuarial valuation date and the date this actuarial valuation was completed that may have a material financial effect on the actuarial valuation.

 Signature

 Date

 Name

 Title

REPS-4 Actuarial Valuation Report of the Salaried Employees Pension Plan, January 1, 2014 (cont'd)

Cliffs Natural Resources Inc.
Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent
Actuarial valuation as at January 1, 2014

I-1

Appendix I: Actuarial Information Summary

REPS-7 Letter from Wabush Mines to Michael Keeper, January 26, 2016

Mines Wabush
C.P. 25
Bureau Chef
Saint-Bruno de Montarville, Qc J8V 4P8

January 26, 2016

Mr. Michael Keeper


Subject: Contributory Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent, Arnaud Railway Company and Wabush Lake Railway Company, Limited (Newfoundland Registration No. 021314 and CRA Registration NO. 0343558) (The "Plan")

Notice of Plan termination as of December 16, 2015

Dear Mr. Keeper:

Wabush Iron Co. Limited, Wabush Resources Inc. and certain of their affiliates, including Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited, filed for restructuring proceedings under the Companies' Creditors Arrangement Act (CCAA) in May 2015. As part of the CCAA proceeding, special payments towards the deficits of the Plan have been suspended since May 2015, affecting the financial position of the Plan. In addition, Wabush Mines has ceased its operation, with essentially all of its employees laid-off or terminated and it appears unlikely that the Plan can continue as a going concern under a new sponsor.

As a result, the Newfoundland Superintendent of Pensions (the "Regulator") has ordered the termination of the Plan effective as of December 16, 2015.

About the termination

As required by the pension legislation, Wabush Mines will arrange for a Termination Report that reviews the financial position of the Plan as of December 16, 2015. That report will be filed with the Regulator for approval.

All participants will eventually receive a personalized statement setting out their entitlements under the Plan and their options as a result of the termination. Please note that until the Termination Report is approved by the Regulator, no benefits (except for regular monthly pension payments for participants currently receiving payments) may be paid from the Plan. If you are eligible to retire immediately and would like to start your pension, you may contact Marthe Brodeur using the contact information below.

You will find enclosed a *Frequently Asked Questions* (FAQs) document that should answer most of your questions until further information is available. If you have any additional questions, please contact the undersigned.

Please read question 4 of the enclosed FAQ as your monthly pension benefit will be adjusted as early as March 1, 2016 as requested by Provincial regulators.

Wabush Mines

CONTRIBUTORY PENSION PLAN FOR SALARIED EMPLOYEES OF WABUSH MINES, CLIFFS MINING COMPANY, MANAGING AGENT, ARNAUD RAILWAY COMPANY AND WABUSH LAKE RAILWAY COMPANY, LIMITED (Newfoundland Registration No. 021314 and CRA Registration NO. 0343558) (The "Plan")

Frequently Asked Questions (FAQs) – Current recipients

1. *What is a pension plan termination?*

A pension plan termination causes the plan to cease to exist for all members, former members and retirees. All benefits will be settled either through a lump-sum payment or through the purchase of an annuity from a life insurance company. The Newfoundland Superintendent of Pensions (the "Regulator"), has oversight of the termination and must approve the *Termination Report* before benefits are paid out.

2. *When will the Plan be terminated?*

The Plan termination date is December 16, 2015.

3. *Will I receive more information?*

All participants or person entitled to a benefit will eventually receive a personalized statement setting out their entitlements under the Plan and their options as a result of the termination.

4. *Will I be affected?*

You will continue to receive a monthly payment but such payment will be adjusted ("Adjusted Pension Benefit") to reflect the financial position of the Plan as will be stipulated in the *Termination Report*. As requested by Provincial regulators, a preliminary reduction of 25% will be applied to your total gross monthly pension benefit you currently receive starting on March 1, 2016. The reduction could potentially change and your monthly pension be readjusted once the *Termination Report* is filed with the Regulators. We will make sure to keep you informed if this is the case.

Once the termination process is completed, the payments will be paid from a life insurance company instead of from the Plan. The pension option you chose at retirement (for example, a survivor pension option), remains in effect. For example, if you elected a Joint & Surviving Spouse option upon retirement and you die before your spouse, your spouse will receive a percentage of your *adjusted* amount upon your death, in accordance with the provisions of the plan.

As a current recipient, you do not have anything to do. Once the Regulators have approved the *Termination Report*, Wabush Mines will proceed with the annuity purchase

5. When will my pension statement be ready?

Wabush Mines will send individual pension statements approximately 30 days following the approval of the *Termination Report* by the Regulator.

6. What is an annuity?

An annuity is a financial contract with a life insurance company that provides a continuing payment with a monthly amount payable for your lifetime, just like a pension.

7. Is my pension guaranteed after the annuity is purchased?

The purchase of the annuity will not affect your *Adjusted Pension Benefit*. Once the annuity is purchased, your *Adjusted Pension Benefit* is protected by Assuris against the unlikely event that the life insurance company selected to pay your monthly pension is ever declared insolvent. Assuris is a not-for-profit organization of Canadian insurers whose role is to provide additional protection to policyholders against loss of benefits and it covers pension annuities up to a maximum of \$2,000 per month, or 85% of your monthly pension if greater.

8. When will the annuity purchases happen?

The annuity purchase can only happen after the plan *Termination Report* has been approved by the Regulator. This may take up to 12 months or more from the *termination date*.

9. When will I be notified about the purchase of my annuity?

Once an annuity has been purchased for you, you will receive a notice from Wabush Mines, which will include the name of the life insurance company who will provide the annuity and the date you will receive your first annuity payment from the insurance company. You will also receive a welcome letter from the insurance company.

10. How will the insurance company know where to send my payments?

Wabush Mines will arrange to provide certain personal information including banking information for direct deposits, as well as the name and age of your spouse (for survivor benefits, if applicable) and beneficiary information. The welcome letter from the insurance company will ask you to review and confirm the accuracy of your personal information.

11. Will my payments continue to be received on exactly the same schedule?

We know you count on receiving your payments on schedule and may have automatic banking transactions in place based on these dates. Wabush Mines and the insurance company who will provide your annuity will work together to ensure that there is no disruption to your pension.

12. Will I miss any of my monthly payments as a result of the annuity purchase

There will be no disruption in your monthly pension payments as a result of the annuity purchase. You will continue to receive your *Adjusted Pension Benefit* payments from the Plan up to the first payment from the life insurance company, at which time the payments will then be paid by the insurance company.

13. Where can I get more information?

Should you have any questions, please contact Marthe Brodeur using the contact information included in the notice.

While every effort has been made to be accurate, the official Plan document and the full Termination Report will govern in the event of any conflict between this Frequently Asked Questions document and one or both of those documents.

REPS-7 Letter from Wabush Mines to Michael Keeper, January 26, 2016 (cont'd)

Contact information

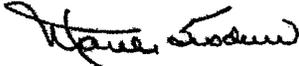
Mailing address: Wabush Mines
C.P. 25
Succ. Bureau Chef
St-Bruno de Montarville, Qc
J3V 4P8

Phone: 450-441-9564 or
1-844-954-6534 (toll free)

Email: marthe.brodeur@cliffsnr.com.

Please make sure to keep Wabush Mines informed of any change of address that you may incur.

Sincerely,



Marthe Brodeur
Manager, Compensation and Benefits ECIO

Procédures en vertu de la Loi sur les arrangements avec les créanciers
 Parties LACC Bloom Lake
 Réclamation détaillée par factures et échéances

Date de détermination : 2015-01-27
 Date du calcul des intérêts : 2016-03-08

Matricule : 7758 93 4829
 Propriétaire : Ciffs Québec Mine de Fer Limitée
 Adresse: 345, chemin de la Pointe-Noire
 Lots (3) : 4787156 , 4787159 , 4787160

Description de la facture						Créances												Total
						Nombre de jours			Intérêts		Créances jusqu'au 2015-01-27			Créances à compter du 2015-01-28			Total	
Type de facture	Période	# facture	Date	Échéance	Montant	Jusqu'au 2015-01-27	À compter du 2015-01-28	Total	Date	Nbre de mois	Capital	Intérêts	Total	Capital	Intérêts	Total		Total
Hydromètre	2014-09-01	2014-12-31	15780	2015-02-27	2015-03-31	3 330,82	122	0	122	2016-03-01	1	3 330,82	33,31	3 364,13	-	-	-	3 364,13
Hydromètre	2015-01-01	2015-04-30	18535	2015-07-07	2015-08-31	2 079,00	27	93	120	2016-03-01	1	467,78	4,68	472,46	1 611,22	16,11	1 627,33	2 099,79
Hydromètre	2015-01-01	2015-04-30	18536	2015-07-07	2015-08-31	2 079,00	27	93	120	2016-03-01	1	467,78	4,68	472,46	1 611,22	16,11	1 627,33	2 099,79
Hydromètre	2015-01-01	2015-04-30	18537	2015-07-07	2015-08-31	376,96	27	93	120	2016-03-01	1	84,59	0,85	86,44	291,37	2,51	294,28	376,72
Hydromètre	2015-01-01	2015-04-30	18538	2015-07-07	2015-08-31	4 158,00	27	93	120	2016-03-01	1	635,55	9,36	644,91	3 222,45	32,22	3 254,67	4 199,58
Hydromètre	2015-05-01	2015-08-31	18547	2015-10-27	2015-11-30	2 079,00	0	123	123	2016-03-01	1	-	-	-	2 079,00	20,79	2 099,79	2 099,79
Hydromètre	2015-05-01	2015-08-31	18548	2015-10-27	2015-11-30	2 079,00	0	123	123	2016-03-01	1	-	-	-	2 079,00	20,79	2 099,79	2 099,79
Hydromètre	2015-05-01	2015-08-31	18549	2015-10-27	2015-11-30	347,00	0	123	123	2016-03-01	1	-	-	-	347,00	3,47	350,47	350,47
Hydromètre	2015-05-01	2015-08-31	18550	2015-10-27	2015-11-30	4 158,00	0	123	123	2016-03-01	1	-	-	-	4 158,00	41,58	4 199,58	4 199,58
Hydromètre	2015-09-01	2015-12-31	18927	2016-01-20	2016-02-29	2 079,00	0	122	122	2016-03-01	1	-	-	-	2 079,00	20,79	2 099,79	2 099,79
Annuelle	2015-01-01	2015-12-31	149211	2015-01-19	2015-02-28	813 811,70	27	338	365	2015-03-01	13	177 688,36	23 099,49	200 787,85	636 123,34	62 696,02	718 819,36	819 607,21
Annuelle	2015-01-01	2015-12-31	149211	2015-01-19	2015-05-31	813 811,67	27	338	365	2015-06-01	10	-	-	-	813 811,67	81 381,17	896 192,84	896 192,84
Annuelle	2015-01-01	2015-12-31	149211	2015-01-19	2015-08-31	813 811,67	27	338	365	2015-09-01	7	-	-	-	813 811,67	56 966,82	870 778,49	870 778,49
Annuelle	2016-01-01	2016-12-31	159957	2016-01-18	2016-02-29	774 459,00	0	366	366	2016-03-01	1	-	-	-	774 459,99	7 744,60	782 204,60	782 204,60
Annuelle	2016-01-01	2016-12-31	159957	2016-01-18	2016-05-31	774 459,99	0	366	366	2015-08-31	0	-	-	-	774 459,99	-	774 459,99	774 459,99
Annuelle	2016-01-01	2016-12-31	159957	2016-01-18	2016-08-31	774 459,99	0	366	366	2015-08-31	0	-	-	-	774 459,99	-	774 459,99	774 459,99
Total de la réclamation - Parties LACC Bloom Lake						4 787 579,80						182 974,88	23 162,37	206 127,25	4 604 604,92	228 963,38	4 833 568,30	5 039 696,55

Procédures en vertu de la Loi sur les arrangements avec les créanciers
Parties LACC Wabush
Réclamation détaillée par factures et échéances

Date de détermination : 2015-05-20
 Date du calcul des intérêts : 2016-03-08

Matricule: 7164 71 5203
 Propriétaire: Arnaud Railway Co Ltd
 Adresse: Boulevard Laure
 Lot : 3931505

Description de la facture						Créances											Total
						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			
Type de facture	Période	# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts	Total	
Annuelle	2015-01-01	2015-12-31	147143	2015-01-19	2015-02-28	144,67	140	225	365	2015-03-01	13	55,45	7,21	62,66	89,12	11,58	100,70
Annuelle	2015-01-01	2015-12-31	147143	2015-01-19	2015-05-31	144,58	140	225	365	2015-08-01	10	55,46	5,55	61,01	89,12	8,91	98,03
Annuelle	2015-01-01	2015-12-31	147143	2015-01-19	2015-08-31	144,58	140	225	365	2015-09-01	7	55,46	3,88	59,34	89,12	6,24	95,36
Annuelle	2016-01-01	2016-12-31	157895	2016-01-18	2016-02-29	168,04	0	366	366	2016-03-01	1	-	-	-	168,04	1,68	169,72
Annuelle	2016-01-01	2016-12-31	157895	2016-01-18	2016-05-31	168,03	0	366	366	2016-05-31	0	-	-	-	168,03	-	168,03
Annuelle	2016-01-01	2016-12-31	157895	2016-01-18	2016-08-31	168,03	0	366	366	2016-08-31	0	-	-	-	168,03	-	168,03
937,83												166,37	16,64	183,01	771,46	28,41	799,87

Matricule: 7265 16 3875
 Propriétaire: Arnaud Railway Co Ltd
 Adresse: Route 138 Ouest
 Lot : 3931530

Description de la facture						Créances											Total
						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			
Type de facture	Période	# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts	Total	
Annuelle	2015-01-01	2015-12-31	147144	2015-01-19	2015-02-28	106,72	140	225	365	2015-03-01	13	40,93	5,32	46,25	65,79	8,55	74,34
Annuelle	2015-01-01	2015-12-31	147144	2015-01-19	2015-05-31	106,73	140	225	365	2015-06-01	10	40,94	4,09	45,03	65,79	6,58	72,37
Annuelle	2015-01-01	2015-12-31	147144	2015-01-19	2015-08-31	106,73	140	225	365	2015-09-01	7	40,94	2,87	43,81	65,79	4,61	70,40
Annuelle	2016-01-01	2016-12-31	157896	2016-01-18	2016-02-29	112,48	0	366	366	2016-03-01	1	-	-	-	112,48	1,12	113,60
Annuelle	2016-01-01	2016-12-31	157896	2016-01-18	2016-05-31	112,47	0	366	366	2016-05-31	0	-	-	-	112,47	-	112,47
Annuelle	2016-01-01	2016-12-31	157896	2016-01-18	2016-08-31	112,47	0	366	366	2016-08-31	0	-	-	-	112,47	-	112,47
667,60												122,81	12,28	135,09	534,79	20,86	555,55

Matricule: 7467 18 5944
 Propriétaire: Arnaud Railway Co Ltd
 Adresse: Route 138 Ouest
 Lot : 3708223

Description de la facture						Créances											Total
						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			
Type de facture	Période	# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts	Total	
Annuelle	2015-01-01	2015-12-31	147145	2015-01-19	2015-02-28	246,75	140	225	365	2015-03-01	13	94,64	12,30	106,94	152,11	19,79	171,89
Annuelle	2015-01-01	2015-12-31	147145	2015-01-19	2015-05-31	246,75	140	225	365	2015-06-01	10	94,64	9,46	104,10	152,11	15,21	167,32
Annuelle	2015-01-01	2015-12-31	147145	2015-01-19	2015-08-31	246,75	140	225	365	2015-09-01	7	94,64	6,62	101,26	152,11	10,65	162,76
Annuelle	2016-01-01	2016-12-31	157897	2016-01-18	2016-02-29	259,53	0	366	366	2016-03-01	1	-	-	-	259,53	2,60	262,13
Annuelle	2016-01-01	2016-12-31	157897	2016-01-18	2016-05-31	259,54	0	366	366	2016-05-31	0	-	-	-	259,54	-	259,54
Annuelle	2016-01-01	2016-12-31	157897	2016-01-18	2016-08-31	259,54	0	366	366	2016-08-31	0	-	-	-	259,54	-	259,54
1 518,86												283,92	28,38	312,30	1 234,94	48,24	1 283,18

Procédures en vertu de la Loi sur les arrangements avec les créanciers
 Parties LACC Wabush
 Réclamation détaillée par factures et échéances

Date de détermination : 2015-05-20
 Date du calcul des intérêts : 2016-03-08

Matricule: 7689 29 9399
 Propriétaire: Arnaud Railway Co Ltd
 Adresse: Route 138 Ouest
 Lot : 3669289

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	147145	2015-01-19	2015-02-28	223,70	140	225	365	2015-03-01	13	85,80	11,15	96,95	137,90	17,93	155,83	252,78
Annuelle	2016-01-01	2016-12-31	157898	2016-01-18	2016-02-29	236,30	0	366	366	2016-03-01	1	-	-	-	235,30	2,35	237,65	237,65
						459,00						85,80	11,15	96,95	373,20	20,28	393,48	490,43

Matricule: 7670 64 9344
 Propriétaire: Arnaud Railway Co Ltd
 Adresse: Route 138 Ouest
 Lot : 3669310

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	147147	2015-01-19	2015-02-28	154,54	140	225	365	2015-03-01	13	59,28	7,71	66,99	95,26	12,38	107,64	174,63
Annuelle	2016-01-01	2016-12-31	157899	2016-01-18	2016-02-29	163,40	0	366	366	2016-03-01	1	-	-	-	163,40	1,63	165,03	165,03
						317,94						59,28	7,71	66,99	258,66	14,01	272,67	339,66

Matricule: 7972 85 2991
 Propriétaire: Arnaud Railway Co Ltd
 Adresse: Boulevard Laure
 Lot : 3931623

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	147148	2015-01-19	2015-02-28	91,36	140	225	365	2015-03-01	13	35,04	4,56	39,60	56,32	7,31	63,63	103,23
Annuelle	2016-01-01	2016-12-31	157900	2016-01-18	2016-02-29	95,60	0	366	366	2016-03-01	1	-	-	-	95,60	0,96	96,56	96,56
						186,96						35,04	4,56	39,60	151,92	8,27	160,19	199,79

Procédures en vertu de la Loi sur les arrangements avec les créanciers
Parties LACC Wabush
Réclamation détaillée par factures et échéances

Date de détermination : 2015-05-20
 Date du calcul des Intérêts : 2016-03-08

Matricule: 9169 59 5730
 Propriétaire: Arnaud Railway Co Ltd
 Adresse: Chemin du Lac-Daigle
 Lots (15) : 3708313 , 3708316 , 3708318 , 3708319
 3931502 , 3931504 , 3931506 , 3931507
 3931509 , 3931540 , 3931542 , 3931544
 3931552 , 3940981 , 4085794

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	147149	2015-01-19	2015-02-28	5 213,70	140	225	365	2015-03-01	13	1 999,78	259,97	2 259,75	3 213,92	417,81	3 631,73	5 891,48
Annuelle	2015-01-01	2015-12-31	147149	2015-01-19	2015-05-31	5 213,71	140	225	365	2015-06-01	10	1 999,78	199,98	2 199,76	3 213,93	321,39	3 535,32	5 735,08
Annuelle	2015-01-01	2015-12-31	147149	2015-01-19	2015-08-31	5 213,71	140	225	365	2015-09-01	7	1 999,78	139,98	2 139,76	3 213,93	224,98	3 438,91	5 578,67
Annuelle	2016-01-01	2016-12-31	157901	2016-01-18	2016-02-29	6 422,23	0	366	366	2016-03-01	1	-	-	-	6 422,23	64,22	6 486,45	6 486,45
Annuelle	2016-01-01	2016-12-31	157901	2016-01-18	2016-05-31	6 422,23	0	366	366	2016-05-31	0	-	-	-	6 422,23	-	6 422,23	6 422,23
Annuelle	2016-01-01	2016-12-31	157901	2016-01-18	2016-08-31	6 422,23	0	366	366	2016-08-31	0	-	-	-	6 422,23	-	6 422,23	6 422,23
						34 907,81						5 989,34	599,93	6 589,27	28 908,47	1 028,40	29 936,87	36 536,14

Matricule: 9369 90 7358
 Propriétaire: Compagnie de chemin de Fer Arnaud
 Adresse: Chemin du Lac-Daigle
 Lot :

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	149322	2015-01-19	2015-02-28	95 531,78	140	225	365	2015-03-01	13	36 642,33	4 763,50	41 405,83	58 889,45	7 655,64	66 545,09	107 950,92
Annuelle	2015-01-01	2015-12-31	149322	2015-01-19	2015-05-31	95 531,77	140	225	365	2015-06-01	10	36 642,32	3 664,23	40 306,55	58 889,45	5 889,95	64 778,40	105 084,95
Annuelle	2015-01-01	2015-12-31	149322	2015-01-19	2015-08-31	95 531,77	140	225	365	2015-09-01	7	36 642,32	2 564,96	39 207,28	58 889,45	4 122,26	63 011,71	102 218,99
Annuelle	2016-01-01	2016-12-31	160068	2016-01-18	2016-02-29	91 738,44	0	366	366	2016-03-01	1	-	-	-	91 738,44	917,38	92 655,82	92 655,82
Annuelle	2016-01-01	2016-12-31	160068	2016-01-18	2016-05-31	91 738,45	0	366	366	2016-05-31	0	-	-	-	91 738,45	-	91 738,45	91 738,45
Annuelle	2016-01-01	2016-12-31	160068	2016-01-18	2016-08-31	91 738,45	0	366	366	2016-08-31	0	-	-	-	91 738,45	-	91 738,45	91 738,45
						561 810,65						109 926,97	10 992,69	120 919,66	451 683,69	18 584,23	470 467,92	591 387,58

Matricule: 7658 89 7445.56
 Propriétaire: Mines Wabush
 Adresse: Chemin de la Pointe-Noire
 Lot : 3708370

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	154167	2015-01-19	2015-02-28	3 285,34	140	225	365	2015-03-01	13	1 260,13	163,82	1 423,95	2 025,21	263,28	2 289,49	3 712,44
Annuelle	2015-01-01	2015-12-31	154167	2015-01-19	2015-05-31	3 285,34	140	225	365	2015-06-01	10	1 260,13	126,01	1 386,14	2 025,21	202,52	2 227,73	3 613,87
Annuelle	2015-01-01	2015-12-31	154167	2015-01-19	2015-08-31	3 285,34	140	225	365	2015-09-01	7	1 260,13	88,21	1 348,34	2 025,21	141,76	2 166,97	3 516,31
Annuelle	2016-01-01	2016-12-31	164879	2016-01-18	2016-02-29	3 303,12	0	366	366	2016-03-01	1	-	-	-	3 303,12	33,03	3 336,15	3 336,15
Annuelle	2016-01-01	2016-12-31	164879	2016-01-18	2016-05-31	3 303,11	0	366	366	2016-05-31	0	-	-	-	3 303,11	-	3 303,11	3 303,11
Annuelle	2016-01-01	2016-12-31	164879	2016-01-18	2016-08-31	3 303,11	0	366	366	2016-08-31	0	-	-	-	3 303,11	-	3 303,11	3 303,11
						19 765,36						3 780,39	378,04	4 158,43	15 984,97	640,59	16 625,56	20 783,99

Procédures en vertu de la Loi sur les arrangements avec les créanciers
Parties LACC Wabush
Réclamation détaillée par factures et échéances

Date de détermination : 2015-05-20
 Date du calcul des intérêts : 2016-03-08

Matricule: 8365 88 9774
 Propriétaire: Wabush Mines Co Liée
 Adresse: 907, Place La Fayette
 Lot : 2830981

Description de la facture						Créances												
						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	157294	2015-01-19	2015-02-28	1 126,92	140	225	365	2015-03-01	13	432,24	56,19	488,43	694,68	90,30	784,98	1 273,41
Annuelle	2015-01-01	2015-12-31	157294	2015-01-19	2015-05-31	1 126,92	140	225	365	2015-06-01	10	432,24	43,22	475,46	694,68	69,47	764,15	1 239,61
Annuelle	2015-01-01	2015-12-31	157294	2015-01-19	2015-08-31	1 126,92	140	225	365	2015-09-01	7	432,24	30,26	462,50	694,68	48,63	743,31	1 206,81
Annuelle	2016-01-01	2016-12-31	164879	2016-01-18	2016-02-29	1 191,86	0	366	366	2016-03-01	1	-	-	-	1 191,86	11,92	1 203,78	1 203,78
Annuelle	2016-01-01	2016-12-31	164879	2016-01-18	2016-05-31	1 191,85	0	366	366	2016-05-31	0	-	-	-	1 191,85	-	1 191,85	1 191,85
Annuelle	2016-01-01	2016-12-31	164879	2016-01-18	2016-08-31	1 191,85	0	366	366	2016-08-31	0	-	-	-	1 191,85	-	1 191,85	1 191,85
						5 956,32						1 296,72	129,67	1 426,39	5 659,60	220,32	5 879,92	7 306,31

Matricule: 7359 98 5575
 Propriétaire: Wabush Resources inc.
 Adresse: 1505, chemin de la Pointe-Noire
 Lots (13) : 3669058 , 3669214 , 3708334 , 3708383
 3708384 , 3708385 , 3931508 , 3931512
 3931535 , 3931539 , 3931541 , 4873981
 4873983

Description de la facture						Créances												
						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Hydromètre	2014-05-01	2014-08-31	15775	2015-01-28	2015-02-28	3 960,00	123	-	123	2015-03-01	13	3 960,00	514,80	4 474,80	-	-	-	4 474,80
Hydromètre	2014-05-01	2014-08-31	15776	2015-01-28	2015-02-28	3 213,30	123	-	123	2015-03-01	13	3 213,30	417,73	3 631,03	-	-	-	3 631,03
Hydromètre	2014-09-01	2014-12-31	15782	2015-02-27	2015-03-31	3 960,00	122	-	122	2015-04-01	12	3 960,00	475,20	4 435,20	-	-	-	4 435,20
Hydromètre	2014-09-01	2014-12-31	15783	2015-02-27	2015-03-31	980,00	122	-	122	2015-04-01	12	980,00	117,60	1 097,60	-	-	-	1 097,60
Hydromètre	2015-01-01	2015-04-30	16540	2015-07-07	2015-08-31	4 158,00	120	-	120	2015-09-01	7	4 158,00	291,06	4 449,06	-	-	-	4 449,06
Hydromètre	2015-01-01	2015-04-30	16541	2015-07-07	2015-08-31	1 029,00	120	-	120	2015-09-01	7	1 029,00	72,03	1 101,03	-	-	-	1 101,03
Hydromètre	2015-05-01	2015-08-31	16552	2015-10-27	2015-11-30	4 158,00	20	103	123	2015-12-01	4	676,10	27,04	703,14	3 481,90	139,28	3 621,18	4 324,32
Hydromètre	2015-05-01	2015-08-31	16553	2015-10-27	2015-11-30	1 029,00	20	103	123	2015-12-01	4	167,32	6,69	174,01	861,68	34,47	896,15	1 070,16
Annuelle	2015-01-01	2015-12-31	157300	2015-01-19	2015-02-28	720 311,82	140	225	365	2015-03-01	13	276 283,91	35 916,91	312 200,82	444 027,71	57 723,60	501 751,31	813 952,13
Annuelle	2015-01-01	2015-12-31	157300	2015-01-19	2015-05-31	720 311,59	140	225	365	2015-06-01	10	276 283,90	27 628,39	303 912,29	444 027,69	44 402,77	488 430,46	792 342,76
Annuelle	2015-01-01	2015-12-31	157300	2015-01-19	2015-08-31	720 311,59	140	225	365	2015-09-01	7	276 283,90	19 339,67	295 623,57	444 027,69	31 081,94	476 109,63	770 733,40
Annuelle	2016-01-01	2016-12-31	167998	2016-01-18	2016-02-29	791 342,66	0	366	366	2016-03-01	1	-	-	-	791 342,56	7 913,43	799 256,01	799 256,01
Annuelle	2016-01-01	2016-12-31	167998	2016-01-18	2016-05-31	791 342,66	0	366	366	2016-05-31	0	-	-	-	791 342,56	-	791 342,56	791 342,56
Annuelle	2016-01-01	2016-12-31	167998	2016-01-18	2016-08-31	791 342,66	0	366	366	2016-08-31	0	-	-	-	791 342,56	-	791 342,56	791 342,56
						4 557 449,80						846 995,43	84 807,32	931 802,75	3 710 454,37	141 296,49	3 851 749,86	4 783 552,61
Total de la réclamation - Parties LACC Wabush						5 164 988,14						968 752,07	96 988,37	1 065 740,44	4 216 216,07	161 089,10	4 378 125,17	5 443 855,61

Procédures en vertu de la Loi sur les arrangements avec les créanciers
Parties LACC Bloom Lake et Parties LACC Wabush

Grand total de la réclamation - Parties LACC Bloom Lake
et Parties LACC Wabush

Créances						
Créances jusqu'à la DD			Créances après la DD			Total
1 151 726,95	120 140,74	1 271 867,69	8 820 820,99	390 872,48	9 211 693,47	10 483 561,16

**Procédures en vertu de la Loi sur les arrangements avec les créanciers
Parties LACC Bloom Lake
Réclamation détaillée par factures et échéances**

Date de détermination : 2015-01-27
Date du calcul des intérêts : 2016-10-01

Matricule : 7759 93 4829
Propriétaire : Cliffs Québec Mine de Fer Limitée
Adresse : 345, chemin de la Pointe-Noire
Lots (3) : 4787156 , 4787159 , 4787160

Description de la facture							Créances											
							Nombre de jours			Intérêts		Créances jusqu'au 2015-01-27			Créances à compter du 2015-01-28			Total
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-01-27	À compter du 2015-01-28	Total	Date	Nbre de mois	Capital	Intérêts	Total	Capital	Intérêts	Total	
Hydromètre	2014-09-01	2014-12-31	15780	2015-02-27	2016-02-23	3 330,82	122	0	122	2016-10-01	8	3 330,82	286,47	3 697,29	-	-	-	3 697,29
Hydromètre	2015-01-01	2015-04-30	16535	2015-07-07	2016-02-23	2 079,00	27	93	120	2016-10-01	8	467,78	37,42	505,20	1 611,22	128,90	1 740,12	2 246,32
Hydromètre	2015-01-01	2015-04-30	16536	2015-07-07	2016-02-23	2 079,00	27	93	120	2016-10-01	8	467,78	37,42	505,20	1 611,22	128,90	1 740,12	2 246,32
Hydromètre	2015-01-01	2015-04-30	16537	2015-07-07	2016-02-23	375,96	27	93	120	2016-10-01	8	84,59	6,77	91,36	291,37	23,31	314,68	406,04
Hydromètre	2015-01-01	2015-04-30	16538	2015-07-07	2016-02-23	4 158,00	27	93	120	2016-10-01	8	935,55	74,84	1 010,39	3 222,45	257,80	3 480,25	4 490,64
Hydromètre	2015-05-01	2015-08-31	16547	2015-10-27	2016-02-23	2 079,00	0	123	123	2016-10-01	8	-	-	-	2 079,00	166,32	2 245,32	2 245,32
Hydromètre	2015-05-01	2015-08-31	16548	2015-10-27	2016-02-23	2 079,00	0	123	123	2016-10-01	8	-	-	-	347,00	27,76	374,76	374,76
Hydromètre	2015-05-01	2015-08-31	16549	2015-10-27	2016-02-23	347,00	0	123	123	2016-10-01	8	-	-	-	4 158,00	332,64	4 490,64	4 490,64
Hydromètre	2015-05-01	2015-08-31	16550	2015-10-27	2016-02-23	4 158,00	0	122	122	2016-10-01	8	-	-	-	2 079,00	166,32	2 245,32	2 245,32
Hydromètre	2015-09-01	2015-12-31	16927	2016-01-20	2016-02-28	2 079,00	0	121	121	2016-10-01	3	-	-	-	2 079,00	62,37	2 141,37	2 141,37
Hydromètre	2016-01-01	2016-04-30	17318	2016-06-15	2016-07-31	2 079,00	0	121	121	2016-10-01	3	-	-	-	2 079,00	62,37	2 141,37	2 141,37
Hydromètre	2016-01-01	2016-04-30	17320	2016-06-15	2016-07-31	347,00	0	121	121	2016-10-01	3	-	-	-	347,00	10,41	357,41	357,41
Hydromètre	2016-01-01	2016-04-30	17321	2016-06-15	2016-07-31	4 158,00	0	121	121	2016-10-01	3	-	-	-	4 158,00	124,74	4 282,74	4 282,74
Annuelle	2015-01-01	2015-12-31	149211	2015-01-19	2015-02-28	813 811,70	27	338	365	2016-10-01	20	60 199,77	12 039,95	72 239,72	753 611,93	150 722,38	904 334,31	976 574,03
Annuelle	2015-01-01	2015-12-31	149211	2015-01-19	2015-05-31	813 811,67	27	338	365	2016-10-01	17	60 199,77	10 233,96	70 433,73	753 611,90	128 114,02	881 725,92	962 159,56
Annuelle	2015-01-01	2015-12-31	149211	2015-01-19	2015-08-31	813 811,67	27	338	365	2016-10-01	14	60 199,77	8 427,97	68 627,74	753 611,90	105 505,67	859 117,57	927 746,31
Annuelle	2016-01-01	2016-12-31	159957	2016-01-18	2016-02-29	774 459,99	0	366	366	2016-10-01	6	-	-	-	774 459,99	61 956,80	836 416,80	836 416,80
Annuelle	2016-01-01	2016-12-31	159957	2016-01-18	2016-05-31	774 459,99	0	366	366	2016-10-01	5	-	-	-	774 459,99	38 723,00	813 182,99	813 182,99
Annuelle	2016-01-01	2016-12-31	159957	2016-01-18	2016-08-31	774 459,99	0	366	366	2016-10-01	2	-	-	-	774 459,99	15 489,20	789 949,19	789 949,19
Total de la réclamation - Parties LACC Bloom Lake							4 796 242,80					185 885,83	31 124,80	217 010,63	4 610 356,97	502 169,23	5 112 526,20	5 329 536,83

Procédures en vertu de la Loi sur les arrangements avec les créanciers
Parties LACC Wabush
Réclamation détaillée par factures et échéances

Date de détermination : 2015-05-20
Date du calcul des intérêts : 2016-10-01

Matricule: 7164 71 5203
Propriétaire: Arnaud Railway Co Ltd
Adresse: Boulevard Laure
Lot : 3931505

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période	# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mos	Capital	Intérêts	Total	Capital	Intérêts	Total		
Annuelle	2015-01-01	2015-12-31	147143	2015-01-19	2015-02-28	144,57	140	225	365	2016-10-01	20	55,45	11,09	66,54	89,12	17,80	106,92	173,48
Annuelle	2015-01-01	2015-12-31	147143	2015-01-19	2015-05-31	144,58	140	225	365	2016-10-01	17	55,46	9,43	64,89	89,12	15,16	104,28	169,17
Annuelle	2015-01-01	2015-12-31	147143	2015-01-19	2015-08-31	144,58	140	225	365	2016-10-01	14	55,46	7,76	63,22	89,12	12,48	101,60	164,82
Annuelle	2016-01-01	2016-12-31	157895	2016-01-18	2016-02-29	168,04	0	366	366	2016-10-01	8	-	-	-	168,04	13,44	181,48	181,48
Annuelle	2016-01-01	2016-12-31	157895	2016-01-18	2016-05-31	168,03	0	366	366	2016-10-01	5	-	-	-	168,03	6,40	174,43	176,43
Annuelle	2016-01-01	2016-12-31	157895	2016-01-18	2016-08-31	168,03	0	366	366	2016-10-01	2	-	-	-	168,03	3,36	171,39	171,39
						937,83						166,37	28,28	194,65	771,46	70,64	842,10	1 036,75

Matricule: 7265 16 3875
Propriétaire: Arnaud Railway Co Ltd
Adresse: Route 138 Ouest
Lot : 3931530

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période	# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mos	Capital	Intérêts	Total	Capital	Intérêts	Total		
Annuelle	2015-01-01	2015-12-31	147144	2015-01-19	2015-02-28	106,72	140	225	365	2016-10-01	20	40,93	8,19	49,12	65,79	13,16	78,95	128,07
Annuelle	2015-01-01	2015-12-31	147144	2015-01-19	2015-05-31	106,73	140	225	365	2016-10-01	17	40,94	6,96	47,90	65,79	11,17	76,96	124,86
Annuelle	2015-01-01	2015-12-31	147144	2015-01-19	2015-08-31	106,73	140	225	365	2016-10-01	14	40,94	5,73	46,67	65,79	9,21	75,00	121,67
Annuelle	2016-01-01	2016-12-31	157896	2016-01-18	2016-02-29	112,48	0	366	366	2016-10-01	8	-	-	-	112,48	9,00	121,48	121,48
Annuelle	2016-01-01	2016-12-31	157896	2016-01-18	2016-05-31	112,47	0	366	366	2016-10-01	5	-	-	-	112,47	5,62	118,09	118,09
Annuelle	2016-01-01	2016-12-31	157896	2016-01-18	2016-08-31	112,47	0	366	366	2016-10-01	2	-	-	-	112,47	2,25	114,72	114,72
						657,60						122,61	20,88	143,69	634,79	60,41	585,20	728,89

Matricule: 7467 18 5944
Propriétaire: Arnaud Railway Co Ltd
Adresse: Route 138 Ouest
Lot : 3708223

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période	# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mos	Capital	Intérêts	Total	Capital	Intérêts	Total		
Annuelle	2015-01-01	2015-12-31	147145	2015-01-19	2015-02-28	246,75	140	225	365	2016-10-01	20	94,64	18,93	113,57	152,11	30,42	182,53	296,10
Annuelle	2015-01-01	2015-12-31	147145	2015-01-19	2015-05-31	246,75	140	225	365	2016-10-01	17	94,64	16,09	110,73	152,11	25,86	177,97	288,70
Annuelle	2015-01-01	2015-12-31	147145	2015-01-19	2015-08-31	246,75	140	225	365	2016-10-01	14	94,64	13,25	107,89	152,11	21,30	173,41	281,30
Annuelle	2016-01-01	2016-12-31	157897	2016-01-18	2016-02-29	259,53	0	366	366	2016-10-01	8	-	-	-	259,53	20,76	280,29	280,29
Annuelle	2016-01-01	2016-12-31	157897	2016-01-18	2016-05-31	259,54	0	366	366	2016-10-01	5	-	-	-	259,54	12,98	272,52	272,52
Annuelle	2016-01-01	2016-12-31	157897	2016-01-18	2016-08-31	259,54	0	366	366	2016-10-01	2	-	-	-	259,54	5,19	264,73	264,73
						1 518,86						283,92	48,27	332,19	1 234,94	116,51	1 351,45	1 683,64

Procédures en vertu de la Loi sur les arrangements avec les créanciers
 Parties LACC Wabush
 Réclamation détaillée par factures et échéances

Date de détermination : 2015-05-20
 Date du calcul des intérêts : 2016-10-01

Matricule: 7669 29 9399
 Propriétaire: Amaud Railway Co Ltd
 Adresse: Route 138 Ouest
 Lot : 3669289

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Echéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	147145	2015-01-19	2015-02-28	223,70	140	225	365	2016-10-01	20	85,80	17,16	102,96	137,90	27,58	165,48	268,44
Annuelle	2016-01-01	2016-12-31	157898	2016-01-18	2016-02-29	235,30	0	366	366	2016-10-01	8	-	-	-	235,30	18,82	254,12	254,12
						459,00						85,80	17,16	102,96	373,20	46,40	419,60	522,56

Matricule: 7670 64 9344
 Propriétaire: Amaud Railway Co Ltd
 Adresse: Route 138 Ouest
 Lot : 3669310

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Echéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	147147	2015-01-19	2015-02-28	164,54	140	225	365	2016-10-01	20	59,28	11,86	71,14	95,26	19,05	114,31	185,45
Annuelle	2016-01-01	2016-12-31	157899	2016-01-18	2016-02-29	163,40	0	366	366	2016-10-01	8	-	-	-	163,40	13,07	176,47	176,47
						317,94						59,28	11,86	71,14	258,66	32,12	290,78	361,92

Matricule: 7972 85 2991
 Propriétaire: Amaud Railway Co Ltd
 Adresse: Boulevard Laure
 Lot : 3931623

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Echéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	147148	2015-01-19	2015-02-28	91,36	140	225	365	2016-10-01	20	35,04	7,01	42,05	56,32	11,26	67,58	109,63
Annuelle	2016-01-01	2016-12-31	157900	2016-01-18	2016-02-29	95,60	0	366	366	2016-10-01	8	-	-	-	95,60	7,85	103,25	103,25
						186,96						35,04	7,01	42,05	151,92	18,91	170,83	212,88

Procédures en vertu de la Loi sur les arrangements avec les créanciers
Parties LACC Wabush
Réclamation détaillée par factures et échéances

Date de détermination : 2015-05-20
Date du calcul des intérêts : 2016-10-01

Matricule: 9169 59 5730
Propriétaire: Arnaud Railway Co Ltd
Adresse: Chemin du Lac-Daigle
Lots (15) : 3708313 , 3708316 , 3708318 , 3708319
3931502, 3931504, 3931506, 3931507
3931509, 3931540, 3931542, 3931544
3931552, 3940981, 4085794

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	147149	2015-01-19	2015-02-28	5 213,70	140	225	365	2016-10-01	20	1 999,78	399,96	2 399,74	3 213,92	642,78	3 856,70	6 256,44
Annuelle	2015-01-01	2015-12-31	147149	2015-01-19	2015-05-31	5 213,71	140	225	365	2016-10-01	17	1 999,78	339,96	2 339,74	3 213,93	546,38	3 760,31	6 100,05
Annuelle	2015-01-01	2015-12-31	147149	2015-01-19	2015-08-31	5 213,71	140	225	365	2016-10-01	14	1 999,78	279,97	2 279,75	3 213,93	449,95	3 663,88	5 943,63
Annuelle	2016-01-01	2016-12-31	157901	2016-01-18	2016-02-29	6 422,23	0	366	366	2016-10-01	8	-	-	-	6 422,23	513,78	6 936,01	6 936,01
Annuelle	2016-01-01	2016-12-31	157901	2016-01-18	2016-05-31	6 422,23	0	366	366	2016-10-01	5	-	-	-	6 422,23	321,11	6 743,34	6 743,34
Annuelle	2016-01-01	2016-12-31	157901	2016-01-18	2016-08-31	6 422,23	0	366	366	2016-10-01	2	-	-	-	6 422,23	128,44	6 550,67	6 550,67
						34 907,81						5 999,34	1 019,89	7 019,23	28 908,47	2 602,44	31 510,91	38 530,14

Matricule: 9369 90 7358
Propriétaire: Compagnie de chemin de Fer Arnaud
Adresse: Chemin du Lac-Daigle
Lot :

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	149322	2015-01-19	2015-02-28	95 531,78	140	225	365	2016-10-01	20	36 642,33	7 328,47	43 970,80	58 889,45	11 777,88	70 667,33	114 638,13
Annuelle	2015-01-01	2015-12-31	149322	2015-01-19	2015-05-31	95 531,77	140	225	365	2016-10-01	17	36 642,32	6 229,19	42 871,51	58 889,45	10 011,21	68 900,66	111 772,17
Annuelle	2015-01-01	2015-12-31	149322	2015-01-19	2015-08-31	95 531,77	140	225	365	2016-10-01	14	36 642,32	5 129,92	41 772,24	58 889,45	8 244,52	67 133,97	108 906,21
Annuelle	2016-01-01	2016-12-31	160068	2016-01-18	2016-02-29	91 738,44	0	366	366	2016-10-01	8	-	-	-	91 738,44	7 339,08	99 077,52	99 077,52
Annuelle	2016-01-01	2016-12-31	160068	2016-01-18	2016-05-31	91 738,45	0	366	366	2016-10-01	5	-	-	-	91 738,45	4 586,92	96 325,37	96 325,37
Annuelle	2016-01-01	2016-12-31	160068	2016-01-18	2016-08-31	91 738,45	0	366	366	2016-10-01	2	-	-	-	91 738,45	1 834,77	93 573,22	93 573,22
						581 810,65						109 928,97	18 687,58	128 614,55	461 883,69	43 794,38	496 678,07	624 292,62

Matricule: 7858 89 7445.56
Propriétaire: Mines Wabush
Adresse: Chemin de la Pointe-Noire
Lot : 3708370

Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total	
Type de facture	Période		# facture	Date	Échéance	Montant	Jusqu'au 2015-05-20	À compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts		Total
Annuelle	2015-01-01	2015-12-31	154167	2015-01-19	2015-02-28	3 285,34	140	225	365	2016-10-01	20	1 260,13	252,03	1 512,16	2 025,21	405,04	2 430,25	3 942,41
Annuelle	2015-01-01	2015-12-31	154167	2015-01-19	2015-05-31	3 285,34	140	225	365	2016-10-01	17	1 260,13	214,22	1 474,35	2 025,21	344,30	2 369,51	3 843,86
Annuelle	2015-01-01	2015-12-31	154167	2015-01-19	2015-08-31	3 285,34	140	225	365	2016-10-01	14	1 260,13	176,42	1 436,55	2 025,21	283,53	2 308,74	3 745,29
Annuelle	2016-01-01	2016-12-31	164879	2016-01-18	2016-02-29	3 303,12	0	366	366	2016-10-01	8	-	-	-	3 303,12	284,25	3 567,37	3 567,37
Annuelle	2016-01-01	2016-12-31	164879	2016-01-18	2016-05-31	3 303,11	0	366	366	2016-10-01	5	-	-	-	3 303,11	165,16	3 468,27	3 468,27
Annuelle	2016-01-01	2016-12-31	164879	2016-01-18	2016-08-31	3 303,11	0	366	366	2016-10-01	2	-	-	-	3 303,11	66,06	3 369,17	3 369,17
						19 765,36						3 780,39	642,67	4 423,06	16 984,97	1 528,34	17 513,31	21 936,37

Procédures en vertu de la Loi sur les arrangements avec les créanciers
Parties LACC Wabush
Réclamation détaillée par factures et échéances

Date de détermination : 2015-05-20
 Date du calcul des intérêts : 2016-10-01

Matricule: 7359 96 5575
 Propriétaire: Wabush Resources inc
 Adresse: 1505, chemin de la Pointe-Noire
 Lots (13) : 3669058 , 3669214 , 3708334 , 3708383
 3708384 , 3708385 , 3931508 , 3931512
 3931535 , 3931539 , 3931541 , 4873981
 4873983

Type de facture	Description de la facture						Nombre de jours			Intérêts		Créances jusqu'au 2015-05-20			Créances à compter du 2015-05-21			Total
	Période		# facture	Date	Echéance	Montant	Jusqu'au 2015-05-20	A compter du 2015-05-21	Total	Date	Nbre mois	Capital	Intérêts	Total	Capital	Intérêts	Total	
Hydromètre	2014-05-01	2014-08-31	15775	2015-01-28	2015-02-28	3 960,00	123	-	123	2016-10-01	20	3 960,00	792,00	4 752,00	-	-	-	4 752,00
Hydromètre	2014-05-01	2014-08-31	15776	2015-01-28	2015-02-28	3 213,30	123	-	123	2016-10-01	20	3 213,30	642,66	3 855,96	-	-	-	3 855,96
Hydromètre	2014-09-01	2014-12-31	15782	2015-02-27	2015-03-31	3 960,00	122	-	122	2016-10-01	19	3 960,00	752,40	4 712,40	-	-	-	4 712,40
Hydromètre	2014-09-01	2014-12-31	15783	2015-02-27	2015-03-31	980,00	122	-	122	2016-10-01	19	980,00	186,20	1 166,20	-	-	-	1 166,20
Hydromètre	2015-01-01	2015-04-30	16540	2015-07-07	2015-08-31	4 158,00	120	-	120	2016-10-01	14	4 158,00	582,12	4 740,12	-	-	-	4 740,12
Hydromètre	2015-01-01	2015-04-30	16541	2015-07-07	2015-08-31	1 029,00	120	-	120	2016-10-01	14	1 029,00	144,06	1 173,06	-	-	-	1 173,06
Hydromètre	2015-05-01	2015-08-31	16552	2015-10-27	2015-11-30	4 158,00	20	103	123	2016-10-01	11	676,10	74,37	750,47	3 481,90	383,01	3 864,91	4 615,38
Hydromètre	2015-05-01	2015-08-31	16553	2015-10-27	2015-11-30	1 029,00	20	103	123	2016-10-01	11	167,32	18,41	185,73	861,68	94,78	956,46	1 142,19
Hydromètre	2016-01-01	2016-04-30	17323	2016-06-15	2016-07-31	4 158,00	0	121	121	2016-10-01	3	-	-	-	4 158,00	124,74	4 282,74	4 282,74
Hydromètre	2016-01-01	2016-04-30	17324	2016-06-15	2016-07-31	1 029,00	0	121	121	2016-10-01	3	-	-	-	1 029,00	30,87	1 059,87	1 059,87
Annuelle	2015-01-01	2015-12-31	157300	2015-01-19	2015-02-28	720 311,62	140	225	365	2016-10-01	20	276 283,91	55 256,78	331 540,69	444 027,71	88 805,54	532 833,25	864 373,94
Annuelle	2015-01-01	2015-12-31	157300	2015-01-19	2015-05-31	720 311,59	140	225	365	2016-10-01	17	276 283,90	48 968,26	323 252,16	444 027,69	75 484,72	519 512,41	842 764,57
Annuelle	2015-01-01	2015-12-31	157300	2015-01-19	2015-08-31	720 311,69	140	225	365	2016-10-01	14	276 283,90	38 679,75	314 963,65	444 027,69	62 163,88	506 191,57	821 166,22
Annuelle	2016-01-01	2016-12-31	167998	2016-01-18	2016-02-29	791 342,68	0	366	366	2016-10-01	8	-	-	-	791 342,58	63 307,41	854 649,99	854 649,99
Annuelle	2016-01-01	2016-12-31	167998	2016-01-18	2016-05-31	791 342,56	0	366	366	2016-10-01	5	-	-	-	791 342,56	39 567,13	830 909,69	830 909,69
Annuelle	2016-01-01	2016-12-31	167998	2016-01-18	2016-08-31	791 342,56	0	366	366	2016-10-01	2	-	-	-	791 342,56	15 825,85	807 168,41	807 168,41
						4 562 638,80						846 995,43	144 097,01	991 092,44	3 715 641,37	348 788,93	4 061 430,30	5 052 522,74
Total de la réclamation - Parties LACC Wabush						5 183 198,82						967 455,35	164 500,01	1 132 035,96	4 215 743,47	394 049,06	4 609 792,55	5 741 828,51

Procédures en vertu de la Loi sur les arrangements avec les créanciers
Parties LACC Bloom Lake et Parties LACC Wabush

Grand total de la réclamation - Parties LACC Bloom Lake
et Parties LACC Wabush

Créances					
Créances jusqu'à la DD			Créances après la DD		Total
1 183 341,18	195 705,41	1 349 046,59	8 826 100,44	896 218,31	9 722 318,75
					11 071 365,34

Exhibit B (City of Sept-Îles) Water Meter Tax Account and Property Tax Account (cont'd)



546, avenue De Quin
Sept-Îles (Québec) G4R 2R4

DATE DU COMPTE
28-01-2015

N° FACTURE
15775

FACTURÉ À

WABUSH RESOURCES INC.
CASE POSTALE 100, SUCCURSALE B
MONTREAL (QUEBEC)
H3B 3J7

DUPLICATA
FACTURE

Fourniture
d'eau au compteur

PROPRIÉTÉ VISÉE	
MATRICULE	F 7359 96 5575 00 0000
ADRESSE	1505 CHEMIN DE LA POINTE-NOIRE
CADASTRE	3708383,3708334,3669058,3708385...

Période de consommation (J-M-A)	DU 01-05-2014 AU 31-08-2014
Unité de mesure	GALLONS
(*) Type de facturation par compteur	
R: Lecture réelle	C: Consommation estimée
E: Lecture estimée	M: Montant fixe

VEUILLEZ VOUS REFERER A VOTRE DERNIER
RELEVÉ DE COMPTE POUR LES ARRIERES

N° compteur	Lecture courante	Lecture précédente	Consommation		Taux	Type (*)	Montant
			Base	Excédent			
	18,096,932.00	17,474,417.00	622,515.00		.001091	R	3,960.00

ÉCHÉANCE DES VERSEMENTS	
DATE	MONTANT
28-02-2015	3960.00

TAUX APRÈS ÉCHÉANCE	
INTÉRÊT	12.00%
PÉNALITÉS	

SOUS TOTAL	3,960.00
ARRIÉRÉS	
INTÉRÊTS/PÉNALITÉS	
TOTAL À PAYER	3,960.00

COUPON DE REMISE

Payable à :



546, avenue De Quin
Sept-Îles (Québec) G4R 2R4

N° SIPC	ARRIÉRÉS	
N° FACTURE	INTÉRÊTS/PÉNALITÉS	
15775	COURANT	3960.00
ÉCHÉANCE (J-M-A)	TOTAL À PAYER	3960.00
28-02-2015	MONTANT PAYÉ	

MATRICULE : F 7359 96 5575 00 0000
PROPRIÉTAIRE : WABUSH RESOURCES INC.
EMPLACEMENT : 1505 CHEMIN DE LA POINTE-NOIRE

090750900

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Affidavit of Terence Watt, December 14, 2016

CANADA

**PROVINCE OF QUÉBEC
DISTRICT OF MONTREAL**

No: 500-11-048114-157

SUPERIOR COURT

(Commercial Division)

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED**

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

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING CORPORATION,
8568391 CANADA LIMITED, CLIFFS QUÉBEC
IRON MINING ULC, WABUSH IRON CO.
LIMITED, WABUSH RESOURCES INC.**

Petitioners

-and-

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY, WABUSH LAKE RAILWAY
COMPANY LIMITED**

Mises-en-cause

-and-

FTI CONSULTING CANADA INC.

Monitor

-and-

**MICHAEL KEEPER, TERENCE WATT,
DAMIEN LEBEL AND NEIL JOHNSON**

Petitioners-Mises-en-cause

**AFFIDAVIT OF TERENCE WATT
(Sworn December 14, 2016)**

Affidavit of Terence Watt, December 14, 2016 (*cont'd*)

I, **TERENCE W. WATT**, of 6 Willow Street Suite 1001, City of Waterloo, in the Province of Ontario, SOLEMNLY DECLARE AND MAKE OATH AND SAY:

Introduction

1. I am the former Mine Superintendent and Technical Assistant to the Resident Manager of the Scully Mine located in Newfoundland and Labrador. I worked with Wabush Mines for more than 30 years before retiring on April 30, 1999.
2. At the time of my retirement, I earned various post-retirement benefits from Wabush Mines, including a monthly pension benefit to be paid from the Contributory Defined Benefit Pension Plan for Salaried Employees of Wabush Mines, Cliffs Mining Company, Managing Agent (Nfld & Lab. Reg. No. 0021314, CRA Reg. No. 0343558) (the "**Salaried Plan**") (and together with the Union plan, the "**Wabush Pension Plans**").
3. On May 20, 2015, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**") obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C 1985, c. C-36 ("**CCAA**") (the "**Wabush CCAA Proceedings**") by order of Mr. Justice Hamilton of the Superior Court of Québec ("**CCAA Judge**"). FTI Canada Consulting Inc. was appointed as Monitor.
4. The shutdown of Wabush Mines via a CCAA proceeding is part of the corporate decision by its parent company, Cliffs National Resources Inc. ("**CNR**") to disengage from its operations in Eastern Canada. Attached hereto as **Exhibit "REPS-1"** are copies of

Affidavit of Terence Watt, December 14, 2016 (*cont'd*)

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CNR's Press Releases dated February 11, 2014, November 19, 2014, and January 27, 2015, respectively.

5. On June 22, 2015, I was appointed along with Neil Johnson, Damien Lebel, and Michael Keeper (the "**Representatives**") as representatives of all Non-Union Active Employees and Retirees (the "**Salaried Members**") in the Wabush CCAA Proceedings by the CCAA Judge. Koskie Minsky LLP and Scheib Legal were appointed as Representative Counsel with respect to all matters pertaining to any recovery, compromise of rights or entitlements of Non-Union Active Employees and Retirees in the Wabush CCAA Proceedings.
6. As a Representative, I am very familiar and actively involved with the Wabush CCAA Proceedings. I have knowledge of the matters to which I hereinafter depose except where stated to be based on information or belief and regarding such matters I believe same to be true. All capitalized terms used herein are the same as used and defined by the Petitioners in their prior materials except where noted. When reference is made herein to the "company" it applies to my former employer Wabush Mines.
7. I swear this affidavit:
 - (a) in opposition to the Motion by the Monitor for Directions with respect to Pension Claims dated September 20, 2016 ("**Motion for Directions**"); and
 - (b) in support of the transfer of certain issue(s) regarding the interpretation of the deemed trust priority provisions in the Newfoundland *Pension Benefits Act, 1997*,

Affidavit of Terence Watt, December 14, 2016 (*cont'd*)

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SNL c. P-4.01 (the "NPBA") (the "**Newfoundland PBA Deemed Trust**") to the Supreme Court of Newfoundland and Labrador for adjudication.

Personal and Work Background

8. I started working with Wabush Mines at the Scully Mine location in Labrador in April, 1969. At first I was working in Plant Engineering, where I was responsible for housing construction for the Wabush townsite. After a series of promotions from Plant Engineer to Mine Engineer to Mine Foreman, in 1980, I became a Mine Superintendent, and worked in that position for 15 years until 1995. As indicated above, I remained employed at Wabush Mines for 30 years, working as a Technical Assistant to the Resident Manager of Scully Mine in my last four years of employment.
9. I have spent the majority of my working life in Newfoundland and Labrador.
10. I retired from Wabush Mines on April 30, 1999. I am now 72 years old and, like all other retirees of Wabush Mines, am highly dependent on my post-employment benefits and pension benefits for my everyday living expenses.

The Employment Contract, Salary, Pensions and Benefits

11. In consideration for my 30 years of service with the company, I had a contract of employment in which Wabush Mines paid and I earned wages and a salary, other employment benefits such as health benefits (payable during employment and after my retirement), and a pension.

Affidavit of Terence Watt, December 14, 2016 (*cont'd*)

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12. For my employment service with the company, I earned the following compensation:
- (a) **Pension Benefits.** I am a pensioner member of the Salaried Plan. Attached as **Exhibit "REPS-2"** is a copy of the Salaried Plan text. Section 4.02 of the Salaried Plan text directs the Employer (the Wabush CCAA Parties) to file the latest actuarial valuation report with the Newfoundland pension regulatory authority and Revenue Canada. Attached as **Exhibit "REPS-3"** are copies of the Annual Information Return for the 2013 and 2014 plan year, respectively, which are also filed with the Newfoundland pension regulatory authority.
 - (b) **Health Benefits.** I earned an entitlement to post-retirement health benefits including Major Medical Benefits, Life Insurance, Hospital Expense Insurance, and Travel Insurance. The company is obliged to contribute the cost of the premiums necessary to maintain these benefits, "for as long as you live".
13. I have reviewed documentation relating to the Salaried Pension Plan, which indicate that:
- (a) the Plan is registered in the Province of Newfoundland and Labrador;
 - (b) the Plan has been funded and administered in accordance with the NPBA and its Regulations since their inception;
 - (c) the actuarial reports have been and continue to be prepared in accordance with the NPBA;
 - (d) the Plan has been, and continues to be, regulated by the Newfoundland Superintendent of Pensions, pursuant to the provisions of the NPBA; and

Affidavit of Terence Watt, December 14, 2016 (*cont'd*)

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- (e) the Plan is to be interpreted pursuant to the laws applicable in the province of Newfoundland (pursuant to section 12.06 of the Salaried Plan text, which is attached hereto as **Exhibit "REPS-2"**).
14. The Salaried Members are both a significant and vulnerable stakeholder group. There are over 600 Salaried Members impacted by these CCAA Proceedings, in addition to the union retirees.
15. I have received a copy of the most recent Actuarial Valuation Report on the Salaried Pension Plan as at January 1, 2014 (attached hereto as **Exhibit "REPS-4"**), which discloses the membership breakdown of the Salaried Pension Plan totaling 695 Salaried Members as of that date, as follows:
- (a) 188 active and disabled employees in the Salaried Plan located predominantly in Newfoundland and Labrador, and Québec;
 - (b) 324 retired members and beneficiaries in payment of a monthly pension, located across Canada and elsewhere; and
 - (c) 183 transferred and terminated vested members, located across Canada and elsewhere.
16. On December 6, 2016, I received updated data from Morneau Shepell, the actuarial consulting firm who was appointed by the Newfoundland Superintendent of Pensions on March 30, 2016 as the replacement pension plan administrator, in respect of the

membership breakdown of the Wabush Mines employees and retirees in each jurisdiction, as follows:

Salaried Plan	Union Plan
• Federal – 14	• Federal – 66
• Newfoundland – 313	• Newfoundland – 1,005
• Québec – 329	• Québec – 661

The NPBA Deemed Trust in favour of pension plan beneficiaries

17. The Wabush pension plans are significantly underfunded. On August 14, 2015, Representative Counsel wrote to the Company and other parties asserting that the deemed trust provisions in the NPBA apply in favour of the Salaried Pension Plan pension plan beneficiaries and as such, that the amounts that are subject to the trust (i.e., unpaid employer contribution) are not available for distribution to other creditors. Attached as **Exhibit "REPS-5"** is a copy of the said correspondence.

18. On December 16, 2015, the Newfoundland Superintendent of Pensions declared that the Salaried Plan be terminated effective on that date. Attached as **Exhibit "REPS-6"** is a copy of the letter dated December 16, 2015 from the Superintendent to Cliffs Natural Resources, in its capacity as the Plan administrator.

19. On January 26, 2016, the retirees received a letter from Wabush Mines notifying them that, due to the underfunding in the pension plans, the Newfoundland Superintendent of Pensions has directed Wabush Mines to reduce the amount of monthly benefits being paid to all retirees. Attached hereto as **Exhibit "REPS-7"** is a copy of said letter received by another Representative, Michael Keeper. The monthly benefits of the Salaried Plan

retirees (including my own) have been reduced by 25% and those of the Union Plan retirees by 21%, to my knowledge and belief.

20. The reduction of retirees' monthly pension benefits, coupled with the loss of their health and life insurance benefits, has caused very significant financial hardship for myself and, as I have been told countless times by different people, for other Salaried and former unionized Wabush Mines retirees as well.
21. I am advised and believe that on November 16, 2015, at the hearing of the motion by the Monitor for approval of the Claims Procedure Order, our Representative Counsel Mr. Andrew J. Hatnay of Koskie Minsky LLP and Mr. Nicholas Scheib of Étude Légale Scheib, indicated in court that it is the Representatives' position that any issue(s) regarding the interpretation of the Newfoundland PBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication. There was no decision made on that issue at the time, nor was a decision sought.

The Monitor's Motion for Directions

22. The Monitor filed a motion returnable on September 20, 2016 seeking:

*...directions with respect to the priority of Pension claims filed by the Plan Administrator...and the applicability and scope of deemed trusts under the Pension Benefits Standards Act, R.S.C. 1985, c. 32 (2nd Supp.) (PBSA) and the Newfoundland & Labrador Pension Benefits Act, S.N.L. 1996, c. P-401 (PBA)...*¹(emphasis added) (the "**Monitor's Motion for Directions**").

¹ Monitor's Notice of Motion dated September 20, 2016 at para. 9.

23. The Monitor's Motion for Directions seeks to have certain questions prepared by the Monitor concerning the priority of the various components of the Salaried DB Plan Claim and the Union DB Plan Claim, including questions involving the interpretation of the Newfoundland PBA Deemed Trust, put before the Superior Court of Québec and not the Newfoundland Court.
24. I disagree both with the approach adopted by the Monitor and its formulation of its questions. On October 7, 2016, Representative Counsel filed our Notice of Objection to the Monitor's Motion for Directions on our behalf. The Notice of Objection repeats that it is the Representatives' positions that any issue(s) regarding the interpretation of the NPBA Deemed Trust should be referred to the Supreme Court of Newfoundland and Labrador for adjudication. Attached hereto as **Exhibit "REPS-8"** is a copy of said Objection.
25. Morneau Shepell also filed a Notice of Objection objecting to the Monitor's Motion for Direction, including objections that there should be resolution between the affected parties with respect to the appropriate forum for the adjudication of any NPBA Deemed Trust issues.
26. The NPBA deemed trust is a critical remedy for the members of the Wabush Pension Plans to help relieve us from financial hardship caused by the underfunding of the Plans by Wabush Mines.
27. I and the other Representatives have been contacted by many Salaried Members and USW retirees, who have told us that they want to have the issue(s) regarding the

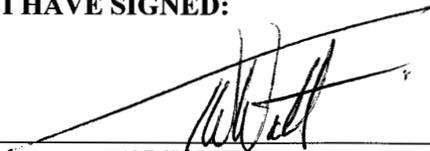
Affidavit of Terence Watt, December 14, 2016 (*cont'd*)

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interpretation of the NPBA Deemed Trust be referred to the Supreme Court of Newfoundland and Labrador for adjudication.

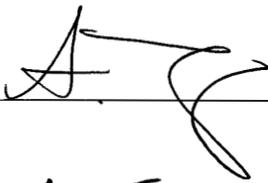
28. I understand that the Newfoundland Superintendent of Pensions and Graham Letto, the Member of the House of Assembly to Labrador West, are also in support of a transfer to Supreme Court of Newfoundland and Labrador in respect of any issue(s) regarding the interpretation of the NPBA Deemed Trust.

AND I HAVE SIGNED:



TERENCE WATT

SOLEMNLY AFFIRMED before me in Toronto,
the Province of Ontario, this 14th day of December
2016.



AMY TANG

Monitor's 38th Report, June 21, 2017

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-048114-157

**IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUÉBEC IRON
MINING ULC, WABUSH IRON CO.
LIMITED AND WABUSH RESOURCES
INC.**

Petitioners

- and -

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY AND WABUSH LAKE
RAILWAY COMPANY LIMITED**

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

**THIRTY-EIGHTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (“**CQIM**”) (collectively, the “**Bloom Lake Petitioners**”) sought and obtained an initial order (as amended, restated or rectified from time to time, the “**Bloom Lake Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) from the Superior Court of Québec (the “**Court**”), providing for, *inter alia*, a stay of proceedings against the Bloom Lake Petitioners until February 26, 2015, (the “**Bloom Lake Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The relief granted in the Bloom Lake Initial Order was also extended to The Bloom Lake Iron Ore Mine Limited Partnership (“**Bloom Lake LP**”) and Bloom Lake Railway Company Limited (together with Bloom Lake LP, the “**Bloom Lake Mises-en-Cause**” and together with the Bloom Lake Petitioners, the “**Bloom Lake CCAA Parties**”). The proceedings commenced under the CCAA by the Bloom Lake CCAA Parties will be referred to herein as the “**CCAA Proceedings**”.

2. On May 20, 2015, the CCAA Proceedings were extended to include Wabush Iron Co. Limited (“**WICL**”), Wabush Resources Inc. (“**WRI**” and together with WICL, the “**Wabush Petitioners**”), Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the “**Wabush Mises-en-Cause**” and together with the Wabush Petitioners, the “**Wabush CCAA Parties**”) pursuant to an initial order (as amended, restated or rectified from time to time, the “**Wabush Initial Order**”) providing for, *inter alia*, a stay of proceedings against the Wabush CCAA Parties until June 19, 2015, (the “**Wabush Stay Period**”) and approving an interim financing term sheet dated May 19, 2015, providing an interim facility of up to US\$10 million. The Bloom Lake CCAA Parties and the Wabush CCAA Parties will be referred to collectively herein as the “**CCAA Parties**”.
3. The Bloom Lake Stay Period and the Wabush Stay Period (together, the “**Stay Period**”) have been extended from time to time and currently expire on June 30, 2017.
4. On June 22, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**June 22 Rep Order**”) *inter alia*:
 - (a) Appointing Michael Keeper, Terence Watt, Damin Lebel and Neil Johnson as representatives (the “**Representatives**”) of the Salaried Members (as defined in the June 22 Rep Order); and
 - (b) Appointing Koskie Minsky LLP and Nicholas Scheib (collectively “**Representative Counsel**”) as legal counsel to the Representatives.
5. On November 5, 2015, Mr. Justice Hamilton J.S.C. granted an Order approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (as amended, the “**Claims Procedure Order**”).

Monitor's 38th Report, June 21, 2017 (*cont'd*)

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6. To date, the Monitor has filed thirty-seven reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor's Thirty-Eighth Report (this "**Report**"), is to provide information to the Court with respect to:
- (a) The CCAA Parties current cash balances;
 - (b) The CCAA Parties' cash flow forecast for the period July 1 to December 1, 2017 (the "**June 20 Forecast**");
 - (c) The current status of the realization of the assets of the CCAA Parties;
 - (d) The CRA ITA Audit, as defined in the Monitor's Thirty-Fourth Report;
 - (e) The progress of the Claims Procedure;
 - (f) The Newfoundland Reference;
 - (g) The 2014 Reorganization;
 - (h) The Allocation Motion;
 - (i) The current estimates of potential distributions to creditors;
 - (j) The MFC Minimum Royalty Litigation;
 - (k) The MFC Lift Stay Motion;
 - (l) The CCAA Parties' request for an extension of the Stay Period to November 30, 2017, and the Monitor's recommendation thereon;

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- (m) The motion filed May 29, 2017, by The Kami Mine Limited Partnership (“**Kami LP**”) and Alderon Iron Ore Corp. (“**AIOC**” and together with Kami LP, “**Alderon**”) seeking an Order of the Court compelling the Wabush CCAA Parties to use their best efforts to obtain from the government of Newfoundland and Labrador (the “**Government**”) copies of a report entitled “Wabush Mines Viability Analysis, 2016” by Rance and Associates (the “**2016 Viability Analysis**”) and a report entitled “Wabush Mines, 2016” by Strathcona Minerals (the “**Strathcona 2016 Report**” and together with the 2016 Viability Analysis, the “**Government Reports**”) and to communicate the Government Reports to Alderon, the Monitor and the Court (the “**Alderon Motion**”); and
- (n) The motion filed June 16, 2017, by Representative Counsel seeking an Order providing *inter alia* for the payment by the Wabush CCAA Parties of legal costs of Representative Counsel of up to \$40,000 per month for the period July 1 to November 30, 2017, to a maximum of \$200,000 in the aggregate upon the rendering of sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) to the Wabush CCAA Parties and subject to such invoices being approved by the Monitor (the “**Rep Counsel Fee Motion**”).

TERMS OF REFERENCE

7. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Parties, the CCAA Parties’ books and records, certain financial information prepared by the CCAA Parties and discussions with various parties (the “**Information**”).
8. Except as described in this Report:

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- (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
9. The Monitor has prepared this Report in connection with the CCAA Parties' motion for an extension of the Stay Period, the Alderon Motion and the Rep Counsel Fee Motion, all scheduled to be heard June 26, 2017, and should not be relied on for other purposes.
10. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
11. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Bloom Lake Initial Order, the Wabush Initial Order or previous reports of the Monitor.

CURRENT CASH BALANCES

12. As previously reported, at the request of the CCAA Parties, the Monitor has been assisting with the administration of receipts and disbursements in order to streamline administration and reporting. All of the CCAA Parties' accounts have now been closed and all transactions are being processed through the Monitor's accounts on behalf of the CCAA Parties. Total cash balances as at June 16, 2017¹, are summarized below:

	Bloom Lake CCAA Parties	Wabush CCAA Parties	Total
	\$000	\$000	\$000
Held by Monitor			
Sale Proceeds Accounts	7,659	6,612	14,271
Operating Accounts	2,249	2,755	5,004
Minimum Royalty Deposits	0	5,714	5,714
GIC Investments	73,000	60,000	133,000
Total Held by Monitor	82,908	75,081	157,989

*In addition, the Monitor holds a deposit of \$750,000 in respect of the Scully Mine Transaction

THE JUNE 20 FORECAST

13. The June 20 Forecast is attached hereto as **Appendix A**. The June 20 Forecast excludes proceeds of asset realizations and is summarized below:

¹ The Monitor has not provided a variance analysis of actual cash flow versus the April 24 Forecast to June 16, 2017, as the April 24 Forecast included actual receipts and disbursements to June 9, 2016.

Monitor's 38th Report, June 21, 2017 (cont'd)

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	Bloom Lake CCAA Parties	Wabush CCAA Parties
	\$000	\$000
Receipts	402	330
Disbursements:		
Payroll & Employee Benefits		(1,051)
Contractors		(480)
Utilities		(29)
Other Operating Disbursements		(824)
Operating Cash Flows	402	(2,054)
Restructuring Professional Fees	(2,230)	(3,883)
Projected Net Cash Flow	(1,828)	(5,937)

14. The only items in the Bloom Lake CCAA Parties forecast are interest earned and legal and professional fees. Accordingly, and consistent with the April 24 Forecast, the forecast has not been presented on a weekly basis as such presentation would provide no relevant information.
15. The forecast for the Wabush CCAA Parties has been prepared assuming that Scully Mine Transaction does not close and the Wabush Mine is abandoned effective July 28, 2017. The forecast includes the payment of accrued vacation pay and severance and termination payments for the remaining employees and has been presented on a weekly basis until July 28, 2017. Consistent with the presentation of the Bloom Lake forecast, the Wabush forecast has not been presented on a weekly basis thereafter as such presentation would provide no relevant information.
16. Of the approximately \$6.1 million of restructuring professional fees included in the June 20 Forecast, an estimated amount of approximately \$3.4 million relates to amounts already incurred.

CURRENT STATUS OF ASSETS REALIZATIONS**SEPT-ILES HOUSES**

17. As previously reported, certain amounts from the proceeds of sale of the eight employee houses located in Sept-Iles were held in escrow in respect of potential withholding tax liabilities. Since the date of the Monitor's Thirty-First Report, final assessments of federal and provincial withholding tax liabilities have been received by the Wabush CCAA Parties and the amounts owing have been paid. Compliance certificates have been issued by the relevant taxation authorities.
18. All remaining amounts held in escrow in connection with withholding taxes have now been released.

CONDITIONAL SALE EMPLOYEE HOMES

19. Since the date of the Thirty-Fourth Report, two sales of Conditional Sale Employee Homes have closed. Two further sales are pending closing. Eight Conditional Sale Employee Homes remain occupied pursuant to the terms of the respective conditional sale agreements and the Wabush CCAA Parties continue to collect the amounts payable under those agreements.

THE MONT-WRIGHT CAMP TRANSACTION

20. Outstanding post-filing amounts owing to ArcelorMittal in respect of the Mont-Wright Camp were paid pursuant to a mutual release agreement between, *inter alios*, CQIM and ArcelorMittal dated as of May 5, 2017, that released all remaining claims and the Mont-Wright Camp Transaction closed on May 16, 2017.

THE WABUSH MINE

21. The Sale Approval Motion in respect of the Scully Mine Transaction is scheduled to be heard on June 26, 2017. Details of the Scully Mine Transaction and the Monitor's recommendation in respect of the Sale Approval Motion are set out in the Monitor's Thirty-Seventh Report.
22. The Replacement Financial Assurance Condition Date of the Scully Mine APA is now June 25, 2017. While at the date of this Report the Purchaser's RFA Condition has not been satisfied or waived, the Purchaser has informed the Monitor that it currently anticipates that it will shortly be in position to satisfy or waive the Purchaser's RFA Condition.

POTENTIAL TAX REFUNDS

23. As previously reported, the CCAA Parties have been seeking refunds in respect of Québec taxes and mining duties. A refund of approximately \$7.2 million was received on behalf of Bloom Lake LP on May 1, 2017. Based on the assessments received and the claims filed by Revenu Québec in the Claims Procedure, the Monitor estimates that further refunds totalling approximately \$7.9 million are due relating to pre-filing periods. Revenu Québec has a number of claims in the Claims Procedure which could give rise to potential set-off against the refunds.

INSURANCE CLAIM PROCEEDS

24. As set out in the Monitor's Thirty-Fourth Report, certain of the CCAA Parties executed an Insurance Settlement relating to a spill that occurred at the Pointe-Noire Facility prior to September 1, 2013. The proceeds of the Insurance Settlement were received on April 28, 2017.

THE CRA ITA AUDIT

25. In the Monitor's Thirty-Fourth Report, the Monitor reported that on April 18, 2017, counsel to the CCAA Parties informed the Monitor that the CCAA Parties, with the assistance of their counsel, had been dealing with the CRA ITA Audit and various requests for information by CRA in connection therewith. The Monitor further reported that it had requested copies of the correspondence from CRA and of the responses provided to CRA.
26. Counsel to the CCAA Parties has now provided electronic copies of correspondence from CRA and the CCAA Parties' responses thereto. The Monitor has requested further details regarding any requests by the CRA for which responses have not yet been provided by the CCAA Parties and any follow up requests by CRA.
27. The Monitor has requested that it be consulted on future activities regarding the CRA ITA Audit.

THE CLAIMS PROCEDURE**CLAIMS**

28. The current status of the Claims Procedure is summarized below:

	Allowed/To Be Allowed		In Progress		In Dispute		To be Disallowed / Dispute Period Not Expired		Disallowance Final	
	#	\$000	#	\$000	#	\$000	#	\$000	#	\$000
Secured										
CQIM	1	139	2	69,559					8	102,816
Bloom Lake LP	19	32,274	3	143,781	3	3,737	1	567	14	118,233
Bloom Lake GP	1	1,001	1	26,415					5	1,483
Quinto Mining										
8568391 Canada									1	161
Bloom Lake Railway										
Wabush Mines	1	839	4	55,203					1	25,774
WICL			2	9,101						
WRI			2	13,646						
Arnaud Railway			3	55,569						
Wabush Lake Railway			2	54,937						
Total Secured	22	34,253	19	428,211	3	3,737	1	567	29	248,467
Unsecured										
CQIM	59	706,271	14	1,184,269			1	6,541	18	37,287
Bloom Lake LP	189	689,755	12	673,020	1	100	1	6,338	75	56,212
Bloom Lake GP	5	590,830							13	27,041
Quinto Mining			5	16,952					11	100
8568391 Canada									9	25
Bloom Lake Railway									10	-
Wabush Mines	99	57,077	1,101	1,829,088	5	2,341			188	24,881
WICL	6	57,802	11	386,399	3	193			14	11,342
WRI	3	49,778	15	727,289	3	193			13	16,314
Arnaud Railway	5	4,255	455	61,134	3	193			21	1,766
Wabush Lake Railway	2	1,811	394	90,724	3	193			12	984
Total Unsecured	368	2,157,579	2,007	4,968,875	18	3,213	2	12,879	384	175,952
Total	390	2,191,832	2,026	5,397,086	21	6,950	3	13,446	413	424,419

29. The claims in progress are summarized as follows:

- (a) Eight claims by three creditors are municipal tax claims in the aggregate amount of approximately \$64.4 million. As previously reported, the CCAA Parties have identified and are pursuing a number of potential opportunities for municipal tax contestation that, based on current estimates, could result in reductions of approximately \$17 million in pre-filing claims if successful;

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- (b) 1,932 claims in the aggregate amount of approximately \$293.4 million² are claims of former employees in respect of OPEBs and other employment related amounts, of which 843 claims in the aggregate amount of approximately \$126 million are filed on a joint and several basis against two of the CCAA Parties;
- (c) Six claims in the aggregate amount of approximately \$164.8³ million are claims related to the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan, with claims of approximately \$54.9 million in the aggregate being filed on a joint and several basis against three of the Wabush CCAA Parties;
- (d) 75 claims in the aggregate amount of approximately \$4.7 billion are Related Party Claims⁴; and
- (e) Five claims by two creditors in the aggregate amount of approximately \$161.2 million are pending further review by the Monitor, which review has been deferred pending the outcome of efforts to sell the Wabush Mine. Of this amount, \$149.2 million relates to three claims of one creditor, each in the amount of approximately \$49.7 million, related to environmental claims in respect of the Wabush Mine, which claims were filed on a joint and several basis against three of the Wabush CCAA Parties.

² Since the previous report, it has been clarified that 843 claims in the aggregate amount of approximately \$126 million are being advanced not just against Wabush Mines but also on a joint and several basis against Arnaud Railway or Wabush Lake Railway, thereby increasing the overall number and value of claims reported.

³ Updated to reflect the amounts shown in the wind-up reports.

⁴ Excluding the Related Party Claim relating to subordinated Note Y discussed in the Monitor's Twenty-Fourth Report.

Related Party Claims

30. As previously reported, the Monitor is in the process of preparing a separate report on the current status of the review of the Related Party Claims and its findings to date. While the Monitor had hoped to be able to file that report prior to the expiry of the Stay Period on June 30, 2017, the completion of the report has been delayed because of the efforts to negotiate the Scully Mine APA and file the Sale Approval Motion. The Monitor will endeavour to file that report in July.

Secured Claims

31. As previously reported, Secured Claims include:
- (a) A Related Party Claim for advances made by Cliffs Mining Company (“**CMC**”) to the Wabush CCAA Parties prior to the CCAA Proceedings (the “**CMC Secured Claim**” and the related security being the “**CMC Security**”);
 - (b) Claims relating to the Key Bank Facility (the “**Key Bank Claims**” and the related security being the “**Key Bank Security**”);
 - (c) Claims of CNR as guarantor under the Key Bank Facility and assignee and/or subrogor of the Key Bank Claims (the “**CNR Key Bank Claims**” and the related security being the “**CNR Key Bank Security**”);
 - (d) Claims of creditors holding a registered legal hypothec for construction (the “**Construction Hypothec Claims**”);
 - (e) Claims filed by the pension administrators in respect of the Wabush Hourly Pension Plan and the Wabush Salaried Pension Plan;
 - (f) Claims filed in respect of environmental obligations; and
 - (g) Claims filed in respect of unpaid property taxes.

32. Previous reports of the Monitor have included details of the independent opinions on the validity and enforceability of the CMC Security, the Key Bank Security and the CNR Key Bank Security. The determination of the value of the security for these Claims is pending the approval of the Allocation Motion.
33. The quantum of all except one Construction Hypothec Claim, as noted below, has been finally determined in accordance with the provisions of the Claims Procedure Order. The status of the adjudication of the validity of the security of the Construction Hypothec Claims, in each case subject to the allocation of proceeds and costs of realization as discussed elsewhere in this Report, is as follows:
- (a) Sixteen Construction Hypothec Claims in the aggregate amount of approximately \$32.6 million have been allowed as secured claims;
 - (b) Three Construction Hypothec Claims in the aggregate amount of approximately \$0.9 million have been allowed as unsecured claims as the Monitor issued Notices of Revision or Disallowance in respect of the validity of the security, which notices were not disputed;
 - (c) Three Construction Hypothec Claims in the aggregate amount of approximately \$4 million are in dispute as to the validity of security as the claimants filed Notices of Dispute in response to the Notices of Revision or Disallowance in respect of the validity of the security issued by the Monitor;
 - (d) One Construction Hypothec Claim in the amount of approximately \$0.2 million is in dispute as to quantum and the validity of security as the claimant filed a Notice of Dispute in response to the Notices of Revision or Disallowance in respect of both aspects of the Construction Hypothec Claim; and

- (e) The determination of three Construction Hypothec Claims in the aggregate amount of approximately \$1.1 million remain under review in respect of the validity of the security.

Pension Claims

34. As reported in the Monitor's Thirty-First Report, Morneau Shepell, the replacement administrator of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan (the "**Pension Administrator**") filed wind-up reports quantifying the wind-up deficits of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan as at December 16, 2016 as \$27,450,000 and \$27,486,548 respectively. As at the date of this Report, the wind-up reports have not yet been approved by the relevant regulators. No timeline for such approval has been provided to the Monitor.
35. Also as reported in the Monitor's Thirty-First Report, on September 21, 2016, the Monitor filed a motion for advice and directions with respect to the potential priority of the various aspects of the pension plan claims (the "**Pension Priority Motion**"). The Court heard representations in respect of jurisdictional matters, including the request by certain parties that aspects of the Pension Priority Motion be transferred to the Newfoundland court and determined that no aspect of the Pension Priority Motion was to be transferred to the Newfoundland court. The Pension Priority Motion is now scheduled to be heard on June 28 and 29, 2017.

OPEB Claims

36. The Monitor continues to work with Representative Counsel, the USW and their actuary to determine the appropriate basis of the calculation of the OPEB claims. The calculation methodology will be applied consistently across the group of claimants.

37. Following its review of the methodology and underlying assumptions used by Representative Counsel, the USW and their actuary in their calculation of the OPEB claims, the Monitor requested that the calculations be run with amendments to some assumptions. The Monitor is awaiting the output of those calculations from the actuary of the Representative Counsel and the USW in order to formulate its preliminary adjudication of the OPEB claims. It is expected that the actuary will be able to provide the revised calculations by June 30, 2017.

THE NEWFOUNDLAND REFERENCE

38. The Newfoundland Reference refers the following questions (the “**Reference Questions**”) to the Newfoundland and Labrador Court of Appeal (the “**Newfoundland COA**”), as set out in Order in Council 2017-013 issued on March 27, 2017:
- (a) The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies’ Creditors Arrangement Act*, RSC 1985 c. C-36. What is the scope of section 32 of the *Pension Benefits Act, 1997*, SNL 1996, cP-4.01 deemed trusts in respect of:
 - (i) Unpaid current service costs;
 - (ii) Unpaid special payments; and,
 - (iii) Unpaid wind-up liability?
 - (b) The Salaried Plan is registered in Newfoundland and Labrador and regulated by the *Pension Benefits Act, 1997*.

- (i) Does the federal *Pension Benefits Standards Act, R.S.C. 1985, c-32* deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?
 - (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*? If so, how is the conflict resolved?
 - (iii) Does the Quebec *Supplemental Pension Plans Act, CQLR, c. R-15.1* also apply to those members of the Salaried Plan who reported for work in Quebec?
 - (iv) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplemental Pensions Plan Act*? If so, how is the conflict resolved?
 - (v) Do the Quebec *Supplemental Pension Plans Act* deemed trusts also apply to Quebec Salaried Plan members?
- (c) Is the *Pension Benefits Act, 1997* lien and charge in favour of the pension plan administrator in section 32(4) of the *Pension Benefits Act, 1997* a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?
39. As previously reported, on May 15, 2017, the Monitor filed a Notice of Intention to Intervene in the Newfoundland Reference, together with an application with the Newfoundland COA (the “**Monitor’s Reference Application**”) for an order granting the following relief:
- (a) That, pursuant to Rule 31 (2) of the Civil Appeal Rules, the May 5 Reference Order be reheard by a panel of the Newfoundland COA; and

- (b) That paragraph 5 of the May 5 Reference Order⁵ be stayed until full argument can be heard with respect to the timing and scope of the Newfoundland Reference.
40. During the latest Court hearing held on May 31, 2017, Mr. Justice Hamilton stated:

“I also have problem with the Newfoundland Reference. The Newfoundland reference is as it currently stands is very broad and clearly infringes upon my jurisdiction. It's not up to me to tell the Newfoundland Court that but the Newfoundland Court current reference in my view is far too broad and the result of that is going to be that after I hear the parties in June, I have a choice. I can either render my judgment without waiting for Newfoundland to render its judgment or I can wait for the Newfoundland judgment. And if the Newfoundland judgment is going to deal with issues that are within my jurisdiction, I have absolutely no interest in waiting for their judgment because then I'm going to be told that Newfoundland has already decided these issues and if there's going to be a contradiction between the two judgments, I just assume that their judgment be the contradictory one, not mine.

So the result of all of that is that unless the Newfoundland Court narrows its focus to what in my view would be appropriate focus, I have absolutely no interest in waiting for their judgment and therefore I'm not sure what, I'm not sure on what basis I would be authorizing a broader mandate for the employees to participate in the process

⁵ Paragraph 5 of the May 5 Reference Order provides for the publication of newspaper notices.

which isn't going to have much use to anybody because they'll render a judgment that will come after mine and that will be of no assistance to me and that will have no effect with respect to these proceedings.”

41. The Monitor's Reference Application was heard as part of the status hearing in respect of the Newfoundland Reference that took place on June 9, 2017 (the “**Reference Status Hearing**”).
42. The Newfoundland COA issued a ruling, a copy of which is attached hereto as **Appendix B**, following the Reference Status Hearing holding that, *inter alia*:
 - (a) The Newfoundland COA did not yet consider itself in a position to determine the extent to which, if at all, it should decline to answer one or more of the Reference Questions:
 - (b) Generally speaking, the questions posed on a reference should not be directed at determining parties' rights and that the CCAA Court will determine those rights;
 - (c) In determining the parties' rights, the CCAA Court may or may not advert to or apply the opinion of the Newfoundland COA provided in the Newfoundland Reference; and
 - (d) The parties may make submissions as to whether the Newfoundland COA should decline to answer a question, or any part thereof, or narrow the scope of a question as part of submissions made at the hearing of the Newfoundland Reference.
43. The Newfoundland COA also issued an amended timetable for perfection of the Newfoundland Reference at the Reference Status Hearing as follows:

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- (a) June 30, 2017 - Filing of record and Notice of Constitutional Questions by any participant to be filed and delivered;
 - (b) July 26, 2017 – Factum of Superintendent of Pensions Newfoundland and Labrador to be filed;
 - (c) August 2, 2017 – Factum of Representative Counsel to be filed;
 - (d) August 23, 2017 – Facta of Attornies General of Canada and Québec and of other intervenors to be filed;
 - (e) September 8, 2017 – Factum of Attorney General of Newfoundland and Labrador to be filed; and
 - (f) September 21 and 22, 2017 – Hearing of Newfoundland Reference.
44. Given the comments of Mr. Justice Hamilton and the acknowledgment of the Newfoundland COA that the CCAA Court has jurisdiction to determine the Pension Priority Motion, there is arguably no benefit from the estate funds being expended on the continued participation of the Monitor or the Wabush CCAA Parties in the Newfoundland Reference.
45. Representative Counsel has informed the Monitor that it will be seeking funding from the Government for participation in the Newfoundland Reference and that it will not be seeking funding from the Wabush CCAA Parties for the purposes of continuing to participate in the Newfoundland Reference.
46. Pursuant to paragraph 5 of the Rep Counsel Order, the appointment of the Representatives is “for the purpose of representing the Salaried Members in these CCAA proceedings and in particular with respect to proving, settling or compromising the rights and claims of the Salaried Members in these CCAA proceedings” (emphasis added).

47. Pursuant to paragraph 6 of the Rep Counsel Order, the appointment of Representative Counsel is with the mandate “to provide assistance to the Salaried Members so that the Salaried Members are able to participate in the CCAA proceedings and the restructuring process in a more efficient manner” (emphasis added).
48. The Newfoundland Reference is not part of the CCAA Proceeding nor part of the restructuring process. Accordingly, it is not clear to the Monitor under what mandate or on what authority the Representatives and Representative Counsel purport to represent the Salaried Members for the purposes of the Newfoundland Reference.
49. The Monitor does have some concern that the Newfoundland COA may not be given a balanced view of the facts and circumstances if Representative Counsel participates in the Newfoundland Reference and the Monitor, or the Wabush CCAA Parties, do not. Accordingly, the Monitor continues to assess the whether it and/or the Wabush CCAA Parties should continue to participate in the Newfoundland Reference.

THE 2014 REORGANIZATION

50. As noted in the Monitor's Thirty-Fourth Report, the Monitor has commenced “without prejudice” discussions with legal counsel to CNR and its non-filed affiliates (“**CNR Counsel**”) with respect to the 2014 Reorganization and its effect on the CQIM estate and its creditors with a view to agreeing the factual matrix of the 2014 Reorganization and any potential claim arising therefrom, identifying any areas of dispute and determining the process for bringing any claim or proposed settlement forward for consideration by the stakeholders and the Court.

51. Since the date of the Monitor's Thirty-Fourth Report, such discussions have continued. CNR Counsel has provided a summary of calculations, prepared by or for CNR, of the value at various dates of the Australian subsidiaries transferred from CQIM as part of the 2014 Reorganization and the Monitor is now commencing the process of undertaking due diligence on those calculations.
52. Subject to Court approval, CNR and the Monitor have entered into a "tolling agreement" with respect to any statutory limitation periods related to any claims or actions that may arise from the 2014 Reorganization or from any other transactions involving the non-filed related parties and the CCAA Parties in order that there is no concern that any statutory limitation periods may expire while the Monitor's investigations and discussions with CNR Counsel continue. A copy of the tolling agreement dated June 21, 2017 (the "**2014 Reorg Tolling Agreement**"), is attached hereto as **Appendix C**.
53. The Monitor intends to file a motion for approval of the 2014 Reorg Tolling Agreement, returnable as soon as possible.

THE ALLOCATION MOTION

54. The Allocation Motion is described in the Monitor's Thirty-Sixth Report and was originally returnable on May 31, 2017.
55. Notices of objection in respect of the Allocation Motion were filed by the following parties (the "**Objecting Parties**"):
- (a) The USW;
 - (b) The Representatives;
 - (c) The Office of the Superintendent of Financial Institutions;
 - (d) The Superintendent of Pensions of Newfoundland and Labrador;

- (e) The Pension Administrator; and
 - (f) The City of Vermont.
56. As a result of the filing of the notices of objection, the Allocation Motion was adjourned to June 26, 2017.
57. Each of the Objecting Parties other than the City of Vermont has now confirmed to the Monitor that it has withdrawn its objection.

ESTIMATED RANGES OF POTENTIAL DISTRIBUTIONS

58. At paragraph 69 of its Thirty-Fourth Report, the Monitor provided a summary of its estimate of the ranges of potential distributions to unsecured creditors from the estates of each of the CCAA Parties based on the information available at that time.
59. The Monitor has now updated its estimates based on the information currently available with respect to costs and realizations to date, the current status of claims and assumptions regarding potential future realizations. No amounts have been included in the estimates for any amounts that might be recoverable in respect of the 2014 Reorganization. The estimate utilizes the allocation methodology set out in the Allocation Motion. The current estimate of the ranges of potential distributions to unsecured creditors from the estates of each of the CCAA Parties, assuming that the Related Party Claims other than Note Y (which by its terms is subordinated) are valid as filed, are summarized below:

	Low	High
Bloom Lake LP	1.82%	2.03%
Bloom Lake GP	0.00%	0.00%
CQIM	2.38%	2.76%
Quinto Mining	54.78%	61.08%
Arnaud Railway	0.00%	20.07%
WICL	0.00%	1.07%
Wabush Lake Railway	0.00%	1.00%
Wabush Mines ¹	0.00%	0.00%
WRI	0.00%	2.60%

¹Wabush Mines is an unincorporated joint venture, accordingly it has no assets or liabilities of its own and distributions would be through the joint venturers, WICL and WRI

THE MFC LITIGATION

THE MFC ROYALTY LITIGATION

60. Pursuant to the December 4 Order, the Wabush CCAA Parties have made deposits of \$812,250 with the Monitor in December 2015, January 2016, April 2016, July 2016, October 2016, January 2017 and April 2017 for amounts potentially payable in respect of the Minimum Royalty Payment.
61. The MFC Royalty Litigation is scheduled to be heard on July 19, 20 and 21, 2017.

THE MFC LIFT STAY MOTION

62. The MFC Lift Stay Motion seeks the lifting of the stay of proceedings in order for MFC to terminate the MFC Sub-Lease. The MFC Lift Stay Motion is scheduled to be heard on June 26, 2017.

63. As described in the Monitor's Thirty-Seventh Report, the Vendors have filed the Sale Approval Motion, returnable June 26, 2017, seeking approval of the Scully Mine Transaction, including the assignment of the MFC Sub-Lease. As set out in the Monitor's Thirty-Seventh Report, the Monitor is of the view that the approval of the Scully Mine Transaction is in the best interests of the creditors of the Vendors and of the Vendors' stakeholders generally and the Monitor supports the Vendors' request for approval of the Scully Mine Transaction.
64. If the Purchaser's RFA Condition is satisfied and the Scully Mine Transaction is approved by the Court, as requested by the Vendors and recommended by the Monitor, it is the Monitor's view that the MFC Lift Stay Motion must necessarily be denied as the assignment of the MFC Sub-Lease is a condition precedent to the Scully Mine Transaction.
65. The Monitor will provide its position with respect to the MFC Lift Stay Motion in the circumstance where the Purchaser's RFA Condition is not satisfied or the Scully Mine Transaction is not approved by the Court if such circumstance arises.

REQUEST FOR AN EXTENSION OF THE STAY PERIOD

66. The Stay Period currently expires on June 30, 2017. Additional time is required for the CCAA Parties and the Monitor to complete the CCAA Proceedings, including the following activities:
- (a) Closing the Scully Mine Transaction, if the conditions to closing are satisfied and the Scully Mine Transaction is approved by the Court;
 - (b) If the Scully Mine Transaction does not close and is terminated, disclaiming the MFC Sub-Lease and abandoning the balance of the assets associated with the Scully Mine;
 - (c) Continuing to address, to the extent necessary and appropriate, the CRA ITA Audit;

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- (d) Resolving the MFC Litigation by way of agreement among the parties or, if not so resolved, to proceed with the hearing currently scheduled for July 19, 20 and 21, 2017;
 - (e) Participating, to the extent necessary and appropriate, in the Newfoundland Reference; and
 - (f) Completing the investigation of the 2014 Reorganization and the effect thereof and determining what, if any, action should be taken with respect thereto;
 - (g) Completing the Claims Procedure;
 - (h) Determining, subject to Court approval, an appropriate mechanism to effect distributions to creditors, whether by way of plan of arrangement, distribution order or otherwise;
 - (i) Completing the other activities described in this Report; and
 - (j) Undertaking the other activities necessary to complete the CCAA Proceedings.
67. The continuation of the stay of proceedings is necessary to provide the stability needed to complete the foregoing activities. Accordingly, the CCAA Parties now seek an extension of the Stay Period to November 30, 2017.
68. The June 20 Forecast demonstrates that, subject to the underlying assumptions thereof, the CCAA Parties have sufficient liquidity to fund the CCAA Parties' operations and the CCAA Proceedings during the requested extension of the Stay Period.

69. The CCAA Proceedings are complex and various aspects of the CCAA Parties are intertwined. The co-ordination of the various estates is, in the Monitor's view, critical to maximize efficiency and effectiveness. It is also the Monitor's view that a continuation of the CCAA Proceedings is, at the current time, the most efficient and effective way that such co-ordination can be achieved and that the proceedings can be completed for the benefit of all stakeholders. The Monitor will continue to work with the CCAA Parties to endeavour to ensure that cost efficiency is maximized during any extension of the Stay Period.
70. Based on the information currently available, the Monitor believes that creditors of the CCAA Parties would not be materially prejudiced by an extension of the Stay Period to November 30, 2017.
71. The Monitor also believes that the CCAA Parties have acted, and are acting, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
72. The Monitor therefore respectfully recommends that this Honourable Court grant the CCAA Parties' request for an extension of the Stay Period to November 30, 2017. The Monitor intends to provide a status report on the progress of matters mid-way through the extension of the Stay Period, if the request for the extension is granted.

THE ALDERON MOTION

73. As noted earlier in this Report, the Alderon Motion seeks an Order of the Court compelling the Wabush CCAA Parties to use their best efforts to obtain from the Government the Government Reports and to communicate the Government Reports to Alderon, the Monitor and the Court.

74. Alderon attempted to obtain the Government Reports through a request (the “**AITPP Request**”) pursuant to the *Access to Information and Privacy Protection Act*. The Government declined to provide the Government Reports. It is the Monitor’s understanding that the denial of the AITPP Request was not appealed.
75. As described in Confidential Appendix D to the Monitor’s Thirty-Third Report, the Monitor informed the Court that on March 17, 2017, counsel to Alderon wrote to counsel for the Monitor asking whether the Monitor was aware of certain economic viability studies in respect of the Wabush Mine that Alderon believed the Government had obtained, including the Government Reports.
76. On March 21, 2017, counsel to the Monitor responded to counsel to Alderon and advised, *inter alia*, that:
- (a) The Monitor and the Wabush CCAA Parties were not aware of the alleged Government Reports, and
 - (b) The Monitor did not believe that there was any need to obtain the Government Reports for the purposes of the Wabush Mine Sale Procedure.
77. Alderon is neither a creditor of any of the CCAA Parties nor a stakeholder in the CCAA Proceedings. To the best of the Monitor’s knowledge, Alderon’s only connection to the CCAA Proceedings is as an unsuccessful bidder in the Wabush Mine Sale Procedure⁶. Accordingly, it is unclear what standing Alderon has to bring the Alderon Motion.

⁶ The deposit submitted in the Wabush Mine Sale Procedure in respect of the Kami Proposal has been returned.

78. Regardless, the Monitor remains of the view that the Government Reports have no relevance to the Wabush Mine Sale Procedure or to the CCAA Proceedings generally. The Monitor is also of the view that there is no apparent circumstance where the Government Reports be of any assistance to the CCAA Parties, the Monitor or the Court.
79. Accordingly, the Monitor recommends that the Alderon Motion be dismissed.

THE REP COUNSEL FEE MOTION

80. As noted earlier in this Report, the Rep Counsel Fee Motion seeks an Order providing *inter alia* for the payment by the Wabush CCAA Parties of legal costs of Representative Counsel of up to \$40,000 per month for the period July 1 to November 30, 2017, to a maximum of \$200,000 in the aggregate upon the rendering of sufficiently detailed accounts (subject to reasonable redaction due to solicitor-client privilege) to the Wabush CCAA Parties and subject to such invoices being approved by the Monitor.
81. The Rep Counsel Order appointed Koskie Minsky LLP (“**KM**”) and Nicholas Scheib together as Representative Counsel. It is the Monitor’s understanding that the inclusion of Mr. Scheib as part of Representative Counsel was to ensure that Representative Counsel had the necessary Québec law expertise and French language skills, neither of which KM could provide.
82. The Monitor has been informed by Mr. Scheib that he intends to take steps to terminate his appointment under the Rep Counsel Order. The Monitor has concerns about the loss of Québec law expertise and French language skills to Representative Counsel, which concerns it has discussed with KM. KM has informed the Monitor that it is seeking alternative Québec based counsel to replace Mr. Scheib.

83. The Monitor continues to be of the view that the involvement of Representative Counsel is beneficial. The Monitor has no objection to the cap on legal fees proposed in the Rep Counsel Fee and Scope Motion, noting that actual costs must be validly incurred in accordance with the June 22 Rep Order.
84. The Monitor does not consider that the continued participation of Representative Counsel in the Newfoundland Reference is necessary for it to fulfil its mandate under the Rep Counsel Order and does not consider it appropriate for the Wabush CCAA Parties to fund any costs of Representative Counsel in respect of the Newfoundland Reference.
85. As noted earlier in this Report, Representative Counsel has informed the Monitor that it will not seek funding by the Wabush CCAA Parties of any costs in respect of the Newfoundland Reference. The Monitor recommends that if the Court grants the Rep Counsel Fee Motion, the resultant order should specifically exclude any funding of legal fees, disbursements and taxes of Representative Counsel related to the Newfoundland Reference or any other proceedings outside the CCAA Court, unless specifically approved by further Order of the Court.

Monitor's 38th Report, June 21, 2017 (*cont'd*)

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The Monitor respectfully submits to the Court this, its Thirty-Eighth Report.

Dated this 21st day of June, 2017.

FTI Consulting Canada Inc.
In its capacity as Monitor of
Bloom Lake General Partner Limited, Quinto Mining Corporation,
8568391 Canada Limited, Cliffs Québec Iron Mining ULC,
Wabush Iron Co. Limited, Wabush Resources Inc.,
The Bloom Lake Iron Ore Mine Limited Partnership,
Bloom Lake Railway Company Limited, Wabush Mines,
Arnaud Railway Company and Wabush Lake Railway Company Limited



Nigel D. Meakin
Senior Managing Director



Steven Bissell
Managing Director

Monitor's 38th Report, June 21, 2017 (*cont'd*)

Appendix A

June 20 Forecast

CCAA Parties' Cash Flow Projection

Amounts in CAD in thousands (\$000s)

Week Ending Friday
Forecast Week

	Wabush									Wabush	Bloom Lake	Combined	
	16-Jun-17	23-Jun-17	30-Jun-17	7-Jul-17	14-Jul-17	21-Jul-17	28-Jul-17	4-Aug-17	11-Aug-17	Aug 12 - Dec 1	Total	Total	Total
	1	2	3	4	5	6	7	8	9	10 to 25	1 to 25	1 to 25	1 to 25
Cash Flow from Operations													
Receipts	-	-	-	-	-	-	-	330	-	-	330	402	732
Payroll & Employee Benefits	-	(25)	-	(25)	-	(25)	-	(976)	-	-	(1,051)	-	(1,051)
Contractors	(20)	(2)	(149)	-	(12)	-	(149)	-	(148)	-	(480)	-	(480)
Utilities	(3)	(8)	-	-	(9)	-	-	-	(9)	-	(29)	-	(29)
Other Operating Disbursements	-	-	(4)	-	(4)	(812)	(4)	-	-	-	(824)	-	(824)
Operating Cash Flows	(23)	(35)	(153)	(25)	(25)	(837)	(153)	(646)	(157)	-	(2,054)	402	(1,652)
Restructuring Professional Fees	(244)	(1,861)	(493)	(27)	(18)	(18)	(171)	(109)	(305)	(637)	(3,883)	(2,230)	(6,113)
Projected Net Cash Flow	(267)	(1,896)	(646)	(52)	(43)	(855)	(324)	(755)	(462)	(637)	(5,937)	(1,828)	(7,765)

Wabush CCAA Parties - Notes:

- [1] The purpose of this cash flow projection is to determine the liquidity requirements of the Wabush CCAA Parties during the forecast period.
- [2] Forecasted Receipts relate to interest on GIC investments.
- [3] Forecast Payroll & Employee Benefits disbursements are forecast based on current staffing levels and recent payroll amounts. On the abandonment of Scully Mine in July, the 4 remaining employees are assumed to be paid severance and termination, and their outstanding vacation.
- [4] Forecast disbursements in respect of Contractors consist primarily of environmental monitoring and containment activities related to the Scully mine, and are assumed to be paid in when incurred. The forecast does not include any amounts for the ordering of dust control supplies as it is assumed that the Scully Mine would be abandoned before the summer dust control program would have to be implemented.
- [5] Forecast Utilities disbursements consist primarily of hydro costs to maintain the Scully Mine facilities and reflect current payment terms, rates and estimated consumption over the forecast period.
- [6] Forecast Other Operating Disbursements reflect costs of on-going monitoring and maintenance of the Scully Mine facilities not reflected in other line items. The timing of Other Operating Disbursements is assumed to be cash on delivery.
- [7] Forecast Restructuring Professional Fees consist of legal and financial advisor fees associated with the CCAA proceedings.

Bloom Lake CCAA Parties - Notes

- [1] The purpose of this cash flow projection is to determine the liquidity requirements of the Bloom Lake CCAA Parties during the forecast period.
- [2] Forecasted Receipts relate to interest on GIC investments.
- [3] Forecast Payroll & Employee Benefits disbursements are nil as there are no employees remaining following the closing of the sale of the Bloom Lake business and assets.
- [4] Forecast Restructuring Professional Fees consist of legal and financial advisor fees associated with the CCAA proceedings based on estimates obtained from legal and professional advisors.

Monitor's 38th Report, June 21, 2017 (*cont'd*)

Appendix C

Tolling Agreement

TOLLING AGREEMENT

This Agreement is made as of June 21, 2017 (the "**Effective Date**") between on the first part Cliffs Natural Resources Inc. ("**CNR**") including, for the purposes of this Agreement, any subsidiary body corporate and any affiliated body corporate of CNR (collectively the "**Cliffs Parties**"), as these terms are defined in the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the "**CBCA**"), as well as any predecessor of CNR including for greater certainty Cleveland-Cliffs International Holding Company, Cliffs (Gibraltar) Limited, Cliffs (Gibraltar) Holdings Limited, Cliffs (Gibraltar) Holdings Limited Luxembourg SCS, Cliffs Natural Resources Luxembourg S.à r.l., Cliffs Finance Lux SCS, Cliffs International Luxembourg I Sarl, Cliffs Subscription LLC and Cliffs Canada Finance ULC, but excluding the Bloom Lake CCAA Parties (as hereinafter defined) and the Wabush CCAA Parties (as hereinafter defined), and on the second part FTI Consulting Canada Inc. in its capacity as court-appointed monitor (as described below):

WITNESSETH:

WHEREAS on January 27, 2015 an order (as amended from time to time, the "**Bloom Lake Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (the "**CCAA**") was rendered with regards to Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Quebec Iron Mining ULC ("**CQIM**"), The Bloom Lake Iron Ore Mine Limited Partnership, and Bloom Lake Railway Company Limited (collectively, the "**Bloom Lake CCAA Parties**") by the Québec Superior Court for the District of Montréal (the "**Court**");

WHEREAS on May 20, 2015 an order (as amended from time to time, the "**Wabush Initial Order**") under the CCAA was rendered with regards to Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company, and Wabush Lake Railway Company Limited (collectively, the "**Wabush CCAA Parties**") by the Court;

WHEREAS pursuant to the Bloom Lake Initial Order and the Wabush Initial Order, FTI Consulting Canada Inc. has been appointed as the monitor of the Bloom Lake CCAA Parties and the Wabush CCAA Parties (the "**Monitor**");

WHEREAS in December 2014, a multi-stage corporate reorganization was implemented to which CQIM and certain Cliffs Parties were parties (the "**2014 Reorganization**");

WHEREAS the Monitor has commenced "without prejudice" discussions with legal counsel to the Cliffs Parties with respect to the 2014 Reorganization and its effect on the CQIM estate and its creditors with a view to agreeing the factual matrix of the 2014 Reorganization and discussing any potential claims arising therefrom or from other transactions involving the Cliffs Parties and the Bloom Lake CCAA Parties or the Wabush CCAA Parties (the "**Potential Claims**");

WHEREAS the Cliffs Parties and the Monitor have mutually agreed to defer initiating legal proceedings or, in the case of the Monitor, taking any steps necessary to authorize or provide the required legal capacity to commence such proceedings with regards to the Potential Claims while settlement discussions are continuing; and

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WHEREAS the Cliffs Parties and the Monitor (on its own behalf and on behalf of any trustee in bankruptcy that may be appointed over any of the Bloom Lake CCAA Parties and for any other person on whose behalf the Monitor may be authorized by the Court to commence a proceeding or pursue a claim) wish to suspend the running of any unexpired limitation periods existing in respect of the Potential Claims and all defences, counterclaims and cross-claims connected with or that otherwise might be pleaded in any action related to any of the Potential Claims;

NOW, THEREFORE, the Cliffs Parties and the Monitor intending to be legally bound, and in consideration of their mutual covenants herein, agree as follows:

1. Nothing herein shall be construed as an admission of liability by the Cliffs Parties.
2. Cliffs Parties hereby renounce and waive the benefit of any time limitation period or delay defence, whether established by law, statute, regulation, at common law, in equity or otherwise, which is applicable to any of the Potential Claims and which has, may have begun to run or which may begin to run at a future date and which has not elapsed as of the Effective Date but only for the period that commences six months prior to the Effective Date and ends on the Effective Date (the "**Renunciation Period**"). Cliffs Parties further agree that in defending any suit or suits that may be filed by any holder of a Potential Claim (including, without limitation, the Monitor, on its own behalf or on behalf of any other person as may be authorized by the Court, or any trustee in bankruptcy that may be appointed over any of the Bloom Lake CCAA Parties, or any creditor of the Bloom Lake CCAA Parties) with respect to the Potential Claims, they will not plead, assert or raise in any manner whatsoever any time-related defence based, in whole or in part, upon any time limitation period or part thereof that includes the renunciation of the Renunciation Period.
3. The entering into of this Agreement by the Cliffs Parties is not an acknowledgement or admission that there is or could be any merit to any of the Potential Claims. Cliffs Parties shall not be deemed by this Agreement to have waived, and this Agreement shall be without prejudice to, any defences, counterclaims and cross-claims to any and all claims that may be asserted by any holder of a Potential Claim (including, without limitation, the Monitor, on its own behalf or on behalf of any other person as may be authorized by the Court, or any trustee in bankruptcy that may be appointed over any of the Bloom Lake CCAA Parties, or any creditor of the Bloom Lake CCAA Parties) other than those time-related defences waived pursuant to this Agreement, or to have waived any claim or defence of any nature other than those time-related defences waived pursuant to this Agreement in respect of any person or entity that is not a party to this Agreement with respect to the Potential Claims.
4. Nothing herein shall be construed as preventing any holder of a Potential Claim, (including, without limitation, the Monitor, on its own behalf or on behalf of any other person as may be authorized by the Court, or any trustee in bankruptcy that may be appointed over any of the Bloom Lake CCAA Parties, or any creditor of the Bloom Lake CCAA Parties) from commencing or permitting or causing to commence, at any time whatsoever and in its sole discretion, directly or indirectly, alone or in concert with others, any action, suit or proceeding of any kind against Cliffs Parties.

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5. Any party to this Tolling Agreement may terminate its participation in this Tolling Agreement on twenty-one (21) days' notice by providing written notice of its intention to terminate its participation in this Tolling Agreement to the other parties.
6. This Agreement binds the parties, their successors and assigns and any subsidiary or affiliated corporation or body corporate, as those terms are defined in the *CBCA*, excluding the Bloom Lake CCAA Parties and the Wabush CCAA Parties.
7. This Agreement shall be construed and enforced according to the laws of the Province of Québec and the laws of Canada in force in the Province of Québec.
8. Each of the parties hereto expressly and irrevocably submits to the exclusive jurisdiction of the Courts of the Province of Québec sitting in the judicial district of Montréal solely with respect to this Agreement but without prejudice to the right of any party to this agreement or any holder of a Potential Claim to argue jurisdictional issues in respect of a Potential Claim.
9. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such separate counterparts shall together constitute but one and the same instrument. Any such counterpart may be delivered by facsimile, telecopier, email in PDF format or similar transmission and if so delivered shall be deemed to be an original document.
10. Each Party represents and warrants to the other that it has all requisite power and authority to enter into this Agreement to perform its obligations and that this Agreement has been duly authorized, executed and delivered by it and constitutes a valid and binding obligation, enforceable against it in accordance with its terms.
11. CNR is signing this Agreement on behalf of all of its subsidiaries.
12. The Monitor intends to seek authority to sign this Agreement and approval of this Agreement from the Court as soon as possible on a *nunc pro tunc* basis. The CNR Parties agree that they will consent to any such Order of the Court, including any portion of such Order that confirms the benefits of this Agreement extend to any holder of a Potential Claim, (including, without limitation, the Monitor, on its own behalf or on behalf of any other person as may be authorized by the Court, or any trustee in bankruptcy that may be appointed over any of the Bloom Lake CCAA Parties, or any creditor of the Bloom Lake CCAA Parties).
13. The creditors, any trustee in bankruptcy and the stakeholders of the Bloom Lake CCAA Parties or any party on whose behalf the Monitor may be authorized by the Court to commence a proceeding in respect of a Potential Claim are the intended third party beneficiaries of this Agreement.
14. The parties hereto acknowledge that they have requested that this Agreement be drawn up in the English language. *Les parties aux présentes reconnaissent avoir requis que la présente entente soit rédigée en anglais.*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the date first mentioned above.

Monitor's 38th Report, June 21, 2017 (cont'd)

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Signed this 21st day of June, 2017
in the City of Toronto, Ontario

FTI CONSULTING CANADA INC., in its capacity as court-appointed Monitor of the Bloom Lake CCAA Parties and the Wabush CCAA Parties and not in its personal or corporate capacity



Per: Nigel D. Mehta
Senior Manager Director

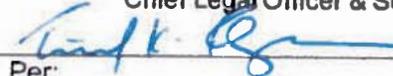
Per: _____

Signed this 21st day of June, 2017
in the City of Cleveland, Ohio

CLIFFS NATURAL RESOURCES INC.



Per: James D. Graham
Executive Vice President,
Chief Legal Officer & Secretary



Per: Timothy K. Annagan
EVA - CFO

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-048114-157

**IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUÉBEC IRON
MINING ULC, WABUSH IRON CO.
LIMITED AND WABUSH RESOURCES
INC.**

Petitioners

- and -

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY AND WABUSH LAKE
RAILWAY COMPANY LIMITED**

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

**THIRTY-SIXTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited (“**Bloom Lake GP**”), Quinto Mining Corporation (“**Quinto**”), 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (“**CQIM**”) (collectively, the “**Bloom Lake Petitioners**”) sought and obtained an initial order (as amended, restated or rectified from time to time, the “**Bloom Lake Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) from the Superior Court of Québec (the “**Court**”), providing for, *inter alia*, a stay of proceedings against the Bloom Lake Petitioners until February 26, 2015, (the “**Bloom Lake Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The relief granted in the Bloom Lake Initial Order was also extended to The Bloom Lake Iron Ore Mine Limited Partnership (“**Bloom Lake LP**”) and Bloom Lake Railway Company Limited (together with Bloom Lake LP, the “**Bloom Lake Mises-en-Cause**” and together with the Bloom Lake Petitioners, the “**Bloom Lake CCAA Parties**”). The proceedings commenced under the CCAA by the Bloom Lake CCAA Parties will be referred to herein as the “**CCAA Proceedings**”.

2. On May 20, 2015, the CCAA Proceedings were extended to include Wabush Iron Co. Limited (“**WICL**”), Wabush Resources Inc. (“**WRI**” and together with WICL, the “**Wabush Petitioners**”), Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the “**Wabush Mises-en-Cause**” and together with the Wabush Petitioners, the “**Wabush CCAA Parties**”) pursuant to an initial order (as amended, restated or rectified from time to time, the “**Wabush Initial Order**”) providing for, *inter alia*, a stay of proceedings against the Wabush CCAA Parties until June 19, 2015, (the “**Wabush Stay Period**”) and approving an interim financing term sheet dated May 19, 2015 (as amended, the “**Interim Financing Term Sheet**”), providing an interim facility of up to US\$10 million (the “**Interim Financing**”). The Bloom Lake CCAA Parties and the Wabush CCAA Parties will be referred to collectively herein as the “**CCAA Parties**”.
3. The Bloom Lake Stay Period and the Wabush Stay Period (together, the “**Stay Period**”) have been extended from time to time and currently expires on June 30, 2017.
4. On April 17, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**SISP Order**”) approving, as it relates to the Bloom Lake CCAA Parties, a sale and investor solicitation process (as may be amended from time to time, the “**SISP**”) involving the business and assets of the Bloom Lake CCAA Parties. The SISP was subsequently amended and restated to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings and was approved *nunc pro tunc* as it relates to the Wabush CCAA Parties pursuant to an Order granted June 9, 2015 (together with the April 17, 2015 Order, the “**SISP Order**”).
5. On June 22, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**June 22 Rep Order**”) *inter alia*:

- (a) Appointing Michael Keeper, Terence Watt, Damin Lebel and Neil Johnson as representatives (the “**Representatives**”) of the Salaried Members (as defined in the June 22 Rep Order); and
 - (b) Appointing Koskie Minsky LLP and Nicholas Scheib (collectively “**Representative Counsel**”) as legal counsel to the Representatives.
6. On November 5, 2015, Mr. Justice Hamilton J.S.C. granted an Order approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (as amended, the “**Claims Procedure Order**”).
7. To date, the Monitor has filed thirty-five reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor's Thirty-Sixth Report (this “**Report**”), is to provide information to the Court with respect to:
- (a) The April 24 Forecast, as defined in the Monitor's Thirty-Fourth Report;
 - (b) The CRA ITA Audit, as defined in the Monitor's Thirty-Fourth Report;
 - (c) The reference of certain questions to the Supreme Court of Newfoundland and Labrador (Court of Appeal) (the “**Newfoundland COA**”) by the Lieutenant-Governor in Council for the Province of Newfoundland and Labrador pursuant to Orders in Council 2017-103 and 2017-137 (the “**Newfoundland Reference**”) and the Monitor's activities and position with respect thereto;
 - (d) The current status of the Wabush Mine Sale Procedure, as defined in the Monitor's Thirty-Second Report;

- (e) The CCAA Parties' motion (the "**Allocation Motion**") for an Order, *inter alia*:
 - (i) Approving the allocation methodology to be applied with respect to proceeds of realization and the costs of the CCAA Proceedings (the "**Allocation Methodology**");
 - (ii) Authorizing the repayment of the amount of approximately \$4.1 million in inter-company funding advanced by Bloom Lake LP to CQIM since the start of the CCAA Proceedings pursuant to the provisions of the Bloom Lake Initial Order; and
 - (iii) Authorizing the payment of certain amounts owing in respect of property taxes, claims for which are secured on the proceeds of realization of the applicable real property; and
- (f) Representative Counsel's motion (the "**Rep Counsel Fee and Scope Motion**") for an Order:
 - (i) Authorizing the payment by the Wabush CCAA Parties of the legal costs of the Salaried Members; and
 - (ii) Amending the June 22 Rep Order to include activities related to the Newfoundland Reference.

TERMS OF REFERENCE

8. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Parties, the CCAA Parties' books and records, certain financial information prepared by the CCAA Parties and discussions with various parties (the "**Information**").

9. Except as described in this Report:
 - (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
10. The Monitor has prepared this Report in connection with the Allocation Motion and the Rep Counsel Fee and Scope Motion, each returnable May 31, 2017. The Report should not be relied on for other purposes.
11. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Bloom Lake Initial Order, the Wabush Initial Order or previous reports of the Monitor.

EXECUTIVE SUMMARY

13. Capitalized terms used in the Executive Summary are as defined in the relevant section of the Report.
14. With respect to the Allocation Motion, the Monitor:

- (a) Is of the view that the proposed Allocation Methodology is appropriate, fair and reasonable in the circumstances and supports the CCAA Parties' request for approval of the proposed Allocation Methodology:
 - (b) Supports the CCAA Parties' request for authorization to repay the Bloom Lake Inter-Company Funding; and
 - (c) Supports the CCAA Parties' request for authorization to pay from the net proceeds of sale of real estate, after the application of the Allocation Methodology, outstanding property taxes that are not in dispute or otherwise contested, provided that there exists no competing claim which may rank equal or higher than such property taxes.
15. With respect to the Rep Fee and Scope Motion, the Monitor:
- (a) Has no objection to the cap on legal fees proposed in the Rep Counsel Fee and Scope Motion, noting that actual costs must be validly incurred in accordance with the June 22 Rep Order; and
 - (b) Has no objection to the proposed amendment of the June 22 Rep Order to include the Newfoundland Reference, though reserves the right to raise objections to the appropriateness and reasonableness of any fees incurred in respect of the Newfoundland Reference by Representative Counsel given the Monitor's position with respect to the Newfoundland Reference.

THE APRIL 24 FORECAST

16. Paragraph 18 of the Monitor's Thirty-Fourth Report stated:

"18. The Monitor has been assisting the CCAA Parties in the preparation of the April 24 Forecast. Completion of the April 24

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Forecast has been delayed pending counsel to the CCAA Parties finalizing its forecast of legal costs for the period. The April 24 Forecast will be filed with the Court once it is completed.”

17. Since the date of the Monitor's Thirty-Fourth Report, the Monitor has followed up several times regarding the forecast of legal costs for the period. Despite these efforts, the Monitor has not yet been provided a forecast of the CCAA Parties legal costs for its review and, accordingly, the April 24 Forecast has not yet been completed. Counsel to the CCAA Parties has informed the Monitor that the forecast of legal costs for the period will be provided by no later than May 31, 2017.

THE CRA ITA AUDIT

18. The CRA ITA Audit was discussed at paragraphs 40 to 42 of the Monitor's Thirty-Fourth Report. Paragraph 42 of the Monitor's Thirty-Fourth Report stated:

“42. On the call on April 20, 2017, the Monitor requested copies of the correspondence from CRA and of the responses provided to CRA. To date, those documents have not been provided to the Monitor.”
19. Counsel to the CCAA Parties subsequently confirmed that copies of the correspondence from CRA and of the responses provided to CRA would be provided but that redactions would, in their view, be necessary as the documents include information relating to non-CCAA Parties.
20. On May 25, 2017, counsel to the CCAA Parties provided redacted copies of the correspondence from CRA and the responses provided to CRA.

21. As the documents were only received on the eve of this Report, the Monitor has not yet reviewed the documents and, accordingly, is unable to provide any further update at this time or any comment on the potential implications of the CRA ITA Audit, if any, on the estates of the CCAA Parties.

THE NEWFOUNDLAND REFERENCE

22. The Newfoundland Reference refers the following questions to the Newfoundland COA (the “**Reference Questions**”), as set out in Order in Council 2017-013 issued on March 27, 2017:

- (a) The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC v. United Steelworkers, 2013 SCC 6*, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies' Creditors Arrangement Act, RSC 1985 c. C-36*. What is the scope of section 32 of the *Pension Benefits Act, 1997, S.N.L. 1996, c. P-4.01* deemed trusts in respect of:
- (i) Unpaid current service costs;
 - (ii) Unpaid special payments; and,
 - (iii) Unpaid wind-up liability?
- (b) The Salaried Plan is registered in Newfoundland and regulated by the *Pension Benefits Act, 1997*.
- (i) Does the *Pension Benefits Standards Act, R.S.C. 1985, c-32* deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?

- (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*? If so, how is the conflict resolved?
 - (iii) Does the Quebec *Supplemental Pensions Plan Act, CQLR, c. R-15.1* also apply to those members of the Salaried Plan who reported for work in Quebec?
 - (iv) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplemental Pensions Plan Act*? If so, how is the conflict resolved?
 - (v) Do the Quebec *Supplemental Pensions Plan Act* deemed trusts also apply to Quebec Salaried Plan members?
- (c) Is the *Pension Benefits Act, 1997* lien and charge in favour of the pension plan administrator in section 32(4) of the *Pension Benefits Act, 1997* a valid secured claim in favour of the plan administrator? If yes, what amounts does this secured claim encompass?
23. The Monitor has endeavoured to discuss with counsel to the Province the limitation of the Reference Questions to matters of statutory interpretation of section 32 of the *Pension Benefits Act, 1997, S.N.L. 1996, c. P-4.01* (the “**PBA**”) in the abstract without seeking to adjudicate matters that the CCAA Court has already determined will be dealt with in the CCAA Proceedings¹. Counsel to the Province declined to engage in any meaningful discussions in that regard.
24. On May 5, 2017, the Honourable Mr. Chief Justice Green of the Newfoundland COA granted an *ex parte* Order (the “**May 5 Reference Order**”), a copy of which is attached hereto as Appendix A, *inter alia*:

¹ The Order of the Honourable Mr. Justice Hamilton granted January 30, 2017 (the “**January 30 Jurisdiction Order**”), which has not been appealed, addressed various jurisdictional issues and other preliminary objections with respect to the Pension Priority Motion.

- (a) Inscribing the Newfoundland Reference for hearing;
 - (b) Providing for notice of the inscription of the Newfoundland Reference to various parties;
 - (c) Requiring Notices of Intention to Intervene to be filed by May 31, 2017;
 - (d) Providing for publication of newspaper notices by no later than May 26, 2017;
 - (e) Setting the timetable for the perfection of the Newfoundland Reference and disposition of other preliminary matters; and
 - (f) Setting a status hearing for June 9, 2017, to address various matters (the “**June 9 Hearing**”).
25. On May 9, 2017, counsel to the Monitor wrote to counsel to the Province (the “**May 9 Letter**”) to formally express its views on the Newfoundland Reference, including the view that the Reference Questions should be limited to the matters relating exclusively to the interpretation of section 32 of the PBA and that all other matters relating to the Wabush CCAA Parties or the Wabush CCAA Proceedings should be dealt with exclusively by the CCAA Court. A copy of the May 9 Letter, without schedules, is attached hereto as **Appendix B**.
26. On May 15, 2017, the Monitor filed a Notice of Intention to Intervene. Also on May 15, 2017, the Monitor filed an application with the Newfoundland COA (the “**Monitor’s Reference Application**”) for an order granting the following relief:
- (a) That, pursuant to Rule 31 (2) of the Civil Appeal Rules, the May 5 Reference Order be reheard by a panel of the Newfoundland COA; and

(b) That paragraph 5 of the May 5 Reference Order² be stayed until full argument can be heard with respect to the timing and scope of the Newfoundland Reference.

27. The Monitor's Reference Application, a copy of which is attached hereto as **Appendix C**, was returnable May 23, 2017. The Newfoundland COA declined to hear the Monitor's Reference Application on May 23, 2017, and it will now be addressed at the hearing scheduled for June 9, 2017.

STATUS OF POTENTIAL TRANSACTION FOR SALE OF WABUSH MINE

28. An update with respect to the potential sale of the Wabush Mine was last provided in the Monitor's Thirty-Fourth Report. In the Monitor's Thirty-Fourth Report, it was reported that the Wabush CCAA Parties, in consultation with the Monitor, were in the process of endeavouring to negotiate a mutually acceptable asset purchase agreement.

29. Since the date of the Monitor's Thirty-Fourth Report, the parties have made considerable progress with efforts to negotiate a mutually acceptable asset purchase agreement. While no agreement has been executed at the date of this Report and there is no certainty that an agreement will be executed, the Monitor is optimistic that an agreement will be executed in the near future. Further details of the current state of affairs with respect to the negotiation of a mutually acceptable asset purchase agreement are set out in **Confidential Appendix D**.

30. If an agreement of purchase and sale is executed, the Monitor will provide details of the agreement, any conditions precedent and its recommendation on the proposed transaction in connection with any motion for approval of such transaction by the CCAA Parties.

² Paragraph 5 of the May 5 Reference Order provides for the publication of newspaper notices.

THE ALLOCATION MOTION**BACKGROUND**

31. As the Court is aware, various approval and vesting orders issued in the CCAA Proceedings specifically provide that the transactions were approved without prejudice to the rights of creditors to object to the allocation of proceeds. Accordingly, prior to any distribution to creditors it is necessary to obtain a final determination of the appropriate allocation of the proceeds of realizations among each of the CCAA Parties and amongst various asset classes.
32. As is common in CCAA proceedings involving groups of related companies, many of the costs incurred by the CCAA Parties during the CCAA Proceedings have been shared costs for the benefit of each of the CCAA Parties which would have been difficult, if not impossible, to specifically allocate.
33. As each of the CCAA Parties are separate legal entities with separate creditor constituencies³, it is necessary to provide for an appropriate, fair and reasonable allocation of costs in order to ensure that creditors of one CCAA Party are not prejudiced as compared to the creditors of other CCAA Parties. Accordingly, it is necessary for an appropriate allocation of the costs of the CCAA Proceedings among each of the CCAA Parties and amongst various asset classes to be determined.
34. As noted in its Thirty-First Report, the Monitor provided its recommendation for a proposed allocation methodology to the CCAA Parties and that recommendation was under consideration by the CCAA Parties.
35. The CCAA Parties have informed the Monitor that they have reviewed and considered the allocation methodology proposed by the Monitor and agree that it represents a fair and reasonable approach. Accordingly, the CCAA Parties have now filed the Allocation Motion seeking approval of the Allocation Methodology.

³ Other than Wabush Mines JV, which as an unincorporated joint venture, is not a legal entity.

THE ALLOCATION METHODOLOGY

36. The proposed allocation methodology was developed by the Monitor on a principled basis with a view to enabling proceeds of realization and the costs of the CCAA Proceedings to be allocated on a fair and reasonable basis consistent with the allocation methodology approved in other CCAA proceedings⁴. The Proposed Allocation Methodology is as follows:

- (a) Realizations from transactions would be allocated amongst specific assets and specific CCAA Parties as set out in each transaction agreement, which, in each case, are the allocations proposed by an arm's length purchaser;
- (b) Non-transaction related realizations specifically attributable to a CCAA Party would be allocated to that CCAA Party. For example cash on hand at the commencement of the CCAA Proceedings and collection of accounts receivable;
- (c) Non-transaction related realizations not specifically attributable to a CCAA Party would be allocated pro-rata based on total realizations. For example, interest on funds held by the Monitor;
- (d) Costs specifically attributable to an asset or asset category would be applied to that asset or category. For example, railcar storage fees would be applied against railcar proceeds;
- (e) Costs specifically attributable to a CCAA Party would be allocated to that CCAA Party. For example, Bloom Lake mine and Wabush Mine direct operating costs would be allocated to BLLP and to Wabush Mine JV respectively;

⁴ Including the CCAA proceedings of Timminco Limited and Bécancour Silicon Inc.

- (f) Costs not specifically attributable to a CCAA Party would be allocated pro-rata based on net realizations after specifically attributable costs. For example, costs of management and legal and professional costs. Within this category, legal and professional fees billed on the Bloom Lake accounts will be allocated amongst the Bloom Lake CCAA Parties, legal and professional fees billed on the Wabush accounts will be allocated amongst the Wabush CCAA Parties and legal and professional fees billed on the joint Bloom/Wabush accounts will be allocated amongst all of the CCAA Parties; and
 - (g) As the Wabush Mines joint venture is not a legal entity, it does not have assets and liabilities in its own right. Accordingly any realizations and costs notionally allocated to Wabush Mines in the foregoing steps would be allocated to the joint venturers, WICL and WRI, based on their respective joint venture interests.
37. The Monitor has not included details of the calculation of the effect of the application of the proposed Allocation Methodology in this Report as the Monitor is of the view that the Allocation Methodology should be considered on a principled basis, without reference to the result for any specific creditor. The Monitor does note however, that the estimates of the potential range of distributions to unsecured creditors of each of the CCAA Parties provided at paragraph 69 of the Monitor's Thirty-Fourth Report were calculated applying the proposed Allocation Methodology.
38. The Monitor is of the view that the proposed Allocation Methodology is appropriate, fair and reasonable in the circumstances and supports the CCAA Parties' request for approval of the proposed Allocation Methodology.

REPAYMENT OF INTER-COMPANY FUNDING

39. As previously reported in several of the Monitor's reports, most recently in the Monitor's Thirty-Fourth Report, the amount of approximately \$4.1 million in inter-company funding has been advanced by Bloom Lake LP to CQIM since the start of the CCAA Proceedings pursuant to the provisions of the Bloom Lake Initial Order (the "**Bloom Lake Inter-Company Funding**").
40. The provisions of the various approval and vesting orders granted in respect of sales that have generated sale proceeds require that such proceeds be held by the Monitor pending further Order of the Court. Accordingly, an Order of the Court is required to allow the repayment of the Bloom Lake Inter-Company Funding.
41. If the Allocation Methodology is approved, CQIM will have sufficient funds to repay the Bloom Lake Inter-Company Funding. Failure to repay the Bloom Lake Inter-Company Funding would be detrimental to the interests of the creditors of Bloom Lake LP and would provide a wind-fall benefit to the creditors of CQIM.
42. Accordingly, the Monitor supports the CCAA Parties' request for authorization to repay the Bloom Lake Inter-Company Funding.

DISBURSEMENT OF PROCEEDS TO PAY PROPERTY TAXES

43. As the Court is aware, pre- and post-filing amounts are outstanding in respect of property taxes accruing to the closing date of various transactions involving the sale of real estate. Those amounts have statutory priority on the proceeds of the realization of the real estate to which they relate, subject to any valid deemed trust in respect of the Pension Claims.

44. The provisions of the various approval and vesting orders granted in respect of sales that have generated sale proceeds require that such proceeds be held by the Monitor pending further Order of the Court. Accordingly, an Order of the Court is required to allow disbursement of sale proceeds on account of priority property tax claims. The CCAA Parties now seek an Order authorizing the payment from the net proceeds of sale of real estate, after the application of the Allocation Methodology, of outstanding property taxes that are not in dispute or otherwise contested, provided that there exists no competing claim which may rank equal or higher than such property taxes⁵.
45. Various claims for property taxes have been made by the Ville de Fermont and the Ville de Sept Iles. Those claims include both pre- and post-filing amounts, amounts relating periods subsequent to the closing of the sale of the real estate which have been assumed by the relevant purchaser, interest and amounts subject to contestation or appeal as discussed in earlier reports of the Monitor. In addition, if the contestations and appeals are successful, refunds may be owing to the CCAA Parties, creating a potential amount that may be set-off against the amounts owing. The aggregate amounts of the claims as currently understood by the Monitor are summarized as follows:

	Ville de Fermont		Ville de Sept Iles			
	Bloom Lake GP	Bloom Lake LP	CQIM	WRI	Wabush Mines	Arnaud
	\$000	\$000	\$000	\$000	\$000	\$000
Principal	24,144.7	24,693.5	4,787.6	4,557.5	26.7	600.8
Interest	2,270.0	2,317.2	252.2	226.1	1.4	31.5
Disputed amounts	(23,325.8)	(23,635.8)	(2,111.1)	(5,594.6)	(15.4)	(269.8)
Undisputed Amount	3,088.9	3,374.9	2,928.7	(811.0)	12.7	362.5

⁵ For greater certainty, including any potential deemed trust claims in respect of the Pension Plans.

46. In addition to the amounts set out above, approximately \$124,000 is claimed as owing by the Town of Wabush in respect of property taxes related to properties in the Town of Wabush.
47. The claims of Ville de Sept Iles and the Town of Wabush against WRI, WICL, Wabush Mines and Arnaud Railway Company are subject to potential priority claims in respect of the Pension Plans. Accordingly, no amounts would be paid on account of such claims until the Pension Priority Motion has been finally determined.
48. If the Allocation Methodology is approved and the request for authorization to make payments in respect of undisputed property tax claims is granted, it is anticipated that net proceeds from the sale of real estate, after allocation of costs, would be available to make payments to Ville de Fermont and Ville de Sept Iles in respect of their claims against Bloom Lake LP and CQIM respectively. No amount would be paid on account of the claim of Ville de Fermont against Bloom Lake GP as there are no proceeds of sale of real estate in Bloom Lake GP.
49. The specific amount of such payments can only be calculated once the Allocation Methodology has been approved and up to date billing information has been obtained in respect of the costs of the CCAA Proceedings. Accordingly, it is not possible at this time to calculate the specific amounts that would be available for payment. However, based on current estimates, the Monitor expects that if the Allocation Motion is granted, there would be sufficient net proceeds after application of the Allocation Methodology to pay the undisputed amount of the claim of Ville de Fermont against Bloom Lake LP in part and to pay the undisputed amount of the claim of Ville de Sept Iles against CQIM in full.

50. The Monitor supports the CCAA Parties' request for authorization to pay from the net proceeds of sale of real estate, after the application of the Allocation Methodology, outstanding property taxes that are not in dispute or otherwise contested, provided that there exists no competing claim which may rank equal or higher than such property taxes. Any payment would be made first on account of the principal amount of any pre-closing post-filing amount owing, secondly on account of the principal amount of any pre-filing amount owing and thirdly on account of any interest validly accrued on the secured claims.

REP COUNSEL FEE AND SCOPE MOTION

51. Payment of legal costs of Rep Counsel was last approved by the Court in an Order granted October 28, 2016 (the "**October 28 Rep Fee Order**"). The October 28 Rep Fee Order provided for payment by the Wabush CCAA Parties of the legal fees, taxes and disbursements of Representative Counsel for the period October 1, 2016, to January 31, 2017, up to an amount of \$35,000 per month in legal fees subject to a total cap for such legal fees of \$140,000.
52. The Rep Counsel Fee and Scope Motion seeks an Order:
- (a) Authorizing the payment by the Wabush CCAA Parties of the legal fees of the Salaried Members for the period to January 31, 2017, that were in excess of the cap on such fees in the October 28 Rep Fee Order;
 - (b) Authorizing the payment by the Wabush CCAA Parties of the legal costs of the Salaried Members for the period February 1 to June 30, 2017, up to an amount of \$40,000 per month in legal fees subject to a total cap for such legal fees of \$200,000; and
 - (c) Amending the June 22 Rep Order to include activities related to the Newfoundland Reference.

53. Legal fees of Representative Counsel for the period October 1, 2016, to January 31, 2017, were \$154,165.00, \$14,165.00 in excess of the total cap provided for in the October 28 Rep Fee Order.
54. Representative Counsel has informed the Monitor that legal fees incurred in the period February 1 to April 30, 2017, total \$41,853.50, leaving a balance of \$158,146.50 against the proposed overall cap on legal fees for the period.
55. Paragraphs 5 and 6 of the June 22 Rep Order state:

5. GRANTS the motion of the Petitioners-Mises-en-cause (the "Representatives") appointing them as representatives of all salaried/non-Union employees and retirees of the Wabush CCAA Parties (namely, Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway company and Wabush Lake Railway Company Limited) or any person claiming an interest under or on behalf of such employees or former employees or pensioners and surviving spouses, or group or class of them (excluding Opt-Out Individuals, as defined below, if any), (collectively, the "Salaried Members"), in these CCAA proceedings, for the purpose of representing the Salaried Members in these CCAA proceedings and in particular with respect to proving, settling or compromising the rights and claims of the Salaried Members in these CCAA proceedings, who shall be bound by the actions of the Representatives and Representative Counsel (as defined below) in these CCAA proceedings;

6. GRANTS the appointment of Koskie Minsky LLP and Nicholas Scheib (collectively, "Representative Counsel") as legal counsel to the Representatives in their capacity as representatives for the Salaried Members in these CCAA proceedings with the mandate to provide assistance to the Salaried Members so that the Salaried

- 20 -

Members are able to participate in the CCAA proceedings and the restructuring process in a more efficient manner, including to assist the Salaried Members in the evaluation of their entitlements and claims in a cost-effective and timely manner;”

56. As discussed earlier in this Report, the Monitor takes that position that the Newfoundland Reference should be limited to matters of statutory interpretation in the abstract, that the Reference Questions should not be specific to the Wabush CCAA Proceedings or the Wabush Pension Plans, and that all matters relevant to the Pension Priority Motion can, and should, be dealt with by the Court in the CCAA Proceedings. The Monitor is of the view that this position is consistent with the January 30 Jurisdiction Order.
57. In the Monitor's view, it is not clear that any costs incurred or to be incurred by Representative Counsel in connection with the Newfoundland Reference fall within the parameters of the June 22 Rep Order and arguably do not do so. Accordingly, the Rep Counsel Fee and Scope Motion seeks to amend the June 22 Rep Order to specifically include costs incurred in respect of the Newfoundland Reference.
58. The Monitor requested that Representative Counsel provide a break-down between the major areas of activity in the CCAA Proceedings of the estimated legal fees for the period February 1 to June 30, 2017, on which the proposed cap was based. The break-down provided by Representative Counsel included \$25,000 related to the Newfoundland Reference. Invoices have not been received from Representative Counsel for February, March or April 2017 and additional time related to the Newfoundland Reference could be included in those invoices.
59. The Monitor understands that the CCAA Parties take no position with respect to the Rep Counsel Fee and Scope Motion.

60. The Monitor continues to be of the view that the involvement of Representative Counsel is beneficial. The Monitor has no objection to the cap on legal fees proposed in the Rep Counsel Fee and Scope Motion, noting that actual costs must be validly incurred in accordance with the June 22 Rep Order.
61. With respect to payment of fees of Representative Counsel related to the Newfoundland Reference, the Monitor comments as follows:
- (a) Given the participation of Representative Counsel, the Province of Newfoundland and the regulators of the Wabush Pension Plans in the hearing that resulted in the January 30 Jurisdiction Order, and the fact that the January 30 Jurisdiction Order was not appealed, it is not clear that any fees incurred to date by Representative Counsel related to the Newfoundland Reference were necessary or fall within the scope of the June 22 Rep Order;
 - (b) Given the scope of the May 5 Reference Order, the refusal of the Province to limit the scope of the Reference Questions and the refusal of the Newfoundland COA to hear the Monitor's application prior to the June 9 Hearing, the Monitor understands the desire of Representative Counsel to participate in the June 9 Hearing; and
 - (c) The reasonableness and appropriateness of Representative Counsel participating in the Newfoundland Reference will need to be determined following the June 9 Hearing and the hearing of the Pension Priority Motion scheduled to be heard June 28 and 29, 2017.
62. The Monitor has no objection to the proposed amendment of the June 22 Rep Order to include the Newfoundland Reference, though reserves the right to raise objections to the appropriateness and reasonableness of any fees incurred in respect of the Newfoundland Reference by Representative Counsel given the Monitor's position with respect to the Newfoundland Reference.

Monitor's 36th Report, May 26, 2017 (*cont'd*)

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The Monitor respectfully submits to the Court this, its Thirty-Sixth Report.

Dated this 26th day of May, 2017.

FTI Consulting Canada Inc.

In its capacity as Monitor of

Bloom Lake General Partner Limited, Quinto Mining Corporation,

8568391 Canada Limited, Cliffs Québec Iron Mining ULC,

Wabush Iron Co. Limited, Wabush Resources Inc.,

The Bloom Lake Iron Ore Mine Limited Partnership,

Bloom Lake Railway Company Limited, Wabush Mines,

Arnaud Railway Company and Wabush Lake Railway Company Limited



Nigel D. Meakin
Senior Managing Director



Steven Bissell
Managing Director

Monitor's 36th Report, May 26, 2017 (*cont'd*)

Appendix B

The May 9 Letter

Monitor's 36th Report, May 26, 2017 (*cont'd*)

May 9, 2017

Without Prejudice
Sent By E-mail

Rolf Pritchard, Q.C.
Director - Civil Division
Office of the Attorney General
Department of Justice & Public Safety
Government of Newfoundland and Labrador

NORTON ROSE FULBRIGHT

Barristers & Solicitors / Patent & Trade-mark Agents

Norton Rose Fulbright Canada LLP
1 Place Ville Marie, Suite 2500
Montréal, Quebec H3B 1R1 Canada

F: +1 514.286.5474

nortonrosefulbright.com

Sylvain Rigaud
+1 514.847.
sylvain.rigaud@nortonrosefulbright.com

Your reference

Our reference
01028478-0001

Dear Confrère,

**In the matter of the plan of compromise or arrangement of: Wabush Iron Co. Limited et al.
S.C.M. 500-11-048114-157**

We are writing to you to express our concerns and position in connection with the *ex parte* order issued on May 5th, 2017 (the **May 5th Order**) by the Newfoundland & Labrador Court of Appeal in relation to the reference initiated under the authority of Section 13 of the *Judicature Act*, R.S.N.L. 1990, c. J-4 and in furtherance of Orders in Council 2017-103 and 2017-137 (the **Reference**).

As you know, we act on behalf of FTI Consulting Canada Inc., in its capacity as court-appointed monitor (the **Monitor**) to various parties subject to orders issued on January 27th and May 20th, 2015 pursuant to the terms of the *Companies' Creditors Arrangement Act*, R.S.C., c. C-36, as amended (the **CCAA**) by the Superior Court of Québec, commercial division, for the District of Montreal (the **CCAA Court**).

For ease of reference, capitalized terms not otherwise defined in this letter shall have the meaning ascribed to them in the Monitor's Motion for Directions dated September 20, 2016, as amended on April 13, 2017 (the **Motion for Directions**), a copy of which is attached as Schedule A.

The May 5th Order and the three (3) questions to be submitted to the Newfoundland & Labrador Court of Appeal by way of the Reference (the **Reference Questions**), as currently drafted, appear to be inextricably related to the pending proceedings before the CCAA Court in the above-captioned matter, presided and supervised by the Honourable Justice Stephen W. Hamilton, J.S.C. more specifically as they concern the Wabush CCAA Parties (the **Wabush CCAA Proceedings**). As such, there exists in our view a significant risk that the Reference will be in part duplicative in light of the ongoing Wabush CCAA Proceedings, thereby potentially leading certain interested parties to mistakenly believe that issues relating to the Wabush CCAA Parties are open for adjudication before both the CCAA Court and the Newfoundland & Labrador Court of Appeal. We are concerned that the Reference could amount to a collateral attack of orders previously made by the CCAA Court.

We list in Schedule B hereto various orders issued by the CCAA Court (as supplemented by the relevant Motion records, including the Monitor's reports and exhibits) which in our view could have an impact on or be relevant to the Reference Questions to be put before the Newfoundland & Labrador Court of Appeal.

We have reached out on numerous occasions to you and your colleagues (Philip Osborne and Raylene Stokes) to share our views as to the importance of limiting the scope of the proposed Reference Questions to matters of

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Monitor's 36th Report, May 26, 2017 (*cont'd*)

Rolf Pritchard, Q.C.
May 9, 2017



statutory interpretation *in abstracto* as they relate to Section 32 of the *Pension Benefits Act*, 1997, S.N.L. 1996, c. P-4.01 (**PBA**), without overreaching and veering into the adjudication of the rights of parties already engaged in the Wabush CCAA Proceedings. We have specifically asked to be consulted with respect to the wording of the notices to be sent in connection with the Reference so as to avoid confusion amongst stakeholders and ensure that the Reference process does not run afoul of the current stay of proceedings against the Wabush CCAA Parties or disrupt the conduct of the Wabush CCAA Proceedings.

In this respect, we directed you to paragraph 7 of the Wabush Initial Order, which reads as follows:

ORDERS that, until and including June 19, 2015*, or such later date as the Court may order the (the "**Stay Period**"), no proceeding or enforcement process in any Court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the CCAA Parties, or affecting the Business operations and activities of the CCAA Parties (the "**Business**") or the Property, including as provided hereinbelow except with the leave of this Court. Any and all proceedings currently under way against any or in respect of the CCAA Parties or affecting the Business or the Property are hereby stayed and suspended pending further order of this Court, the whole subject to subsection 11.1 CCAA.

*The current Stay Period has been extended and is set to expire on June 30, 2017, subject to further order of the CCAA Court.

The ability of the Monitor to seek directions and the CCAA Court's jurisdiction to hear the Motion for Directions are based on paragraph 68 of the Claims Procedure Order, paragraph 65 of the Wabush Initial Order as well as Sections 9(1) and 11 CCAA, which read as follows:

9.(1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

(...)

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

The CCAA Court issued on January 30th, 2017, its decision (the **January 30th Order**) with respect to various jurisdictional issues and other preliminary objections raised with respect to the Motion for Directions by several parties, including Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions. We attach for your convenience copy of the January 30 Order as Schedule C. The position of the parties in relation to said jurisdictional issues is summarized at paragraphs 23 to 28 of the January 30th Order. In declining to refer any of the issues to the courts with jurisdiction in Newfoundland & Labrador, including specifically the questions as formulated by the representatives of the salaried employees and retirees (at paragraph 25) – which have since been adopted *verbatim* as the Reference Questions – the CCAA Court relied on well-established precedents that favour a single forum to hear all disputes relating to an insolvent debtor (at paragraphs 29 to 33) and properly exercised its discretion not to seek the assistance of another court on the basis of legal, factual and practical considerations (at paragraphs 39 to 89), including the position of the United Steel Workers representing the unionized pensioners of the Wabush CCAA Parties, which supported the jurisdiction of the CCAA Court and objected to the referral of certain issues before the courts with jurisdiction in Newfoundland & Labrador (at paragraph 80), as well as the fact that a plurality of non-unionized pensioners are residents in the Province of Quebec (at paragraph 77).

Monitor's 36th Report, May 26, 2017 (*cont'd*)

Rolf Pritchard, Q.C.
May 9, 2017



The January 30th Order was not appealed from, and all interested parties, including Her Majesty in Right of Newfoundland, as represented by the Superintendent of Pensions, have since agreed to debate the merits of the Motion for Directions before the CCAA Court on June 26th and 27th, 2017.

As for the Reference Questions, we have already expressed concerns about the formulation of questions 1 and 3 and the extent to which the Newfoundland & Labrador Court of Appeal will be asked to determine the scope and dollar value of the deemed trusts, liens and charges, that may arise pursuant to Section 32 PBA, as this provision applies to the Pension Plans at stake in the Wabush CCAA Proceedings and more specifically the Motion for Directions. Further, the preamble to question 1 appears unduly argumentative and, in our view, obfuscates the interplay between Section 32 PBA and the applicable provisions of the CCAA and the terms of the orders issued to date in the Wabush CCAA Proceedings.

The foregoing was noted by Mr. Justice Hamilton in the January 30th Order (at paragraph 66), wherein he also pointed out that such a question, inasmuch as the Wabush CCAA Parties are concerned, may well be moot:

Finally, as is typical in these cases, there is a close interplay between the NLPBA and the CCAA. The first question proposed by the representatives of the salaried employees and retirees is: "Assuming there is no issue of paramountcy, what is the scope of section 32 in the NLPBA deemed trusts". The scope of the NLPBA is not relevant if the NLPBA does not apply because of a conflict with the CCAA and federal paramountcy. In that sense, there may not even be a need to deal with the interpretation of the NLPBA.

As previously reported, we also seriously question the appropriateness of seeking the opinion of the courts of another forum than Québec with respect to question 2(b).

Before the issuance of the May 5th Order, we had specifically asked that you consider the possibility of coordinating the Reference with the ongoing Wabush CCAA Proceedings, and had asked to discuss the formulation of the Reference Questions and the wording of the notices, the whole in order to avoid any actual or perceived duplication, inconsistency or contradiction in the parallel processes, to no avail to date. We note that a status hearing is set to take place on June 9, 2017 before the Newfoundland & Labrador Court of Appeal, but are of the view that it will be too late at that point to properly address some of the concerns outlined above.

It is our view that the Monitor and its undersigned attorneys should have been consulted in connection with the May 5th Order and that same should not have been granted on an *ex parte* basis. We formally reiterate the invitation to discuss the foregoing with you at your earliest convenience, while we continue to contemplate the possibility to raise these issues directly before the CCAA Court and/or the Newfoundland & Labrador Court of Appeal.

We are of the view that the Reference Questions should be limited to the matters relating exclusively to the interpretation of Section 32 PBA and that all other matters relating to the Wabush CCAA Parties or the Wabush CCAA Proceedings should be dealt with exclusively by the CCAA Court.

We would greatly appreciate a reply with respect to the foregoing by the end of the week.

Monitor's 36th Report, May 26, 2017 (cont'd)

Rolf Pritchard, Q.C.
May 9, 2017



Copy of this letter and of the May 5th Order will be circulated to the parties on the Service List in the Wabush CCAA Proceedings.

Yours truly,

A handwritten signature in blue ink, appearing to read "Sylvain Rigaud".

Sylvain Rigaud
Partner

SAR/ch/jrl

Enclosures:

- Schedule A – Motion for Directions with Respect to Pension Claims;
- Schedule B – List of Relevant Orders with respect to the Wabuth CCAA Parties; and
- Schedule C – January 30th Order.

Monitor's 36th Report, May 26, 2017 (*cont'd*)

Confidential Appendix D

Status of Negotiations of Asset Purchase Agreement

Monitor's 34th Report, April 26, 2017

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-048114-157

**IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUÉBEC IRON
MINING ULC, WABUSH IRON CO.
LIMITED AND WABUSH RESOURCES
INC.**

Petitioners

- and -

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY AND WABUSH LAKE
RAILWAY COMPANY LIMITED**

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

**THIRTY-FOURTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited (“**Bloom Lake GP**”), Quinto Mining Corporation (“**Quinto**”), 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (“**CQIM**”) (collectively, the “**Bloom Lake Petitioners**”) sought and obtained an initial order (as amended, restated or rectified from time to time, the “**Bloom Lake Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) from the Superior Court of Québec (the “**Court**”), providing for, *inter alia*, a stay of proceedings against the Bloom Lake Petitioners until February 26, 2015, (the “**Bloom Lake Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The relief granted in the Bloom Lake Initial Order was also extended to The Bloom Lake Iron Ore Mine Limited Partnership (“**Bloom Lake LP**”) and Bloom Lake Railway Company Limited (together with Bloom Lake LP, the “**Bloom Lake Mises-en-Cause**” and together with the Bloom Lake Petitioners, the “**Bloom Lake CCAA Parties**”). The proceedings commenced under the CCAA by the Bloom Lake CCAA Parties will be referred to herein as the “**CCAA Proceedings**”.

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2. On May 20, 2015, the CCAA Proceedings were extended to include Wabush Iron Co. Limited (“**WICL**”), Wabush Resources Inc. (“**WRI**” and together with WICL, the “**Wabush Petitioners**”), Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the “**Wabush Mises-en-Cause**” and together with the Wabush Petitioners, the “**Wabush CCAA Parties**”) pursuant to an initial order (as amended, restated or rectified from time to time, the “**Wabush Initial Order**”) providing for, *inter alia*, a stay of proceedings against the Wabush CCAA Parties until June 19, 2015, (the “**Wabush Stay Period**”) and approving an interim financing term sheet dated May 19, 2015 (as amended, the “**Interim Financing Term Sheet**”), providing an interim facility of up to US\$10 million (the “**Interim Financing**”). The Bloom Lake CCAA Parties and the Wabush CCAA Parties will be referred to collectively herein as the “**CCAA Parties**”.
3. The Bloom Lake Stay Period and the Wabush Stay Period (together, the “**Stay Period**”) have been extended from time to time and currently expires on June 30, 2017.
4. On April 17, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**SISP Order**”) approving, as it relates to the Bloom Lake CCAA Parties, a sale and investor solicitation process (as may be amended from time to time, the “**SISP**”) involving the business and assets of the Bloom Lake CCAA Parties. The SISP was subsequently amended and restated to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings and was approved *nunc pro tunc* as it relates to the Wabush CCAA Parties pursuant to an Order granted June 9, 2015 (together with the April 17, 2015 Order, the “**SISP Order**”).
5. On June 22, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**June 22 Rep Order**”) *inter alia*:

- 3 -

- (a) Appointing Michael Keeper, Terence Watt, Damin Lebel and Neil Johnson as representatives (the “**Representatives**”) of the Salaried Members (as defined in the June 22 Rep Order); and
 - (b) Appointing Koskie Minsky LLP and Nicholas Scheib (collectively “**Representative Counsel**”) as legal counsel to the Representatives.
6. On November 5, 2015, Mr. Justice Hamilton J.S.C. granted an Order approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (as amended, the “**Claims Procedure Order**”).
7. To date, the Monitor has filed thirty-three reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor's Thirty-Fourth Report (this “**Report**”), is to provide information to the Court with respect to:
- (a) The receipts and disbursements of the CCAA Parties for the period January 14, 2017, to April 14, 2017;
 - (b) The CCAA Parties' revised and extended cash flow forecast for the period April 15 to June 30, 2017 (the “**April 24 Forecast**”);
 - (c) The current status of the realization of the assets of the CCAA Parties;
 - (d) An audit being carried out by the Canada Revenue Agency (“**CRA**”) in respect of income tax filings by the CCAA Parties for the tax years 2010 to 2015 (the “**CRA ITA Audit**”);
 - (e) The progress of the Claims Procedure;
 - (f) The current status of litigation matters;
 - (g) The 2014 Reorganization;

- 4 -

- (h) Allocation issues with respect to proceeds of realization and the costs of the CCAA Proceedings; and
- (i) The current estimates of potential distributions to creditors.

TERMS OF REFERENCE

8. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Parties, the CCAA Parties' books and records, certain financial information prepared by the CCAA Parties and discussions with various parties (the "**Information**").
9. Except as described in this Report:
 - (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
10. The Monitor has prepared this Report to provide a status update to the Court, including in respect of progress towards a transaction for the sale of the Wabush Mine, as instructed by Mr. Justice Hamilton J.S.C. and should not be relied on for other purposes.
11. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Bloom Lake Initial Order, the Wabush Initial Order or previous reports of the Monitor.

RECEIPTS & DISBURSEMENTS FOR THE PERIOD TO APRIL 14, 2017

THE BLOOM LAKE CCAA PARTIES

13. The Bloom Lake CCAA Parties' actual cash flow on a consolidated basis for the period from January 14, 2017, to April 14, 2017, excluding proceeds of major asset realizations, was approximately \$1.4 million better than the January 20 Forecast, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	275	320	45
Disbursements:			
Payroll & Employee Benefits	0	0	0
Termination & Severance	0	0	0
Utilities	0	0	0
Other Operating Disbursements	(725)	(29)	696
Operating Cash Flows	(450)	291	741
Restructuring Professional Fees	(2,838)	(2,209)	629
Net Cash Flow	(3,288)	(1,918)	1,370
Asset realizations	0	1,458	1,458
Cash Flow after Asset Realizations	(3,288)	(460)	2,828

14. Explanations for the key variances in actual receipts and disbursements as compared to the January 20 Forecast are as follows:
- (a) The favourable variance of approximately \$0.7 million in other operating disbursements is primarily a timing variance arising in respect of an anticipated settlement payment in full and final satisfaction of all amounts owing in respect of the Mont-Wright Camp; and

- 6 -

- (b) The favourable variance of approximately \$0.6 million in aggregate restructuring professional fees is comprised of favourable timing variances of approximately \$1.0 million offset by unfavourable permanent variances of approximately \$0.4 million. Those variances arise as follows:
 - (i) Favourable variances of approximately \$0.5 million in the aggregate for the costs of the Monitor and its counsel, of which approximately \$0.3 million is a favourable permanent variance and approximately \$0.2 million is a timing variance; and
 - (ii) A favourable variance of approximately \$0.1 million in the aggregate for the costs of the Bloom Lake CCAA Parties' counsel, of which approximately \$0.8 million is a favourable timing variance resulting from delays in invoicing, offset by a permanent unfavourable variance of approximately \$0.7 million as fees in the period were higher than forecast. Based on the information available to the Monitor, it appears that the significant majority of the permanent unfavourable variance relates to legal fees expended in connection with the CRA ITA Audit, discussed later in this Report.
15. The Bloom Lake Initial Order permits inter-company funding between the Bloom Lake CCAA Parties. Inter-company funding in the amount of approximately \$4.1 million had been advanced by Bloom Lake LP to CQIM in the period since the start of the CCAA Proceedings to January 13, 2017. There was no additional inter-company funding advanced in the period January 13, 2017, to April 14, 2017.

THE WABUSH CCAA PARTIES

16. The Wabush CCAA Parties' actual cash flow on a consolidated basis for the period from January 14, 2017, to April 14, 2017, excluding proceeds of major asset realizations, was approximately \$1.8 million better than the January 20 Forecast, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	263	948	685
Disbursements:			
Payroll & Employee Benefits	(309)	(302)	7
Contractors	(277)	(167)	110
Utilities	(90)	(26)	64
Other Operating Disbursements	(861)	(859)	2
Operating Cash Flows	(1,274)	(406)	868
Restructuring Professional Fees	(2,240)	(1,340)	900
Net Cash Flow	(3,514)	(1,746)	1,768
Asset realizations	0	420	420
Cash Flow after Asset Realizations	(3,514)	(1,326)	2,188

17. Explanations for the key variances in actual receipts and disbursements as compared to the January 20 Forecast are as follows:
- (a) The favourable variance of approximately \$0.7 million in receipts is a permanent variance arising from the receipt of sales tax refunds that had not been forecast;
 - (b) The favourable variance of approximately \$0.1 million in contractors is a timing variance that is expected to reverse in future periods; and

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- (c) The favourable variance of approximately \$0.9 million in restructuring professional fees is believed to be comprised of favourable timing variances of approximately \$1.3 million that are expected to reverse in future periods combined with unfavourable permanent variances of approximately \$0.4 million. Those variances arise as follows:
- (i) Favourable timing variances of approximately \$0.2 million in the aggregate for the costs of the Monitor and its counsel;
 - (ii) A favourable variance of approximately \$0.5 million in the aggregate for the costs of the Wabush CCAA Parties' counsel, of which approximately \$0.9 million is a favourable timing variance resulting from delays in invoicing, offset by a permanent unfavourable variance of approximately \$0.4 million as fees in the period were higher than forecast; and
 - (iii) A favourable timing variance of approximately \$0.2 million in the costs of Representative Counsel.

THE APRIL 24 FORECAST

18. The Monitor has been assisting the CCAA Parties in the preparation of the April 24 Forecast. Completion of the April 24 Forecast has been delayed pending counsel to the CCAA Parties finalizing its forecast of legal costs for the period. The April 24 Forecast will be filed with the Court once it is completed.

Monitor's 34th Report, April 26, 2017 (cont'd)

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CURRENT CASH BALANCES

19. As previously reported, at the request of the CCAA Parties, the Monitor has been assisting with the administration of receipts and disbursements in order to streamline administration and reporting. All of the CCAA Parties' accounts have now been closed and all transactions are being processed through the Monitor's accounts on behalf of the CCAA Parties. Total cash balances as at April 14, 2017, are summarized below:

	Bloom Lake CCAA Parties	Wabush CCAA Parties	Total
	\$000	\$000	\$000
Held by Monitor			
Sale Proceeds Accounts	168	1,735	1,903
Operating Accounts	3,544	3,600	7,144
Minimum Royalty Deposits	0	4,896	4,896
GIC Investments	73,000	60,000	133,000
Total Held by Monitor	76,712	70,231	146,943

*In addition, the Monitor holds deposits submitted by interested parties in the Wabush Mine Sale Procedure

CURRENT STATUS OF ASSETS REALIZATIONS**SEPT-ILES HOUSES**

20. As previously reported, certain amounts from the proceeds of sale of the eight employee houses located in Sept-Iles were held in escrow in respect of potential withholding tax liabilities. Since the date of the Monitor's Thirty-First Report, final assessments of federal and provincial withholding tax liabilities have been received by the Wabush CCAA Parties and the amounts owing have been paid. Compliance certificates have been issued by the relevant taxation authorities.

21. Approximately \$550,000 has been released to the Monitor in respect of amounts held in escrow in connection with federal withholding taxes. Approximately \$330,000 is expected to be released shortly to the Monitor in respect of amounts held in escrow in connection with provincial withholding taxes.

EMPLOYEE HOMES

22. In its Thirty-First Report, the Monitor reported that all of the single-family homes that were vacant at the commencement of the CCAA Proceedings had been sold other than one property for which the sale had been agreed but had not yet been completed and the property on which there was an oil spill prior to the CCAA Proceedings. The foregoing pending sale and the sale of the property on which there was an oil spill prior to the commencement of the CCAA Proceedings have now been completed.
23. At the date of the Thirty-First Report, the status of the remaining employee homes was as follows:
- (a) Sales of fifteen Conditional Sale Employee Homes had been agreed and were in progress;
 - (b) The sale of one Conditional Sale Employee Home was being negotiated;
 - (c) Offers for the purchase of the three Vacant Conditional Sale Homes had been accepted, subject to completion of definitive documentation;
 - (d) Ten Conditional Sale Employee Homes whose occupants had not accepted an offer for the early completion of the conditional sale agreements remained occupied pursuant to the terms of the respective conditional sale agreements.

24. Since the date of the Thirty-First Report, a further seventeen sales have closed and four further sales are pending closing. Eight Conditional Sale Employee Homes remain occupied pursuant to the terms of the respective conditional sale agreements and the Wabush CCAA Parties continue to collect the amounts payable under those agreements.

THE MONT-WRIGHT CAMP TRANSACTION

25. Paragraph 35 and 36 of the Monitor's Thirty-First Report stated:

“35. In the absence of any other prospect for the sale of the Mont-Wright Camp, the Bloom Lake CCAA Parties, in consultation with the Monitor, took steps to close down the camp and to terminate ongoing obligations with respect thereto. In that regard, the Bloom Lake CCAA Parties:

(a) Engaged a third-party contractor to winterize and close the camp, with the work being completed in the first week of December 2016; and

(b) On November 30, 2016, issued a notice of disclaimer in respect of the Mont-Wright Camp services agreement with ArcelorMittal Mining Canada G.P. (“**ArcelorMittal**”) pursuant to section 32 of the CCAA, which disclaimer became effective on December 30, 2016.

36. The Bloom Lake CCAA Parties, in consultation with the Monitor, are in discussions with ArcelorMittal in respect of the final resolution of amounts owing and other matters in respect of the Mont-Wright Camp.”

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26. Subsequent to the date of the Monitor's Thirty-First Report, the Bloom Lake CCAA Parties received a renewed expression of interest from a party that had previously expressed interest in the Mont-Wright Camp. A draft agreement of purchase and sale was provided to the interested party on March 8, 2017 (the "**Draft Mont-Wright APA**").
27. Preliminary comments and clarification questions on the Draft Mont-Wright APA were provided by counsel to the interested party in a letter dated April 11, 2017. Counsel to the interested party also confirmed that it holds funds necessary for the payment of the proposed purchase price in trust. Responses to the preliminary comments and clarification questions were provided by counsel to the CCAA Parties, in consultation with the Monitor, on April 19, 2017. A discussion between counsel to the CCAA Parties, counsel to the interested party, the Monitor and its counsel took place on April 24, 2017, to seek to resolve outstanding issues.
28. The CCAA Parties, in consultation with the Monitor, have been in discussion with ArcelorMittal regarding the amounts owing to ArcelorMittal in respect of the Mont-Wright Camp. While the post-filing amount to December 30, 2016, has been agreed, certain other matters raised by ArcelorMittal in respect of the Mont-Wright Camp remain outstanding at this time. It is anticipated that the sale of the Mont-Wright Camp may resolve the other matters raised by ArcelorMittal.

TOWN OF WABUSH VACANT LAND

29. As previously reported, the Wabush CCAA Parties own some small parcels of vacant land in the Town of Wabush. Two parties have expressed interest in the vacant land and have been provided information related thereto.

THE WABUSH MINE

30. Updates with respect to the potential sale of the Wabush Mine were provided in the Monitor's Thirty-Second Report and the Monitor's Thirty-Third Report.

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31. Since the date of the Monitor's Thirty-Third Report, the Wabush CCAA Parties have received responses to their requests for clarification and additional information from various interested parties. The Wabush CCAA Parties, in consultation with the Monitor, are in the process of endeavouring to negotiate a mutually acceptable agreement of purchase and sale.
32. The Monitor's understanding of the current state of affairs with Interested Party One is set out in **Confidential Appendix A**.
33. The Monitor's understanding of the current state of affairs with Interested Party Two is set out in **Confidential Appendix B**.
34. The Monitor's understanding of the current state of affairs with MFC is set out in **Confidential Appendix C**.
35. The Monitor's understanding of the current state of affairs with Interested Party Four is set out in **Confidential Appendix D**.
36. While the Monitor is hopeful that the ongoing efforts to sell the Wabush Mine will be successful, there is no certainty that such efforts will lead to a binding agreement for the acquisition of the Wabush Mine.

OTHER WABUSH MOVABLE ASSETS

37. Since the date of the Monitor's Thirty-First Report, no further action has been taken with respect to the other movable assets located at the Wabush Mine as discussions have continued with potential purchasers interested in acquiring the Wabush Mine, as described earlier in this Report.

POTENTIAL TAX REFUNDS

38. Also as previously reported, the CCAA Parties are seeking refunds in respect of Québec taxes and mining duties. The Monitor has been informed that the relevant assessments are now complete. Based on the assessments received and the claims filed by Revenu Québec in the Claims Procedure, the Monitor estimates that refunds totalling approximately \$20.7 million are due relating to pre-filing periods. Revenu Québec has a number of claims in the Claims Procedure which could give rise to potential set-off against the refunds.

INSURANCE CLAIM PROCEEDS

39. The CCAA Parties, in consultation with the Monitor, have executed a settlement agreement with respect to the remaining amount recoverable from insurance in respect of an environmental spill that occurred at the Pointe-Noire Facility prior to September 1, 2013 (the “**Insurance Settlement**”). The Insurance Settlement contains confidentiality provisions that restrict the CCAA Parties from disclosing the amount recoverable at this time.

THE CRA ITA AUDIT

40. On April 18, 2017, counsel to the CCAA Parties informed the Monitor that the CCAA Parties, with the assistance of their counsel, had been dealing with the CRA ITA Audit and various requests for information by CRA in connection therewith.
41. The Monitor had not been previously informed of the CRA ITA Audit. The Monitor therefor requested a briefing call to obtain an explanation of the matter. That call took place on April 20, 2017, and the following explanation was provided:

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- (a) In early 2016 CRA requested substantial amounts of information in respect of the income tax returns of the CCAA Parties for the tax years 2010 to 2015;
 - (b) On January 23, 2017, CRA issued formal "requirement in respect of the prior information requests" with a deadline of February 27, 2017 for compliance;
 - (c) Notwithstanding the stay of proceedings provided by the Bloom Lake Initial Order and the Wabush Initial Order, the CCAA Parties were concerned about the potential implications of a failure to comply, including for their directors and officers, and began to prepare responses with the assistance of counsel to the CCAA Parties;
 - (d) In February 2017, counsel to the CCAA Parties requested that the deadline to comply with the requirements be extended to March 31, 2017 on the basis that all items would be substantially complete by that date;
 - (e) While CRA did not formally grant an extension, they did not refuse the request, no further requirements have been received and no notification of legal action has been received from CRA; and
 - (f) Approximately 90% of the information requested has now been provided.
42. On the call on April 20, 2017, the Monitor requested copies of the correspondence from CRA and of the responses provided to CRA. To date, those documents have not been provided to the Monitor.

THE CLAIMS PROCEDURE**CLAIMS**

43. The current status of the Claims Procedure is summarized below:

	Allowed/To Be Allowed		In Progress		In Dispute		To be Disallowed / Dispute Period Not Expired		Disallowance Final	
	#	\$000	#	\$000	#	\$000	#	\$000	#	\$000
Secured										
CQIM	1	139	2	69,559					8	102,816
Bloom Lake LP	19	32,274	3	143,781	3	3,737	1	567	14	118,233
Bloom Lake GP	1	1,001	1	26,415					5	1,483
Quinto Mining 8568391 Canada Bloom Lake Railway									1	161
Wabush Mines	1	839	4	55,203					1	25,774
WICL			2	9,101						
WRI			2	13,646						
Arnaud Railway			3	55,569						
Wabush Lake Railway			2	54,937						
Total Secured	22	34,253	19	428,211	3	3,737	1	567	29	248,467
Unsecured										
CQIM	59	706,271	14	1,184,269			1	6,541	18	37,287
Bloom Lake LP	189	689,755	12	673,020	1	100	1	6,338	75	56,212
Bloom Lake GP	5	590,830							13	27,041
Quinto Mining 8568391 Canada Bloom Lake Railway			5	16,952					11	100
Wabush Mines	87	55,723	1,101	1,830,498	5	1,802	1	540	187	23,844
WICL	6	57,802	11	386,399	3	193			14	11,342
WRI	3	49,778	15	727,289	3	193			13	16,314
Arnaud Railway	5	4,255	5	24,255	3	193			11	3
Wabush Lake Railway	2	1,811	1	1,562	3	193			11	3
Total Unsecured	356	2,156,225	1,164	4,844,244	18	2,674	3	13,419	372	172,171
Total	378	2,190,478	1,183	5,272,455	21	6,411	4	13,986	401	420,638

44. The 1,183 claims in progress are summarized as follows:

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- (a) Eight claims by three creditors are municipal tax claims in the aggregate amount of approximately \$64.4 million. As previously reported, the CCAA Parties have identified and are pursuing a number of potential opportunities for municipal tax contestation that, based on current estimates, could result in reductions of approximately \$17 million in pre-filing claims if successful;
- (b) 1,089 claims in the aggregate amount of approximately \$168.8 million are claims of former employees in respect of OPEBs and other employment related amounts;
- (c) Six claims in the aggregate amount of approximately \$164.8¹ million are claims related to the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan, with claims of approximately \$54.9 million in the aggregate being filed on a joint and several basis against three of the Wabush CCAA Parties;
- (d) 75 claims in the aggregate amount of approximately \$4.7 billion are Related Party Claims²; and
- (e) Five claims by two creditors in the aggregate amount of approximately \$161.2 million are pending further review by the Monitor. Of this amount, \$149.2 million relates to three claims of one creditor related to environmental claims in respect of the Wabush Mine, which claims were filed on a joint and several basis against three of the Wabush CCAA Parties. The review of these claims has been deferred pending the outcome of efforts to sell the Wabush Mine.

¹ Updated to reflect the amounts shown in the wind-up reports.

² Excluding the Related Party Claim relating to subordinated Note Y discussed in the Monitor's Twenty-Fourth Report.

Related Party Claims

45. The Monitor is in the process of preparing a separate report on the current status of the review of the Related Party Claims and its findings to date and expects to file that report in the near future.

Secured Claims

46. As previously reported, Secured Claims include:
- (a) A Related Party Claim for advances made by Cliffs Mining Company (“**CMC**”) to the Wabush CCAA Parties prior to the CCAA Proceedings (the “**CMC Secured Claim**” and the related security being the “**CMC Security**”);
 - (b) Claims relating to the Key Bank Facility (the “**Key Bank Claims**” and the related security being the “**Key Bank Security**”);
 - (c) Claims of CNR as guarantor under the Key Bank Facility and assignee and/or subrogor of the Key Bank Claims (the “**CNR Key Bank Claims**” and the related security being the “**CNR Key Bank Security**”);
 - (d) Claims of creditors holding a registered legal hypothec for construction (the “**Construction Hypothec Claims**” and the related security being the “**Construction Hypothecs**”);
 - (e) Claims filed by the pension administrators in respect of the Wabush Hourly Pension Plan and the Wabush Salaried Pension Plan;
 - (f) Claims filed in respect of environmental obligations; and
 - (g) Claims filed in respect of unpaid property taxes.

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47. Previous reports of the Monitor have included details of the independent opinions on the validity and enforceability of the CMC Security, the Key Bank Security and the CNR Key Bank Security. The determination of the value of the security for these Claims is pending the allocation of proceeds and costs of realization as discussed elsewhere in this Report.
48. The quantum of all except one Construction Hypothec Claim, as noted below, has been finally determined in accordance with the provisions of the Claims Procedure Order. The status of the adjudication of the validity of the security of the Construction Hypothec Claims, in each case subject to the allocation of proceeds and costs of realization as discussed elsewhere in this Report, is as follows:
- (a) Sixteen Construction Hypothec Claims in the aggregate amount of approximately \$32.6 million have been allowed as secured claims;
 - (b) Three Construction Hypothec Claims in the aggregate amount of approximately \$0.9 million have been allowed as unsecured claims as the Monitor issued Notices of Revision or Disallowance in respect of the validity of the security, which notices were not disputed;
 - (c) Three Construction Hypothec Claims in the aggregate amount of approximately \$4 million are in dispute as to the validity of security as the claimants filed Notices of Dispute in response to the Notices of Revision or Disallowance in respect of the validity of the security issued by the Monitor;
 - (d) One Construction Hypothec Claim in the amount of approximately \$0.2 million is in dispute as to quantum and the validity of security as the claimant filed a Notice of Dispute in response to the Notices of Revision or Disallowance in respect of both aspects of the Construction Hypothec Claim; and

- (e) The determination of three Construction Hypothec Claims in the aggregate amount of approximately \$1.1 million remain under review in respect of the validity of the security.

Pension Claims

49. As reported in the Monitor's Thirty-First Report, Morneau Shepell, the replacement administrator of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan (the "**Pension Administrator**") filed wind-up reports quantifying the wind-up deficits of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan as at December 16, 2016 as \$27,450,000 and \$27,486,548 respectively.
50. Also as reported in the Monitor's Thirty-First Report, on September 21, 2016, the Monitor filed a motion for advice and directions with respect to the potential priority of the various aspects of the pension plan claims (the "**Pension Priority Motion**"). The Court heard representations in respect of jurisdictional matters, including the request by certain parties that aspects of the Pension Priority Motion be transferred to the Newfoundland court and determined that no aspect of the Pension Priority Motion was to be transferred to the Newfoundland court. The Pension Priority Motion is now scheduled to be heard on June 28 and 29, 2017.
51. As previously reported to the Court, on March 27, 2017, the Committee of the Executive Council of Newfoundland & Labrador issued an Order in Council³ directing that a reference be brought before the Newfoundland & Labrador Court of Appeal stating the following questions (the "**Reference**"):
- (a) What is the scope of section 32 of the *Pension Benefits Act, 1997*, *SNL1996 cP-4.01* deemed trusts in respect of:
- (i) Unpaid current service costs;

³OC2017-137

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- (ii) Unpaid special payments; and
 - (iii) Unpaid wind-up deficits?
- (b)
- (i) Does the federal *Pension Benefits Standards Act, R.S.C. 1985, c-32* deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?
 - (ii) If yes, is there a conflict between the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*?
 - (iii) If so, how is the conflict resolved?
- (c)
- (i) Does the *Quebec Supplemental Pension Plans Act, CQLR, c. R-15.1* also apply to those members of the Salaried Plan who reported for work in Quebec?
 - (ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the *Quebec Supplemental Pension Plans Act*?
 - (iii) If so, how is the conflict resolved?
- (d) Do the *Quebec Supplemental Pension Plans Act* deemed trusts also apply to Quebec Salaried Plan members?
- (e)
- (i) Is the *Pension Benefits Act, 1997* lien and charge in favour of the pension plan administrator in section 32(4) of the *Pension Benefits Act, 1997* a valid secured claim in favour of the plan administrator?
 - (ii) If yes, what amounts does this secured claim encompass?
52. An additional Order in Council was issued on April 20, 2017⁴, authorizing the Court of Appeal to take such evidence as it may require to properly determine the Reference.

⁴ OC2017-137

53. The Monitor has been informed that counsel for the Government of Newfoundland & Labrador (the “**Government**”) first met with the Chief Justice of Newfoundland & Labrador on April 3, 2017, at which time the Chief Justice instructed counsel for the Government to present an application on an *ex parte* basis to formally initiate the Reference before the Newfoundland & Labrador Court of Appeal and to deal with procedural, evidentiary and timing issues. The Monitor understands that the application may be presented in the week ended April 29, 2017.
54. The Monitor has been informed that it is possible that a hearing on the Reference could take place before the Newfoundland & Labrador Court of Appeal in mid- to late-September 2017.

OPEB Claims

55. The Monitor continues to work with Representative Counsel, the USW and their actuary to determine the appropriate basis of the calculation of the OPEB claims. The calculation methodology will be applied consistently across the group of claimants.
56. A number of meetings and discussions have taken place with regard to the methodology and underlying assumptions used by Representative Counsel, the USW and their actuary in their calculation of the OPEB claims and information has been provided to the Monitor. The Monitor is still awaiting responses to requests for certain information and support before it can complete its review and make an adjudication of the claims.

LITIGATION UPDATE**THE MFC ROYALTY LITIGATION**

57. Pursuant to the December 4 Order, the Wabush CCAA Parties have made deposits of \$812,250 with the Monitor in December 2015, January 2016, April 2016, July 2016, October 2016, January 2017 and April 2017 for amounts potentially payable in respect of the Minimum Royalty Payment.
58. The MFC Royalty Litigation is scheduled to be heard on June 5, 6 and 7, 2017.

THE MFC LIFT STAY MOTION

59. Following discussions with the CCAA Parties and the Monitor on December 7, 2016, MFC agreed to adjourn the MFC Lift Stay Motion and the parties agreed that the MFC Lift Stay Motion would be heard at the same time as the MFC Royalty Litigation. Accordingly, the MFC Lift Stay Motion is also scheduled to be heard on June 5, 6 and 7, 2017.
60. The MFC Lift Stay Motion included a request for an Order requiring the Monitor to provide to MFC with copies of all proofs of claim filed against the Wabush CCAA Parties by CNR and its related parties. As noted in the Monitor's Thirty-First Report, the CCAA Parties agreed that arrangements could be made to provide MFC's representatives access to review such proofs of claim electronically at MFC's expense.
61. On January 20, 2017, counsel to the Monitor requested confirmation from counsel to MFC that MFC would pay the costs of making the related party proofs of claim available electronically. No response has yet been provided by MFC.

THE 2014 REORGANIZATION

62. The Monitor has commenced “without prejudice” discussions with legal counsel to CNR and its non-filed affiliates (“**CNR Counsel**”) with respect to the 2014 Reorganization and its effect on the CQIM estate and its creditors with a view to agreeing the factual matrix of the 2014 Reorganization and any potential claim arising therefrom, identifying any areas of dispute and determining the process for bringing any claim or proposed settlement forward for consideration by the stakeholders and the Court.
63. CNR Counsel and the Monitor are planning to meet in the week commencing May 1, 2017, to determine the next steps to address the 2014 Reorganization.

ALLOCATION ISSUES

64. As the Court is aware, various approval and vesting orders issued in the CCAA Proceedings specifically provide that the transactions were approved without prejudice to the rights of creditors to object to the allocation of proceeds. Accordingly, prior to any distribution to creditors it will be necessary to obtain a final determination of the appropriate allocation of the proceeds of realizations among each of the CCAA Parties and amongst various asset classes.
65. Furthermore, it will be necessary for an appropriate allocation of the costs of the CCAA Proceedings among each of the CCAA Parties and amongst various asset classes to be determined.
66. As noted in its Thirty-First Report, the Monitor provided its recommendation for a proposed allocation methodology to the CCAA Parties and that recommendation was under consideration by the CCAA Parties.

67. The Monitor has been encouraging the CCAA Parties to bring a motion for approval of an allocation methodology in order to minimize interest accruing on unpaid secured property tax claims owing by CQIM. Counsel to the CCAA Parties have informed the Monitor that they are considering the recommended allocation methodology with a view to agreeing a proposed methodology with the Monitor and bringing a motion for its approval. Counsel to the CCAA Parties has further informed the Monitor that they hope to be able to provide feedback to the Monitor in the week commencing May 1, 2017.

ESTIMATED RANGES OF POTENTIAL DISTRIBUTIONS

68. At paragraph 174 of its Twenty-Fourth Report, the Monitor provided a summary of its estimate of the ranges of potential distributions to unsecured creditors from the estates of each of the CCAA Parties based on the information available at that time.
69. The Monitor has now updated its estimates based on the information currently available with respect to costs and realizations to date, the current status of claims and assumptions regarding potential future realizations. No amounts have been included in the estimates for any amounts that might be recoverable in respect of the 2014 Reorganization. The estimate utilizes the proposed allocation methodology recommended by the Monitor to the CCAA Parties. The current estimate of the ranges of potential distributions to unsecured creditors from the estates of each of the CCAA Parties, assuming that the Related Party Claims other than Note Y (which by its terms is subordinated) are valid as filed, are summarized below:

Monitor's 34th Report, April 26, 2017 (cont'd)

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	Low	High
Bloom Lake LP	1.48%	2.55%
Bloom Lake GP	0.00%	0.00%
CQIM	2.18%	2.79%
Quinto Mining	52.08%	57.86%
Arnaud Railway	0.00%	29.75%
WICL	0.00%	0.98%
Wabush Lake Railway	0.00%	0.02%
Wabush Mines ¹	0.00%	0.00%
WRI	0.00%	2.42%

¹Wabush Mines is an unincorporated joint venture, accordingly it has no assets or liabilities of its own and distributions would be through the joint venturers, WICL and WRI

The Monitor respectfully submits to the Court this, its Thirty-Fourth Report.

Dated this 26th day of April, 2017.

FTI Consulting Canada Inc.

In its capacity as Monitor of

Bloom Lake General Partner Limited, Quinto Mining Corporation,

8568391 Canada Limited, Cliffs Québec Iron Mining ULC,

Wabush Iron Co. Limited, Wabush Resources Inc.,

The Bloom Lake Iron Ore Mine Limited Partnership,

Bloom Lake Railway Company Limited, Wabush Mines,

Arnaud Railway Company and Wabush Lake Railway Company Limited



Nigel D. Meakin
Senior Managing Director



Steven Bissell
Managing Director

Monitor's 34th Report, April 26, 2017 (*cont'd*)

Confidential Appendix A

State of Affairs with Interested Party One

Monitor's 34th Report, April 26, 2017 (*cont'd*)

Confidential Appendix B

State of Affairs with Interested Party Two

Monitor's 34th Report, April 26, 2017 (*cont'd*)

Confidential Appendix C

State of Affairs with MFC

Monitor's 34th Report, April 26, 2017 (*cont'd*)

Confidential Appendix D

State of Affairs with Interested Party Four

Monitor's 24th Report, October 6, 2016

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-048114-157

**IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUÉBEC IRON
MINING ULC, WABUSH IRON CO.
LIMITED AND WABUSH RESOURCES
INC.**

Petitioners

- and -

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY AND WABUSH LAKE
RAILWAY COMPANY LIMITED**

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

**TWENTY-FOURTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited (“**Bloom Lake GP**”), Quinto Mining Corporation (“**Quinto**”), 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (“**CQIM**”) (collectively, the “**Bloom Lake Petitioners**”) sought and obtained an initial order (as amended, restated or rectified from time to time, the “**Bloom Lake Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) from the Superior Court of Quebec (the “**Court**”), providing for, *inter alia*, a stay of proceedings against the Bloom Lake Petitioners until February 26, 2015, (the “**Bloom Lake Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The relief granted in the Bloom Lake Initial Order was also extended to The Bloom Lake Iron Ore Mine Limited Partnership (“**Bloom Lake LP**”) and Bloom Lake Railway Company Limited (together with Bloom Lake LP, the “**Bloom Lake Mises-en-Cause**” and together with the Bloom Lake Petitioners, the “**Bloom Lake CCAA Parties**”). The proceedings commenced under the CCAA by the Bloom Lake CCAA Parties will be referred to herein as the “**CCAA Proceedings**”.

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2. On May 20, 2015, the CCAA Proceedings were extended to include Wabush Iron Co. Limited (“**WICL**”), Wabush Resources Inc. (“**WRI**” and together with WICL, the “**Wabush Petitioners**”), Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the “**Wabush Mises-en-Cause**” and together with the Wabush Petitioners, the “**Wabush CCAA Parties**”) pursuant to an initial order (as amended, restated or rectified from time to time, the “**Wabush Initial Order**”) providing for, *inter alia*, a stay of proceedings against the Wabush CCAA Parties until June 19, 2015, (the “**Wabush Stay Period**”) and approving an interim financing term sheet dated May 19, 2015 (as amended, the “**Interim Financing Term Sheet**”), providing an interim facility of up to US\$10 million (the “**Interim Financing**”). The Bloom Lake CCAA Parties and the Wabush CCAA Parties will be referred to collectively herein as the “**CCAA Parties**”.
3. The Bloom Lake Stay Period and the Wabush Stay Period (together, the “**Stay Period**”) have been extended from time to time and currently expires on October 12, 2016.
4. On April 17, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**SISP Order**”) approving, as it relates to the Bloom Lake CCAA Parties, a sale and investor solicitation process (as may be amended from time to time, the “**SISP**”) involving the business and assets of the Bloom Lake CCAA Parties. The SISP was subsequently amended and restated to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings and was approved *nunc pro tunc* as it relates to the Wabush CCAA Parties pursuant to an Order granted June 9, 2015 (together with the April 17, 2015 Order, the “**SISP Order**”).
5. On June 22, 2015, Mr. Justice Hamilton J.S.C. granted an Order (the “**June 22 Rep Order**”) *inter alia*:

- 3 -

- (a) Appointing Michael Keeper, Terence Watt, Damin Lebel and Neil Johnson as representatives (the “**Representatives**”) of the Salaried Members (as defined in the June 22 Rep Order); and
 - (b) Appointing Koskie Minsky LLP and Nicholas Scheib (collectively “**Representative Counsel**”) as legal counsel to the Representatives.
6. On November 5, 2015, Mr. Justice Hamilton J.S.C. granted an Order approving a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and their current and former directors and officers (as amended, the “**Claims Procedure Order**”).
7. To date, the Monitor has filed twenty-three reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor's Twenty-Fourth Report (this “**Report**”), is to provide information to the Court with respect to:
- (a) The receipts and disbursements of the CCAA Parties for the period March 26 to September 23, 2016;
 - (b) The CCAA Parties' revised and extended cash flow forecast for the period September 24, 2016 to February 3, 2017 (the “**September 20 Forecast**”);
 - (c) The current status of the realization of assets;
 - (d) The progress of the Claims Procedure;
 - (e) The current status of litigation matters;
 - (f) The 2014 Reorganization;
 - (g) Allocation issues with respect to proceeds of realization and the costs of the CCAA Proceedings;
 - (h) The current estimates of potential distributions to creditors; and

- (i) The CCAA Parties' request for an extension of the Stay Period to January 31, 2017 and the Monitor's recommendation thereon.

TERMS OF REFERENCE

- 8. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Parties, the CCAA Parties' books and records, certain financial information prepared by the CCAA Parties and discussions with various parties (the "**Information**").
- 9. Except as described in this Report:
 - (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook; and
 - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
- 10. The Monitor has prepared this Report in connection with the CCAA Parties' motion for an extension of the Stay Period now scheduled to be heard October 12, 2016 (the "**October 12 Extension Motion**") and the MFC Lift Stay Motion, as hereinafter defined. The Report should not be relied on for other purposes.
- 11. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.

12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Bloom Lake Initial Order, the Wabush Initial Order or previous reports of the Monitor.

EXECUTIVE SUMMARY

13. Capitalized terms used in the Executive Summary are as defined in the relevant section of the Report.
14. The Monitor is of the view that:
- (a) The CCAA Parties have acted, and are acting, in good faith and with due diligence;
 - (b) Circumstances exist that make an extension of the Stay Period appropriate; and
 - (c) Creditors would not be materially prejudiced by an extension of the Stay Period to January 31, 2017.
15. Accordingly, the Monitor respectfully recommends that the CCAA Parties' request for an extension of the Stay Period to January 31, 2017, be granted.

RECEIPTS & DISBURSEMENTS FOR THE PERIOD TO SEPTEMBER 23, 2016

THE BLOOM LAKE CCAA PARTIES

16. The Bloom Lake CCAA Parties' actual cash flow on a consolidated basis for the period from March 26 to September 23, 2016, excluding proceeds of major asset realizations, was approximately \$0.7 million below the April 8 Forecast, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	403	453	50
Disbursements:			
Payroll & Employee Benefits	(859)	(1,217)	(358)
Termination & Severance	(463)	(463)	0
Utilities	(276)	(100)	176
Other Operating Disbursements	(1,244)	(1,367)	(123)
Operating Cash Flows	(2,439)	(2,694)	(255)
Restructuring Professional Fees	(3,209)	(3,663)	(454)
Net Cash Flow	(5,648)	(6,357)	(709)
Asset realizations	0	0	0
Cash Flow after Asset Realizations	(5,648)	(6,357)	(709)

17. Explanations for the key variances in actual receipts and disbursements as compared to the April 8 Forecast are as follows:
- (a) The favourable variance of approximately \$0.1 million in receipts is a permanent variance arising from the collection of interest, insurance premium refunds and the refund of supplier deposits offset by cessation of lease payments as a result of the termination of the Mont-Wright Camp lease;
 - (b) The unfavourable variance of approximately \$0.4 million in payroll and employee benefits is a permanent variance arising from the final payment of vacation pay for employees at Bloom Lake terminated as a result of the Champion Transaction which had not been included in the April 8 Forecast;
 - (c) The favourable variance of approximately \$0.2 million in utility costs arose as the final reconciliation of amounts owing to or recoverable from Hydro Québec in respect of post-filing services has yet to be completed;

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- (d) The unfavourable variance of approximately \$0.1 million in other operating disbursements is primarily a permanent variance arising from the incurrence of tax and accounting professional fees not included in the April 8 Forecast; and
 - (e) The unfavourable variance of approximately \$0.5 million in aggregate professional fees is comprised of favourable timing variances of approximately \$1.0 million offset by unfavourable permanent variances of approximately \$1.5 million arising due to the extensive additional amounts of work required in respect of asset realizations, payments administration and claims adjudication¹.
18. The Bloom Lake Initial Order permits inter-company funding between the Bloom Lake CCAA Parties. Inter-company funding in the amount of approximately \$4.1 million had been advanced by Bloom Lake LP to CQIM in the period since the start of the CCAA Proceedings to March 25, 2016. There was no additional inter-company funding advanced in the period March 26 to September 9, 2016.

THE WABUSH CCAA PARTIES

19. The Wabush CCAA Parties' actual cash flow on a consolidated basis for the period from March 26 to September 23, 2016, excluding proceeds of major asset realizations, was approximately \$0.5 million better than the April 8 Forecast, as summarized below:

¹ When combined with the variances in the Wabush CCAA cash flow, the overall professional fee variance for the period is a positive variance of approximately \$0.7 million, comprising of favourable timing variances of approximately \$1.5 million and unfavourable permanent variances of approximately \$0.8 million.

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	173	463	290
Disbursements:			
Payroll & Employee Benefits	(298)	(316)	(18)
Contractors	(2,276)	(2,878)	(602)
Utilities	(377)	(305)	72
Other Operating Disbursements	(1,948)	(2,444)	(496)
Operating Cash Flows	(4,726)	(5,480)	(754)
Restructuring Professional Fees	(3,254)	(2,025)	1,229
Net Cash Flow	(7,980)	(7,505)	475
Asset realizations	0	0	0
Cash Flow after Asset Realizations	(7,980)	(7,505)	475

20. Explanations for the key variances in actual receipts and disbursements as compared to the April 8 Forecast are as follows:
- (a) The favourable variance of approximately \$0.3 million in receipts is a permanent favourable variance arising from interest collected, proceeds related to Conditional Sale Employee Homes, tax refunds and the refund of supplier deposits;
 - (b) The unfavourable variance of approximately \$0.6 million in contractors is a permanent variance that relates primarily to the revegetation program required for the Wabush Mine and comprises of a permanent variance of approximately \$0.3 million from actual costs incurred being higher than forecast and approximately \$0.3 million related to sales taxes having been inadvertently omitted from the April 8 Forecast;

- (c) The unfavourable variance of approximately \$0.5 million in other operating disbursements is a permanent variance resulting primarily from the payment of lease and related costs that had not been included in the forecast; and
- (d) The favourable variance of approximately \$1.2 million in restructuring fees is believed to be comprised of favourable timing variances of approximately \$0.3 million that are expected to reverse in future periods combined with permanent favourable variances of approximately \$0.9 million.

THE SEPTEMBER 20 FORECAST

21. The September 20 Forecast is attached hereto as **Appendix A**. The September 20 Forecast shows a net cash outflow, before proceeds of major asset realizations, of approximately \$2.7 million for the Bloom Lake CCAA Parties and of approximately \$5.3 million for the Wabush CCAA Parties in the period September 24, 2016 to February 3, 2017. The September 20 Forecast is summarized below:

	Bloom Lake CCAA Parties	Wabush CCAA Parties
	\$000	\$000
Receipts		58
Disbursements:		
Payroll & Employee Benefits		(215)
Contractors		(647)
Utilities		(150)
Other Operating Disbursements	(231)	(1,742)
Operating Cash Flows	(231)	(2,696)
Restructuring Professional Fees	(2,428)	(2,599)
Projected Net Cash Flow	(2,659)	(5,295)

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22. Of the \$2.9 million of combined aggregate net operating cash outflow, an estimated amount of approximately \$0.1 million relates to expenses already incurred. Similarly, of the \$5.0 million of restructuring professional fees included in the September 20 Forecast, an estimated amount of approximately \$1.8 million relates to amounts incurred prior to the date of this Report. Other operating disbursements includes \$1.65 million to be paid to and held by the Monitor in respect of potential Minimum Royalty Payments that may become owing to MFC.
23. Based on the current information, additional potential future realizations of up to approximately \$89 million are possible, excluding any amount that may be recoverable in respect of the 2014 Reorganization. Additional information regarding the sources of potential future realizations is provided later in this Report.

CURRENT CASH BALANCES

24. At the request of the CCAA Parties, the Monitor has been assisting with the administration of receipts and disbursements in order to streamline administration and reporting. The only remaining accounts being operated by the CCAA Parties are the accounts used for the collection of payments related to Conditional Sale Employee Homes. The CCAA Parties and the Monitor are working with their banking institutions to effect the transition of the administration of these accounts. Total cash balances as at September 23, 2016 are summarized below:

	Bloom Lake CCAA Parties	Wabush CCAA Parties	Total
	\$000	\$000	\$000
Held by Monitor			
Sale Proceeds Accounts ¹	2,781	13,312	16,263
Operating Accounts	1,335	238	1,572
Supplier Security Deposits	0	0	0
Minimum Royalty Deposits	0	3,258	3,258
GIC Investments	50,800	49,600	100,400
Total Held by Monitor	54,916	66,577	121,493
Total Held by CCAA Parties	0	51	51
Total	54,916	66,628	121,544

¹Excluding deposits held in respect of transactions yet to close

CURRENT STATUS OF ASSETS REALIZATIONS

THE POINTE-NOIRE TRANSACTION AND THE BLOCK Z TRANSACTION

25. As previously reported, the Pointe-Noire Transaction closed on March 8, 2016.
26. Various amounts totalling approximately \$6.4 million are outstanding in respect of property taxes related to the Pointe-Noire Facility and Block Z Lands (the "**Pointe-Noire Property Taxes**").
27. While the Pointe-Noire Property Taxes have a statutory priority in respect of proceeds of the sale of taxable immovable property in the Pointe-Noire Transaction and the Block Z Transaction there are competing claims to the proceeds in respect of potential deemed trust claims in respect of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan (collectively, the "**Potential Deemed Trust Claims**"). Accordingly, the Monitor is of the view that the validity and priority of the Potential Deemed Trust Claims must be determined prior to any payment of the Pointe-Noire Property Taxes. As discussed later in this Report, the Monitor has filed a motion for advice and directions in respect of the Potential Deemed Trust Claims.

THE BLOOM LAKE TRANSACTION

28. As previously reported, the Bloom Lake Transaction closed on April 11, 2016.

THE RIO TINTO RAILCAR TRANSACTION

29. The Rio Tinto Railcar Transaction closed on July 8, 2016.

THE TOROMONT GENERATOR TRANSACTION

30. The Toromont Generator Transaction closed on July 25, 2016.

THE IOC RAILCAR TRANSACTION

31. The IOC Railcar Transaction closed on September 2, 2016.

SEPT-ILES HOUSES

32. As previously reported, the eight employee houses located in Sept-Iles were listed for sale and sold over the period January to March, 2016.

33. Certain amounts from the proceeds of sale are currently held in escrow in respect of potential withholding tax liabilities. The Wabush CCAA Parties are in the process of preparing the information and documentation requested by the taxation authorities in order to obtain a compliance certificate which is necessary for the release of the escrowed funds.

THE EMPLOYEE HOMES TRANSACTION

34. In its Twenty-Second Report, the Monitor reported that the Wabush CCAA Parties had obtained an offer to purchase 48 of the 49 vacant single-family homes², the two apartment buildings and the staff house (the “**Employee Homes Transaction**”). The Employee Homes Transaction closed on September 20, 2016. The sale of one additional vacant single-family home had also been agreed subject to definitive documentation by the date of the Twenty-Second Report. That sale is expected to close in the near future.
35. The Wabush CCAA Parties, in consultation with the Monitor, are considering how to deal with the remaining vacant single-home.

OTHER EMPLOYEE HOMES

36. In its Twenty-Second Report, the Monitor reported that the Wabush CCAA Parties were in the process of negotiating the sale of a number of the Conditional Sale Employee Homes to the occupants of such Conditional Sale Employee Homes and intended to make offers to the remaining occupants for the early completion of the conditional sale agreements.
37. Such offers were communicated to the occupants of the 55 Conditional Sale Employee Homes in August 2016, with an expiry date of September 16, 2016. 30 occupants accepted the offers, eight occupants submitted a counter-proposal, each of which is now under consideration, four occupants declined the offer without making a counter-proposal and 13 occupants did not respond.
38. In addition, there is one additional employee home that that is currently occupied under a rental agreement. An offer was received for the purchase of this property, which offer is currently under negotiation.

² The purchaser did not want to acquire the remaining vacant single-family home as a result of an oil spill on the property prior to the CCAA Proceedings.

THE MONT-WRIGHT CAMP TRANSACTION

39. The Bloom Lake CCAA Parties have accepted an offer for the sale of the Mont-Wright Camp (the "**Mont-Wright Camp Transaction**"), subject to negotiation of a definitive agreement of purchase and sale and Court approval. The Bloom Lake CCAA Parties are in the process of attempting to negotiate a definitive agreement of purchase and sale with the prospective purchaser.

THE NALCOR TRANSACTION

40. The Wabush CCAA Parties have accepted an offer from Newfoundland and Labrador Hydro ("**Nalcor**") for the sale of real estate, machinery, equipment and other chattels used in connection with the Wabush Terminal Station or the Wabush Substation (the "**Nalcor Transaction**"), subject to negotiation of a definitive agreement of purchase and sale and Court approval.
41. Nalcor has obtained the necessary approval for the transaction from the Newfoundland and Labrador Board of Commissioners of Public Utilities pursuant to Order No. P.U. 37(2016) issued September 8, 2016. The Wabush CCAA Parties and Nalcor are in the process of finalizing the agreement of purchase and sale.

TOWN OF WABUSH VACANT LAND

42. The Wabush CCAA Parties own some small parcels of vacant land in the Town of Wabush. The Wabush CCAA Parties, with the assistance of the Monitor, are in the process of confirming the inventory of vacant land and determining a plan for its realization.

REMAINING MASON GRAPHITE PROCEEDS

43. Quinto is party to an agreement of purchase and sale dated April 5, 2012 (the "**Mason Graphite Agreement**"), pursuant to which Quinto agreed to sell certain mining claims to Mason Graphite Corp. ("**Mason Graphite**"). Pursuant to the Mason Graphite Agreement, US\$7.5 million of the purchase price was deferred and was payable at various future dates subsequent to the commencement of the CCAA Proceedings.
44. The first two payments due after the commencement of the CCAA Proceedings, totalling US\$2.5 million in the aggregate, were paid by Mason Graphite. Subsequent payments of US\$2.5 million each are due October 5, 2016, and April 5, 2017 (the "**Remaining Mason Graphite Proceeds**").
45. In January 2016, Mason Graphite made a proposal for the early repayment of the Remaining Mason Graphite Proceeds at a significant discount. Quinto, following consultation with the Monitor, rejected that proposal.
46. On July 28, 2016, Mason Graphite made a revised early payment offer stating that Mason Graphite had "found some financial partners and are now in a position to have access to an amount of \$3M to be used as a complete and final payment to fully reimburse the last deferred payment". Following consultation with the Monitor, Quinto made a counter-proposal (the "**Quinto Settlement Offer**") at US\$4 million, subject to the following conditions:
 - (a) Acceptance of the offer by no later than 5:00 p.m. Eastern Time on Monday August 22, 2016;
 - (b) Execution of a definitive settlement agreement by no later than September 2, 2016; and

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- (c) Payment in full by no later than September 30, 2016, or three business days after Court approval is granted if such approval is determined by Quinto to be required.
47. Mason Graphite accepted the Quinto Settlement Offer on August 22, 2016.
48. A draft settlement agreement was provided to counsel to Mason Graphite on August 26, 2016, subject to further review by Quinto and the Monitor. The draft settlement agreement included a provision that the agreement was subject to Court approval.
49. Mason Graphite provided a mark-up of the draft settlement agreement on September 1, 2016, which mark-up was unacceptable to Quinto. Quinto provided a revised draft at 11:46 a.m. on September 6, 2016.
50. At 11:57 a.m. on the same day, Mason Graphite issued a press release announcing a \$25.0 million bought deal private placement offering and stating that up to approximately \$6 million of the proceeds of the offering would be used “for the payment of amounts owing to Quinto Mining Corporation”³.
51. Given the new material information on the financial capacity of Mason Graphite to pay the full amount of the Remaining Mason Graphite Proceeds, Quinto, in consultation with the Monitor, determined that the proposed settlement was no longer in the best interests of Quinto’s stakeholders. Accordingly, at 1:53 p.m. on September 6, 2016, counsel to Quinto informed counsel to Mason Graphite that Quinto could no longer proceed with the proposed settlement as the proposed settlement was no longer in the best interests of Quinto’s stakeholders and that deferred payments under the Mason Graphite Agreement should continue to be paid in accordance with the terms of the Mason Graphite Agreement.

³ Mason Graphite issued a subsequent press release on September 27, 2016, announcing that the bought deal private placement offering had closed with gross proceeds of \$28,778,750.

52. On September 14, 2016, counsel to Quinto received a letter from counsel to Mason Graphite (the “**Mason Graphite September 14 Letter**”) asserting the position that Quinto and Mason Graphite had entered into a binding contract for the settlement of the Remaining Mason Graphite Proceeds notwithstanding that no definitive agreement had been executed. Mason Graphite requested that Quinto execute of the draft settlement agreement within five days and present a motion for Court approval of the settlement by no later than September 23, 2016.
53. Quinto disputes the assertion by Mason Graphite that the parties had reached a binding contract. Furthermore, the Monitor has informed Quinto that it could not recommend that the Court approve an early payment settlement at a discount given the Mason Graphite press release that confirms that Mason Graphite now has the financial capacity to pay the full US\$5 million of the Remaining Mason Graphite Proceeds. Accordingly, Quinto has informed the Monitor that it will not execute the draft settlement agreement or seek Court approval thereof.
54. On October 4, 2016, Mason Graphite filed a motion (the “**Mason Graphite Homologation Motion**”) seeking an Order:
- (a) Lifting the stay of proceedings for the purposes of the Mason Graphite Homologation Motion;
 - (b) Homologating the transaction set out in the draft settlement agreement described above; and
 - (c) Approving the settlement described above.
55. As noted above, a payment of US\$2.5 million was due on October 5, 2016. That payment was made by Mason Graphite on October 4, 2016, following the delivery of a letter from Mason Graphite’s counsel to Quinto and the Monitor in which Mason Graphite’s counsel advised that the payment would be made and that the payment was considered by Mason as a partial payment of the amount of US\$4 million stated in the Quinto Settlement Offer.

56. The Monitor will provide a separate report in respect of the Mason Graphite Homologation Motion prior to its return date.

THE BEUMER ESCROW FUNDS

57. As previously reported, on October 23, 2015, the CCAA Parties filed a motion (as amended from time to time, the "**Beumer Motion**") seeking the release of approximately US\$6.3 million (the "**Beumer Escrow Funds**") from an escrow agreement dated June 28, 2013 and entered into between Beumer Corporation ("**Beumer**"), Bloom Lake LP and BMO Trust Company (the "**Beumer Escrow Agreement**") in relation to certain disputed claims.
58. Also as previously reported, in its contestation filed on December 17, 2015 (the "**Beumer Contestation**" and together with the Beumer Motion, the "**Beumer Litigation**"), Beumer responded by not only opposing the conclusions sought in the Beumer Motion, but also by seeking the release of the Beumer Escrow Funds to Beumer.
59. The Beumer Litigation was settled on April 22, 2016, with 50% of the Beumer Escrow Funds being remitted to each of Beumer and Bloom Lake LP. The settlement of the Beumer Litigation was approved by the Court on April 22, 2016.

THE WABUSH MINE

60. Paragraphs 37 to 39 of the Monitor's Nineteenth Report stated the following with respect to discussions with an interested party for the Wabush Mine:

“37. Paragraph 28 of the Monitor's Sixteenth Report stated:

“Since the date of the Fifteenth Report, the interested party has been undertaking due diligence, including a visit to the Wabush Mine and discussions with various stakeholders. A letter of intent was submitted by the interested party on

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January 20, 2016 and is under consideration by the Wabush CCAA Parties in consultation with the Monitor. There is no guarantee that the letter of intent will lead to a binding agreement for the acquisition of the Wabush Mine.”

38. Since the date of the Sixteenth Report, the interested party has continued its due diligence and discussions with various stakeholders. The Wabush CCAA Parties and the interested party have exchanged a number of drafts of an asset purchase agreement but to date no agreement has been reached. There is no guarantee that the efforts of the parties will lead to a binding agreement for the acquisition of the Wabush Mine.

39. In the event that the parties are unable to agree on the terms of an asset purchase agreement or if the interested party decides not to proceed with the potential acquisition, the Monitor expects that the moveable Wabush Mine assets would be liquidated.”

61. As noted in the Monitor's Twenty-Third Report, although the interested party (the “**Wabush Interested Party**”) had terminated discussions in May 2016, it subsequently re-opened discussions. In July 2016, the Wabush Interested Party informed the Monitor and the Wabush CCAA Parties that it had entered into a “support agreement” with MFC in respect of its interest in the Wabush Mine. The interested party also informed the Monitor that any proposal would exclude major mobile equipment.

62. The Monitor and the Wabush CCAA Parties expended significant time and effort endeavouring to obtain a proposal from the Wabush Interested Party. Notwithstanding these efforts, it became increasingly apparent that it was unlikely that any proposal for the acquisition of the Wabush Mine would be forthcoming. Ultimately, the Wabush Interested Party was informed that it had to submit its proposal by August 26, 2016, failing which the Wabush CCAA Parties would proceed with alternative realization strategies for the equipment and processing plant at the Wabush Mine. Regrettably, no proposal was forthcoming from the Wabush Interested Party by that date nor from any party thereafter.
63. In addition to the efforts with the Wabush Interested Party described above, the Monitor was contacted by a separate party in late June 2016 enquiring about the Wabush Mine. That party signed a confidentiality agreement and was given access to the data room but decided not to pursue the opportunity.
64. The Wabush CCAA Parties, in consultation with the Monitor, are considering various alternatives with respect to the Wabush Mine, which alternatives could involve continuing to hold all or parts of the Wabush Mine to effect the realization of the remaining assets as described below, terminating the mining lease between predecessors of MFC and WICL dated September 2, 1959, (the "**MFC Sub-Lease**"), abandoning the property or any combination of the foregoing. Information on the realizable value of the remaining assets from the proposals submitted at the September 16 Proposal Deadline and from the proposals submitted at the October 5 Proposal Deadline, each as hereinafter defined, will be an important factor in the consideration of the available alternatives.

MAJOR MOBILE EQUIPMENT

65. As discussed in the Monitor's Twenty-Third Report, after the Wabush Interested Party had informed the CCAA Parties that any proposal would not include the major mobile equipment at the Wabush Mine, the CCAA Parties, in consultation with the Monitor, proceeded to seek new proposals for the liquidation of the remaining assets at the Bloom Lake Mine, the remaining railcars and the major mobile equipment at the Wabush Mine (collectively, the "**September 16 Proposal Assets**").
66. To that end, on August 18, 2016, the Monitor, on behalf of the CCAA Parties, sent an email to 88 interested parties including equipment brokers, end-users/operators and other interested parties that had participated in the liquidation sales process, or who had expressed an interest in some or all of the assets of the CCAA Parties during the CCAA Proceedings, requesting final and best offers on the September 16 Proposal Assets. Pursuant to this renewed call for proposals, the deadline for submitting proposals was September 16, 2016 (the "**September 16 Proposal Deadline**").
67. As discussed in the Monitor's Twenty-Third Report, and for the reasons set out therein, following receipt of the RBA 830E Proposal, the CCAA Parties determined, after consultation with the Monitor, that it was, in the circumstances and in their business judgment, fair and reasonable to accept the RBA 830E Proposal and exclude the RBA 830E Purchased Assets from the renewed call for proposals.
68. A number of proposals were received on or before the September 16 Proposal Deadline. The CCAA Parties, in consultation with the Monitor, assessed the proposals received and the CCAA Parties have accepted a proposal, subject to negotiation of a definitive asset purchase agreement and Court approval, for the sale of all of the September 16 Proposal Assets other than the 564 rail cars owned by the Bloom Lake CCAA Parties.

69. Proposals have been received for the rail cars but at prices that were not considered acceptable. The Bloom Lake CCAA Parties, with the assistance of the Monitor, have commenced discussions with certain parties that submitted proposals on the rail cars to determine whether an acceptable price can be agreed.

OTHER WABUSH MOVABLE ASSETS

70. An Order issued by the Honourable Mr. Justice Hamilton on December 4, 2015 (the “**December 4 Order**”), stated, *inter alia*:

“Orders that until such time as the Court renders judgment with respect to the Motion, the Wabush CCAA Parties shall give 14 day prior notice to MFC before dismantling or destroying the infrastructure or fixtures at the Wabush mine, in order to allow MFC to take whatever proceedings it considers appropriate to protect its rights.”

71. On August 30, 2016, following the failure of the interested party to submit a proposal for the acquisition of the Wabush Mine, and in anticipation of a further process to seek proposals for the remaining movable assets at the Wabush Mine, the Wabush CCAA Parties issued to MFC a Notice of Intent to Dismantle or Destroy Infrastructure or Fixtures located at the Wabush Mine (the “**August 30 Notice**”). A copy of the August 30 Notice is attached hereto as **Appendix B**.

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72. Counsel to MFC responded to the notice by letter dated September 2, 2016 (the “**MFC September 2 Letter**”), stating that MFC intends to oppose the actions contemplated under the August 30 Notice and has instructed counsel to prepare a motion in furtherance thereof. The MFC September 2 Letter also requested that no further actions be taken in respect of the August 30 Notice until MFC’s motion in respect thereof had been heard⁴.
73. The Wabush CCAA Parties have informed the Monitor that no infrastructure or fixtures at the Wabush Mine have been dismantled or destroyed since the granting of the December 4 Order.
74. In order that the remaining movable assets at the Wabush Mine could be realized for the benefit of the estate generally, on September 14, 2016, the Monitor, on behalf of the CCAA Parties, sent an email to the 88 interested parties that had received the email requesting proposals for the major mobile equipment. The email requested final and best offers on the remaining movable assets⁵ at the Wabush Mine other than the September 16 Proposal Assets (collectively, the “**October 5 Proposal Assets**”), with a deadline for submitting proposals of October 5, 2016 (the “**October 5 Proposal Deadline**”). In addition, the request for proposals was sent to MFC and to the Wabush Mine interested party on September 16, 2016.
75. The email sent on September 14, 2016, specifically provided that the October 5th Proposal Assets exclude any land and buildings and any assets that would constitute “fixtures” thereto, for example, wiring, plumbing or HVAC.

THE RESTRUCTURING LETTER OF INTENT

76. Paragraphs 29 and 30 of the Monitor’s Sixteenth Report stated:

⁴ The MFC Lift Stay Motion, as hereinafter defined, was served on September 21, 2016, and seeks, inter alia, an Order to suspend consideration of any liquidation proposals. The MFC Lift Stay Motion is discussed later in this Report.

⁵ The remaining movable assets include movable equipment in the crusher building and movable equipment in the mill building.

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“29. The Monitor has previously stated to the Court that the Bloom Lake CCAA Parties have been in discussions with a party potentially interested in sponsoring a plan of arrangement that would generate significant value for the estate in connection with the corporate attributes of the Bloom Lake CCAA Parties, which value would be in addition to the proceeds of the various proposed sale transactions.

30. The Bloom Lake CCAA Parties have now received the Restructuring Letter of Intent. The Restructuring Letter of Intent states, *inter alia*, that the proposed restructuring assumes that Bloom Lake LP continues to exist and carry on business and is not bankrupt and that the Bloom Lake Transaction is completed prior to the closing of the proposed restructuring.”

77. The Bloom Lake CCAA Parties, in consultation with the Monitor, have continued working with the party that submitted the Restructuring Letter of Intent to develop a mutually acceptable restructuring transaction that could realize value for the corporate attributes. The transaction, if it proceeds, would involve, *inter alia*, the filing of plans of arrangement by CQIM, Bloom Lake GP and Bloom Lake LP and would have to be completed on or before December 31, 2016, in order for the corporate attributes to be of value to the interested party.
78. The parties are currently in the process of attempting to agree on the specific timetable for the potential restructuring transaction and negotiating the key documents. The proposed restructuring transaction is complex and would require a significant number of key documents, including the following:
- (a) A restructuring agreement;

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- (b) Various partnership, shareholder, investment, share subscription and asset transfer agreements;
 - (c) A CCAA plan of arrangement and a BIA proposal; and
 - (d) Various forms of Court order, including an order convening meetings of creditors, a CCAA plan sanction order and a BIA proposal approval order.
79. If agreement is reached on the timetable and the terms of the key documents, it is anticipated that the Bloom Lake CCAA Parties would seek Court approval of the restructuring agreement and authority to file the plan of arrangement by early-November, with meetings of creditors to consider and vote on the plan of arrangement to be held shortly thereafter and the plan of arrangement, if approved by the creditors and sanctioned by the Court, to be fully implemented by December 31, 2016.

POTENTIAL TAX REFUNDS

80. The CCAA Parties have identified and are pursuing a number of potential opportunities for municipal tax contestation that, if successful, could result in significant refunds to the CCAA Parties or significant reductions in municipal taxes payable by the CCAA Parties.
81. Eleven applications for review have been filed in respect of property taxes for various parcels of real estate. Based on current estimates, those applications, if successful, could result in property tax refunds, or reductions in amounts owing, in the range of approximately \$10 million to \$20 million.

82. The CCAA Parties are also seeking refunds in respect of sales taxes, income taxes and Québec mining duties totalling approximately \$23.5 million. The CCAA Parties have informed the Monitor that all information and documents in support of the refunds requested by the various taxing authorities have been provided and the taxing authorities are in the process of reviewing the refund applications.

THE CLAIMS PROCEDURE

CLAIMS

83. The current status of the Claims Procedure is summarized below:

Monitor's 24th Report, October 6, 2016 (cont'd)

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	Allowed/To Be Allowed		In Progress		In Dispute		To be Disallowed / Dispute Period Not Expired		Disallowance Final	
	#	\$000	#	\$000	#	\$000	#	\$000	#	\$000
Secured										
CQIM	1	139	2	69,559	1	1,001			7	101,815
Bloom Lake LP	22	13,597	5	172,768			1	71	12	113,027
Bloom Lake GP			1	26,415	1	1,001			5	1,483
Quinto Mining										
8568391 Canada									1	161
Bloom Lake Railway										
Wabush Mines	1	839	4	54,667					1	25,774
WICL			2	9,101						
WRI			2	13,646						
Arnaud Railway			3	55,032						
Wabush Lake Railway			2	54,400						
Total Secured	24	14,575	21	455,588	2	2,002	1	71	26	242,261
Unsecured										
CQIM	57	620,090	15	1,204,638	1	80,317	11	3	6	29,320
Bloom Lake LP	181	611,816	59	705,216	1	80,317			27	27,017
Bloom Lake GP	5	590,830					10		3	27,041
Quinto Mining			5	16,952			10		1	100
8568391 Canada							8		1	25
Bloom Lake Railway							10			
Wabush Mines	71	55,541	1,108	1,858,944			1	1	10	6,631
WICL	5	51,692	15	401,904			11	252	2	1,003
WRI	3	49,778	19	742,794			10		2	1,003
Arnaud Railway	5	4,255	10	33,328			10		1	3
Wabush Lake Railway	2	1,811	6	10,635			10		1	3
Total Unsecured	329	1,985,813	1,237	4,974,410	2	160,634	91	256	54	92,147
Total	353	2,000,388	1,258	5,429,998	4	162,635	92	327	80	334,407

84. The 1,258 claims in progress are summarized as follows: update.

- (a) Eight claims by three creditors are municipal tax claims in the aggregate amount of approximately \$64.4 million;
- (b) Four claims by two creditors in the aggregate amount of approximately \$31.8 million are pending responses by the creditors to requests from the Monitor for further information or documentation;

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- (c) Two claims by one creditor in the aggregate amount of approximately \$12.1 million are pending responses by the CCAA Parties to requests from the Monitor for further information or documentation;
- (d) 1,148 claims in the aggregate amount of approximately \$174.3 million are claims of former employees in respect of OPEBs, which are discussed in further detail below, and other employment related amounts;
- (e) Twelve claims in the aggregate amount of approximately \$189.8 million are claims related to the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan, with claims of approximately \$63.3 million⁶ in the aggregate being filed on a joint and several basis against three of the Wabush CCAA Parties;
- (f) 75 claims in the aggregate amount of approximately \$4.7 billion are Related Party Claims⁷, which are discussed in further detail below; and
- (g) Nine claims by three creditors in the aggregate amount of approximately \$244.3 million are pending further review by the Monitor. Of these, three claims are related to the RBC litigation discussed later in this Report, which claims were filed on a joint and several basis against three of the Wabush CCAA Parties and three claims of one creditor relate to environmental claims in respect of the Wabush Mine, the review of which was deferred pending the outcome of discussions with the Wabush Interested Party, which claims were filed on a joint and several basis against three of the Wabush CCAA Parties.

⁶ Based on the revised estimates provided by the Pension Administrator as discussed later in this Report.

⁷ Excluding the Related Party Claim relating to Note Y discussed later in this Report.

Related Party Claims

85. 76 claims totalling approximately US\$8 billion or \$9.9 billion were filed by a CCAA Party against another CCAA Party or by a related party that is not subject to the CCAA Proceedings (collectively, “**Related Party Claims**”). Of the Related Party Claims, claims totalling approximately \$199 million were filed as secured claims and claims totalling approximately \$9.7 billion were filed as unsecured claims.
86. The Related Party Claims include a claim against CQIM by Cliffs Canada Finance Inc. (“**CFC**”) in respect of an inter-company debt instrument known as “**Note Y**”. The claim in respect of Note Y is in the amount of approximately US\$4.2 billion. The Monitor has determined that Note Y is, on its terms, contractually subordinated to all other claims against CQIM. CFC has confirmed that it concurs with the Monitor’s assessment regarding the subordination of Note Y. As there is no prospect of the other claims against CQIM being paid in full, the Monitor intends to undertake no further review of the claim in respect of Note Y.
87. As noted in the Monitor’s Nineteenth Report, the Monitor intends to provide a report on its review of the Related Party Claims and its assessment of the quantum, status and validity thereof once its review is completed. The Monitor intends to file that report prior to issuing any Notice of Allowance or any Notice of Revision or Disallowance in respect of the Related Party Claims in order to provide the opportunity for any relevant stakeholder to consider the Monitor’s assessment.
88. There are seven large individual components of the Related Party Claims that are specific to particular financing or guarantee activities other than Note Y (the “**Specific Claim Components**”). In the aggregate, the Specific Claim Components total approximately US\$1 billion.

89. The Related Party Claims are net of a large number of offsetting debit transactions totalling approximately US\$8.7 billion in the aggregate which reduce the quantum of the Related Party Claims (the “**Related Party Debit Transactions**”).
90. Excluding the amounts for the Specific Claim Components and the Related Party Debit Transactions, the balance of the Related Party Claims is approximately US\$11.5 billion. The support provided for the balance of the Related Party Claims includes in excess of 31,000 transaction entries, many of them small. Given the level of potential of distributions to creditors as discussed later in this Report, it would be uneconomic for the Monitor to review all transactions. The stratification of those transactions is summarized below:

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Transaction Values	Bloom Lake LP		CQIM		Quinto Mining	
	US\$000	#	US\$000	#	US\$000	#
<= \$100,000	49,510	5,095	16,978	19,207	3,664	255
\$100,001 - \$250,000	35,596	230	12,147	78	6,623	42
\$250,001 - \$500,000	55,466	149	17,456	50	3,760	12
\$500,001 to \$1,000,000	93,205	132	19,101	25	503	1
\$1,000,001 - \$10,000,000	429,937	147	525,173	112	-	-
>= \$10,000,001	335,376	20	2,563,032	51	-	-
Total	999,090	5,773	3,153,886	19,523	14,550	310
	WICL		Wabush Lake Railway		Wabush Mines	
	US\$000	#	US\$000	#	US\$000	#
<= \$100,000	1,224	84	15,081	1,183	5,281	266
\$100,001 - \$250,000	2,390	15	3,065	20	8,873	54
\$250,001 - \$500,000	5,031	14	1,996	6	19,980	53
\$500,001 to \$1,000,000	21,187	29	1,691	3	57,842	79
\$1,000,001 - \$10,000,000	431,517	150	1,743	1	1,651,037	454
>= \$10,000,001	388,215	27	-	-	3,150,585	97
Total	849,564	319	23,575	1,213	4,893,598	1,003
	Arnaud Railway		WRI		Total	
	US\$000	#	US\$000	#	US\$000	#
<= \$100,000	40,571	2,302	835	81	133,143	28,473
\$100,001 - \$250,000	46,737	297	2,089	11	117,521	747
\$250,001 - \$500,000	24,496	74	6,729	17	134,913	375
\$500,001 to \$1,000,000	9,752	14	14,527	19	217,807	302
\$1,000,001 - \$10,000,000	117,604	45	405,515	96	3,562,526	1,005
>= \$10,000,001	-	-	925,812	19	7,363,019	214
Total	239,161	2,732	1,355,506	243	11,528,929	31,116

91. Based on the stratification of Related Party Claims transaction entries and utilizing the current information and assumptions with respect to the potential ranges of claims, the potential recoveries for creditors as discussed later in this Report and the time and cost that would be involved in reviewing the smaller transactions, the Monitor has analysed and considered various scenarios for the level of review of transactions underlying the Related Party Claims as an alternative to incurring the significant costs that would be associated with reviewing all of the transactions.

92. Based on that analysis, the Monitor is of the view that the following approach to the review of the Related Party Claims is reasonable in the circumstances:
- (a) Note Y will not be reviewed as it is subordinate to all other claims and will not share in any distribution;
 - (b) The Specific Claim Components will be reviewed;
 - (c) All debit transactions will be presumed to be valid as they reduce the net Related Party Claims;
 - (d) All transactions less than or equal to \$100,000 for Quinto and \$1 million for all other CCAA Parties (approximately 28,500 transactions) will be presumed to be valid and will not be reviewed; and
 - (e) All transactions greater than \$100,000 for Quinto and \$1 million for all other CCAA Parties (approximately 2,500 transactions) will be reviewed to determine whether they constitute valid claims.
93. Based on the analysis performed, even if it were determined that all related party transactions below the proposed review threshold were not valid claims⁸, the potential impact on the estimated potential recoveries for creditors⁹ would be *de minimis*, as shown in the table below:

⁸ In the Monitor's experience, it is highly unlikely that all such transactions would be invalid.

⁹ Excluding any amount that may be recoverable in respect of the 2014 Reorganization.

	Estimated Unsecured Distributions to Third Parties					
	If Intercompany Claims Valid As Filed		If Untested Intercompany Claim Not Valid		Delta	
	Low	High	Low	High	Low	High
Bloom Lake LP	1.25%	2.95%	1.51%	3.61%	0.27%	0.66%
Bloom Lake GP	0.00%	2.37%	0.00%	2.37%	0.00%	0.00%
CQIM	2.64%	3.78%	2.54%	3.51%	-0.10%	-0.27%
Quinto Mining	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
Arnaud Railway	0.00%	27.31%	0.00%	27.62%	0.00%	0.32%
WICL	0.00%	0.54%	0.00%	0.60%	0.00%	0.06%
Wabush Lake Railway	0.00%	0.02%	0.00%	0.00%	0.00%	-0.02%
Wabush Mines ¹	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
WRI	0.00%	0.85%	0.00%	0.89%	0.00%	0.03%

¹Wabush Mines is an unincorporated joint venture, accordingly it has no assets or liabilities of its own and distributions would be through the joint venturers, WICL and WRI

94. Accordingly, the Monitor is of the view that reducing the threshold for review of related party transactions is not justified and the Monitor intends to perform its review of the Related Party Claims using the criteria set out above.
95. The Monitor has requested additional supporting documentation from the related party creditors in order to be able to undertake that review and provided that the relevant supporting documentation is provided on a timely basis, expects to be able to provide its report on the Related Party Claims within the proposed extension of the Stay Period.

Secured Claims

96. As previously reported, Secured Claims include:
- (a) A Related Party Claim for advances made by Cliffs Mining Company (“CMC”) to the Wabush CCAA Parties prior to the CCAA Proceedings (the “CMC Secured Claim” and the related security being the “CMC Security”);

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- (b) Claims relating to the Key Bank Facility (the “**Key Bank Claims**” and the related security being the “**Key Bank Security**”);
 - (c) Claims of CNR as guarantor under the Key Bank Facility and assignee and/or subrogor of the Key Bank Claims (the “**CNR Key Bank Claims**” and the related security being the “**CNR Key Bank Security**”);
 - (d) Claims of creditors holding a registered legal hypothec for construction (the “**Construction Hypothec Claims**” and the related security being the “**Construction Hypothecs**”);
 - (e) Claims filed by the pension administrators in respect of the Wabush Hourly Pension Plan and the Wabush Salaried Pension Plan;
 - (f) Claims filed in respect of environmental obligations; and
 - (g) Claims filed in respect of unpaid property taxes.
97. Previous reports of the Monitor have included details of the independent opinions on the validity and enforceability of the CMC Security, the Key Bank Security and the CNR Key Bank Security.
98. With the exception of the claims of two creditors, the quantum of all Construction Hypothec Claims have been determined, subject to a subsequent determination of what portion of each Construction Hypothec Claim is validly secured by a construction hypothec, if any. The determination of the secured portion of the Construction Hypothec Claims is pending completion of the legal opinion on the validity and enforceability of the Construction Hypothecs and the allocation of proceeds and costs of realization as discussed elsewhere in this Report. Monitor's Counsel has requested additional information from creditors with Construction Hypothec Claims in order to complete its opinion in respect thereof.

Pension Claims

99. The former pension plan administrator of the Wabush Hourly Pension Plan filed claims against Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company in the amount of \$29 million in respect of wind-up deficit and in the amount of approximately \$6.1 million in respect of unremitted amortization payments.
100. The former pension plan administrator of the Wabush Salaried Pension Plan filed claims against Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company in the amount of \$24 million in respect of wind-up deficit and in the amount of approximately \$1.9 million in respect of unremitted amortization payments.
101. As noted in the Monitor's Nineteenth Report, the relevant regulators appointed Morneau Shepell as independent administrator of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan (the "**Pension Administrator**"). The Pension Administrator will be filing wind-up reports quantifying the wind-up deficits of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan. The deadline for the Pension Administrator to file the wind-up reports has been extended from time to time and is currently October 16, 2016, although the Pension Administrator has informed the Monitor that a further extension has been requested. The Monitor is awaiting the wind-up reports prior to determining the quantum of the pension Claims.
102. In the meantime, the Pension Administrator has provided details of outstanding current service cost payments and special payments and an updated estimate of the wind-up deficits. In that regard, the Pension Administrator provided summaries for each of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan that show the following:
 - (a) With respect to normal cost payments:

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- (i) The normal cost payments with respect to the Wabush Salaried Pension Plan were overpaid in the amount of \$169,961 as of December 16, 2015, the date of the termination of the Wabush Salaried Pension Plan;
 - (ii) The normal cost payments with respect to the Wabush Hourly Pension Plan were fully paid as of December 16, 2015¹⁰, the date of the termination of the Wabush Hourly Pension Plan;
- (b) With respect to special payments:
- (i) The special payments with respect to the Wabush Salaried Pension Plan required to be paid prior to the date of the Wabush Initial Order were paid in full except for \$3;
 - (ii) One special payment with respect to the Wabush Salaried Pension Plan in the amount of \$273,218 was paid after the date of the Wabush Initial Order and before the granting of the Pension Priority and Suspension Order, granted by the Honourable Mr. Justice Hamilton on June 26, 2015, which payment constituted an underpayment of \$1;
 - (iii) The special payments with respect to the Wabush Salaried Pension Plan required to be paid after the date of the Pension Priority and Suspension Order, totalling \$2,185,752, were not paid in accordance with the provisions of the Pension Priority and Suspension Order;

¹⁰ The monthly amount of \$44,356 was pro-rated to the date of the termination of the Wabush Hourly Pension Plan payment resulting in a payment of \$22,893

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- (iv) The special payments with respect to the Wabush Hourly Pension Plan required to be paid prior to the date of the Wabush Initial Order were underpaid in the amount of \$146,776;
 - (v) One special payment with respect to the Wabush Hourly Pension Plan in the amount of \$393,337 was paid after the date of the Wabush Initial Order and before the granting of the Pension Priority and Suspension Order, which payment constituted an overpayment of \$16,308; and
 - (vi) The special payments with respect to the Wabush Hourly Pension Plan required to be paid after the date of the Pension Priority and Suspension Order, totalling \$3,016,232, were not paid in accordance with the provisions of the Pension Priority and Suspension Order;
- (c) Additional special payments in the aggregate amount of \$3,525,120 with respect to the Wabush Hourly Pension Plan were payable by way of a Catch-Up Payment of \$1,762,560 due August 26, 2015, and thereafter in additional special payments payable in six monthly instalments of \$293,760 starting August 30, were required and were not paid in accordance with the provisions of the Pension Priority and Suspension Order.
103. Based on the foregoing and the information provided by the Pension Administrator, the amounts outstanding in respect of the Wabush Salaried Pension Plan and the Wabush Hourly Pension Plan based on contribution payment due date and the most recent estimate of the wind-up deficiencies are summarized as follows:

	Salaried Plan	Hourly Plan
Normal Cost Payments		
Pre-filing	\$0	\$0
Post-Filing	\$0	\$0
Total	\$0	\$0
Special Payments		
Pre-filing	\$3	\$146,776
Post-Filing	\$2,185,753	\$2,999,924
Total	\$2,185,756	\$3,146,700
Catch-up Special Payments		
Pre-filing	\$0	\$0
Post-Filing	\$0	\$3,525,120
Total	\$0	\$3,525,120
Estimated Wind-up Deficiency	\$26.7 million	\$27.7 million

104. On September 21, 2016, the Monitor filed a motion for direction with respect to the potential priority of the various aspects of the pension plan claims (the “**Pension Priority Motion**”). The Pension Priority Motion is returnable on a *proforma* basis on October 12, 2016. The Monitor will seek to agree a timetable for the filing of materials and the presentation of the Pension Priority Motion with the CCAA Parties, Representative Counsel, the USW, the Pension Administrator and the relevant regulators that would allow relevant parties sufficient opportunity to respond and ensure the efficient hearing of the Pension Priority Motion. If the Monitor is unable to reach agreement on a mutually acceptable timetable, it will seek the assistance of the Court in setting an appropriate timetable.

OPEB Claims

105. The Monitor has been working with Representative Counsel, the USW and their actuary to determine the appropriate basis of the calculation of the OPEB claims. The calculation methodology will be applied consistently across the group of claimants.

106. A number of meetings and discussions have taken place with regards to the methodology and underlying assumptions used by Representative Counsel, the USW and their actuary in their calculation of the OPEB claims and the Monitor, in consultation with the CCAA Parties, is in the process of reviewing the information and support provided by Representative Counsel, the USW and their actuary.

D&O CLAIMS

107. 53 D&O Claims were filed in the aggregate amount of approximately \$2.7 million. Of these, 37 D&O Claims in the aggregate amount of approximately \$1.6 million were subsequently confirmed as having been incorrectly filed as D&O Claims and have been re-characterized as Claims. The remaining 16 D&O Claims in the aggregate amount of approximately \$1.1 million were filed by employees in respect of vacation pay and termination amounts. Those D&O Claims were disallowed as all such amounts owing to the employees in question have been paid; none of the disallowances were disputed. Accordingly, there are no proven D&O Claims.

LITIGATION UPDATE

THE FISHERIES SUMMONSES HEARING

108. As described in the Monitor's Fourteenth Report, the Fisheries Summonses were issued on October 28, 2015 and served on Newfoundland counsel to the Wabush CCAA Parties on November 5, 2015, and allege offences under the *Fisheries Act* as follows:

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- (a) On or between May 14, 2015 and May 25, 2015, at or near the Town of Wabush, in the Province of Newfoundland and Labrador, following a deposit out of the normal course of events, at the final discharge point known as Knoll Lake, failed to conduct an acute lethality test without delay, in violation of paragraph 14(1)(b) of the *Metal Mining Effluent Regulations*, SOR/2002-222; and
- (b) On or about May 14, 2015 and continuing until May 25, 2015, at or near the Town of Wabush, in the Province of Newfoundland and Labrador, following the receipt of laboratory test results indicating that the limit for Total Suspended Solids in effluent set out in Schedule 4 of the *Metal Mining Effluent Regulations*, SOR/2002-222, had been exceeded, at the final discharge point known as Knoll Lake, failed to notify an inspector without delay, in violation of subsection 24(1) of the *Metal Mining Effluent Regulations*, SOR/2002-222.

109. Paragraph 32 of the Monitor's Fifteenth Report stated:

“32. The Fisheries Summonses Hearing took place by teleconference on December 17, 2015, before the Provincial Court in the Town of Wabush. The hearing was adjourned until February 25, 2016, in order to allow for written disclosures to be made by the Crown in respect of the alleged offences. No plea was required to be entered before the hearing resumes on February 25, 2016.”

110. The CCAA Parties subsequently entered a not guilty plea with respect to all of the charged entities and received disclosure from the Crown.

111. The CCAA parties have informed the Monitor that negotiations regarding resolution of the matter before trial have been constructive and that they are hopeful that a trial can be avoided.

THE MFC ROYALTY LITIGATION

112. As the Court is aware, there is a dispute between the Wabush CCAA Parties and MFC with respect to the amount of the quarterly Minimum Royalty Payment under the MFC Sub-Lease.
113. Pursuant to the Order of the Honourable Mr. Stephen Hamilton made December 4, 2015 (the “**December 4 Order**”), the Wabush CCAA Parties have made deposits of \$812,250 with the Monitor in December 2015, January, April and July 2016 for amounts potentially payable in respect of the Minimum Royalty Payment.
114. The MFC Royalty Litigation is proceeding, with the next procedural step being the filing by the Wabush CCAA Parties of an expert report. No date has yet been set for a hearing.

THE SIPA CLAIMS MOTION

115. The SIPA Claims Motion was settled on August 30, 2016.

THE CMC LIFT STAY MOTION

116. On September 26, 2016, CMC filed a motion to lift the stay of proceedings (the “**CMC Lift Stay Motion**”) for the purposes of perfecting and registering its security interest in certain assets of the Wabush CCAA Parties located in Newfoundland.
117. Pursuant to an Equipment Security Agreement dated February 23, 2015 (the “**CMC Security Agreement**”), WICL and WRI (collectively, the “**Wabush Obligors**”) granted CMC a security interest in, among other things, all of their present and future right, title and interest in all Equipment, as such term is defined in the *Personal Property Security Act (Newfoundland)* of the Wabush Obligors.

118. The CMC Security Agreement was intended to provide security for the payment and performance of the liabilities of the Wabush Obligors under, among other things, a credit agreement between the Wabush Obligors and CMC dated as of February 23, 2015.
119. A schedule to the CMC Security Agreement lists certain equipment that is to be included in the collateral that is the subject of the CMC Security Agreement. That schedule includes certain Komatsu 830E Haul Trucks and provides serial numbers for such haul trucks.
120. Upon comparing the description of the Komatsu 830E Haul Trucks that were included in the RBA 830E Purchased Assets and located at the Wabush mine against the description of the Komatsu 830E Haul Trucks on Schedule A to the CMC Security Agreement, certain discrepancies were identified. The registrations made in the Personal Property Security Registry in Newfoundland and Labrador by CMC against the Wabush Obligors (the “**CMC PPSA Registrations**”) contained the same discrepancies as Schedule A to the CMC Security Agreement.
121. Section 11(3) of the *Personal Property Security Act (Newfoundland)* states, in part, that a description of collateral is inadequate for the purposes of enforceability against a third party if it describes “equipment” without further describing the item or kind of collateral.
122. CMC therefore brings the CMC Lift Stay Motion to allow for the modification to Schedule A of the CMC Security Agreement and modification of the CMC PPSA Registrations to correct the identified discrepancies in view of Section 11(3) of the *Personal Property Security Act (Newfoundland)*, which requires a proper description of equipment by item or kind for the purposes of enforceability of a security interest against third parties.

123. The CMC Lift Stay Motion is currently scheduled to be heard on October 21, 2016. To the extent considered necessary, the Monitor will provide a separate report in respect of the CMC Lift Stay Motion.

THE RBC LIFT STAY MOTION

124. On August 15, 2016, Royal Bank of Canada filed a motion to lift the stay of proceedings (the “**RBC Lift Stay Motion**”) from the purposes of pursuing an application to add WICL as a party in pending litigation in Newfoundland (the “**RBC Newfoundland Litigation**”).
125. The RBC Newfoundland Litigation was commenced in October 2003 and relates to an alleged breach of a 1996 lease by CMC, Managing Agent of Wabush Mines, and each of the joint venturers. RBC filed a claim in respect of the alleged breach in the Claims Procedure.
126. WICL and the Monitor opposed the RBC Lift Stay Motion on the basis, *inter alia*, that any claim against the Wabush CCAA Parties should be adjudicated pursuant to the Claims Procedure Order.
127. The RBC Lift Stay Motion is currently scheduled to be heard on October 28, 2016. To the extent considered necessary, the Monitor will provide a separate report in respect of the RBC Lift Stay Motion.

THE MFC LIFT STAY MOTION

128. On September 21, 2016, MFC served a motion seeking to lift the stay of proceedings (the “**MFC Lift Stay Motion**”) for the purposes of proceeding with a motion for an Order (the “**MFC Termination Order**”), *inter alia*:
- (a) Terminating the MFC Sub-Lease;
 - (b) Requiring immediate payment of Minimum Royalty Payments;

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- (c) Reserving rights of MFC to acquire certain assets of the Wabush CCAA Parties;
- (d) Requiring the Monitor to provide to MFC copies of all proofs of claim filed against the Wabush CCAA Parties by CNR and its related parties (the “**Related Party Proofs of Claim**”);
- (e) Suspending the consideration of any liquidation proposals.

Termination of MFC Sub-Lease

129. The MFC Sub-Lease is one of four groups of property agreements that together comprise the site referred to as the “Wabush Mine”. The areas covered by each of those groups of agreements is illustrated on the map of the Wabush Mine and surrounding area attached hereto as **Appendix C**.

130. Paragraph 47 of the MFC Lift Stay Motion states:

“47. Based on the above, and the current status of the file, there is no reason for the Sub-Lease to remain in force and, based on past and continuing defaults by WIC, the Court should lift the stay of proceedings, if necessary, and declare the Sub-Lease terminated;”

131. Paragraphs 50 to 53 of the MFC Lift Stay Motion state:

“50. The payment obligations of WIC under the Sub-Lease are to pay (a) annual rent and to pay (b) minimum royalty payments and/or rarned¹¹ royalties;

51. Notices of default were sent to WIC et al. on September 3, 2015 and December 3, 2015 as appears from copies of same file in support hereto as EXHIBIT P-22;

¹¹ “rarned” appears to be a typographical error. It is assumed that the word should be “earned”.

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52. The Annual Rent stipulated in the Sub-Lease has not been paid by WIC either to MFC or to the Monitor in Trust;
53. As mentioned hereinabove, the payment of all sums under the Sub-Lease are presently subject to the terms of the Order rendered on December 4, 2015 (P-3);”
132. The MFC Sub-Lease contains certain termination rights in favour of MFC (the “**Termination Rights**”) in the event of payment defaults under the MFC Sub-Lease. In that regard, paragraph C4 of the MFC Sub-Lease provides that the MFC Sub-Lease may be terminated on sixty days’ notice if any rents or royalties are in arrears for thirty days and if the rents or royalties are not paid within the notice period.
133. Pursuant to the MFC Sub-Lease, the annual rent referenced in paragraphs 50 and 52 of the MFC Lift Stay Motion (the “**Annual Rent**”) is payable yearly on December 20 and is the amount of:
- “...Three Hundred Sixty Dollars (\$360), less such sum as shall be expended by the Lessee after the execution of this Indenture on the prospecting, exploration, development of mining of the Demised Premises or any part thereof.”
134. The notices of default referenced in paragraph 51 of the MFC Lift Stay Motion make no mention of any default in respect of the Annual Rent. Accordingly, the Monitor concludes that any Annual Rent amounts payable prior to December 3, 2015, had been paid.

135. The amount payable on December 20, 2015, would have been \$360, less any applicable deductions as provided for in the MFC Sub-Lease. It is unclear to the Monitor whether any amount of Annual Rent was payable on December 20, 2015 after the application of applicable deductions, if any. The Monitor is not aware of any notice of default having been issued by MFC in respect of the Annual Rent payable on December 20, 2015, if any. Accordingly, any amount payable in respect of Annual Rent could be paid within the notice period if valid notice of default is issued.
136. As the Court is aware, there is no dispute that the MFC Sub-Lease provides for Minimum Royalty Payments on a quarterly basis. The crux of the MFC Royalty Litigation discussed earlier in this Report is whether the amount of the Minimum Royalty Payments is in fact zero under the provisions of the MFC Sub-Lease.
137. Pursuant to the December 4 Order, the Minimum Royalty Payments have been deposited with the Monitor.
138. It is, therefore, not clear at this time whether there is, in fact, any default of the payment obligations under the lease and whether MFC would have a right of termination even if the stay of proceedings was lifted.
139. As noted above, MFC asserts that there is no reason for the MFC Sub-Lease to remain in force. A significant number of movable assets are currently located on the MFC Sub-Lease property. As described earlier in this Report, the Wabush CCAA Parties have sought offers for the remaining assets.
140. The Wabush CCAA Parties, in consultation with the Monitor, are investigating the potential logistics, timing and costs of moving some or all of the assets currently located on the MFC Sub-Lease property to other areas of the Wabush Mine. The Wabush CCAA Parties, in consultation with the Monitor, are in the process of assessing all of the options available to the Wabush CCAA Parties in respect of dealing with the MFC Sub-Lease. Those options could include:

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- (a) Maintaining the MFC Sub-Lease pending the completion of the sale of assets that can be realized in a manner that would provide a net benefit to the estate;
- (b) Moving some or all of the assets off of the MFC-Sub Lease property prior to terminating the MFC Sub-Lease; or
- (c) Terminating the MFC Sub-Lease prior to removing or selling assets in accordance with the rights of the Wabush CCAA Parties under the MFC Sub-Lease as described later in this Report.

141. In the Monitor's view, it would be inappropriate for the MFC Sub-Lease to be terminated before that assessment is complete as such a termination may be prejudicial to the interests of the creditors generally. Furthermore, it is possible that such assessment may conclude that it is not in the best interests of the creditors generally for the MFC Sub-Lease to be maintained and the Wabush CCAA Parties may be prepared to disclaim the MFC Sub-Lease.

Minimum Royalty Payments

142. The issue of what Minimum Royalty Payments, if any, are due to MFC is already before the Court as it is the subject matter of the MFC Royalty Litigation, the status of which is discussed earlier in this Report. The MFC Royalty Litigation is complex, involving expert witnesses and significant production of documents.

143. In the Monitor's view, the issue of the release of the amounts held by the Monitor in respect of the Minimum Royalty Payments cannot be dealt with on a summary basis and should continue to be dealt with in the MFC Royalty Litigation.

Rights to Acquire Certain Assets of the Wabush CCAA Parties

144. The MFC Sub-Lease provides certain rights to acquire assets at reasonable market price, though such rights arise only in the event that the MFC Sub-Lease is terminated pursuant to the Termination Rights (the “**Contingent Purchase Rights**”). The Contingent Purchase Rights arise under paragraph C3 of the MFC Sub-Lease, which states:

“3. It shall be lawful for the Lessee to remove all building, plant, machinery and all articles and things of the Lessee in and upon or under the Demised Premises at any time within six (6) months after the determination of the tenancy; provided that the Lessor shall have the right by notice in writing to purchase all or any part of the said properties, articles and things at the then reasonable market price, to be determined, failing agreement thereon between the parties, by arbitration as hereinafter provided.”

145. Accordingly, it appears to the Monitor that unless and until the MFC Sub-Lease is terminated pursuant to the Termination Rights, MFC has no rights to acquire assets. The Monitor is not aware of any restriction on the Wabush CCAA Parties removing or selling assets located on the MFC Sub-Lease prior to the termination of the MFC Sub-Lease, subject to certain restrictions contained in Orders granted in the CCAA Proceedings, including the December 4 Order which restricts the right of the Wabush CCAA Parties to dismantle or destroy infrastructure or fixtures at the Wabush Mine but does not restrict the right of the Wabush CCAA Parties to remove, market or sell movable assets.

146. Furthermore, it does not appear to the Monitor that there is any restriction in the MFC Sub-Lease on the Wabush CCAA Parties removing or selling assets for a period of up to six months after the termination of the MFC Sub-Lease unless MFC has delivered a written notice offering to buy the assets at the then reasonable market price. It is unclear to the Monitor from its review of the MFC Sub-Lease what is intended with respect to the specifics of the terms of access to the property to effect such removal or sale.
147. The Monitor notes that the September 16 Proposal Assets and the October 5 Proposal Assets include only movable assets and, in the case of the October 5 Proposal Assets, explicitly exclude any land and buildings and any assets that would constitute “fixtures” thereto.
148. Paragraph 55 of the MFC Lift Stay Motion states:
- “55. The immediate termination of the Sub-Lease would allow MFC to retake possession of the mine property and exercise its rights to acquire the Wabush mine assets at their "reasonable market price" in accordance with the Sub-Lease, which would benefit creditors, as the price payable by MFC under the Sub-Lease would likely be higher than that obtained by the liquidation currently sought by the Wabush CCAA Parties.”
149. Contrary to what is suggested by MFC, there is no need for the stay of proceedings to be lifted in order for MFC to be able to acquire the assets at their reasonable market price. MFC, if it genuinely wishes to acquire the assets at their reasonable market price, has been and remains at liberty to submit a proposal for the acquisition of the assets within the CCAA Proceedings. In that regard:
- (a) MFC was invited and encouraged to participate in the SISF but chose not to do so;

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- (b) As discussed at length in the Monitor's Thirteenth Report and Fourteenth¹² Report, copies of which, without appendices, are attached hereto as **Appendices D** and **E** respectively, significant good faith efforts were made to engage with MFC regarding a potential acquisition of the Wabush Mine following the SISP;
- (c) As noted earlier in this Report, MFC executed a "support agreement" with the Wabush Interested Party. Despite having an extended opportunity to submit a proposal, the Wabush Interested Party and MFC chose not to put forth an offer for the assets; and
- (d) MFC was invited to participate in the process seeking proposals for the October 5 Proposal Assets by the October 5 Proposal Deadline but chose not to do so.

150. The Monitor notes that while the termination of the MFC Sub-Lease would allow for the exercise of the Contingent Purchase Rights, neither the MFC Lift Stay Motion nor the MFC Stay Objection, as hereinafter defined, appear to contain any definitive statement that MFC will exercise the Contingent Purchase Rights. As the Contingent Purchase Rights can be exercised up to six months after the termination of the MFC Sub-Lease, the realization process could be delayed by a further six months if MFC's motion is granted, even if MFC decide to exercise the Contingent Purchase Rights.

¹² At paragraph 22 of its Fourteenth Report the Monitor stated "Both the Wabush CCAA Parties and the Monitor would welcome a proposal from MFC for the acquisition of the Wabush mine and related assets at an appropriate price. Regrettably, however, the trail of correspondence, the statements made by MFC in the MFC Press Release and the stated intent to bring a motion to lift the stay of proceedings to allow MFC to file a motion for the termination of the Sub-Lease leads, in the Monitor's view, to the conclusion that MFC has no bona fide intent to submit a proposal to acquire the Wabush mine and the related assets, nor do they intend to restart operations in the short term. If a proposal is forthcoming from MFC or any other party before the negotiation of a definitive agreement for the sale of the moveable property at the Wabush mine is concluded, any such proposal would be given full consideration.". The conclusion regarding MFC's intent was never disputed by MFC.

151. In the Monitor's view, it is in the best of interests of the estate and all of its stakeholders that the realization process and the distributions to creditors be completed as expeditiously as is reasonable, regardless of whether the assets are sold to a third party or acquired by MFC and, accordingly, the granting of the MFC Lift Stay Motion would not be in the best interests of the stakeholders generally.

The Related Party Proofs of Claims

152. The request for an Order requiring the Monitor to provide to MFC copies of all proofs of claim filed against the Wabush CCAA Parties by CNR and its related parties is redundant as paragraph 62 of the Claims Procedure Order already provides MFC the ability to review the claims of CNR and its related parties on written request to the Monitor. No such request was made by MFC.
153. The Monitor has written to MFC reminding them of their rights under paragraph 62 of the Claims Procedure and inviting them to make arrangements to attend and review the claims of CNR and its related parties. MFC has now asked for copies of the claims rather than having to attend at the Monitor's office as provided for in the Claims Procedure. MFC's request is under consideration.

Suspension of Liquidation Proposals

154. Suspension of the process to obtain liquidation proposals would inevitably lead to further delay in the completion of the CCAA Proceedings, which is not in the interests of the stakeholders generally, and would prejudice the right of the Wabush CCAA Parties to continue to sell assets if the MFC Sub-Lease is terminated.
155. As discussed earlier in the Report, even if MFC was in a position to exercise the Contingent Purchase Rights, any acquisition by MFC must be at reasonable market price. The liquidation proposals obtained would be helpful in determining what the reasonable market price would be.

156. The liquidation proposals also provide important information necessary for the Wabush CCAA Parties to determine, in consultation with the Monitor, whether there is any benefit in continuing to hold the MFC Sub-Lease or whether it should be disclaimed.
157. In the Monitor's view, there is no prejudice to MFC from the process to obtain liquidation proposals as:
- (a) MFC has had the opportunity to make an offer for the acquisition of the assets since June 2015 but chose not to do so;
 - (b) MFC is still at liberty to make an offer for the purchase of the assets at any time;
 - (c) As discussed earlier in this Report, the MFC Sub-Lease does not restrict the Wabush CCAA Parties from continuing to sell the assets during the term of the MFC Sub-Lease, nor does the MFC Sub-Lease restrict the Wabush CCAA Parties from continuing to remove and sell the assets for a period of six months after the MFC Sub-Lease is terminated unless MFC has delivered a written notice to buy pursuant to the terms of the MFC Sub-Lease; and
 - (d) The Wabush CCAA Parties could not complete any transactions for the sale of the September 16 Proposal Assets or the October 5 Proposal Assets without further Order of the Court.

Comments with Respect to Other Statements Made in the MFC Lift Stay Motion

158. Paragraph 12 of the MFC Lift Stay Motion states:

“12. The purpose of the Motion for Directions was to obtain an interpretation of the terms of the Sub-Lease that favours WIC by allowing it to retain the rights and benefits as a tenant under the Sub-Lease *without having to pay MFC*

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the required minimum royalty and rent payments thereunder by seeking a Safeguard Order entitling WIC to cease making any payments as of the filing of said Motion for Directions;”
(emphasis added)

159. The “Motion for Directions” referred to in paragraph 12 of the MFC Lift Stay Motion is the MFC Royalty Litigation. It appears to the Monitor that paragraph 12 of the MFC Lift Stay Motion misstates the MFC Royalty Litigation.
160. Firstly, the MFC Royalty Litigation deals only with the Minimum Royalty Payments, not with any other rent payments. Secondly, the MFC Royalty Litigation is based on an assertion that the Minimum Royalty Payments are in fact nil, not that the Minimum Royalty Payments should not be paid if they are greater than nil.
161. Paragraphs 31 and 37 of the MFC Lift Stay Motion state:
- “31. However, recent events reveal the Wabush CCAA Parties true intentions regarding the Wabush Mine and MFC's rights under the Sub-Lease;
37. It has therefore become abundantly clear that the Wabush CCAA Parties and the Monitor have no intention of selling the Wabush Mine an[d] that all remaining assets will be sold-off piecemeal or simply destroyed;”

162. In the view of the Monitor, the statements by MFC regarding the intentions of the Wabush CCAA Parties and the Monitor are untrue and are not supported by the facts. While cognizant of the obligation to take reasonable steps to maximize realizations for the benefit of creditors, it has always been the preference of the Monitor and the Wabush CCAA Parties that the Wabush Mine and associated assets be sold to a party that would preserve the option of restarting mining operations at some point in the future. As described elsewhere in this Report and in the previous reports of the Monitor, significant time, effort and expense has been spent attempting to do that. Indeed, liquidation alternatives have been significantly delayed to give interested parties time to have discussions with various stakeholders and submit a proposal long after the conclusion of the SISP and even after such parties had previously informed the Monitor that they were no longer interested.
163. The Wabush CCAA Parties and the Monitor would welcome a proposal for the acquisition of the Wabush mine and related assets at an appropriate price. Regrettably, approximately eighteen months after the SISP Order was granted, there is no proposal from MFC or from any interested party.
164. Paragraphs 39 and 62 of the MFC Lift Stay Motion state:
- “39. The Wabush CCAA Parties continue to hide behind the protection provided by the CCAA and the Initial Order to conduct a liquidation of all Wabush Mine assets to its own benefit or the benefit of its principals with total disregard for the rights and interests of the various stakeholders;
62. The Wabush CCAA Parties' strategy regarding the liquidation of the remaining mining infrastructure and assets and the Wabush Mine property itself appear to be mainly established in a way that is the most favourable to

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the interests of the principal shareholder Cliffs Natural Resources Inc. ("CNR"), notably as far as its reclamations obligations are concerned;"

165. In the view of the Monitor, the statements by MFC about favouring shareholders are untrue and are not supported by the facts. The CCAA Proceedings, including the marketing efforts for the sale or liquidation of the assets, have been, and continue to be, carried out in a manner intended to maximize recoveries for the estate and for the benefit of stakeholders generally. Furthermore, a sale of the Wabush Mine property to a party that might restart operations in the future could be far more beneficial to CNR than the liquidation of assets and the abandonment of the Wabush Mine as the abandonment would increase the likelihood that the approximately \$50 million of bonds backed by CNR and posted to secure the reclamation obligations of the Wabush CCAA Parties would be called.

166. Paragraphs 45 and 46 of the MFC Lift Stay Motion state:

“45. The Conditional Release required various plans to be filed with the Government of Newfoundland and Labrador before any physical work could commence on the site with respect to the reclamation thereof including, among other things, an implementation plan and a public consultation plan, which would set forth the consultation with the Town of Wabush, Aboriginal groups and include a detailed inspection schedule;

46. MFC has serious concerns that the current intention of the Wabush CCAA Parties and the Monitor to proceed with the liquidation and dismantling of the Mine, as set forth in the Notice, disregards the consultation processes required under the Conditional Release and the rights of

stakeholders, including the Town of Wabush, Aboriginal groups and the Province of Newfoundland and Labrador;”

167. The Wabush CCAA Parties have informed the Monitor, consistent with previous statements made to the Court, that there have been no reclamation activities undertaken other than the revegetation program nor do they intend to commence reclamation activities. Accordingly, the consultation process is not yet relevant.

THE 2014 REORGANIZATION

168. Paragraphs 44 and 45 of the Monitor's Twelfth Report stated:

“44. The 2014 Reorganization was a complex, multi-stage corporate reorganization that had the effect of reducing inter-company indebtedness owed by CQIM to non-filing affiliates by approximately \$805.4 million from approximately \$5.6 billion to \$4.8 billion through the transfer to non-filing affiliates of cash from the Australian subsidiaries of CQIM (the “Australian Subsidiaries”), the assignment of inter-company notes and the transfer of preferred and common shares in the Australian Subsidiaries held by CQIM.

45. The Monitor has requested that CNR provide various documents and other information with respect to the 2014 Reorganization and the inter-company indebtedness in order that the Monitor can undertake its review. To date, CNR has co-operated with the Monitor in respect of its review of the 2014 Reorganization and has provided documents and information in response to the Monitor's original request. The Monitor has made additional requests for documents and information and

CNR has informed the Monitor that it intends to provide additional information shortly.”

169. Paragraph 68 of the Monitor's Nineteenth Report stated:

“The Monitor has now received various additional documents and information relating to the 2014 Reorganization. The effect of the 2014 Reorganization on potential recoveries to creditors of CQIM can only be determined once the Claims against CQIM, including the Related Party Claims, are known. Accordingly, the Monitor is not yet in position to provide a detailed report on the 2014 Reorganization.”

170. The Monitor is hopeful that the final adjudication of Claims against CQIM will progress sufficiently to allow the Monitor to submit a report on the 2014 Reorganization within the proposed extension of the Stay Period.

ALLOCATION ISSUES

171. As the Court is aware, various approval and vesting orders issued in the CCAA Proceedings specifically provide that the transactions were approved without prejudice to the rights of creditors to object to the allocation of proceeds. Accordingly, prior to any distribution to creditors it will be necessary to obtain a final determination of the appropriate allocation of the proceeds of realizations among both the individual CCAA Parties and amongst various asset classes.

172. Furthermore, it will be necessary for an appropriate allocation of the costs of the CCAA Proceedings among both the individual CCAA Parties and amongst various asset classes to be determined.

173. It is anticipated that a motion for such determinations will be brought in the within the proposed extension of the Stay Period.

ESTIMATED RANGES OF POTENTIAL DISTRIBUTIONS

174. The Monitor has estimated the ranges of potential distributions to unsecured creditors from the estates of each of the CCAA Parties based on the information currently available with respect to costs and realizations to date, the current status of claims and assumptions regarding potential future realizations. No amounts have been included in the estimates for any amounts that might be recoverable in respect of the 2014 Reorganization. The estimated the ranges of potential distributions to unsecured creditors from the estates of each of the CCAA Parties, assuming that the Related Party Claims other than Note Y are valid as filed, are summarized below:

	Low	High
Bloom Lake LP	1.25%	2.95%
Bloom Lake GP	0.00%	2.37%
CQIM	2.64%	3.78%
Quinto Mining	59.56%	68.71%
Arnaud Railway	0.00%	27.31%
WICL	0.00%	0.54%
Wabush Lake Railway	0.00%	0.02%
Wabush Mines ¹	0.00%	0.00%
WRI	0.00%	0.85%

¹Wabush Mines is an unincorporated joint venture, accordingly it has no assets or liabilities of its own and distributions would be through the joint venturers, WICL and WRI

REQUEST FOR AN EXTENSION OF THE STAY PERIOD

175. The Stay Period currently expires on October 12, 2016. Additional time is required for the CCAA Parties and the Monitor to complete the CCAA Proceedings, including the following activities:

- (a) Completing the negotiation of definitive agreements for the sale of remaining assets, obtaining Court approval of such agreements and completing the transactions;

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- (b) Pursuing the proposed restructuring under the Restructuring Letter of Intent;
- (c) Completing the Claims Procedure;
- (d) Dealing with distributions to creditors, including the determination of the appropriate allocations of realizations and costs of the CCAA Proceedings amongst the estates and asset categories;
- (e) Completing the investigation of the 2014 Reorganization and the effect thereof and determining what, if any, action should be taken with respect thereto;
- (f) Completing the other activities described in this Report; and
- (g) Undertaking the other activities necessary to complete the CCAA Proceedings.

176. The continuation of the stay of proceedings is necessary to provide the stability needed to complete the foregoing activities. Accordingly, the CCAA Parties now seek an extension of the Stay Period to January 31, 2017.

NOTICES OF OBJECTION TO EXTENSION OF THE STAY PERIOD

177. No notices of objection have been filed in respect of the CCAA Parties' request for an extension of the Stay Period in respect of the Bloom Lake CCAA Parties.

178. Three notices of objection to the CCAA Parties' request for an extension of the Stay Period in respect of the Wabush CCAA Parties as follows:

- (a) Notice of objection dated September 22, 2016, filed by MFC (the "**MFC Stay Objection**");
- (b) Notice of objection dated September 22, 2016, filed by the Town of Wabush (the "**Town Stay Objection**"); and

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- (c) Notice of objection dated September 23, 2016, filed by the Labrador West Chamber of Commerce (the “**Chamber Stay Objection**”).

179. The Monitor notes that the Town Stay Objection and the Chamber Stay Objection are virtually identically worded. The Town Stay Objection is signed by Mr. Colin Vardy, Mayor of the Town of Wabush. The Chamber Stay Objection is also signed by Mr. Vardy, in his capacity as Vice-Chair of the Labrador West Chamber of Commerce. Testifying in respect of the Town Stay Objection and the Chamber Stay Objection on September 28, 2016, Mr. Vardy admitted that both the Town Stay Objection and the Chamber Stay Objection had been prepared by counsel to MFC.

180. Paragraphs 3 and 4 of the Town Stay Objection states:

“3. Wabush believes that no real effort was made to favour a restructuring or sale of the Wabush Mine and that the final liquidation/destruction of mining infrastructure will have a negative impact on Wabush and the region and most probably seal Wabush's fate as a mining community;

4. Wabush believes that the Motion, as far as the Wabush CCAA Parties are concerned should not be granted and that the Wabush CCAA Parties should no longer benefit from the Stay of proceedings provided by the CCAA;”

181. Paragraph 3 and 4 of the Chamber Stay Objection states:

“3. The Chamber believes that no real effort was made to favour a restructuring or sale of the Wabush Mine and that the final liquidation/destruction of mining infrastructure will have a negative impact on the Chamber, its members, and the region and most probably seal the

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Town of Wabush's fate as a mining community;

4. The Chamber believes that the Motion, as far as the Wabush CCAA Parties are concerned should not be granted and that the Wabush CCAA Parties should no longer benefit from the Stay of proceedings provided by the CCAA;"

182. The statements in the Town Stay Objection and the Chamber Stay Objection that "no real effort was made to favour a restructuring or sale of the Wabush Mine" are factually incorrect and are not supported by the record in the CCAA Proceedings. In fact, and as set out earlier in this Report and in previous reports of the Monitor, extensive efforts have been made to achieve a sale of the Wabush Mine.
183. The Town Stay Objection and the Chamber Stay Objection seem to imply that Stay Period should not be extended in order that the assets located at the Wabush Mine would remain on site. The termination of the CCAA Proceedings would not necessarily result in the assets remaining at the Wabush Mine because:
- (a) The Wabush CCAA Parties would still have the right to remove and sell assets as described earlier in this Report;
 - (b) CMC, which holds security over the equipment at the Wabush Mine, could take steps to perfect and enforce its security which would result in the sale of the equipment; and
 - (c) If the Wabush CCAA Parties were placed into bankruptcy, the trustee in bankruptcy would proceed to take steps to realize the assets.

184. While MFC says in the MFC Lift Stay Motion that the termination of the CCAA Proceedings would allow MFC to exercise its contractual rights to acquire the assets at the Wabush Mine, neither the MFC Lift Stay Motion nor the MFC Stay Objection, as hereinafter defined, appear to state that MFC will, in fact, make an offer to acquire the assets at the Wabush Mine at a reasonable market price. Furthermore, the termination of the CCAA Proceedings would likely result the bankruptcy of the Wabush CCAA Parties and the Contingent Purchase Rights are likely not enforceable against a trustee in bankruptcy.
185. MFC has made no offer to buy the assets at any time during the CCAA Proceedings. The stay of proceedings does not prevent, and has not prevented, MFC from making such an offer.
186. Neither the Town Stay Objection nor the Chamber Stay Objection proposes any alternative process for dealing with the other matters that must be attended to in the estate even if the Stay Period is not extended, such as the completion of the adjudication of claims, the allocation of proceeds of sale and costs of realization and distributions to creditors.
187. Paragraph 7 of the MFC Stay Objection states:
- “7. No one has shown any real interest in purchasing the Wabush Mine and any discussion regarding same have been abandoned, the whole as was confirmed by the Monitor;”
188. While parties have shown some interest in the Wabush Mine assets, no party has been prepared to proceed with a proposal to buy those assets. This includes the party with whom MFC signed a support agreement as discussed earlier in this report.

189. As noted in paragraph 7 of the MFC Stay Objection, the marketing efforts have clearly demonstrated that there is no party with any interest in purchasing the mining assets and reopening the mine in the near future.
190. Furthermore, it does not appear that MFC intends to restart operations in the near future even if it acquired the assets. As reported in the Monitor's Fourteenth Report, a press release was issued by MFC on November 16, 2015, which stated, *inter alia*:

“Iron Ore Interests

We are the lessor under a mining sub-lease of the land upon which the Wabush Iron Ore Mine in Labrador, Canada, is located. The mine had operated since 1966. Upon termination of the lease, we intend to re-take the mine and exercise our contractual rights. Our rights may be delayed due to the operator filing for relief for all of their Canadian mines under the Companies' Creditors Arrangement Act. Iron ore prices have declined globally and the short-term outlook is not favorable. But, most importantly, we do not have any debt on this property. While we believe that the mine presents an interesting long-term opportunity, now is the time for conservatism and prudence while we focus on our other efforts. As such, we have initiated a rationalization process and, therefore, have reclassified the mine and our interest in another iron ore property as discontinued operations. We will be responsible stewards of our capital.”

(emphasis added)

191. Similar comments were made in a press issued by MFC on May 2, 2016, which stated, *inter alia*:

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“1. Iron Ore

We are the lessor under a mining lease underlying an iron ore mine in Canada. The mine had operated since 1966, but in 2015 it was closed by the operator. When the lease is terminated, we intend to re-take the mine and exercise our contractual rights. However, these rights have been delayed due to the operator filing for relief for all of their Canadian mines under the Companies' Creditors Arrangement Act of Canada.

While we continue to believe that the mine presents an interesting long-term opportunity, we have emphasized conservatism and prudence while we focus on our other efforts. As such, we initiated a rationalization process and have reclassified the mine and our interest in another iron ore property as discontinued operations and adjusted the carrying values to \$30.0 million resulting in non-cash impairment losses of \$215.6 million (before an income tax recovery of \$46.5 million) in 2015.”

(emphasis added)

192. Paragraph 11 of the MFC Stay Objection states:

“11. Any further delays risk making the possibility for any party interested in purchasing the mining assets and re-opening the mine futile because the competent workforce will have moved away from the region having lost all hope due to the length and secrecy of the process;”

193. The Monitor notes that mining operations at the Wabush Mine were suspended in March 2014 with the large majority of the workforce being laid off shortly thereafter. The Wabush Mine was permanently idled in November 2014. Only four employees have been retained to assist in safeguarding the assets.
194. As discussed earlier in this Report, while the termination of the MFC Sub-Lease would allow for the exercise of the Contingent Purchase Rights, neither the MFC Lift Stay Motion nor the MFC Stay Objection appear to contain any definitive statement that MFC will exercise the Contingent Purchase Rights. In any event, if MFC is genuinely intending to make an offer to purchase the assets, it does not need the CCAA Proceedings to be terminated to do so and the most effective way to avoid any further delay is simply for MFC to make its offer now.

THE MONITOR'S CONCLUSIONS AND RECOMMENDATION

195. The September 20 Forecast demonstrates that, subject to the underlying assumptions thereof, the CCAA Parties have sufficient liquidity to fund the CCAA Parties' operations and the CCAA Proceedings to January 31, 2017.
196. The only objections filed in response to the CCAA Parties' request for an extension of the Stay Period are the MFC Stay Objection, the Town Stay Objection and the Chamber Stay Objection.
197. MFC's primary objective in objecting to the extension of the Stay Period in respect of the Wabush CCAA Parties appears to be able to terminate the MFC Sub-Lease and have the right, but not the obligation, to issue a notice to acquire assets at the Wabush Mine at reasonable market price at some future time up to six months following termination of the MFC Sub-Lease. The Town Stay Objection and the Chamber Stay Objection were prepared by counsel to MFC and appear to have been filed to support the MFC Stay Objection.

198. As noted earlier in this Report and previously in the Monitor's Fourteenth Report dated December 2, 2015, both the Monitor and the Wabush CCAA Parties would welcome a proposal for the acquisition of the Wabush Mine assets from MFC. The termination of the CCAA Proceedings is not required for MFC to be able to make such a proposal. While cognizant of the obligation to take reasonable steps to maximize realizations for the benefit of creditors, it has always been the preference of both the Monitor and the CCAA Parties to sell the Wabush Mine and associated assets to a party that would preserve the option of the mine restarting operations at some point in the future. Regrettably, no proposal that would allow for such a transaction has been forthcoming.
199. The CCAA Proceedings are complex and the activities and assets of the CCAA Parties are, to various extents, intertwined. The co-ordination of the various estates is, in the Monitor's view, critical to maximize efficiency and effectiveness. It is also the Monitor's view that a continuation of the CCAA Proceedings is, at the current time, the only realistic way that such co-ordination can be efficiently achieved and that the realization of assets for the benefit of all stakeholders can be completed.
200. Based on the information currently available, the Monitor believes that creditors of the CCAA Parties would not be materially prejudiced by an extension of the Stay Period to January 31, 2017.
201. The Monitor also believes that the CCAA Parties have acted, and are acting, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
202. The Monitor therefore respectfully recommends that this Honourable Court grant the CCAA Parties' request for an extension of the Stay Period to January 31, 2017.

Monitor's 24th Report, October 6, 2016 (*cont'd*)

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The Monitor respectfully submits to the Court this, its Twenty-Fourth Report.

Dated this 6th day of October, 2016.

FTI Consulting Canada Inc.
In its capacity as Monitor of
Bloom Lake General Partner Limited, Quinto Mining Corporation,
8568391 Canada Limited, Cliffs Québec Iron Mining ULC,
Wabush Iron Co. Limited, Wabush Resources Inc.,
The Bloom Lake Iron Ore Mine Limited Partnership,
Bloom Lake Railway Company Limited, Wabush Mines,
Arnaud Railway Company and Wabush Lake Railway Company Limited



Nigel D. Meakin
Senior Managing Director



Steven Bissell
Managing Director

Monitor's 24th Report, October 6, 2016 (*cont'd*)

Appendix A

The September 20 Forecast

Bloom Lake CCAA Parties Cash Flow Projection

Amounts in CAD in thousands

Week Ending Friday	30-Sep-16	7-Oct-16	14-Oct-16	21-Oct-16	28-Oct-16	4-Nov-16	11-Nov-16	18-Nov-16	25-Nov-16	2-Dec-16	9-Dec-16	16-Dec-16	23-Dec-16	30-Dec-16	6-Jan-17	13-Jan-17	20-Jan-17	27-Jan-17	3-Feb-17	19-Week	
Forecast Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	Total	
Cash Flow from Operations																					
Receipts	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Payroll & Employee Benefits	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Termination & Severance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Utilities	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Operating Disbursements	(18)	-	(5)	(42)	(5)	-	(5)	-	(47)	-	(5)	-	(47)	-	(5)	-	(47)	-	(5)	(231)	
Operating Cash Flows	(18)	-	(5)	(42)	(5)	-	(5)	-	(47)	-	(5)	-	(47)	-	(5)	-	(47)	-	(5)	(231)	
Restructuring Professional Fees	(1,224)	(79)	(79)	(79)	(79)	(79)	(79)	(79)	(79)	(56)	(56)	(56)	(56)	(56)	(56)	(56)	(56)	(56)	(68)	(2,428)	
Projected Net Cash Flow	(1,242)	(79)	(84)	(121)	(84)	(79)	(84)	(79)	(126)	(56)	(61)	(56)	(103)	(56)	(61)	(56)	(103)	(56)	(73)	(2,659)	

Notes:

- [1] The purpose of this cash flow projection is to determine the liquidity requirements of the Bloom Lake CCAA Parties during the forecast period.
- [2] Forecast Payroll & Employee Benefits disbursements are nil as there are no employees remaining following the closing of the sale of the Bloom Lake business and assets.
- [3] Forecast Other Operating Disbursements reflect the railway storage fees and the wind-down of Bloom Lake. The timing of Other Operating Disbursements are assumed to be on 30 day credit terms.
- [4] Forecast Restructuring Professional Fees consist of legal and financial advisor fees associated with the CCAA proceedings based on estimates obtained from legal and professional advisors.

Wabush CCAA Parties Cash Flow Projection

Amounts in CAD in thousands (\$000s)

Week Ending Friday Forecast Week	30-Sep-16	7-Oct-16	14-Oct-16	21-Oct-16	28-Oct-16	4-Nov-16	11-Nov-16	18-Nov-16	25-Nov-16	2-Dec-16	9-Dec-16	16-Dec-16	23-Dec-16	30-Dec-16	6-Jan-17	13-Jan-17	20-Jan-17	27-Jan-17	3-Feb-17	19-Week Total	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19		
Cash Flow from Operations																					
Receipts	-	7	-	7	-	-	7	-	7	-	7	-	7	-	-	7	-	7	-	-	58
Payroll & Employee Benefits	(22)	-	(22)	-	(22)	-	(22)	-	(22)	-	(22)	-	(22)	-	(22)	-	(22)	-	(22)	-	(215)
Termination & Severance	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Contractors	(66)	-	(101)	-	(92)	-	(101)	-	(36)	-	(101)	-	(36)	-	(41)	-	(36)	-	(41)	-	(647)
Utilities	(21)	-	-	-	(31)	-	-	-	(31)	-	-	-	(31)	-	-	-	(36)	-	-	-	(150)
Other Operating Disbursements	(13)	-	(4)	-	(825)	-	(4)	-	(13)	-	(9)	-	(43)	-	(4)	-	(825)	-	(4)	-	(1,742)
Operating Cash Flows	(121)	7	(126)	7	(969)	-	(119)	-	(93)	-	(123)	-	(123)	-	(66)	7	(918)	7	(66)	(2,695)	
Restructuring Professional Fees	(788)	(107)	(107)	(107)	(107)	(107)	(107)	(107)	(107)	(99)	(99)	(99)	(99)	(99)	(92)	(92)	(92)	(92)	(92)	(92)	(2,599)
Projected Net Cash Flow	(909)	(100)	(233)	(100)	(1,076)	(107)	(226)	(107)	(200)	(99)	(222)	(99)	(222)	(99)	(158)	(85)	(1,010)	(85)	(158)	(5,294)	

Notes:

- [1] The purpose of this cash flow projection is to determine the liquidity requirements of the Wabush CCAA Parties during the forecast period.
- [2] Forecast receipts include recurring mortgage payments associated with certain residential properties in Wabush owned by Wabush Mines
- [3] Forecast Payroll & Employee Benefits disbursements are forecast based on current staffing levels and recent payroll amounts, and do not include any payments in respect of post-employment benefit;
- [4] Forecast disbursements in respect of Contractors consist primarily of environmental monitoring and containment activities related to the Scully mine, and are assumed to be paid when services are rendered;
- [5] Forecast Utilities disbursements consist primarily of hydro costs to maintain the Scully Mine facilities and reflect current payment terms, rates and estimated consumption over the forecast period;
- [6] Forecast Other Operating Disbursements reflect costs of on-going monitoring and maintenance of the Scully Mine facilities not reflected in other line items. The timing of Other Operating Disbursements is assumed to be cash on delivery;
- [7] Forecast Restructuring Professional Fees consist of legal and financial advisor fees associated with the CCAA proceedings

Monitor's 24th Report, October 6, 2016 (*cont'd*)

Appendix B

The August 30 Notice

Monitor's 24th Report, October 6, 2016 (*cont'd*)



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
1 Place Ville Marie
Suite 3000
Montréal QC H3B 4N8 Canada
Tel: 514-982-4000 Fax: 514-982-4099

August 30, 2016

BY BAILIFF

Bernard Boucher
Associé/Partner
Dir: 514-982-4006
bernard.boucher@blakes.com

Reference: 11573/374

MFC Industrial Ltd.
400 Burrard Street, Suite 1860
Vancouver, BC V6C 3A6

Attention: Mr. Michael Smith

**RE: Notice of Intent to Dismantle or Destroy
Infrastructure or Fixtures located at the Wabush Mine**

Sir,

We are the legal counsel for the Wabush CCAA Parties as this term is defined in an initial order issued on May 20, 2015 by Mr. Justice Stephen Hamilton in the Court file bearing number 500-11-048114-157 (the "**CCAA Proceedings**").

As you also know, MFC Industrial Ltd. ("**MFC**") and certain of the Wabush CCAA Parties are parties to various indentures, agreements, and amendments thereto, being collectively referred to as the Mining Lease Documents and as more fully detailed in the Motion for Directions and the Issuance of a Safeguard Order ("**Motion**") filed by the Wabush CCAA Parties in the CCAA Proceedings on November 26, 2015.

In connection with said Motion, Mr. Justice Stephen Hamilton issued notably on December 4, 2015, the following order (the "**December 4th Order**"):

"Orders that until such time as the Court renders judgment with respect to the Motion, the Wabush CCAA Parties shall give 14 day prior notice to MFC before dismantling or destroying the infrastructure or fixtures at the Wabush mine, in order to allow MFC to take whatever proceedings it considers appropriate to protect its rights."

In accordance with the December 4th Order, you are hereby notified that it is the Wabush CCAA Parties' intention to initiate a request for proposal process for liquidation proposals for the infrastructure and fixtures located at the Wabush Mine, which proposals may lead to the sale and dismantlement of all or some of the infrastructure or fixtures located at the Wabush Mine.

8507360.2

Blakes

This letter constitutes the notice to MFC required under the December 4th Order.

Yours truly,

BLAKE, CASSELS & GRAYDON LLP



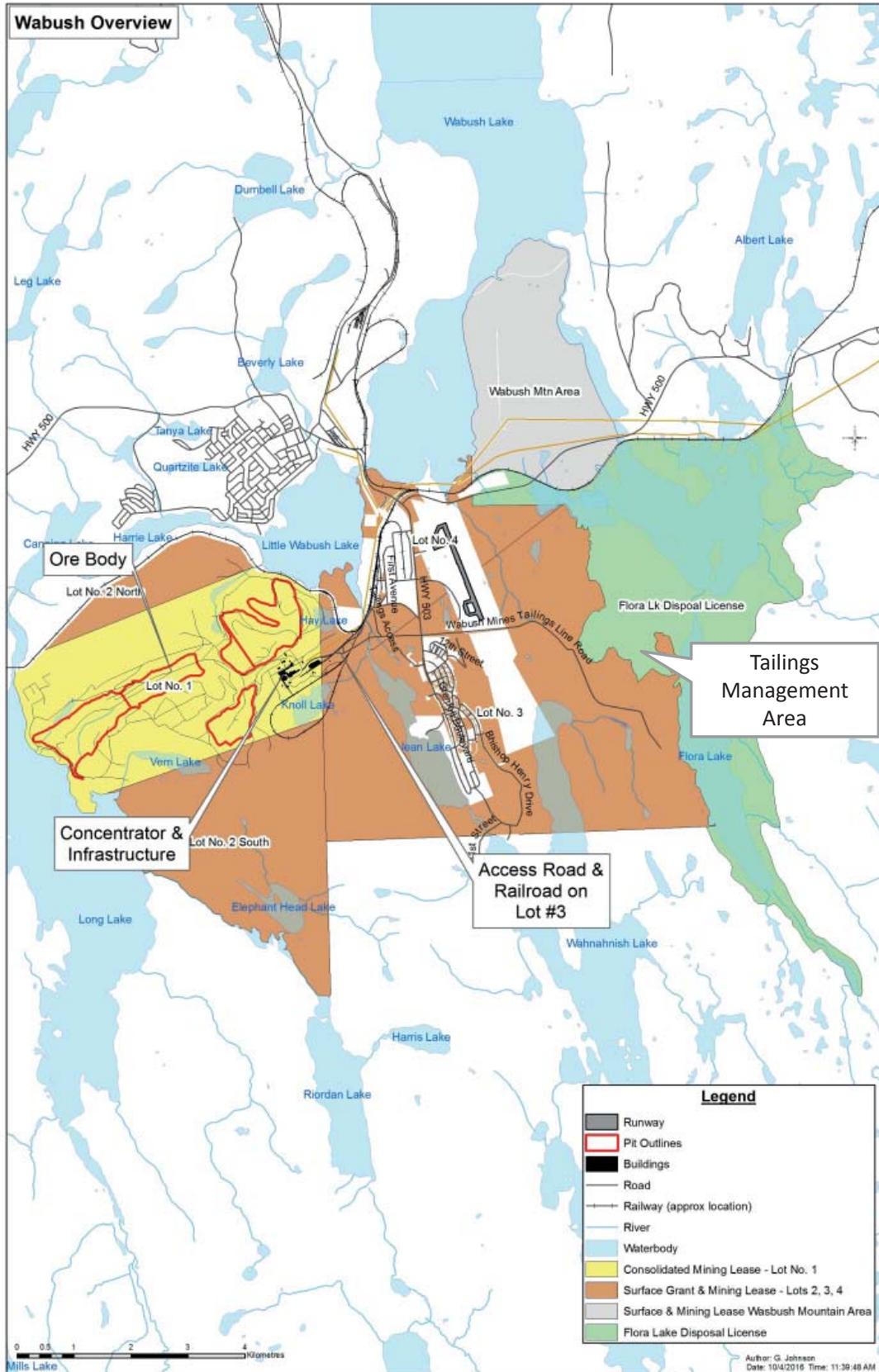
Bernard Boucher
/em

c. Me Gary Rivard

Monitor's 24th Report, October 6, 2016 (*cont'd*)

Appendix C

Map Showing Wabush Mine



Monitor's 6th Report, June 1, 2015

CANADA

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-048114-157

**IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED, CLIFFS QUÉBEC IRON
MINING ULC, WABUSH IRON CO.
LIMITED AND WABUSH RESOURCES
INC.**

Petitioners

- and -

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP, BLOOM LAKE
RAILWAY COMPANY LIMITED,
WABUSH MINES, ARNAUD RAILWAY
COMPANY AND WABUSH LAKE
RAILWAY COMPANY LIMITED**

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

**SIXTH REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited (“**Bloom Lake GP**”), Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (“**CQIM**”) (collectively, the “**Bloom Lake Petitioners**”) sought and obtained an initial order (as amended from time to time, the “**Bloom Lake Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) from the Superior Court of Quebec (the “**Court**”), providing for, *inter alia*, a stay of proceedings against the Bloom Lake Petitioners until February 26, 2015, (the “**Bloom Lake Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The relief granted in the Bloom Lake Initial Order was also extended to The Bloom Lake Iron Ore Mine Limited Partnership (“**Bloom Lake LP**”) and Bloom Lake Railway Company Limited (together with Bloom Lake LP, the “**Bloom Lake Mises-en-Cause**” and together with the Bloom Lake Petitioners, the “**Bloom Lake CCAA Parties**”). The proceedings commenced under the CCAA by the Bloom Lake CCAA Parties will be referred to herein as the “**CCAA Proceedings**”.

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2. On May 20, 2015, the CCAA Proceedings were extended to include Wabush Iron Co. Limited (“**WICL**”), Wabush Resources Inc. (“**WRI**” and together with WICL, the “**Wabush Petitioners**”) Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited (collectively the “**Wabush Mises-en-Cause**” and together with the Wabush Petitioners, the “**Wabush CCAA Parties**”) pursuant to an initial order (the “**Wabush Initial Order**”) providing for, *inter alia*, a stay of proceedings against the Wabush CCAA Parties until June 19, 2015, (the “**Wabush Stay Period**”). The Bloom Lake CCAA Parties and the Wabush CCAA Parties will be referred to collectively herein as the “**CCAA Parties**”.
3. The Bloom Lake Stay Period has been extended from time to time. Pursuant to an Order of Mr. Justice Hamilton J.S.C., granted on April 17, 2015 (the “**April 17 Stay Order**”), the Bloom Lake Stay Period was extended to July 31, 2015.
4. Also on April 17, 2015, Mr. Justice Hamilton J.S.C. granted the following Orders:
 - (a) An Order approving, as it relates to the Bloom Lake CCAA Parties, a sale and investor solicitation process (as may be amended from time to time, the “**SISP**”) involving the business and assets of the Bloom Lake CCAA Parties and the Wabush CCAA Parties (the “**SISP Order**”); and
 - (b) An Order (the “**Bloom Lake Sale Advisor Order**”):
 - (i) Approving the engagement of Moelis & Company LLC (“**Moelis**”) pursuant to the terms of the engagement letter between Moelis, CQIM, Bloom Lake GP and others dated March 23, 2015 and effective January 27, 2015 (the “**Moelis Engagement Letter**”); and

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- (ii) Creating a charge over the property of each Bloom Lake CCAA Party securing the Monthly Retainer Fee, Transaction Fees (as such terms are defined in the Moelis Engagement Letter) and expenses reimbursable pursuant to the Moelis Engagement Letter payable by each Bloom Lake CCAA Party, on a several basis, to a maximum of US\$8 million (the “**Bloom Lake Sale Advisor Charge**”).
- 5. On April 27, 2015, Mr. Justice Hamilton, J.S.C., issued an Order (the “**Chromite Approval and Vesting Order**”):
 - (a) Approving the proposed transaction (the “**Chromite Transaction**”) contemplated by the Share Purchase Agreement (the “**Chromite SPA**”) dated as of March 22, 2015, as amended and restated as of April 17, 2015, by and between CQIM, Cliffs Greene B.V., Cliffs Netherlands B.V., Wabush Resources Inc., Cliffs Canadian Shared Services Inc., Cliffs Natural Resources Exploration Canada Inc. and “CanCo”, as vendors, Noront Resources Ltd., as parent, and 9201955 Canada Inc. as purchaser (the “**Purchaser**”); and
 - (b) Vesting of all of CQIM’s right, title and interest in and to the Amalco Shares (as defined in the Chromite SPA) in and with the Purchaser, free and clear of all encumbrances.
- 6. The Chromite Transaction closed on April 28, 2015.
- 7. To date, the Monitor has filed five reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor’s Sixth Report, is to inform the Court on the following:
 - (a) The activities of the Wabush CCAA Parties and the Monitor since the issuance of the Wabush Initial Order;

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- (b) The receipts and disbursements of the CCAA Parties for the period ending May 22, 2015;
- (c) The progress of the SISP;
- (d) The Bloom Lake CCAA Parties' request for an Order authorizing and directing the Monitor to pay to Moelis the portion of the Transaction Fee payable by CQIM in respect of the Chromite Transaction (the "**CQIM Chromite Transaction Fee**") from CQIM's portion of the Chromite Transaction proceeds of sale (the "**CQIM Chromite Proceeds**") held by the Monitor pursuant to the Chromite Approval and Vesting Order;
- (e) The Wabush CCAA Parties' request for an Order (the "**Wabush Comeback Order**"), *inter alia*:
 - (i) Providing priority for the Wabush Administration Charge, the Wabush Directors' Charge and the Interim Lender Charge (collectively, the "**Wabush CCAA Charges**") over any and all other existing hypothecs, mortgages, liens, security interests, priorities, trusts, deemed trusts (statutory or otherwise) charges, encumbrances or security of whatever nature or kind (collectively, the "**Encumbrances**") affecting the Property whether or not charged by such Encumbrances;
 - (ii) Approving the SISP *nunc pro tunc* as it relates to the Wabush CCAA Parties and approving the amendment and restatement of the SISP to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings;
 - (iii) Approving the Moelis Engagement Letter *nunc pro tunc* as it applies to the Wabush CCAA Parties;

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- (iv) Creating a charge over the property of each Wabush CCAA Party securing the Monthly Retainer Fee, Transaction Fees (as such terms are defined in the Moelis Engagement Letter) and expenses reimbursable pursuant to the Moelis Engagement Letter payable by each Wabush CCAA Party, on a several basis, to a maximum of US\$5 million (the **“Wabush Sale Advisor Charge”**);
 - (v) Suspending the payment by the Wabush CCAA Parties' of Monthly Amortization Payments, Yearly Catch Up Amortization Payments (together the **“Amortization Payments”**) and OPEB Payments, each as hereinafter defined; and
 - (vi) Extending the Wabush Stay Period to July 31, 2015;
- and the Monitor's recommendations with respect to the foregoing.

TERMS OF REFERENCE

8. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Parties, the CCAA Parties' books and records, certain financial information prepared by the CCAA Parties and discussions with various parties (the **“Information”**).
9. Except as described in this Report:
 - (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook;

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- (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
10. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
11. The Monitor has prepared this Report in connection with the CCAA Parties' Motions dated May 29, 2015, returnable June 9, 2015 (the "**May 29 Motions**"). The Report should not be relied on for other purposes.
12. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Bloom Lake Initial Order, the Wabush Initial Order or previous reports of the Monitor.

EXECUTIVE SUMMARY

13. Capitalized terms used in the Executive Summary are as defined in the relevant section of the Report.

PAYMENT OF THE CQIM CHROMITE TRANSACTION FEE

14. The Moelis Engagement Letter, including the CQIM Chromite Transaction Fee, was approved by the Court. The Chromite Transaction was approved by the Court and has closed and the CQIM Chromite Transaction Fee is due and payable from the CQIM Chromite Proceeds but the Chromite Approval and Vesting Order prohibits the Monitor from disbursing the CQIM Chromite Proceeds without further Order of the Court.

15. Accordingly, the Monitor supports the Bloom Lake CCAA Parties' request for an Order authorizing and directing the Monitor to pay the CQIM Chromite Transaction Fee to Moelis from the CQIM Chromite Proceeds on behalf of CQIM.

PRIORITY OF THE WABUSH CCAA CHARGES

16. The Monitor is of the view that the Wabush CCAA Parties' request for an Order providing priority for the Wabush CCAA Charges over the Encumbrances is reasonable, appropriate and justified in the circumstances. The Monitor respectfully recommends that such Order be granted.

AMENDMENT AND APPROVAL OF SISP

17. The Monitor is of the view that:
- (a) As the Wabush CCAA Parties are now subject to the CCAA Proceedings it is appropriate that the SISP be approved as it relates to the Wabush CCAA Parties; and
 - (b) As the Wabush CCAA Parties are now subject to the CCAA Proceedings it is appropriate that the SISP be amended and restated to reflect that.
18. Accordingly, the Monitor respectfully recommends that the CCAA Parties' request for approval of the SISP *nunc pro tunc* as it relates to the Wabush CCAA Parties and approval of the amendment and restatement of the SISP to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings be granted.

MOELIS ENGAGEMENT LETTER AND WABUSH SALE ADVISOR CHARGE

19. The Monitor is of the view that, in the circumstances:

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- (a) The continued engagement of Moelis to assist the Wabush CCAA Parties in the implementation of the SISP is beneficial to the estate and its stakeholders generally and to the efficient completion of the CCAA Proceedings;
 - (b) The amounts payable by the Wabush CCAA Parties under the Moelis Engagement Letter are within market parameters; and
 - (c) The creation of the Wabush Sale Advisor Charge is appropriate and not unduly prejudicial to the creditors of the CCAA Parties.
20. Accordingly, the Monitor supports the Wabush CCAA Parties' request for approval of the Moelis Engagement Letter *nunc pro tunc* as it applies to the Wabush CCAA Parties and the granting of the Wabush Sale Advisor Charge.

SUSPENSION OF AMORTIZATION PAYMENTS AND OPEB PAYMENTS

21. The Monitor is of the view that the continuation of activities to safeguard the assets of the Wabush CCAA Parties while continuing to seek buyers for the assets will maximize recoveries for stakeholders. Continuation of such activities would not be possible without the Interim Financing, which would not be available in the event that the Wabush CCAA Parties are required to make the Amortization Payments and the OPEB Payments. Furthermore, the Wabush CCAA Parties are unable to make the Amortization Payments and the OPEB Payments without additional funding.
22. Accordingly, the Monitor supports the Wabush CCAA Parties' request for suspension of the Amortization Payments and the OPEB Payments.

EXTENSION OF THE WABUSH STAY PERIOD

23. The Monitor is of the view that:

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- (a) The Wabush CCAA Parties have acted, and are acting, in good faith and with due diligence;
 - (b) Circumstances exist that make an extension of the Wabush Stay Period appropriate; and
 - (c) Creditors would not be materially prejudiced by an extension of the Wabush Stay Period to July 31, 2015.
24. Accordingly, the Monitor respectfully recommends that the Wabush CCAA Parties' request for an extension of the Wabush Stay Period to July 31, 2015 be granted.

THE ACTIVITIES OF THE WABUSH CCAA PARTIES AND THE MONITOR

25. To date, the Wabush CCAA Parties and their management and staff have provided the Monitor with their full co-operation and unrestricted access to the Wabush CCAA Parties' premises, books and records. The Monitor has implemented procedures for the monitoring of operations, receipts and disbursements and is assisting the Wabush CCAA Parties in their dealings with employees, suppliers, creditors and other interested parties.

NOTICES AND COMMUNICATIONS

26. The Monitor has amended the website at <http://cfcanada.fticonsulting.com/bloomlake> (the "**Monitor's Website**") on which updates on the CCAA Proceedings are being posted periodically, together with all Court materials filed in the CCAA Proceedings, to include references to the Wabush CCAA Parties. In addition, the Monitor has established contact numbers (416-649-8074 or toll free 1 844-846-7135) and an email address (wabush@fticonsulting.com) to allow stakeholders of the Wabush CCAA Parties to communicate directly with the Monitor in order to address any questions or concerns in respect of the CCAA Proceedings.

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27. Pursuant to paragraph 39(a) of the Wabush Initial Order, the Monitor:
- (a) Published the initial notice containing the information prescribed under the CCAA in La Presse on May 22 and May 29, 2015 and in the Globe and Mail (National Edition) on May 25, 2015. Further publication is scheduled for June 1, 2015 in the Globe and Mail;
 - (b) On May 20, 2015 made the Wabush Initial Order publicly available in English and French by posting it on the Monitor's Website;
 - (c) Sent a notice in the prescribed manner to every known creditor with a claim against the CCAA Parties of more than \$1,000 in mailings on May 21, May 26 and May 27, 2015; and
 - (d) Posted a list of known creditors on the Monitor's Website on May 20, 2015.
28. Since the granting of the Wabush Initial Order, the Wabush CCAA Parties and the Monitor have had meetings and discussions with suppliers, creditors and other parties with an interest in the Wabush CCAA Proceedings. To date, there has been little or no disruption to the Wabush CCAA Parties' operations.

DISCLAIMER OR RESILIATION OF AGREEMENTS

29. Pursuant to section 32(1) of the CCAA and paragraph 33(e) of the Wabush Initial Order, the Wabush CCAA Parties are entitled to disclaim or resiliate agreements by issuance of notices of disclaimer or resiliation of agreement (each such notice, a "**Disclaimer Notice**").

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30. On May 21, 2015, the CCAA Parties, with the consent of the Monitor, issued three Disclaimer Notices. Pursuant to section 32(2) of the CCAA, the counterparty to each agreement has until June 5, 2015 to apply to court for an order that the agreement is not to be disclaimed or resiliated, failing which the disclaimer or resiliation will be effective on June 20, 2015. The agreements for which Disclaimer Notices were issued on May 21, 2015 are as follows:
- (a) Master Net Locomotive Lease dated February 26, 2010 between CIT Financial (Alberta) ULC and Arnaud Railway Company together with all riders and schedules thereto (as each may be amended, restated, supplemented or modified), including, without limitation, Schedule No. 02 dated March 4, 2011 (as amended by Amendment No. 01 to Lease Schedule No. 02 dated March 12, 2013, and as may be further amended, restated, supplemented or modified, together with the Memorandum of Locomotive Lease dated March 4, 2011) and Schedule No. 03 dated June 17, 2011 (as amended by Amendment No. 01 to Lease Schedule No. 03 dated August 5, 2013, and as may be further amended, restated, supplemented or modified, together with the Memorandum of Locomotive Lease dated June 17, 2011);
 - (b) Rental Agreement with reference number S75794 dated June 20, 2012 between Wabush Mines and Groupe CLR (as may be amended, restated, supplemented or modified); and
 - (c) a rail transportation agreement which includes a provision to the effect that its terms shall be kept confidential.

31. An additional Disclaimer Notice was issued on May 29, 2014 in respect of a lease agreement dated August 1, 2014 between Cliffs Québec Iron Mining Ltd. (now CQIM), as lessee, and Henri Dolino and Vasiliki Kiritsis, as landlords, as amended. The deadline for the counter-party to apply to court for an order that agreement is not to be disclaimed or resiliated is June 13, 2015, failing which the disclaimer or resiliation will be effective on June 28, 2015.

RECEIPTS & DISBURSEMENTS FOR THE PERIOD TO MAY 22, 2015

THE BLOOM LAKE CCAA PARTIES

32. The Bloom Lake CCAA Parties' actual cash flow on a consolidated basis for the period from March 28 to May 22, 2015, was approximately \$2.6 million better than the April 2 Forecast, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	1,902	2,572	670
Disbursements:			
Payroll & Employee Benefits	(3,062)	(2,925)	137
Termination & Severance	(1,042)	(983)	59
Utilities	(1,448)	(1,228)	220
Other Operating Disbursements	(3,150)	(1,881)	1,269
Operating Cash Flows	(6,800)	(4,445)	2,355
Restructuring Professional Fees	(4,107)	(2,425)	1,682
Projected Net Cash Flow	(10,907)	(6,870)	4,037
Beginning Cash Balance	47,602	47,602	0
Projected Net Cash Flow	(10,907)	(6,870)	4,037
Foreign Exchange Gain/(Loss)	0	(1,422)	(1,422)
Ending Cash Balance	36,695	39,310	2,615

33. Explanations for the key variances in actual receipts and disbursements as compared to the April 2 Forecast are as follows:

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- (a) The favourable variance of approximately \$0.7 million in receipts is a combination of a permanent favourable variance of approximately \$1.0 million resulting from accounts receivable collections which had not been included in the April 2 Forecast due to uncertainty on collectability and timing of collection offset by an adverse timing variance of \$0.3 million in collection of Camp Lease payments;
 - (b) The favourable variance of approximately \$1.3 million in other operating disbursements consists of favourable permanent variances totalling approximately \$1.2 million as a result of lower than forecast requirements for maintenance and repairs, contractors and transportation and a favourable timing variance of approximately \$0.1 million in respect of charges from non-filing affiliates that is expected to reverse in future periods;
 - (c) The favourable variance of approximately \$1.7 million in aggregate professional fees is believed to be primarily a timing variance that is expected to reverse in future periods; and
 - (d) The foreign exchange loss results as the Bloom Lake CCAA Parties hold certain funds and make certain payments in U.S. dollars and actual exchange rates vary from those used in the April 2 Forecast.
34. The Bloom Lake Initial Order permits inter-company funding between the Bloom Lake CCAA Parties. To date inter-company funding in the amount of approximately \$1.3 million has been advanced from Bloom Lake LP to CQIM since the start of the CCAA Proceedings.

THE WABUSH CCAA PARTIES

35. The Wabush CCAA Parties' actual cash flow, excluding interim financing, on a consolidated basis for the period from May 18 to May 22, 2015, was approximately \$0.3 million better than the Wabush May 18 Forecast, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	0	17	17
Disbursements:			
Payroll & Employee Benefits	(32)	(26)	6
Termination & Severance	0	0	0
Contractors	(17)	(40)	
Utilities	(36)	0	36
Other Operating Disbursements	(85)	(34)	51
Operating Cash Flows	(170)	(83)	110
Restructuring Professional Fees	(200)	0	200
Projected Net Cash Flow	(370)	(83)	310
Beginning Cash Balance	251	889	638
Interim Financing Draws	250	0	(250)
Projected Net Cash Flow	(370)	(83)	287
Foreign Exchange Gain/(Loss)	0	11	11
Ending Cash Balance	131	817	686

36. Explanations for the key variances in actual receipts and disbursements as compared to the Wabush May 18 Forecast are as follows:
- (a) The favourable variance of \$0.2 million in restructuring fees is a timing variance that is expected to reverse in future periods;

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- (b) The favourable variance of approximately \$0.6 million in beginning cash balance arises as a result of certain payments issued prior to the granting of the Wabush Initial Order which had not cleared the bank accounts being stopped as a result of the granting of the Wabush Initial Order.

PROGRESS OF THE SISP

37. Pursuant to the SISP, the Phase I Bid Deadline for the expression of non-binding letters of intent was May 19, 2015 and a number of letters of intent were received on or before that date. In order to protect the integrity of the SISP, the Monitor is of the view that specific details in respect of the letters of intent received should be kept confidential at this time.
38. The Phase II Bid Deadline for the submission of binding offers has been set as 5:00 p.m. Montréal Time July 16, 2015. The Phase II Bid Deadline has been communicated to all Qualified Phase I Bidders.
39. In parallel with the SISP, the Monitor is seeking proposals for the liquidation of assets. A number of non-binding liquidation proposals have been received and parties have been invited to conduct further diligence in order to submit binding proposals.

THE CQIM TRANSACTION FEE

40. Pursuant to the Moelis Engagement Letter and the Bloom Lake Sale Advisor Order, the CQIM Chromite Transaction Fee is payable to Moelis by CQIM from the CQIM Chromite Proceeds. Pursuant to the Bloom Lake Sale Advisor Order, the amount of the CQIM Chromite Transaction Fee is confidential.

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41. Pursuant to the Chromite Approval and Vesting Order, the CQIM Chromite Proceeds are held by the Monitor pending further Order of the Court. It was an oversight that the Chromite Approval and Vesting Order did not authorize the Monitor to make payment of the CQIM Chromite Transaction Fee to Moelis on behalf of CQIM. The Bloom Lake CCAA Parties now seek an Order authorizing and directing the Monitor to pay the CQIM Chromite Transaction Fee from the CQIM Chromite Proceeds to Moelis on behalf of CQIM.
42. The Court approved the Moelis Engagement Letter, including the CQIM Chromite Transaction Fee, and approved the Chromite Transaction. The Chromite Transaction closed on April 28, 2015 and the CQIM Chromite Transaction Fee is due and payable from the CQIM Chromite Proceeds.
43. The Order now sought by the Bloom Lake CCAA Parties authorizing and directing the Monitor to pay the CQIM Chromite Transaction Fee to Moelis on behalf of CQIM is simply an administrative Order necessary as the Chromite Approval and Vesting Order prohibits the Monitor from disbursing the CQIM Chromite Proceeds without further Order of the Court.
44. Accordingly, the Monitor supports the Bloom Lake CCAA Parties' request for an Order authorizing and directing the Monitor to pay the CQIM Chromite Transaction Fee to Moelis on behalf of CQIM from the CQIM Chromite Proceeds.

REQUEST FOR PRIORITY FOR THE WABUSH CCAA CHARGES

45. The Wabush Initial Order created the Wabush CCAA Charges with priority over all claims against the property of the Wabush CCAA Parties except for the claims of any person that is a “secured creditor” as defined in the CCAA and who has not received notice of the Wabush Initial Motion. The Wabush CCAA Charges consist of the Wabush Administration Charge in the amount of \$1.75 million, the Wabush Directors’ Charge in the amount of \$2.0 million and the Interim Lender Charge in the amount of \$15 million.
46. The Wabush CCAA Parties now seek priority for the Wabush CCAA Charges ahead of all Encumbrances on notice to affected parties. For greater certainty, the Wabush CCAA Charges only extend to assets or rights against assets over which the Wabush CCAA Parties hold or acquire title.
47. The beneficiaries of the Wabush Administration Charge are the Monitor, the Monitor’s counsel, counsel to the Wabush CCAA Parties, independent counsel to the Wabush Directors and the Wabush CCAA Parties’ advisors. The Monitor believes that the beneficiaries of the Wabush Administration Charge are, and will be, undertaking a necessary and integral role in the CCAA Proceedings, which CCAA Proceedings will benefit all stakeholders of the Wabush CCAA Parties.
48. The Wabush Directors’ Charge secures an indemnity in favour of the directors and officers of the Wabush CCAA Parties against obligations and liabilities that they may incur as directors or officers of the Wabush CCAA Parties after the granting of the Wabush Initial Order, except to the extent that, with respect to any individual, the obligation or liability was incurred as a result of the individual’s gross negligence, wilful misconduct or gross or intentional fault.

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49. It is the Monitor's view that the continued support and service of the directors and officers of the Wabush CCAA Parties during the CCAA Proceedings would be beneficial to the Wabush CCAA Parties' efforts to explore alternatives to preserve value and maximize recoveries for stakeholders. The Monitor has been informed that current directors and officers will not continue to serve unless the requested priority for the Wabush Directors' Charge is granted.
50. It is the Monitor's view that the Interim Financing is essential to enable the Wabush CCAA Parties to complete the SISF for the benefit of all stakeholders. Pursuant to the Interim Financing Term Sheet, the availability of Tranche B of the Interim Financing is conditional upon the Wabush CCAA Parties obtaining the Interim Financing Priority Order, as defined in the Interim Financing Term Sheet.
51. The known potential secured creditors whose claims, subject to having such claims verified and proven, will be subordinated to the Wabush CCAA Charges if the Wabush CCAA Parties' request for priority for the Wabush CCAA Charges is granted are:
- (a) Parties with registered construction liens (the "**Wabush Construction Lien Creditors**");
 - (b) Parties with movable hypothecs registered against the Wabush CCAA Parties' Property in Quebec (the "**Wabush Movable Hypothec Creditors**");
 - (c) Parties with security registered under *Personal Property Security Acts* (Newfoundland and Labrador or Ontario) or the *Uniform Commercial Code* (Ohio) (the "**PPSA/UCC Creditors**"); and
 - (d) Any creditor with a valid and enforceable statutory deemed trust.

52. While the claims of Wabush Construction Lien Creditors have not been verified or proven, construction lien claims totalling approximately \$2.3 million have been registered against the real property assets.
53. While the claims of Wabush Movable Hypothec Creditors have not been verified or proven, the Wabush CCAA Parties have informed the Monitor that the registrations by the Wabush Movable Hypothec Creditors total approximately \$3 million, excluding the hypothec registered by CMC. The amounts registered do not necessarily equate to amounts owing to Wabush Movable Hypothec Creditors.
54. Certain statutes, including the *Pension Benefits Act, 1997, SNL 1996, c. P-4.01*, may purport to create deemed trusts for certain payments. Whether such deemed trusts exist or would be valid and enforceable in the context of the CCAA Proceedings or a distribution of the Wabush CCAA Parties' assets remains to be determined.
55. The Monitor believes that all of the aforementioned potential secured creditors will benefit from the CCAA Proceedings as the CCAA Proceedings will facilitate the maximization of realizations from the assets subject to such secured claims.
56. The Monitor also notes that claims would only be made on the Wabush Administration Charge in the event that the Wabush CCAA Parties fail to pay the accounts of the beneficiaries and that payment of such accounts is provided for in the Wabush May 18 Forecast.
57. The Monitor further notes that claims would only be made on the Wabush Directors' Charge in the event that:
- (a) The Wabush CCAA Parties fail to pay liabilities that fall due after the granting of the Wabush Initial Order and that could give rise to potential liability for directors; and
 - (b) Any such amounts are not covered by insurance.

58. Accordingly, the Monitor respectfully recommends that the Wabush CCAA Parties' request for priority for the Wabush CCAA Charges be granted by the Court.

APPROVAL AND AMENDMENT OF SISP

59. The Monitor's comments on the SISP and its recommendations relating to the approval of the SISP as it relates to the Bloom Lake CCAA Parties were set out in paragraphs 68 to 73 of the Monitor's Third Report, a copy of which is attached hereto as Appendix A for ease of reference.
60. As noted in the Monitor's Third Report, the SISP includes the Businesses and assets of the Wabush CCAA Parties.
61. With respect to the Wabush CCAA Parties, the Monitor reiterates the comments made in the Third Report that the Monitor has considered the SISP in light of the principles of section 36 of the CCAA and leading decisions dealing with the sale of assets in court-supervised proceedings and is of the view that the SISP is consistent with those principles and provides for a broad, open, fair and transparent process with an appropriate level of independent oversight, that should encourage and facilitate bidding by interested parties and is reasonable in the circumstances. Furthermore, the Monitor does not believe that any aspect of the SISP should discourage parties from submitting offers.
62. The Monitor is of the view that as the Wabush CCAA Parties are now subject to the CCAA Proceedings it is appropriate that the SISP be amended to reflect that. In that regard a black-line showing the proposed amendments to the SISP is attached hereto as Appendix B.
63. Furthermore, the Monitor is of the view that as the Wabush CCAA Parties are now subject to the CCAA Proceedings it is appropriate that the SISP be approved as it relates to the Wabush CCAA Parties.

64. Accordingly, the Monitor respectfully recommends that the CCAA Parties' request for approval of the SISP *nunc pro tunc* as it relates to the Wabush CCAA Parties and approval the amendment and restatement of the SISP to reflect the inclusion of the Wabush CCAA Parties in the CCAA Proceedings be granted.

MOELIS ENGAGEMENT AND THE WABUSH SALE ADVISOR CHARGE

65. The Monitor's comments on the Moelis Engagement Letter, as it relates to the Bloom Lake CCAA Parties, and on the Bloom Lake Sale Advisor Charge, together with the Monitor's recommendations thereon, were set out in paragraphs 54 to 67 of the Monitor's Third Report.
66. The commentary set out in the Third Report with respect to the Moelis Engagement Letter, as it relates to the Bloom Lake CCAA Parties, and on the Bloom Lake Sale Advisor Charge apply equally to the Moelis Engagement Letter as it relates to the Wabush CCAA Parties and to the Wabush Sale Advisor Charge.
67. In that regard, it is the Monitor's view that:
- (a) The continued engagement of Moelis to assist the Wabush CCAA Parties in the implementation of the SISP is beneficial to the estate and its stakeholders generally and to the efficient completion of the CCAA Proceedings;
 - (b) The amounts payable by the Wabush CCAA Parties under the Moelis Engagement Letter are within market parameters; and
 - (c) The creation of the Wabush Sale Advisor Charge, which would rank subordinate to the Wabush CCAA Charges and all secured claims against the Wabush CCAA Parties but in priority to all unsecured creditors of the Wabush CCAA Parties, is appropriate and not unduly prejudicial to the creditors of the CCAA Parties.

68. Accordingly, the Monitor supports the Wabush CCAA Parties' request for approval of the Moelis Engagement Letter *nunc pro tunc* as it applies to the Wabush CCAA Parties and the granting of the Wabush Sale Advisor Charge.

SUSPENSION OF AMORTIZATION PAYMENTS AND OPEB PAYMENTS

69. As discussed in the May 29 Motion, the Wabush CCAA Parties are required to pay the following amounts in respect of their defined benefit pension plans:
- (a) Monthly amortization payments of \$666,555.58, comprising \$393,337.00 in respect of the Hourly DB Plan and \$273,218.58 in respect of the Salaried DB Plan (the "**Monthly Amortization Payments**"); and
 - (b) A lump sum amortization payment in July 2015 (the "**Yearly Catch Up Amortization Payment**") estimated to be approximately \$5.5 million.
70. In addition, and also as discussed in the May 29 Motion, the Wabush CCAA Parties currently provide other post-retirement benefits to former hourly and salaried employees and a supplemental retirement arrangement plan to certain current and former employees (payments in respect of the foregoing being collectively the "**OPEB Payments**").
71. The Wabush CCAA Parties seek the suspension of Amortization Payments and OPEB Payments.
72. Based on the Wabush May 18 Forecast, it is clear that the Wabush CCAA Parties have insufficient liquidity to make the Amortization Payments and the OPEB Payments at this time. Furthermore, paragraph 25(h) of the Interim Financing Term Sheet prohibits the payment of the Amortization Payments and the OPEB Payments.

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73. The Monitor is of the view that the continuation of activities to safeguard the assets of the Wabush CCAA Parties while continuing to seek buyers for the assets will maximize recoveries for stakeholders. Continuation of such activities would not be possible without the Interim Financing, which would not be available in the event that the Wabush CCAA Parties are required to make the Amortization Payments and the OPEB Payments.
74. Accordingly, the Monitor supports the Wabush CCAA Parties' request for suspension of the Amortization Payments and the OPEB Payments.

REQUEST FOR AN EXTENSION OF THE STAY PERIOD

75. The Wabush Stay Period currently expires on June 19, 2015. Additional time is required for the Wabush CCAA Parties to undertake the next phase of the SISP and complete any transactions arising therefrom, to develop and seek approval of a procedure for the submission, evaluation and adjudication of claims against the Wabush CCAA Parties and to undertake the other activities necessary to complete the CCAA Proceedings. The continuation of the stay of proceedings is necessary to provide the stability needed during that time. Accordingly, the Wabush CCAA Parties now seek an extension of the Wabush Stay Period to July 31, 2015.
76. The extension of the Wabush Stay Period to July 31, 2015 will make the Wabush Stay Period concurrent with the Bloom Lake Stay Period thereby providing better efficiency and co-ordination of the CCAA Proceedings.
77. The Wabush May 18 Forecast demonstrates that, subject to the underlying assumptions thereof, including the suspension of Amortization Payments and OPEB Payments, the Wabush CCAA Parties have sufficient liquidity to fund the Wabush CCAA Parties to July 31, 2015.

Monitor's 6th Report, June 1, 2015 (*cont'd*)

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78. Based on the information currently available, the Monitor believes that creditors of the Wabush CCAA Parties would not be materially prejudiced by an extension of the Stay Period to July 31, 2015.
79. The Monitor also believes that the Wabush CCAA Parties have acted, and are acting, in good faith and with due diligence and that circumstances exist that make an extension of the Wabush Stay Period appropriate.
80. The Monitor therefore respectfully recommends that this Honourable Court grant the Wabush CCAA Parties' request for an extension of the Wabush Stay Period to July 31, 2015.

The Monitor respectfully submits to the Court this, its Sixth Report.

Dated this 1st day of June, 2015.

FTI Consulting Canada Inc.
In its capacity as Monitor of
Bloom Lake General Partner Limited, Quinto Mining Corporation,
8568391 Canada Limited, Cliffs Québec Iron Mining ULC,
Wabush Iron Co. Limited, Wabush Resources Inc.,
The Bloom Lake Iron Ore Mine Limited Partnership,
Bloom Lake Railway Company Limited, Wabush Mines,
Arnaud Railway Company and Wabush Lake Railway Company Limited



Nigel D. Meakin
Senior Managing Director



Steven Bissell
Managing Director

Monitor's 6th Report, June 1, 2015 (*cont'd*)

Appendix A

The Monitor's Third Report

Monitor's 6th Report, June 1, 2015 (*cont'd*)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

SUPERIOR COURT
Commercial Division

File: No: 500-11-048114-157

**IN THE MATTER OF THE *COMPANIES'*
CREDITORS ARRANGEMENT ACT, R.S.C.
1985, c. C-36, AS AMENDED:**

**BLOOM LAKE GENERAL PARTNER
LIMITED, QUINTO MINING
CORPORATION, 8568391 CANADA
LIMITED AND CLIFFS QUÉBEC IRON
MINING ULC**

Petitioners

- and -

**THE BLOOM LAKE IRON ORE MINE
LIMITED PARTNERSHIP AND BLOOM
LAKE RAILWAY COMPANY LIMITED**

Mises-en-cause

- and -

FTI CONSULTING CANADA INC.

Monitor

**THIRD REPORT TO THE COURT
SUBMITTED BY FTI CONSULTING CANADA INC.,
IN ITS CAPACITY AS MONITOR**

INTRODUCTION

1. On January 27, 2015, Bloom Lake General Partner Limited (“**Bloom Lake GP**”), Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (“**CQIM**”) (collectively, the “**Petitioners**”) sought and obtained an initial order (the “**Initial Order**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) from the Superior Court of Quebec (the “**Court**”), providing for, *inter alia*, a stay of proceedings against the Petitioners until February 26, 2015 (the “**Stay Period**”) and appointing FTI Consulting Canada Inc. as monitor (the “**Monitor**”). The relief granted in the Initial Order was also extended to The Bloom Lake Iron Ore Mine Limited Partnership (“**Bloom Lake LP**”) and Bloom Lake Railway Company Limited (the “**Mises-en-Cause**” and together with the Petitioners, the “**CCAA Parties**”). The proceedings commenced under the CCAA by the CCAA Parties will be referred to herein as the “**CCAA Proceedings**”.
2. Pursuant to the Order of the Honourable Mr. Justice Hamilton, J.S.C. granted February 20, 2015 (the “**Amended Initial Order**”), the Stay Period was extended to April 30, 2015.
3. To date, the Monitor has filed two reports in respect of various aspects of the CCAA Proceedings. The purpose of this, the Monitor’s Third Report, is to inform the Court on the following:
 - (a) The receipts and disbursements of the CCAA Parties for the period from January 31 to March 27, 2015;

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- (b) The CCAA Parties' revised and extended cash flow forecast for the period March 28 to July 31, 2015 (the "**April 2 Forecast**");
- (c) The CCAA Parties' request, and the Monitor's recommendation thereon, for an Order (the "**Chromite Approval and Vesting Order**"), which provides for, *inter alia*:
 - (i) Approval of the proposed transaction (the "**Chromite Transaction**") contemplated by the Share Purchase Agreement (the "**Chromite SPA**") dated as of March 22, 2015 by and between CQIM, Cliffs Greene B.V., Cliffs Netherlands B.V., Wabush Resources Inc., Cliffs Canadian Shared Services Inc., Cliffs Natural Resources Exploration Canada Inc. and "CanCo", as vendors, Noront Resources Ltd., as parent, and 9201955 Canada Inc. as purchaser (the "**Purchaser**"); and
 - (ii) The vesting of all of CQIM's right, title and interest in and to the Amalco Shares (as defined in the Chromite SPA) in and with the Purchaser, free and clear of all encumbrances.
- (d) The CCAA Parties' request for an Order approving the Mount-Wright Camp Lease Agreement dated March 30, 2015, between 8568391 Canada Inc., as landlord, and 8109796 Canada Inc., as tenant (the "**Camp Lease**") and the Monitor's recommendation thereon;
- (e) The CCAA Parties' request, and the Monitor's recommendation thereon, for:

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- (i) Approval of the engagement of Moelis & Company LLC (“**Moelis**”) pursuant to the terms of the engagement letter between Moelis, CQIM, Bloom Lake GP and others dated March 23, 2015 and effective January 27, 2015 (the “**Moelis Engagement Letter**”); and
- (ii) The creation of a charge over the property of each CCAA Party securing the Monthly Retainer Fee, Transaction Fees (as such terms are defined in the Moelis Engagement Letter) and expenses reimbursable pursuant to the Moelis Engagement Letter payable by each CCAA Party, on a several basis, to a maximum of US\$8 million (the “**Sale Advisor Charge**”);
- (f) The CCAA Parties’ request for approval of the proposed Sale and Investor Solicitation Process (the “**SISP**”) and the Monitor’s recommendation thereon; and
- (g) The CCAA Parties’ request for an extension of the Stay Period to July 31, 2015 and the Monitor’s recommendation thereon.

TERMS OF REFERENCE

4. In preparing this Report, the Monitor has relied upon unaudited financial information of the CCAA Parties, the CCAA Parties’ books and records, certain financial information prepared by the CCAA Parties and discussions with various parties (the “**Information**”).
5. Except as described in this Report:

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- (a) The Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Canadian Institute of Chartered Accountants Handbook; and
 - (b) The Monitor has not examined or reviewed financial forecasts and projections referred to in this Report in a manner that would comply with the procedures described in the Canadian Institute of Chartered Accountants Handbook.
6. Future oriented financial information reported or relied on in preparing this Report is based on management's assumptions regarding future events; actual results may vary from forecast and such variations may be material.
7. The Monitor has prepared this Report in connection with the CCAA Parties' Motions presentable April 17, 2015 (the "**April 17 Motions**"). The Report should not be relied on for other purposes.
8. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian Dollars. Capitalized terms not otherwise defined herein have the meanings defined in the Initial Order, the Pre-filing Report of the Proposed Monitor or previous Reports of the Monitor.

EXECUTIVE SUMMARY

9. Capitalized terms used in the Executive Summary are as defined in the relevant section of the Report.

THE CHROMITE MOTION

10. The Monitor is of the view that, in the circumstances:
- (a) The Chromite Marketing Process was fair, transparent and reasonable;

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- (b) Further canvassing of the market is not necessary;
 - (c) The results of the Chromite Marketing Process indicate that the Purchase Price is fair and reasonable; and
 - (d) The methodology used for the allocation of the Purchase Price is fair and reasonable.
11. Accordingly, the Monitor supports the Chromite Motion and respectfully recommends that the Chromite Approval and Vesting Order be granted by the Court.

THE CAMP LEASE MOTION

12. The Monitor is of the view that, in the circumstances:
- (a) The terms of the Camp Lease are reasonable;
 - (b) Approval of the Camp Lease will not adversely affect the SISP; and
 - (c) Approval of the Camp Lease will be beneficial to the CCAA Parties' stakeholders.
13. Accordingly, the Monitor supports the Camp Lease Motion and respectfully recommends that an Order approving the Camp Lease be granted by the Court.

THE MOELIS MOTION

14. The Monitor is of the view that, in the circumstances:
- (a) The engagement of an investment banker to assist the CCAA Parties in the implementation of the SISP is beneficial to the estate and its stakeholders generally and to the efficient completion of the CCAA Proceedings;
 - (b) Moelis is a logical, appropriate and qualified choice;

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- (c) The amounts payable under the Moelis Engagement Letter are within market parameters; and
 - (d) The creation of the Sale Advisor Charge is appropriate and not unduly prejudicial to the creditors of the CCAA Parties.
15. Accordingly, the Monitor supports the Moelis Motion and respectfully recommends that the CCAA Parties' request for the approval of the engagement of Moelis pursuant to the terms of the Moelis Engagement Letter and the creation of the Sale Advisor Charge be granted by the Court.

THE SISP MOTION

16. The Monitor is of the view that, in the circumstances, the SISP:
- (a) Provides for a broad, open, fair and transparent process;
 - (b) Has an appropriate level of independent oversight;
 - (c) Should encourage and facilitate bidding by interested parties; and
 - (d) Should not discourage parties from submitting offers.
17. Accordingly, the Monitor supports the SISP Motion and respectfully recommends that an Order approving the SISP be granted by the Court.

THE STAY EXTENSION

18. The Monitor is of the view that:
- (a) The CCAA Parties have acted, and are acting, in good faith and with due diligence;
 - (b) Circumstances exist that make an extension of the Stay Period appropriate; and

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(c) Creditors would not be materially prejudiced by an extension of the Stay Period to July 31, 2015.

19. Accordingly, the Monitor respectfully recommends that the CCAA Parties' request for an extension of the Stay Period to July 31, 2015 be granted.

RECEIPTS & DISBURSEMENTS FOR THE PERIOD TO MARCH 27, 2015

20. The CCAA Parties' actual cash flow on a consolidated basis for the period from January 31 to March 27, 2015, was approximately \$6.8 million better than the February 4 Forecast, as summarized below:

	Forecast	Actual	Variance
	\$000	\$000	\$000
Receipts	100	1,286	1,186
Disbursements:			
Payroll & Employee Benefits	(3,713)	(2,952)	761
Termination & Severance	(320)	(343)	(23)
Utilities	(480)	(542)	(62)
Other Operating Disbursements	(4,978)	(2,217)	2,761
Operating Cash Flows	(9,391)	(4,768)	4,623
Restructuring Professional Fees	(2,896)	(1,389)	1,507
Projected Net Cash Flow	(12,287)	(6,157)	6,130
Beginning Cash Balance	53,062	53,539	477
Projected Net Cash Flow	(12,287)	(6,157)	6,130
Foreign Exchange Gain/(Loss)	0	220	220
Ending Cash Balance	40,775	47,602	6,827

21. Explanations for the key variances in actual receipts and disbursements as compared to the February 4 Forecast are as follows:

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- (a) The favourable variance of approximately \$1.2 million in receipts is a permanent variance of which approximately \$1.0 million results from accounts receivable collections and \$0.2 million in sales tax refunds, neither of which had been included in the February 4 Forecast due to uncertainty on collectability and timing of collection;
- (b) The favourable variance of approximately \$0.8 million in payroll and benefits is a combination of a favourable timing variance of approximately \$0.9 million related to outplacement services and other benefits assumed paid on a weekly basis but which are actually being paid as services are utilized and is expected to reverse in future periods and an unfavourable permanent variance of approximately \$0.1 million arising from the payment of certain contractual bonuses that had been inadvertently omitted from the February 4 Forecast;
- (c) The favourable variance of approximately \$2.8 million in other operating disbursements consists of a favourable permanent variance with respect to payments of sales taxes totalling approximately \$1.2 million and a favourable variance of approximately \$1.6 million in other amounts, the majority of which is believed to be a permanent variance;
- (d) The favourable variance of approximately \$1.5 million in aggregate professional fees is a timing variance that is expected to reverse in future periods; and
- (e) The favourable variance of approximately \$0.5 million in beginning cash balance arises from the reversal of payments stopped as a result of the commencement of the CCAA Proceedings which had been assumed to have cleared when the February 4 Forecast was prepared.

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22. The Initial Order permits inter-company funding between the CCAA Parties. To date inter-company funding in the amount of approximately \$340,000 has been advanced from Bloom Lake LP to CQIM since the start of the CCAA Proceedings.

THE APRIL 2 FORECAST

23. The April 2 Forecast is attached hereto as Appendix A. The April 2 Forecast shows a net cash outflow of approximately \$21.7 million in the period March 28 to July 31, 2015, and is summarized below:

	\$000
Receipts	2,247
Disbursements:	
Payroll & Employee Benefits	(6,086)
Termination & Severance	(1,275)
Utilities	(2,523)
Other Operating Disbursements	(7,035)
Operating Cash Flows	(14,672)
Restructuring Professional Fees	(7,017)
Projected Net Cash Flow	(21,689)
Beginning Cash Balance	47,602
Projected Net Cash Flow	(21,689)
Ending Cash Balance	25,913

24. There are no significant changes in the underlying assumptions in the April 2 Forecast as compared to the February 4 Forecast.

REQUEST FOR THE CHROMITE APPROVAL AND VESTING ORDER

25. Capitalized terms used in this section of this Report not otherwise defined are as defined in the Chromite SPA.

THE CHROMITE MARKETING PROCESS

26. Details of the process undertaken for the solicitation of offers for the assets proposed to be sold pursuant to the Chromite SPA (the “**Chromite Marketing Process**”) are set out in the CCAA Parties’ Motion For The Issuance Of An Approval and Vesting Order With Respect To The Sale Of The Chromite Shares dated April 2, 2015 (the “**Chromite Motion**”).
27. The Monitor discussed the Chromite Marketing Process with the CCAA Parties and Moelis and was given the opportunity to provide input on the conduct of the Marketing Process.
28. Paragraph 82 of the Chromite Motion states:
- “82. Given the marketing effort to date, limited number of participants in the chromite market, the uniqueness of the assets, the challenges described above in respect of the Ring of Fire and the fact that CNR's intentions to sell its investment in the Ring of Fire projects have been publicly known to the market since the fall of 2014 at the latest, the CCAA Parties are of the view that further canvassing of the market is not necessary.”
29. Moelis has also informed the Monitor that it is of the view that further canvassing of the market is not necessary.

THE CHROMITE SPA

30. A redacted copy of the Chromite SPA is attached to the Chromite Motion as Exhibit R-9. The only redactions are to maintain as confidential the allocation of the portion of the Purchase Price between those Sellers that are not CCAA Parties.
31. The key provisions of the Chromite SPA are as follows:

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- (a) The Purchaser shall purchase the Purchased Shares for an aggregate purchase price of US\$20 million payable in cash, of which a deposit of US\$200,000 has been paid and is being held by the Monitor;
- (b) The Purchase Price is allocated amongst the Sellers such that CQIM will receive US\$14,298,806.10 or 71.49% of the Purchase Price, subject to a potential small adjustment prior to closing;
- (c) Closing shall take place one business day after the satisfaction of the conditions precedent to Closing and shall be deemed to occur when the Monitor's Certificate, which shall also be filed with the Court, is delivered to the Purchaser and the Sellers;
- (d) The Sellers shall not encourage, solicit, initiate discussions with or engage in negotiations with any person with respect to an Acquisition Proposal and shall terminate any such efforts;
- (e) Notwithstanding the foregoing, if a written Acquisition Proposal is received and the Sellers determine, after consultation with the Monitor, that such proposal is, or could reasonably be expected to lead to, a Superior Proposal, the Sellers shall be entitled to pursue such Superior Proposal and, if the Sellers determine that the completion of the resultant Alternative Proposal is reasonably likely, terminate the Chromite SPA and pay the Expense Reimbursement; and
- (f) The Expense Reimbursement provides for the reimbursement to the Purchaser of reasonable documented out-of-pocket fees, costs and expenses incurred in connection with the transactions contemplated by the Chromite SPA to a maximum of CAD\$250,000 if the Chromite SPA is terminated as described in (e) above.

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32. The Chromite SPA is subject to a number of conditions. The obligation of the Chromite Purchaser and the Sellers to complete the Transaction is subject to the following conditions being satisfied or waived by all parties:
- (a) All Required Consents shall have been obtained in form and on terms satisfactory to Purchaser, Parent and the Sellers, each acting reasonably;
 - (b) The Chromite Approval and Vesting Order shall have been issued and entered in substantially the form of Exhibit G to the Chromite SPA (with such amendments as agreed to by the Purchaser, the Parent and the Sellers, in each case acting reasonably) and the Chromite Approval and Vesting Order shall not have been amended or modified in a manner prejudicial to any of the Parties or set aside, vacated or stayed;
 - (c) There shall be in effect no Law, or any order, injunction, decree or judgment of any court or other Government Entity making it illegal or directly or indirectly prohibiting, restraining, enjoining or preventing the consummation of any of the transactions contemplated by the Chromite SPA.
33. The obligation of the Sellers to complete the Transaction is subject to the following conditions being fulfilled or waived by the Sellers:
- (a) Each of the representations and warranties contained in Article III, in each case disregarding all materiality and Material Adverse Effect qualifications contained therein, shall be true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date, except, in each case, for any failure to be true and correct that, individually and together with other such failures, has not had and would not reasonably be expected to have a Material Adverse Effect;

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- (b) The Purchaser and Parent shall each have performed in all material respects all material covenants, obligations and agreements contained in the Chromite SPA required to be performed by the Purchaser and Parent on or before the Closing;
- (c) The Sellers shall have been furnished with a certificate signed by a senior officer of each of the Purchaser and Parent certifying that the conditions set forth in Section 9.2(a) and Section 9.2(b) of the Chromite SPA have been satisfied;
- (d) The Sellers shall have been furnished with a certificate signed by a senior officer of each of the Purchaser and Parent certifying: (i) the constating documents and By-Laws of Purchaser and Parent; (ii) directors' resolutions of each of Purchaser and Parent authorizing the execution and delivery of this Agreement and the Transaction Documents and the performance of each such entity's obligations under this Agreement and the Transaction Documents; and (iii) certificates of incumbency of Purchaser and Parent;
- (e) The Purchaser and the Parent shall have certified in writing to the Sellers on the Closing Date that there have been no amendments to the Loan Documentation since such Loan Documentation was provided to the Purchaser and the Parent in accordance with Section 6.13 (other than any such amendments which have been consented to in writing by the Sellers in accordance with Section 6.13); and
- (f) The Purchaser and the Parent shall have performed and complied with all of the terms and conditions in the Chromite SPA on its part to be performed or complied with at or before the Closing and shall have executed and delivered or caused to have been executed or delivered to the Sellers at the Closing all the documents contemplated by the Chromite SPA to be executed by them.

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34. The obligation of the Purchaser and the Parent to complete the Transaction is subject to the following conditions being fulfilled or waived by the Purchaser:
- (a) Each of the representations and warranties set forth in Article IV and Article V, in each case disregarding all materiality and Material Adverse Effect qualifications contained therein, shall be true and correct (i) as of the Closing Date as if made on and as of such date or (ii) if made as of a date specified therein, as of such date, except, in each case, for any failure to be true and correct that, individually and together with other such failures, has not had and would not reasonably be expected to have a Material Adverse Effect;
 - (b) The Sellers shall have complied in all material respects with all material covenants, obligations and agreements contained in this Agreement required to be performed by the Sellers on or before the Closing;
 - (c) Between the date of the Chromite SPA and the Closing Date, there shall have been no Material Adverse Effect in respect of the Targets;
 - (d) Upon completion of the transactions contemplated by this Agreement, the Purchaser shall own 100% of the Purchased Shares free and clear of all Liens (other than Permitted Encumbrances);
 - (e) The Parent and Purchaser shall have entered into the Loan Documentation and shall have received funds thereunder in an amount not less than the Purchase Price;
 - (f) The Pre-Acquisition Reorganization shall have been effected in the manner described in Exhibit H;
 - (g) The Sellers shall have settled all Related-Party Debt in accordance with Exhibit H and in accordance with Section 6.5;

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- (h) The Purchaser and Parent shall have received the written resignation of all the officers and directors of Amalco and RoadCo, together with a release and discharge in the form of Exhibit F;
- (i) The Purchaser and Parent shall have been furnished with a certificate signed by a senior officer of each of the Sellers that the conditions set forth in Section 9.3(a) and Section 9.3(b) have been satisfied;
- (j) The Purchaser and Parent shall have been furnished with a certificate signed by a senior officer or managing director, as the case may be, of each of the Sellers certifying: (i) the constating documents and By-Laws of Amalco, CQIM, Cliffs Greene and Cliffs Netherlands and the Additional Sellers; (ii) directors' resolutions of each of the Sellers authorizing the execution and delivery of the Chromite SPA and the Transaction Documents and the performance of each such entity's obligations under the Chromite SPA and the Transaction Documents; (iii) directors' or shareholders' resolutions, as required, of the Sellers, Cliffs Far North, Cliffs Ontario and Amalco authorizing the transactions contemplated by this Agreement, including the Pre-Acquisition Reorganization and the transfer of the Purchased Shares; and (iv) certificates of incumbency of the Sellers;
- (k) The Purchaser and Parent will have received all minute books and share ledgers of Cliffs Ontario, Cliffs Far North, Amalco and RoadCo; and
- (l) Each Seller shall have performed and complied, in all material respects, with all of the terms and conditions in the Chromite SPA on its part to be performed or complied with at or before the Closing and shall have executed and delivered or caused to have been executed or delivered to the Purchaser at the Closing all the documents contemplated by this Agreement to be executed by them.

THE MONITOR'S COMMENTS AND RECOMMENDATION

35. While the inclusion of an expense reimbursement in a CCAA sale agreement is, in the Monitor's view, unusual except where such an agreement is being positioned as a "stalking horse agreement", in this case the Sellers have negotiated the ability to terminate the Chromite SPA in order to proceed with an Alternative Proposal if such a course of action would be beneficial to stakeholders in return for payment of the Expense Reimbursement.
36. The Monitor notes that the Expense Reimbursement is only payable in the event that the Sellers terminate the Chromite SPA to proceed with an Alternative Proposal and the maximum Expense Reimbursement of CAD\$250,000 represents only approximately 1% of the Purchase Price at current CAD\$/US\$ exchange rates. Accordingly, the Monitor believes that the Expense Reimbursement is reasonable in the circumstances of the transaction.
37. The inclusion of a financing condition in favour of the Purchaser and Parent that must only be satisfied by the Closing Date provides some risk that Closing may not occur notwithstanding the granting of the Chromite Approval and Vesting Order. In accordance with section 6.13 of the Chromite SPA, the Sellers have been provided with a copy of the Loan Documentation pursuant to which the Purchaser and the Parent are to be provided with the necessary financing to satisfy the Purchase Price. While the Loan Documentation is itself subject to a number of conditions to closing, CQIM has informed the Monitor that it has reviewed the Loan Documentation and has a reasonable degree of confidence that the financing condition will be satisfied such that Closing can occur.
38. The proposed form of the Chromite Approval and Vesting Order provides for approval of the Chromite Transaction. The Monitor notes that the Chromite Transaction involves transactions by Sellers that are not CCAA Parties but that the Purchaser wishes to purchase all of the Purchased Shares and is requesting that the Chromite Approval and Vesting Order be sought in the form proposed.

39. Section 36(1) of the CCAA states:

“36(1) **Restriction on disposition of business assets** - A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.”

40. Section 36(3) of the CCAA states:

“(3) **Factors to be considered** - In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a Report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

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(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.”

41. The Monitor has considered the conduct of the Chromite Marketing Process in light of the principles of leading decisions regarding Court-approved sales of assets¹ and is satisfied that the marketing process was fair, transparent and reasonable in the circumstances. Furthermore, the Monitor concurs with the views of the CCAA Parties and Moelis that further canvassing of the market is not necessary in the circumstances.
42. Paragraphs 70 to 72 of the Chromite Motion describe the circumstances with respect to the Additional LOI, as defined in the Chromite Motion and the determination that it was in the best interests of CQIM and the other Sellers to proceed to finalize and execute the proposed Transaction with the Purchaser, rather than terminate those negotiations and pursue a transaction based on the Additional LOI. The Monitor was consulted on that determination and is of the view that, given the conditionality of the Additional LOI, the downside risk of terminating negotiations with the Purchaser when the execution of the Chromite SPA appeared imminent outweighed the benefit of a potentially higher purchase price if the conditions of the Additional LOI could be satisfied and a definitive agreement negotiated at that price. Accordingly, the Monitor concurs with CQIM's assessment.

¹ *Royal Bank of Canada v. Soundair Corp.* (1991) 4 O.R. (3d) 1 (C.A.), 1991 CanLII 2727 (ON CA); *Aveos Fleet Performance Inc./Aveos performance aéronautique inc.* (arrangement relatif à), 2012 QCCS 4074 (CanLII); *White Birch Paper Holding Company (Arrangement relatif à)*, 2010 QCCS 4915 (CanLII), leave to appeal refused 2010 QCCA 1950 (CanLII); *AbitibiBowater inc. (Arrangement relatif à)*, 2009 QCCS 6460 (CanLII).

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43. The Chromite Marketing Process started long before the commencement of the CCAA Proceedings. However, since its appointment, the Monitor has been provided with all the information it has requested in respect of the Chromite Marketing Process, including the expressions of interest and letters of intent obtained. The CCAA Parties have provided their full cooperation and have consulted with the Monitor in respect of all material decisions with respect to the Chromite Marketing Process since the commencement of the CCAA Proceedings.
44. There are no creditors of the estate that hold security over the Purchased Shares. Accordingly, it was not considered necessary or appropriate to consult with creditors. However, the Monitor notes that Cliffs Natural Resources Inc. and its subsidiaries are likely, in the aggregate, the largest creditors in the estate and that a number of those entities are parties to the Chromite SPA so were directly involved in its negotiation.
45. The Monitor is of the view that results of the Chromite Marketing Process indicate that the Purchase Price is fair and reasonable in the circumstances. The allocation of the Purchase Price amongst the Sellers has been made based on the relative amounts of Related-Party Debt. The Monitor has discussed the Purchase Price allocation methodology with the Sellers and their advisors and is satisfied that the methodology is fair and reasonable in the circumstances.
46. Based on the foregoing, the Monitor supports the Chromite Motion and respectfully recommends that the Chromite Approval and Vesting Order be granted by the Court.

REQUEST FOR APPROVAL OF THE CAMP LEASE

47. Capitalized terms used in this section of this Report not otherwise defined are as defined in the Camp Lease.

THE CAMP LEASE

48. A description of the Mont-Wright Camp and the previous occupation and service arrangements is set out in the CCAA Parties' Motion For Approval Of The Lease Of Certain Property By The Petitioner 8568391 Canada Inc. dated April 1, 2015 (the "**Camp Lease Motion**").
49. The key terms of the Camp Lease are summarized as follows:
- (a) The term of the Camp Lease is twenty-four months commencing on February 1, 2015, unless sooner terminated or extended under the provisions of the Camp Lease;
 - (b) Provided that the Tenant is not in default of its obligations under the Camp Lease beyond any applicable cure period, the Tenant will have three options to renew the Camp Lease with respect to all or any portion of the Leased Premises then subject to the Camp Lease, each for a period of twelve months;
 - (c) The net rent payable for the Term of the Camp Lease and any renewals is \$100,000 per month and, in addition to the net rent, the Tenant shall pay as additional rental to the Landlord equal to one hundred percent of all taxes and operating expenses of the Leased Premises plus all applicable taxes;
 - (d) The Tenant undertakes to provide cafeteria services to approximately fifty-five of the employees and other invitees of the Landlord, its affiliates or related entities for the months of March and April 2015 and to approximately thirty-five of the employees and other invitees of the Landlord, its affiliates or related entities for the remainder of the Term of the Camp Lease starting May 1, 2015 at the Fermont mining camp owned by the Tenant and situated in Fermont, Quebec;

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- (e) The Landlord shall have the right at its sole discretion to assign its rights and obligations under the Camp Lease or otherwise transfer the Leased Premises and the Building to a third party without obtaining the consent of the Tenant;
- (f) Notwithstanding any other provision of the Camp Lease, the Landlord or the Tenant shall have the right to terminate the Camp Lease at any time during the Term or Renewal Option provided it notifies the other party with a prior ninety days written notice; and
- (g) The Camp Lease is conditional on Court approval in accordance with paragraph 33(c) of the Amended Initial Order.

THE MONITOR'S COMMENTS AND RECOMMENDATIONS

50. The CCAA Parties state in paragraphs 21 to 25 of the Camp Lease Motion that:

“21. The rent payments and the terms of the Lease were negotiated at arm's length.

22. Given the location of the Leased Premises, no persons other than the CCAA Parties (including a future owner or operator of the Bloom Lake Mine) and the Tenant would have any use for the Leased Premises.

23. If the Landlord were not to lease the Leased Premises to the Tenant pursuant to the Lease, the Leased Premises would remain empty and CQIM would have to continue to bear the costs of maintaining them.

24. The CCAA Parties believe that entering into the Lease constitutes the most effective way of realizing cashflow from the Leased Premises, for the ultimate benefit of the CCAA Parties' creditors and other stakeholders.

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25. The terms of the Lease, including the termination rights, were negotiated such that the Lease would not be prejudicial to the sale process to be formally entered into shortly by the CCAA Parties.”

51. The Monitor was consulted throughout the process of negotiating the Camp Lease and concurs with the above statements.
52. The Monitor is of the view that:
- (a) The terms of the Camp Lease are reasonable in the circumstances;
 - (b) Approval of the Camp Lease will not adversely affect the SISF; and
 - (c) Approval of the Camp Lease will be beneficial to the CCAA Parties' stakeholders.
53. Accordingly, the Monitor supports the Camp Lease Motion and respectfully recommends that an Order approving the Camp Lease be granted by the Court.

REQUEST FOR APPROVAL OF THE MOELIS ENGAGEMENT LETTER AND THE CREATION OF THE SALE ADVISOR CHARGE

54. Capitalized terms used in this section of this Report not otherwise defined are as defined in the Moelis Engagement Letter.

THE MOELIS ENGAGEMENT LETTER

55. As described in the CCAA Parties' Motion For Authorization Of The Engagement Of A Sale Advisor And Amending The Initial Order dated April 2, 2015 (the “**Moelis Motion**”), Moelis has been assisting with efforts to sell the businesses and assets of the CCAA Parties and their Canadian affiliates for some time, both before and after the commencement of the CCAA Proceedings.

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56. The Moelis Engagement Letter is dated March 23, 2015 and contains the following key terms:
- (a) The parties to the Moelis Engagement Letter include CQIM, Bloom Lake GP and certain of their affiliates that are not Petitioners or Mises-en-cause in the CCAA Proceedings (the “**Non-CCAA SISP Parties**”), which is consistent with the inclusion of business and assets of the Non-CCAA SISP Parties in the proposed SISP;
 - (b) The amounts payable under the Moelis Engagement Letter are as follows:
 - (i) The Monthly Retainer Fee payable on the first day of each month during the period commencing on the Effective Date and ending on the earlier of (x) the six month anniversary of the Moelis Engagement Letter, (y) closing of a Transaction relating to such Business, and (z) termination of the Moelis Engagement Letter. The last three Monthly Retainer Fees shall be offset, to the extent paid, against the Transaction Fee;
 - (ii) The Transaction Fee, calculated separately with respect to each Transaction and payable promptly at the closing of a Transaction;
 - (iii) The Termination Fee, calculated as a percentage of any Termination Amount received as a result of a Transaction failing to close;
 - (iv) Out-of-pocket and documented reasonable expenses as they are incurred, subject to monthly and aggregate maximums;

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- (c) The CCAA Parties are not responsible for the payment of Monthly Retainer Fees, Transaction Fees or Termination Fees relating to Non-CCAA SISP Parties;
 - (d) A Tail Period of twelve months in respect of Transaction Fees and Termination Fees;
 - (e) CQIM and Bloom Lake GP will use their reasonable best efforts to seek the Moelis Approval Order in a form acceptable to Moelis, acting reasonably;
 - (f) The CCAA Parties are required to use their reasonable best efforts to obtain a charge over the property of each CCAA Party securing the Monthly Retainer Fee, Transaction Fees and expenses reimbursable pursuant to the Moelis Engagement Letter payable by each CCAA Party, on a several basis, with such charge having priority over all claims of unsecured creditors of such CCAA Parties, but to be subordinated to the Administration Charge and Directors' Charge and all secured claims;
 - (g) A broad indemnity in favour of Moelis and its affiliates and any of their respective current or former directors, officers, partners, managers, agents, representatives or employees, including any person controlling Moelis or any of its affiliates.
57. The payment of the Transaction Fees payable under the Moelis Engagement Letter has been guaranteed by Cliffs Natural Resources Inc. (“CNR”) the ultimate parent of the CCAA Parties pursuant to a confidential letter agreement between Moelis and CNR dated March 23, 2015 (the “**Moelis/CNR Letter**”).

58. In addition, the Moelis/CNR Letter provides for payment of the Transaction Fee in respect of certain amounts for which the Transaction Fee would not be payable under the terms of the Moelis Engagement Letter and without duplication to any amount already included in the Transaction Fee payable (or paid) under the Moelis Engagement Letter.

THE SALE ADVISOR CHARGE

59. As noted above, pursuant to the Moelis Engagement Letter, the CCAA Parties are required to use their reasonable best efforts to obtain a charge over the property of each CCAA Party securing the Monthly Retainer Fee, Transaction Fees (as such terms are defined in the Moelis Engagement Letter) and expenses reimbursable pursuant to the Moelis Engagement Letter payable by each CCAA Party, on a several basis, with such charge having priority over all claims of unsecured creditors of such CCAA Parties, but to be subordinated to the Administration Charge and Directors' Charge and all secured claims.
60. The Sale Advisor Charge, if granted, would be limited to a maximum of US\$8 million, being the maximum amount of the Transaction Fees that could become payable by the CCAA Parties under the Moelis Engagement Letter.

THE MONITOR'S COMMENTS AND RECOMMENDATIONS

61. Moelis is a well-known financial advisor and investment banker and has significant experience in providing such services in the context of court supervised restructuring proceedings. The engagement with the CCAA Parties is under the supervision of Mr. Mark Henkels, Managing Director, and Mr. Carlo De Girolamo, Senior Vice President.

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62. The Monitor is of the view that the engagement of an investment banker to assist the CCAA Parties in the implementation of the SISP is, in the circumstances of these CCAA Proceedings, beneficial to the estate and its stakeholders generally and to the efficient completion of the CCAA Proceedings. Furthermore, Moelis has already been providing assistance and advice to the CCAA Parties for some time and is familiar with the businesses and assets. Accordingly, the Monitor is of the view that Moelis is a logical and appropriate choice in the circumstances.
63. While the appointment of an investment banker is not uncommon in CCAA cases, the details of compensation arrangements are often kept confidential. Accordingly, exhaustive research on compensation arrangements approved in CCAA cases is difficult, if not impossible.
64. The Monitor and its counsel have reviewed publicly available information in respect of CCAA filings and have identified a number of recent CCAA cases in which an investment banker has been appointed. Publicly available information with respect to the terms of the engagements in those cases is summarized in Appendix B hereto. Based on this information, together with non-public engagement terms from other proceedings of which the Monitor or its counsel has knowledge, the Monitor is of the view that the amounts payable under the Moelis Engagement Letter are within market parameters.
65. While the Transaction Fees are payable on closing of Transactions, Transaction Value includes assumed liabilities and it is possible that, in certain circumstances, the Transaction Fee could exceed the amount of cash purchase price in a Transaction. Accordingly, Moelis has requested that the CCAA Parties seek the creation of the Sale Advisor Charge to secure payment of the Transaction Fees payable by the CCAA Parties. The Monitor is of the view that although the risk of a claim under the Sale Advisor Charge is remote, the creation of the Sale Advisor Charge is nonetheless appropriate and not unduly prejudicial to the creditors of the CCAA Parties in the circumstances.

66. The Monitor has reviewed the CNR/Moelis Letter and is satisfied that any amounts payable thereunder are not in duplication of amounts payable under the Moelis Engagement Letter. Indeed, while it is not possible for the Monitor to identify and consider all possible transaction scenarios, the Monitor has not been able to construct any likely scenario where additional amounts would be payable under the CNR/Moelis Letter. Furthermore, the Monitor does not view the CNR/Moelis Letter as creating any conflict of interest for Moelis.
67. Accordingly, the Monitor supports the Moelis Motion and respectfully recommends that the CCAA Parties' request for the approval of the engagement of Moelis pursuant to the terms of the Moelis Engagement Letter and the creation the Sale Advisor Charge.

REQUEST FOR APPROVAL OF THE SISP

68. Capitalized terms used in this section of this Report not otherwise defined are as defined in the SISP, which is attached as Exhibit R-3 to the CCAA Parties' Motion For An Order Approving A Sale And Investor Solicitation Process dated April 2, 2015 (the "**SISP Motion**").

THE SISP

69. The key aspects of the SISP are summarized as follows:
- (a) The property that is available for sale pursuant to the SISP is comprised of all property, assets and undertaking (other the Chromite Shares) of the CCAA Parties and Wabush Iron Co. Limited, Wabush Resources Inc., Arnaud Railway Company and Wabush Lake Railway Company, Limited (the "**Non-CCAA Parties**") and together with the CCAA Parties, collectively, the "**Companies**"; the businesses in which an investment may be made pursuant to the SISP are the Bloom Lake Business, the Wabush Mine Business and the Port Business;

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- (b) Qualified Phase I Bidders will have the opportunity to submit a Sale Proposal or a Plan Sponsorship Proposal. Sale Proposals and Plan Sponsorship Proposals may be in respect of only a part or parts of the Property or Businesses, and any such proposal will not be precluded from consideration as an acceptable LOI, Qualified Bid or Successful Bid;
- (c) A list of Prospective Bidders will be prepared and appropriate advertising will be determined, which may include newspaper, trade publication, internet or other advertising directed at Prospective Bidders;
- (d) Prospective Bidders will be required to sign a Confidentiality Agreement in order to gain access to the Summary of Businesses, the Data Room and other confidential information;
- (e) Unless otherwise provided for herein, ordered by the Court or agreed to by the Monitor, in order to participate in the SISP and be considered for qualification as a Qualified Phase I Bidder, a Prospective Bidder must deliver by the LOI Deadline, being 5:00 p.m. (Montréal time) on May 19, 2015 or such later date and/or time as the applicable Companies in respect of one or more Businesses may, in consultation with the Monitor, determine appropriate or as the Court may order;
- (f) The Companies, in consultation with Moelis and the Monitor, shall consider each LOI and the other materials submitted by a Prospective Bidder whether or not the Prospective Bidder constitutes a Qualified Phase I Bidder;

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- (g) Notwithstanding the process and deadlines with respect to LOIs, the Companies, in consultation with Moelis and the Monitor, may at any time prior to the applicable Bid Deadline bring a motion to seek approval of a stalking horse purchase agreement in respect of some or all of the Property and related amendments to the SISP, including with respect to an extension to the applicable Bid Deadline;
- (h) Binding offers for a Sale Proposal or Plan Sponsorship Proposal must be submitted in writing by the Bid Deadline, which will be determined by the applicable Companies, in consultation with Moelis and the Monitor, or as may be fixed by the Court;
- (i) If, after consultation with Moelis and Monitor, the applicable Companies determine that only one Qualified Bid, which may include a combination of non-overlapping Qualified Portion Bids, was received, the applicable Companies may choose to accept such Qualified Bid and take such steps as are necessary to finalize and complete an agreement for the Successful Bid with the Successful Bidder;
- (j) If, after consultation with Moelis and Monitor, the applicable Companies determine that more than one Qualified Bid was received with respect to one or more Businesses or a part thereof, then the applicable Companies shall conduct one or more Auctions to determine the highest and/or best Sale Proposal or Plan Sponsorship Proposal or Aggregated Bid for one or more of the Businesses or any part thereof; and
- (k) All Successful Bids involving the CCAA Parties' Business or Property shall be subject to approval of the Court.

70. The SISP includes requirements for the Companies to consult with the Monitor throughout the process. Non-material amendments may be made to the SISP as agreed to by the Companies and the Monitor. No material amendment to the SISP can be made without the approval of the Court on notice to the Service List.

THE MONITOR'S COMMENTS AND RECOMMENDATION

71. As noted above, the SISP includes the Businesses and assets of the Non-CCAA Parties. Given the nature and locations of the assets and Businesses and the degree of reliance between certain of them, the Monitor is of the view that the inclusion of the Non-CCAA Parties is beneficial as it is possible that interested parties may wish to acquire combinations of businesses or assets of both the CCAA Parties and Non-CCAA Parties.
72. The Monitor has considered the SISP in light of the principles of section 36 of the CCAA and leading decisions dealing with the sale of assets in court-supervised proceedings and is of the view that the SISP is consistent with those principles and provides for a broad, open, fair and transparent process with an appropriate level of independent oversight, that should encourage and facilitate bidding by interested parties and is reasonable in the circumstances. Furthermore, the Monitor does not believe that any aspect of the SISP should discourage parties from submitting offers.
73. Accordingly, the Monitor respectfully recommends that the CCAA Parties' request for approval of the SISP be granted.

REQUEST FOR AN EXTENSION OF THE STAY PERIOD

74. The Stay Period currently expires on April 30, 2015. Additional time is required for the CCAA Parties to implement the SISP, if the SISP is approved by the Court, and complete any transactions arising therefrom, to develop and seek approval of a procedure for the submission, evaluation and adjudication of claims against the CCAA Parties and to undertake the other activities necessary to complete the CCAA Proceedings. The continuation of the stay of proceedings is necessary to provide the stability needed during that time. Accordingly, the CCAA Parties now seek an extension of the Stay Period to July 31, 2015.
75. The April 2 Forecast demonstrates that, subject to the underlying assumptions thereof, the CCAA Parties have sufficient liquidity to fund the CCAA Proceedings to July 31 2015. Consistent with the February 4 Forecast and as disclosed to the Court, the April 2 Forecast does not include payment of equipment financing and leases or Take or Pay Amounts.
76. Based on the information currently available, the Monitor believes that creditors would not be materially prejudiced by an extension of the Stay Period to July 31, 2015.
77. The Monitor also believes that the CCAA Parties have acted, and are acting, in good faith and with due diligence and that circumstances exist that make an extension of the Stay Period appropriate.
78. The Monitor therefore respectfully recommends that this Honourable Court grant the CCAA Parties' request for an extension of the Stay period to July 31, 2015.

Monitor's 6th Report, June 1, 2015 (*cont'd*)

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The Monitor respectfully submits to the Court this, its Third Report.

Dated this 7th day of April, 2015.

FTI Consulting Canada Inc.
In its capacity as Monitor of
Bloom Lake General Partner Limited, Quinto Mining Corporation,
8568391 Canada Limited, Cliffs Québec Iron Mining ULC,
The Bloom Lake Iron Ore Mine Limited Partnership and
Bloom Lake Railway Company Limited



Nigel D. Meakin
Senior Managing Director



Steven Bissell
Managing Director

Appendix A

The April 2 Forecast

Monitor's 6th Report, June 1, 2015 (cont'd)

CCAA Parties Cash Flow Projection

Amounts in CAD in thousands																					
Week Ending Friday		3-Apr-15	10-Apr-15	17-Apr-15	24-Apr-15	1-May-15	8-May-15	15-May-15	22-May-15	29-May-15	5-Jun-15	12-Jun-15	19-Jun-15	26-Jun-15	3-Jul-15	10-Jul-15	17-Jul-15	24-Jul-15	31-Jul-15	Total	
Forecast Week		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18		
Cash Flow from Operations																					
Receipts	1,557	-	-	-	345	(389)	(365)	(285)	(580)	(113)	115	-	-	115	-	-	-	-	115	2,247	
Payroll & Employee Benefits	(380)	(573)	(377)	(377)	(389)	(389)	(365)	(285)	(580)	(113)	(532)	(708)	(13)	(416)	(220)	(594)	(13)	(356)	(59)	(6,086)	
Termination & Severance	(90)	(226)	-	(295)	(177)	(254)	-	(254)	(254)	(48)	(69)	(48)	-	(77)	-	(39)	(39)	-	-	(1,275)	
Utilities	(732)	(106)	(78)	(187)	(83)	(106)	(78)	(106)	(78)	(78)	(189)	(106)	(78)	(189)	(61)	(86)	(58)	(58)	(169)	(2,523)	
Other Operating Disbursements	(638)	(405)	(115)	(717)	(185)	(194)	(194)	(220)	(220)	(676)	(531)	(346)	(590)	(431)	(265)	(444)	(532)	(190)	(346)	(7,095)	
Operating Cash Flows	(283)	(1,310)	(570)	(1,243)	(810)	(810)	(585)	(1,132)	(867)	(1,206)	(404)	(1,208)	(881)	(998)	(546)	(1,163)	(603)	(604)	(459)	(14,672)	
Restructuring/Professional Fees	(115)	(1,880)	(273)	(685)	(935)	(273)	(273)	(273)	(273)	(283)	(348)	(273)	(273)	(283)	(348)	(273)	(273)	(273)	(283)	(7,017)	
Projected Net Cash Flow	(398)	(3,190)	(843)	(1,928)	(1,445)	(1,445)	(858)	(1,405)	(1,140)	(1,489)	(752)	(1,481)	(954)	(1,281)	(894)	(1,436)	(876)	(877)	(742)	(21,689)	
Beginning Cash Balance	47,602	47,204	44,014	43,171	41,243	40,098	39,240	37,835	36,695	35,206	34,454	32,973	32,019	30,738	29,844	28,408	27,532	26,655	26,655	47,602	
DP Financing	(398)	(3,190)	(843)	(1,928)	(1,445)	(858)	(1,405)	(1,140)	(1,140)	(1,489)	(752)	(1,481)	(954)	(1,381)	(894)	(1,436)	(876)	(877)	(742)	(21,689)	
Ending Cash Balance	47,204	40,014	43,171	41,243	40,098	39,240	37,835	36,695	35,206	34,454	32,973	32,019	30,738	29,844	28,408	27,532	26,655	26,655	25,913	25,913	

Notes:

- [1] The purpose of this cash flow projection is to determine the liquidity requirements of the CCAA Parties during the forecast period.
- [2] Receipts in the week ending April 3rd include actual proceeds from the sale in April 2012 by Quinto Mining Corporation to a third party of certain mining claims. Forecast receipts for the balance of the forecast period include receipts pursuant to a lease of certain property which is subject to approval of the Court.
- [3] Forecast Payroll & Employee Benefits disbursements are based on actual payroll funding in the period leading up to the forecast period combined with scheduled reductions in staffing.
- [4] Termination & Severance disbursements are based on estimated amounts payable for past and future planned headcount reductions.
- [5] Forecast Utilities disbursements consist primarily of hydro costs to maintain the Bloom Lake operations on care and maintenance mode, and reflect current payment terms, rates and estimated consumption over the forecast period.
- [6] Forecast Other Operating Disbursements reflect actual payment trends observed in the weeks leading up to the forecast and reflect the current care and maintenance status of the Bloom Lake mine. The timing of Other Operating Disbursements are assumed to be cash on delivery.
- [7] Forecast Restructuring Professional Fees consist of legal and financial advisor fees associated with the CCAA proceedings based on estimates obtained from legal and professional advisors.

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Appendix B

Publicly Available Terms of Investment Banker Engagements

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SUMMARY OF FINANCIAL ADVISOR FEES IN RECENT RESTRUCTURING TRANSACTIONS

	Jurisdiction & Filing Date	Work Fee	Debt Restructuring Fee	Financing Fees	Sale / M&A Fees	Opinion Fee	Tail Period	Court-Ordered Charge
Moelis & Company (Veris Gold Corp.)	British Columbia – June 2014	\$100,000/month, with the exception of the second month, where fees increase to \$200,000 for one month, fully set off against transaction fees.	N/A	N/A	3% of transaction value (including assumption of debt) for one or more transactions. Minimum aggregate fee: \$ 2 million. 25% of any break fees received by company on an incomplete transaction. Additional "alternative transaction fees" in specified circumstances.	To be negotiated at later date	Agreement on transaction within 12 months post-termination	Split charge: - First/Fourth. Transaction fees secured by fourth ranking charge

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	Jurisdiction & Filing Date	Work Fee	Debt Restructuring Fee	Financing Fees	Sale / M&A Fees	Opinion Fee	Tail Period	Court-Ordered Charge
<u>Rothschild</u> (The Cash Store Financial Services Inc.)	Ontario – April 2014	\$125,000/month, partially set off against transaction fees	\$1,500,000	1% - 5% depending upon nature of financing and ranking of security (if any)	1.5% of aggregate consideration (including assumed debt). Additional consideration for returns (if any) to equity holders.	\$500,000	Agreement on transaction within <u>12 months</u> post-termination	First ranking. Note: Charge is limited to \$1,500,000 and must be shared by all professionals.
<u>Rothschild</u> (US Steel Canada Inc.)	Ontario – September 2014	\$200,000/month, subject to re-evaluation at later dates, partially set off against transaction fees.	\$5,500,000 payable on closing of a "Restructuring Transaction" or a Plan. A Restructuring Transaction could include elements of either a debt restructuring, re-financing or sale transaction. Intercompany transaction fees also contemplated, but only in the case of a transaction occurring outside of an insolvency proceeding.			To be negotiated at later date	Closing of transaction within <u>12 months</u> post-termination	Split charge – First/Fourth. Transaction fees secured by fourth ranking charge
<u>Ernst & Young</u> <u>Orenda</u> <u>Corporate Finance Inc.</u> (Poseidon Concepts Corp.)	Alberta April 2013	\$25,000/month, subject to set off against transaction fees	3% of transaction value (including assumed debt). Minimum: \$350,000	N/A	3% of transaction value (including assumed debt). Minimum: \$350,000	To be negotiated at later date	Closing of transaction within <u>18 months</u> post-termination	First ranking. Note: Charge limited to \$1,000,000 and must be shared by all professionals.

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	Jurisdiction & Filing Date	Work Fee	Debt Restructuring Fee	Financing Fees	Sale / M&A Fees	Opinion Fee	Tail Period	Court-Ordered Charge
<u>Houlihan Lokey Capital, Inc.</u> <u>(Sino-Forest Corporation)</u>	Ontario April 2012	\$200,000/month	\$8,000,000	3% of debt financing raised 5% of equity/equity-linked financing raised Minimum, when aggregated with all other fees: \$8 million.	0.75%-1.25% of aggregate consideration (including assumed debt) Minimum, when aggregated with all other fees: \$8 million.	To be negotiated at later date	Agreement on transaction within <u>18 months</u> post-termination	First ranking. Note: Charge is limited to \$15,000,000 and must be shared by all professionals.
<u>CIBC World Markets Inc.</u> <u>(Great Basin Gold Ltd.)</u>	British Columbia September 2012	\$100,000/month, subject to partial set off against Sale Transaction Fees	0.75% of principal value of debt included in restructuring transaction, less any Sale Transaction Fees earned	N/A	1.25% of aggregate consideration (including assumed debt) Minimum: \$1.5 million	None	Agreement on transaction within <u>6 months</u> post-termination, subject to an increased tail period in the case of early termination.	Split charge – First/Fifth. First ranking for a maximum of \$1,000,000. Fifth ranking for all remaining amounts.

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Appendix B

The Amended SISP (Black-line)

AMENDED AND RESTATED SALE AND INVESTOR SOLICITATION PROCEDURES

Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited, Cliffs Québec Iron Mining ULC (formerly, Cliffs Québec Iron Mining Limited), Bloom Lake Railway Company Limited and The Bloom Lake Iron Ore Mine Limited Partnership, ~~together with~~ Wabush Iron Co. Limited, Wabush Resources Inc., Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company, Limited

Recitals

- A. On January 27, 2015 Bloom Lake General Partner Limited, Quinto Mining Corporation, 8568391 Canada Limited and Cliffs Québec Iron Mining ULC (formerly, Cliffs Québec Iron Mining Limited), as petitioners, and The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited, as mises-en-cause (collectively, the "~~Petitioners~~" filed for and Bloom Lake CCAA Parties"), obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the "CCAA") under Court File No. 500-11-048114-157 (such proceedings, the "CCAA Proceedings") pursuant to the provisions of an order (as it may be amended, restated or supplemented from time to time, the "Bloom Lake Initial Order") of the Québec Superior Court (Commercial Division) in the District of Montréal (the "Court").
- B. ~~The relief granted to the Petitioners under the Initial Order was extended to The Bloom Lake Iron Ore Mine Limited Partnership and Bloom Lake Railway Company Limited as mises-en-cause (such entities, together with the Petitioners and any other entities that may be added from time to time as petitioners or mises-en-cause with the same protections in the CCAA Proceedings, collectively, the "CCAA Parties").~~ On May 20, 2015 and Wabush Iron Co. Limited and Wabush Resources Inc., as petitioners, and Wabush Mines, Arnaud Railway Company and Wabush Lake Railway Company Limited, as mises-en-cause, (such entities, together with the Bloom Lake CCAA Parties, collectively, the "Companies") obtained protection from their creditors in the CCAA Proceedings pursuant to the provisions of an order of the Court (as it may be amended, restated or supplemented from time to time, the "Wabush Initial Order").

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- C. Pursuant to the [Bloom Lake Initial Order and Wabush Initial Order](#), FTI Consulting Canada Inc. was appointed as monitor (in its capacity as monitor and not in its personal or corporate capacity, the “**Monitor**”) [of the Companies](#) during the CCAA Proceedings.
- D. Pursuant to an order of the Court dated ~~F~~[April 17](#), 2015 (as it may be amended, restated or supplemented from time to time, the “**SISP Approval Order**”), the Court approved a sale and investor solicitation process to be continued in respect of the Companies, in accordance with the procedures, terms and conditions set out herein (as such process may be amended, restated or supplemented pursuant to the terms herein, the “**SISP**”).
- E. [Pursuant to an order of the Court dated June 9, 2015, this amended and restated SISP was approved by the Court.](#)
- E. ~~E~~-The property that is available for sale pursuant to the SISP (collectively, the “**Property**”) is comprised of all property, assets and undertaking of the ~~CCAA Parties and Wabush Iron Co. Limited, Wabush Resources Inc., Arnaud Railway Company and Wabush Lake Railway Company, Limited (the “Non-CCAA Parties” and together with the CCAA Parties, collectively, the “Companies”)~~[Companies](#), all as more particularly described in the Teaser and Summary of Businesses.
- G. ~~F~~-The businesses in which an investment may be made pursuant to the SISP (collectively, the “**Businesses**”) are the Bloom Lake Business, the Wabush Mine Business and the Port Business.
- H. ~~G~~-For greater certainty, the Property and Businesses available for sale or investment pursuant to the SISP do not include the Chromite Business or any property, assets or undertaking of the Companies related to such business.
- I. ~~H~~-This SISP describes, among other things:
- i. the manner in which the opportunity to purchase some or all of the Property, or invest in one or more of the Businesses through a Plan sponsorship, can be obtained;

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- ii. the manner in which Prospective Bidders may gain access to or continue to have access to due diligence materials concerning the Property, the Companies and the Businesses and timelines applicable thereto;
- iii. the manner and timelines in which Prospective Bidders may submit an LOI for all or substantially all of the Property or any part thereof, and the required content of an LOI;
- iv. the manner and timelines in which Qualified Phase I Bidders may submit a Qualified Bid and the required content of a Qualified Bid;
- v. the manner in which an Auction or Auctions may be held in the event that more than one Qualified Bid is received in accordance with the SISP;
- vi. the process and criteria for the ultimate selection of one or more Successful Bids; and
- vii. the process for approval of one or more Successful Bids by the Court.

I ~~+~~The SISP Approval Order, the SISP, and any other orders of the Court made in the CCAA Proceedings relating to the SISP shall exclusively govern the process for soliciting and selecting bids for the sale of some or all of the Property or investments in the Businesses or any part thereof. An investment in the Businesses may involve, among other things, a restructuring, recapitalization, or other form of reorganization of the business and affairs of the Companies or any part thereof, and such investment may be consummated pursuant to a plan of compromise or arrangement (a “**Plan**”) or otherwise.

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K. ~~J.~~ Unless otherwise indicated herein, any event that occurs on a day that is not a Business Day shall be deemed to occur on the next Business Day.

Defined Terms

1. All capitalized terms used herein shall have the meanings given to them in Appendix "A" hereto.

Conduct of the SISP

2. Conduct of SISP. The SISP will be carried out by the Companies, with the assistance of, and in consultation with, the Sale Advisor and the Monitor. The Companies, the Sale Advisor and the Monitor are fully and exclusively authorized, empowered and directed to take any and all actions and steps pursuant to the SISP.
3. Advice and Directions. If it is determined at any time by the ~~CCAA Parties~~ Companies, in consultation with the Sale Advisor and the Monitor, that it may not be in the best interests of the ~~CCAA Parties~~ Companies to continue with the SISP with respect to one or more of the Businesses, the ~~CCAA Parties~~ Companies shall as soon as reasonably practicable file a motion with the Court seeking advice and directions with the respect to the modification, suspension or termination of the SISP in respect of the applicable Businesses, on notice to the Service List. ~~A Non-CCAA Party may terminate its participation in the SISP at any time.~~
4. Consultation and Retention of Agents and Consultants. At any time during the SISP, the ~~CCAA Parties~~ Companies may from time to time (a) consult with the Sale Advisor and the Monitor and such other parties as the ~~CCAA Parties~~ Companies consider appropriate in respect of the conduct of the SISP, (b) with the consent of the Monitor or approval of the Court, retain such agents, consultants or brokers as they consider appropriate to assist them in the conduct of the SISP, and/or (c) apply to the Court for advice and directions with respect to the discharge of any of their powers and duties hereunder.
5. Primary SISP Responsibilities. In connection with the SISP, the Companies' primary responsibilities include:

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- (a) assisting the Sale Advisor with the preparation of a list of Prospective Bidders;
- (b) preparing the Summary of Businesses and assisting the Sale Advisor with preparing the Teaser Letter;
- (c) assisting legal counsel with the preparation of the template form of confidentiality agreement to be executed by Prospective Bidders (such confidentiality agreement and any other form of confidentiality agreement executed by a Prospective Bidder in favour of the Companies, the "**Confidentiality Agreement**");
- (d) establishing and managing an electronic data room with confidential information in respect of the Companies, the Property and the Businesses (the "**Data Room**");
- (e) assisting legal counsel with the preparation of the template Form of APA and if the Companies so elect, the template Form of PSA;
- (f) assisting the Sale Advisor with managing all communications with Prospective Bidders, Qualified Phase I Bidders, Qualified Bidders and Auction Bidders, prior to and after receipt of the LOIs and Qualified Bids. These communications shall include, without limitation, facilitating the delivery of all communications, contacting Prospective Bidders and providing them with the Teaser Letter and the Summary of Businesses and coordinating the execution of the Confidentiality Agreements by Prospective Bidders, managing the process of answering all reasonable inquiries from Prospective Bidders, Qualified Phase I Bidders, Qualified Bidders and Auction Bidders and arranging for site visits by Prospective Bidders, Qualified Phase I Bidders and Qualified Bidders;
- (g) negotiating with Prospective Bidders, Qualified Phase I Bidders, Qualified Bidders and Auction Bidders;
- (h) reviewing and considering the LOIs and Qualified Bids; and

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- (i) if applicable, conducting an Auction or Auctions with respect to one or more of the Businesses in accordance with the SISP.

Sale and Investment Opportunities

6. **Opportunity to Submit a Bid.** Qualified Phase I Bidders will have the opportunity to submit a bid to purchase some or all of the Property (a "**Sale Proposal**") or for an investment in the Businesses or any part thereof through a Plan sponsorship (a "**Plan Sponsorship Proposal**"). Sale Proposals and Plan Sponsorship Proposals may be in respect of only a part or parts of the Property or Businesses, and any such proposal will not be precluded from consideration as an acceptable LOI, Qualified Bid or Successful Bid.

"As is, Where Is"

7. **"As is, Where is" Basis.** Any Sale Proposal or Plan Sponsorship Proposal shall be made on an "as is, where is" basis, without surviving representations or warranties of any kind or nature.
8. **No Representations or Warranties.** The Companies, the Sale Advisor and the Monitor are not responsible for, and will have no liability with respect to, any information obtained by any Prospective Bidder, Qualified Phase I Bidder, Qualified Bidder, Auction Bidder or Successful Bidder in connection with the Property, the Companies or the Businesses. The Companies and their advisors (including the Sale Advisor) and the Monitor do not make any representations or warranties whatsoever as to the information or the materials provided through the due diligence process or otherwise made available to any Prospective Bidder, Qualified Phase I Bidder, Qualified Bidder, Auction Bidder or Successful Bidder, including any information contained in the Teaser Letter, Summary of Businesses or Data Room.

Free of Any and All Claims and Interests

9. **Free and Clear.** In the event of a Sale Proposal for any or all of the Property, all of the ~~CCAA Parties~~ Companies' right, title and interest in and to the Property may be acquired pursuant to an approval and vesting order of the Court, free and clear of all pledges, liens, security interests, charges, options, hypothecs, mortgages and interest thereon, except to

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the extent otherwise set forth in a definitive purchase agreement executed with a Successful Bidder. ~~With respect to the Non-CCAA Parties' right, title or interest in the Property, a vesting order may not be available.~~

Solicitation of Interest

10. Solicitation Materials. The Companies, with the assistance of the Sale Advisor, and in consultation with the Monitor, have or will:
- (a) compile a listing (the "**Contact List**") of prospective purchasers and investors (collectively, "**Prospective Bidders**"), which list will include parties who in the Companies' reasonable business judgment may be interested in acquiring the Property or making an investment in the Businesses or any part thereof;
 - (b) prepare the Summary of Businesses;
 - (c) determine the appropriate advertising to be directed at Prospective Bidders, which may include newspaper, trade publication, internet or other advertising directed at Prospective Bidders;
 - (d) send to each Prospective Bidder a solicitation letter summarizing the acquisition and investment opportunity with respect to the Property and the Businesses (the "**Teaser Letter**");
 - (e) send to each Prospective Bidder upon request a form of Confidentiality Agreement. The Prospective Bidders will be required, among other things, to sign a Confidentiality Agreement in order to gain access to confidential information (including access to the Data Room). For greater certainty, only Prospective Bidders who submit an executed Confidentiality Agreement, which is in form and substance acceptable to the Companies, shall have access to the Summary of Businesses, Data Room and other confidential information and management presentations, if available; and
 - (f) send to each Prospective Bidder who executes a Confidentiality Agreement a copy of this SISIP and/or the Process Letter.
11. Restrictions on Access to Confidential Information. The Companies reserve the right to

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limit any Prospective Bidder's or Qualified Phase I Bidder's access to any confidential information (including any information in the Data Room) and to customers and suppliers of the Companies, where, in the Companies' discretion, such access could negatively impact the SISP, the ability to maintain the confidentiality of the confidential information, or the value of the Property. Requests for additional information are to be made to the Sale Advisor.

Submission of Non-Binding Letters of Intent & Other Participation Requirements

12. LOI Deadline. Unless otherwise provided for herein, ordered by the Court or agreed to by the Monitor, in order to participate in the SISP and be considered for qualification as a Qualified Phase I Bidder, a Prospective Bidder must deliver to the Sale Advisor, with a copy to the Monitor (in each case, at the addresses set out in the Process Letter), so as to be received by the Sale Advisor not later than 5:00 p.m. (Montréal time) on Tuesday, May 19, 2015 or such later date and/or time as the applicable Companies in respect of one or more Businesses may, in consultation with the Monitor, determine appropriate or as the Court may order (the "**LOI Deadline**"), the following:
 - (a) an executed Confidentiality Agreement;
 - (b) a non-binding letter of intent (a "**LOI**") which specifies whether the Prospective Bidder anticipates submitting a Sale Proposal or Plan Sponsorship Proposal, and which complies with the requirements of paragraph 13 or 14 below, as applicable;
 - (c) to the extent not provided in the LOI, a letter setting forth the identity of the Prospective Bidder, the contact information for such Prospective Bidder, and the contact information for any business, financial or legal advisors retained or to be retained in connection with the contemplated transaction, and full disclosure of the direct and indirect owners of the Prospective Bidder and its principals; and
 - (d) to the extent not provided in the LOI or the Confidentiality Agreement, a written acknowledgement of receipt of a copy of the SISP Approval Order

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(including the SISP) and agreeing to accept and be bound by the provisions contained therein or herein.

13. Requirements for LOIs (Sale Proposal). An LOI in respect of a Sale Proposal must include:
- (a) a detailed listing and description of the Property to be included in the Sale Proposal and a detailed listing of the Property to be excluded from the Sale Proposal;
 - (b) the low and high range of the proposed purchase price for such Sale Proposal, the proposed allocation of purchase price among the applicable Property and an explanation of what contingencies and variables may influence where in the range the final purchase price will fall;
 - (c) details as to the form of consideration for the Sale Proposal;
 - (d) an acknowledgment that the Sale Proposal will be made on an “as is, where is” basis;
 - (e) a list of the key material contracts and leases, if any, the Prospective Bidder wishes to acquire and the Prospective Bidder’s proposed treatment of any related “cure costs”;
 - (f) a description of any liabilities to be assumed by the Prospective Bidder and the Prospective Bidder’s estimated value of such assumed liabilities;
 - (g) a detailed description of any remaining due diligence required by the Prospective Bidder to be completed before making a Qualified Bid and an estimated timeline for the completion of such due diligence (including with respect to any specific technical diligence matters relating to mines or mining rights owned by the applicable Companies or any environmental due diligence);
 - (h) any anticipated regulatory and other approvals required to close the proposed transaction and the anticipated time frame and any anticipated impediments for obtaining any such approvals;

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- (i) all material conditions to closing that the Prospective Bidder may wish to impose;
- (j) the proposed target closing date and a timeline to closing with critical milestones;
- (k) an indication as to whether the Prospective Bidder is intending to effect the Sale Proposal through a special purpose vehicle;
- (l) any other terms and conditions which the Prospective Bidder believes are material to the transaction; and
- (m) such other information reasonably requested by any Company.

14. Requirements for LOIs (Plan Sponsorship Proposal). An LOI in respect of a Plan Sponsorship Proposal must include:

- (a) a description of the structure of Plan sponsorship transaction, including which Companies will be the target of such transaction;
- (b) a description of the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors and shareholders of each of the applicable Companies;
- (c) the proposed treatment of stakeholders of the applicable Companies, including lenders, trade creditors and shareholders;
- (a) the structure and financing of the transaction, including a sources and uses analysis;
- (b) an acknowledgment that the Plan Sponsorship Proposal will be made on an "as is, where is" basis;
- (c) a description of any liabilities to be assumed by the Prospective Bidder and the Prospective Bidder's estimated value of such assumed liabilities;
- (d) a detailed description of any remaining due diligence required by the Prospective Bidder to be completed before making a Qualified Bid and

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estimated timeline for the completion of such due diligence (including with respect to any specific technical diligence matters relating to mines or mining rights owned by the applicable Companies or any environmental due diligence);

- (e) any anticipated regulatory and other approvals required to close the proposed transaction and the anticipated time frame and any anticipated impediments for obtaining any such approvals;
- (f) all material conditions to closing that the Prospective Bidder may wish to impose;
- (g) the proposed target closing date and a timeline to closing with critical milestones;
- (h) an indication as to whether the Prospective Bidder is intending to effect the Plan Sponsorship Proposal through a special purpose vehicle;
- (i) any other terms and conditions which the Prospective Bidder believes are material to the transaction; and
- (j) such other information reasonably requested by any Company.

15. Clarifications, Extensions and Waivers of LOIs. For greater certainty, the Companies shall be entitled, either prior to or following the LOI Deadline, to seek to clarify the terms of an LOI or with respect to any of the other requirements of paragraphs 12, 13 or 14 above, and the applicable Companies, in consultation with the Monitor, may accept a revised, clarified LOI, provided that the initial LOI was received prior to the LOI Deadline. The applicable Companies may grant extensions to the LOI Deadline with respect to any Business upon consultation with the Monitor, and the applicable Companies shall comply with any other extensions of the LOI Deadline as may be ordered by the Court. The Companies, in consultation with the Sale Advisor and Monitor, may waive compliance with any one or more of the requirements specified in paragraphs 12, 13 and 14 and deem any non-compliant LOI to be a qualifying LOI.

Review of LOIs

16. **Sale Proposal LOI Criteria.** Promptly following the LOI Deadline, the Companies, in consultation with the Sale Advisor and the Monitor, will review and assess the LOIs and other materials submitted by Prospective Bidders in respect of a Sale Proposal, and in making such assessment will consider, among other things, the following (the “**Sale Proposal LOI Criteria**”):
- (a) the purchase price and net value (including all assumed liabilities and other obligations to be performed by the Prospective Bidder) provided by such LOI and the proposed allocation of the purchase price among the applicable Property;
 - (b) the evidence of the financial ability of the Prospective Bidder to consummate the Sale Proposal;
 - (c) the claims, if any, likely to be created against the applicable Companies by the transaction contemplated by the LOI, relative to alternatives available to such Companies;
 - (d) the nature and amount of debt and other liabilities to be assumed by the Prospective Bidder;
 - (e) the counterparties to the Sale Proposal including the applicable Companies;
 - (f) the assets included in or excluded from the Sale Proposal and the transaction costs and risks associated with closing multiple transactions versus a single sale transaction for all, or substantially all, of the applicable Companies' Property;
 - (g) any transition services required from the Companies post-closing and any related costs;
 - (h) the planned treatment of stakeholders, including lenders, trade creditors and shareholders; and
 - (i) other factors affecting the speed, certainty and value of the Sale Proposal (including any remaining due diligence, regulatory approvals and other conditions required to close the Sale Proposal), including whether the Sale Proposal is

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reasonably likely to close on or before the target closing date indicated by the Prospective Bidder in its LOI.

17. Plan Sponsorship Proposal LOI Criteria. Promptly following the LOI Deadline, the Companies, in consultation with the Sale Advisor and the Monitor, will review and assess the LOIs and other materials submitted by Prospective Bidders in respect of a Plan Sponsorship Proposal, and in making such assessment will consider, among other things, the following (the “**Plan Sponsorship Proposal LOI Criteria**”):
- (a) the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors and shareholders of each of the applicable Companies, and the planned treatment of such persons under the Plan Sponsorship Proposal;
 - (b) the counterparties to the Plan Sponsorship Proposal;
 - (c) the cost, risks and timing associated with obtaining the approval of the requisite majority of creditors and approval of the Court in respect of the Plan; and
 - (d) other factors affecting the speed, certainty and value of the Plan Sponsorship Proposal (including any remaining due diligence, regulatory approvals and other conditions required to close the Plan Sponsorship Proposal), including whether the Plan Sponsorship Proposal is reasonably likely to close on or before the target closing date indicated by the Prospective Bidder in its LOI.

Identification of Qualified Phase I Bidders

18. Determination of Qualified Phase I Bidders. The Companies, in consultation with the Sale Advisor and the Monitor, shall apply the Sale Proposal LOI Criteria and the Plan Sponsorship Proposal LOI Criteria, as applicable, and consider each LOI and the other materials submitted by a Prospective Bidder pursuant to paragraph 12 and determine whether it will be in the best interests of the applicable Companies to permit the Prospective Bidder to continue to participate in the SISF based upon the terms set out in the applicable LOI (any such Prospective Bidder, a “**Qualified Phase I Bidder**”). The determination by the applicable Companies as to whether a Prospective Bidder is a Qualified Phase I Bidder will be made as promptly as practicable after such Prospective

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Bidder has satisfied the requirements described in paragraph 12 (subject to any waiver thereof under paragraph 15), and any clarification that may be sought by the applicable Companies pursuant to paragraph 15. For greater certainty, an LOI may be in respect of only a part or parts of the Property or Businesses.

19. Notification of Qualified Phase I Bidders. If it is determined by the applicable Companies, in consultation with the Sale Advisor and the Monitor, that a Prospective Bidder is a Qualified Phase I Bidder, the Sale Advisor will promptly notify the Prospective Bidder of such determination, and such Qualified Phase I Bidder will thereafter be provided an opportunity to complete due diligence and submit a binding offer in respect of such Sale Proposal or Plan Sponsorship Proposal. No LOIs will be considered pursuant to the SISP after the LOI Deadline. Prospective Bidders not identified as Qualified Phase I Bidders by the applicable Companies will no longer be able to participate in the SISP or continue to have access to any confidential information in connection therewith.

20. Advice and Directions if no Suitable LOI. If at any point before or after the LOI Deadline any of the ~~CCAA Parties~~ Companies determine, in consultation with the Sale Advisor and the Monitor, that there are or will be no Qualified Phase I Bidders with respect to a particular Business, or that it will not be in the best interests of all or any ~~CCAA Parties~~ Companies to continue with the SISP with respect to all or any of the Businesses, the applicable ~~CCAA Parties~~ Companies shall as soon as reasonably practicable file a motion with the Court on notice to the Service List for advice and directions with respect to the modification, suspension or termination of the SISP in respect of such Business or Businesses. ~~A Non-CCAA Party may terminate its participation in the SISP at any time.~~

21. Stalking Horse. Notwithstanding the process and deadlines outlined above with respect to LOIs, the Companies, in consultation with the Sale Advisor and the Monitor, may at any time prior to the applicable Bid Deadline bring a motion to seek approval of a stalking horse purchase agreement in respect of some or all of the Property and related amendments to the SISP, including with respect to an extension to the applicable Bid Deadline. If any stalking horse purchase agreement is approved by the Court, the Company or the Sale Advisor will provide written notice of same, including any related amendments to the SISP, to all Qualified Phase I Bidders and such information will be

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posted on the Monitor's Website.

Submissions of Binding Qualified Bids

22. **Bid Deadline.** All binding offers for a Sale Proposal or Plan Sponsorship Proposal must be submitted in writing by a Qualified Phase I Bidder to the Sale Advisor, with a copy to the Monitor (in each case, at the address set out in the Process Letter) by the date or dates (the "**Bid Deadline**") which will be determined by the applicable Companies, in consultation with the Sale Advisor and the Monitor, or as may be fixed by the Court, in respect of the Businesses. Once determined or fixed by the Court, as applicable, the Company or the Sale Advisor will provide written notice of the Bid Deadline(s) to all Qualified Phase I Bidders and notice of the Bid Deadline(s) will be posted on the Monitor's Website.

Requirements for Qualified Bid

23. **Requirements for Qualified Bids (Sale Proposal).** A Sale Proposal will be considered a "**Qualified Bid**" only if (i) it is submitted by a Qualified Phase I Bidder on or before the applicable Bid Deadline, and (ii) the Sale Proposal complies with the following requirements:
- (a) it fully discloses the identity of each person or entity that will be sponsoring or participating in the Sale Proposal, including the identification of the Qualified Phase I Bidder's direct and indirect owners and their principals, and the complete terms of such participation;
 - (b) it contains evidence of authorization and approval from the Qualified Phase I Bidder's board of directors, investment committee, credit committee or comparable governing body, as applicable, with respect to the submission, execution, delivery and closing of the transaction contemplated by the Sale Proposal;
 - (c) it includes a letter confirming that the Sale Proposal is a binding offer capable of acceptance by the applicable Companies, irrevocable and open for acceptance until at least 11:59 p.m. Montréal Time on the Business Day after

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the closing of a Successful Bid relating to the same Property and/or Businesses that is/are subject to the Sale Proposal;

- (d) it includes (A) a duly authorized and executed purchase agreement based on the Form of APA; (B) all exhibits and schedules thereto, including a detailed description of the Property to be included and excluded from the proposed transaction and an allocation of the purchase price among the applicable Property, and such ancillary agreements as may be required by the Qualified Phase I Bidder with all exhibits and schedules thereto; and (C) a mark-up of the Form of APA showing all amendments and modifications made thereto;
- (e) it includes a cash deposit in an amount equal to five percent (5%) of the cash purchase price contemplated therein, payable by wire transfer of immediately available funds (to a bank account specified by the Monitor) payable to the order of the Monitor, in trust, which will be dealt with in accordance with paragraphs 40 to 43, or such other form of deposit or amount as is acceptable to the applicable Companies and the Monitor (each, a “**Deposit**”);
- (f) it includes an acknowledgement and representation that the Qualified Phase I Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid, including the applicable Property; (ii) has not relied upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the applicable Property or any liabilities to be assumed or the completeness of any information provided in connection therewith, including but not limited, to (A) the enforceability, validity or status of any of the applicable Property, and (B) the nature and condition (environmental, financial and otherwise) of the applicable Property, Companies or Businesses; and (iii) is a knowledgeable, experienced and sophisticated purchaser with respect to the applicable Property and Businesses, has been provided the opportunity to conduct any and all due diligence it deemed appropriate and is relying on its own due diligence and expertise and that of its own consultants, accountants, and legal and tax advisors in making

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its Qualified Bid;

- (g) it includes either written evidence of a firm, irrevocable commitment for all required funding and/or financing from a credit worthy bank or financial institution, or other evidence of financial ability to close the transaction, that will allow the applicable Companies to make a reasonable determination as to the Qualified Phase I Bidder's (and its direct and indirect owners') financial and other capabilities to consummate the transaction contemplated by the Sale Proposal; if the Qualified Phase I Bidder is an entity newly formed for the purpose of the transaction, or if the Qualified Phase I Bidder intends to complete the sale transaction through a special purpose vehicle, (A) the direct and indirect equity holders or sponsors of such newly formed entity or special purpose vehicle must guarantee the special purpose vehicle's obligations under all definitive transaction documents, and (B) the Sale Proposal shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the applicable Companies and names the applicable Companies as third party beneficiaries of any such commitment letter with recourse against such parent entity or sponsor;
- (h) it shall not be conditional upon, among other things:
 - (i) the outcome of unperformed due diligence by the Qualified Phase I Bidder;
 - (ii) obtaining any financing; or
 - (iii) approval of the Qualified Bid by the Qualified Phase I Bidder's board of directors, investment committee, credit committee or comparable governing body, as applicable;
- (i) it includes the anticipated time frame and any anticipated impediments for obtaining any regulatory or other approvals indicated in the executed purchase agreement as conditions to closing;

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- (j) it provides a timeline to closing with critical milestones and provides for a closing of the proposed transaction by no later than the applicable Target Closing Date;
- (k) it does not request or entitle the Qualified Phase I Bidder to any break-fee, termination fee, expense reimbursement or other type of compensation or payment; and
- (l) it contains such other information reasonably requested by any Company.

24. Requirements for Qualified Bids (Plan Sponsorship Proposal). A Plan Sponsorship Proposal will be considered a “**Qualified Bid**” only if (i) it is submitted by a Qualified Phase I Bidder on or before the applicable Bid Deadline, and (ii) the Plan Sponsorship Proposal complies with the following requirements:

- (a) it fully discloses the identity of each person or entity that will be sponsoring or participating in the Qualified Bid, including the identification of the Qualified Phase I Bidder's direct and indirect owners and their principals, and the complete terms of such participation;
- (b) it contains evidence of authorization and approval from the Qualified Phase I Bidder's board of directors, investment committee, credit committee or comparable governing body, as applicable, with respect to the submission, execution, delivery and closing of the transaction contemplated by the Plan Sponsorship Proposal;
- (c) it includes a letter confirming that the Plan Sponsorship Proposal is a binding offer capable of acceptance by the applicable Companies, irrevocable and open for acceptance until at least 11:59 p.m. Montréal Time on the Business Day after the closing of a Successful Bid relating to the same Property and/or Businesses that is/are subject to the Plan Sponsorship Proposal;
- (d) it includes a reasonably detailed description of the manner in which the investment is to be made, including the allocation of such investment between the applicable Companies or Businesses;

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- (e) it includes (A) a duly authorized and executed investment agreement based on the Form of PSA (if one has been provided by the applicable Companies); (B) all exhibits and schedules thereto, and such ancillary agreements as may be required by the Qualified Phase I Bidder with all exhibits and schedules thereto; and (C) a mark-up of the Form of PSA (if one has been provided by the applicable Companies) showing all amendments and modifications made thereto;
- (f) it includes a cash deposit in an amount equal to five percent (5%) of the amount of consideration to be available for distribution to creditors of the applicable Companies under the Plan Sponsorship Proposal, payable by wire transfer of immediately available funds (to a bank account specified by the Monitor) payable to the order of the Monitor, in trust, which will be dealt with in accordance with paragraphs 40 to 43, or such other form of deposit or amount acceptable to the applicable Companies and the Monitor (each, a “**Deposit**”);
- (g) it includes an acknowledgement and representation that the Qualified Phase I Bidder: (i) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets to be acquired and liabilities to be assumed in making its bid, including the applicable Property; (ii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the applicable Property or any liabilities to be assumed or the completeness of any information provided in connection therewith, including but not limited, to (A) the enforceability, validity or status of any of the applicable Property, and (B) the nature and condition (environmental, financial and otherwise) of the applicable Property, Companies and Businesses; and (iii) is a knowledgeable, experienced and sophisticated investor with respect to the applicable Property and Businesses, has been provided the opportunity to conduct any and all due diligence it deemed appropriate and is relying on its own due diligence and expertise and that of its own consultants, accountants, and legal and tax advisors in making its Qualified Bid;

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- (h) it includes either written evidence of a firm, irrevocable commitment for all required funding and/or financing from a credit worthy bank or financial institution, or other evidence of financial ability to close the investment transaction, that will allow the applicable Companies to make a reasonable determination as to the Qualified Phase I Bidder's (and its direct and indirect owners and their principals, as applicable) financial and other capabilities to consummate the transaction contemplated by the Plan Sponsorship Proposal;
- (i) if the Qualified Phase I Bidder is an entity newly formed for the purpose of the investment transaction, or if the Qualified Phase I Bidder intends to complete the investment transaction through a special purpose vehicle, (A) the direct and indirect equity holders or sponsors of such newly formed entity or special purpose vehicle must guarantee the special purpose vehicle's obligations under all definitive transaction documents, and (B) the Plan Sponsorship Proposal shall contain an equity or debt commitment letter from the parent entity or sponsor, which is satisfactory to the applicable Companies and that names the applicable Companies as third party beneficiaries of any such commitment letter with recourse against such parent entity or sponsor;
- (j) it shall not be conditional upon, among other things:
 - (i) the outcome of unperformed due diligence by the Qualified Phase I Bidder;
 - (ii) obtaining any financing; or
 - (iii) approval of the Qualified Bid by the Qualified Phase I Bidder's board of directors, investment committee, credit committee or comparable governing body, as applicable;
- (k) it includes the anticipated time frame and any anticipated impediments for obtaining any regulatory or other approvals;
- (l) it provides a timeline to closing with critical milestones and provides for a closing of the proposed transaction by no later than the applicable Target Closing Date;

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- (m) it does not request or entitle the Qualified Phase I Bidder to any break-fee, termination fee, expense reimbursement or other type of compensation or payment; and
 - (n) it contains such other information reasonably requested by any Company.
25. Qualified Portion Bids. For greater certainty, Sale Proposals and Plan Sponsorship Proposals may be in respect of only a part or parts of the Property or Businesses and such proposal shall constitute a “**Qualified Portion Bid**” if it satisfies the requirements in paragraph 23 or 24 hereof, as applicable, in respect of the Property or Business subject to such proposal, and in such case, such bidder shall constitute a “**Qualified Portion Bidder**”. Each Qualified Portion Bid shall be deemed to be a Qualified Bid, and each Qualified Portion Bidder shall be deemed to be a Qualified Bidder, for all purposes of the SISP.

Assessment of Qualified Bids

26. Review of Qualified Bids (Sale Proposal). Promptly following the Bid Deadline, the Companies, in consultation with the Sale Advisor and Monitor, will review and assess the Qualified Bids in respect of a Sale Proposal, and in making such assessment will consider, among other things, the following (the “**Sale Proposal Bid Criteria**”):
- (a) the purchase price and net value (including all assumed liabilities and other obligations to be performed by the Qualified Phase I Bidder) provided by such Qualified Bid and the proposed allocation of the purchase price among the applicable Property;
 - (b) the firm, irrevocable commitment for financing the transaction or other evidence of ability to consummate the Sale Proposal;
 - (c) the claims, if any, likely to be created against the applicable Companies by the transaction contemplated by the Sale Proposal, relative to alternatives available to such Companies;
 - (d) the nature and amount of debt and other liabilities to be assumed or acquired by the Qualified Phase I Bidder;

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- (e) the counterparties to the Sale Transaction including the applicable Companies;
- (f) the proposed revisions to the Form of APA and the terms of the proposed sale transaction documents;
- (g) the assets included in or excluded from the Sale Proposal and the transaction costs and risks associated with closing multiple transactions versus a single sale transaction for all or substantially all of the applicable Companies' Property or Businesses;
- (h) any transition services required from the applicable Companies post-closing and any related restructuring costs;
- (i) the planned treatment of stakeholders, including lenders, trade creditors and shareholders; and
- (j) other factors affecting the speed, certainty and value of the Sale Proposal (including any regulatory approvals and other conditions required to close the Sale Proposal by the applicable Target Closing Date), including the likelihood of closing the Sale Proposal on or before the applicable Target Closing Date.

27. Review of Qualified Bids (Plan Sponsorship Proposal). Promptly following the Bid Deadline, the Companies, in consultation with the Sale Advisor and the Monitor, will review and assess the Qualified Bids in respect of a Plan Sponsorship Proposal, and in making such assessment will consider, among other things, the following (the "**Plan Sponsorship Proposal Bid Criteria**"):

- (a) the type and amount of consideration, including equity, if any, to be allocated to secured creditors, unsecured creditors and shareholders of each of the applicable Companies and the planned treatment of such persons under the proposed Plan Sponsorship Proposal;
- (b) the firm, irrevocable commitment for financing the investment or other evidence of ability to consummate the Plan Sponsorship Proposal;
- (c) the counterparties to the proposed Plan Sponsorship Proposal;

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- (d) the proposed revisions to the Form of PSA, if applicable, and the terms of the proposed investment transaction documents;
- (e) the cost, risks and timing associated with obtaining the approval of the requisite majority of creditors and approval of the Court in respect of the Plan; and
- (f) other factors affecting the speed, certainty and value of the Plan Sponsorship Proposal (including any regulatory approvals and other conditions required to close the Plan Sponsorship Proposal, including whether the Plan Sponsorship Proposal is reasonably likely to close on or before the applicable Target Closing Date.

28. Clarifications, Extensions and Waivers of Qualified Bids. For greater certainty, the Companies shall be entitled either prior to or following the applicable Bid Deadline, to seek to clarify the terms of a Qualified Bid and the applicable Companies, in consultation with the Monitor, may accept a revised, clarified Qualified Bid, provided that the initial Qualified Bid was received prior to the applicable Bid Deadline. The ~~CCAA Parties~~ Companies may grant extensions to the Bid Deadline with respect to any Business upon consultation with the Monitor, and the ~~CCAA Parties~~ Companies shall comply with any other extensions of the Bid Deadline as may be ordered by the Court. The ~~CCAA Parties~~ Companies, in consultation with the Sale Advisor and Monitor, may waive compliance with any one or more of the requirements specified in paragraphs 23 or 24, as applicable, and deem any non-compliant bid to be a Qualified Bid.
29. Identification of Suitable Qualified Bids. The Companies, in consultation with the Sale Advisor and Monitor shall apply the Sale Proposal Bid Criteria and Plan Sponsorship Proposal Bid Criteria, as applicable, and consider each Qualified Bid upon its submission and determine whether it will be in the best interests of the applicable Companies to pursue a transaction on the terms set out in the applicable Qualified Bid. This determination by the applicable Companies will be made as promptly as practicable after the applicable Bid Deadline, and any clarification that may be sought by the applicable Companies pursuant to paragraph 28.
30. Advice and Directions if no Suitable Qualified Bids. If at any point before or after the applicable Bid Deadline any of the ~~CCAA Parties~~ Companies determine, in consultation

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with the Sale Advisor and the Monitor, that there are or will be no Qualified Bids with respect to a particular Business, or that it is appropriate to reject all Qualified Bids received because none are in the best interests of the applicable ~~CCAA Parties~~ Companies, or that it will not be in the best interests of all or any ~~CCAA Parties~~ Companies to continue with the SISP with respect to any of the Businesses, the applicable ~~CCAA Parties~~ Companies shall as soon as reasonably practicable file a motion with the Court on notice to the Service List to seek advice and directions with respect to the modification, suspension or termination of the SISP. ~~A Non-CCAA Party may terminate its participation in the SISP at any time.~~

31. Next Steps if only one Suitable Qualified Bid. If, after consultation with the Sale Advisor and Monitor, the applicable Companies determine that only one Qualified Bid was received with respect to a Business that is in the best interests of the applicable Companies (or only one combination of non-overlapping Qualified Portion Bids was received that is in the best interests of the applicable Companies), the applicable Companies may choose to accept such Qualified Bid (in which case, such Qualified Bid shall be a “**Successful Bid**” and the Qualified Phase I Bidder making the Successful Bid shall be a “**Successful Bidder**”) and take such steps as are necessary to finalize and complete an agreement for the Successful Bid with the Successful Bidder. For greater certainty, the applicable Companies may accept a combination of non-overlapping Qualified Portion Bids (collectively, an “**Aggregated Bid**”) to create one “Successful Bid” and in such case, the applicable Qualified Portion Bidders will become “Successful Bidders”.
32. Next Steps if more than one Suitable Qualified Bid. If, after consultation with the Sale Advisor and Monitor, the applicable Companies determine that more than one Qualified Bid (and/or more than one Aggregated Bid) was received with respect to one or more Businesses or a part thereof that is in the best interests of the applicable Companies, then the applicable Companies shall conduct one or more auctions (the “**Auction**” or, if more than one, the “**Auctions**”) relating to one or more of the Businesses or any part thereof, as the Companies, in consultation with the Sale Advisor and the Monitor, consider appropriate, to determine the highest and/or best Sale Proposal or Plan Sponsorship Proposal or Aggregated Bid for one or more of the Businesses or any part thereof. In the event that an Auction or Auctions will be held, all Qualified Phase I Bidders (including

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Qualified Portion Bidders) who submitted a Qualified Bid that the applicable Companies determine, in consultation with the Sale Advisor and the Monitor, entitles such Qualified Phase I Bidder to participate in the Auction (each, an “**Auction Bidder**”) will be promptly advised by the Sale Advisor of such determination. A Qualified Phase I Bidder not identified as an Auction Bidder will no longer be able to participate in the SISP or any Auction.

33. Discretion of the Companies. The Companies, upon consultation with the Sale Advisor and Monitor, may at any time (including prior to or during an Auction), (a) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the CCAA, the SISP or any orders of the Court applicable to the ~~CCAA Parties~~ Companies, or (iii) contrary to the best interests of the applicable Companies; (b) in accordance with the terms hereof, accept bids not in conformity with the SISP to the extent that the applicable Companies determine, in their reasonable business judgment after consultation with the Sale Advisor and Monitor, that doing so would benefit the applicable Companies; (c) in accordance with the terms hereof, extend the LOI Deadline and/or Bid Deadlines, and/or change the date of an Auction; and/or (d) reject all bids. For greater certainty, the Companies shall be under no obligation to accept the highest or best offer and the selection of the Successful Bid shall be entirely in the discretion of the Companies after consultation with the Sale Advisor and Monitor.

Auction

34. Place and Time. If the Auction or Auctions are to be conducted pursuant to paragraph 32, the Auction or Auctions with respect to one or more Businesses or any part thereof shall commence on a date and time to be determined by the applicable Companies, in consultation with the Sale Advisor and the Monitor, or as fixed by the Court. All Auctions shall be conducted at the offices of Blake, Cassels & Graydon LLP located at 600 de Maisonneuve Boulevard West, Suite 200, Montreal, Québec, Canada or such other location(s) as the applicable Companies may determine. Notice of the place, date and time of the Auction(s) will be delivered to all Auction Bidders by the Sale Advisor not less than three (3) Business Days before the date of the Auction.

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35. Procedures for the Auction. If there is an Auction or Auctions, each Auction shall be conducted according to the following procedures:
- (a) Notice of Participation. At least one (1) Business Day prior to the Auction, each Auction Bidder who has been notified by the Sale Advisor or the Companies that it has qualified as an Auction Bidder must inform the Companies whether it intends to attend the Auction; provided that in the event an Auction Bidder elects not to attend the Auction, such Auction Bidder's Qualified Bid shall remain binding, irrevocable and open for acceptance until at least 11:59 p.m. Montréal Time on the Business Day after the closing of a Successful Bid relating to the same Property and/or Businesses that is/are subject to such Auction Bidder's bid;
 - (b) Participation at the Auction. The applicable Companies and their advisors (including the Sale Advisor), in consultation with the Monitor, shall direct and preside over the Auction or Auctions, as applicable. Only Auction Bidders are eligible to participate in an Auction, and then only in the Auction in respect of the Business or Businesses or any part thereof that is subject to their Qualified Bid or Overbid, as applicable. Only the authorized representatives (including legal counsel and other advisors) of each of the Auction Bidders, the applicable Companies, the Sale Advisor and the Monitor shall be permitted to attend an Auction.
 - (c) Anti-Collusion. Each Auction Bidder shall be required to confirm that it has not engaged, and will not engage, in any collusion with respect to the bidding or any Sale Proposal or Plan Sponsorship Proposal, and if such Auction Bidder is a special purpose vehicle, each of the direct or indirect equity holders of such Auction Bidder shall be required to confirm that it has not engaged, and will not engage, in any collusion with respect to the bidding or any Sale Proposal or Plan Sponsorship Proposal, such confirmation, in each case, in form and substance satisfactory to the Companies in their sole discretion.
 - (d) Rounds. Bidding at an Auction shall be conducted in rounds. In each round, an Auction Bidder may submit no more than one Overbid. If at the end of any

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round of bidding, an Auction Bidder (other than the Auction Bidder who submitted the Opening Bid for such round and any Qualified Portion Bidder who is an Auction Bidder) did not submit an Overbid, then such Auction Bidder shall be barred from participating in any further round of bidding at the Auction. Any Auction Bidder who submits an Overbid in a round, as well as the Auction Bidder who submitted the Opening Bid for such round and any Qualified Portion Bidder who is an Auction Bidder, shall be entitled to participate in the next round of bidding at the Auction.

- (e) Determination of Opening Bids. The applicable Companies, in consultation with the Sale Advisor and Monitor, shall apply the Sale Proposal Bid Criteria and Plan Sponsorship Proposal Bid Criteria, as applicable, to determine which Qualified Bid is the highest and/or best bid received by the applicable Bid Deadline, which shall constitute the “**Opening Bid**” for the first round of an Auction. The applicable Companies shall follow the same process to determine the highest and/or best Overbid submitted in each round of an Auction, which shall constitute the “**Opening Bid**” for the following round. For greater certainty, an Aggregated Bid may be determined to be the “Opening Bid” for any round. As soon as practicable prior to the start of the Auction, the applicable Companies shall distribute a copy of the Opening Bid for the first round to all Auction Bidders eligible to participate in the applicable Auction.
- (f) Overbids. All bids made at an Auction shall be Overbids and shall be made and received on an open, non-confidential basis and the identity of each Auction Bidder and all material terms of each Overbid shall be fully disclosed to all other Auction Bidders participating in the applicable round of the applicable Auction. The Sale Advisor shall maintain a transcript of the Opening Bids and all Overbids made and announced at an Auction.
- (g) Requirements for Overbids. A Sale Proposal or Plan Sponsorship Proposal submitted at an Auction will be considered an “**Overbid**” only if it complies with the following requirements:

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- (i) *Minimum Consideration.* Subject to paragraph 35(l) below in respect of Qualified Portion Bids, the amount of the purchase price (in the case of a Sale Proposal), or the amount of the consideration to be allocated to secured creditors, unsecured creditors and shareholders of the applicable Companies (in the case of a Plan Sponsorship Proposal) shall not be less than the purchase price or consideration of the Opening Bid of the applicable round of such Auction, plus an amount (the “**Minimum Overbid Increment**”) to be set by the applicable Companies, in consultation with the Sale Advisor and Monitor; and
- (ii) *Qualified Bid Criteria.* Except as modified herein, an Overbid shall comply with all requirements for a Qualified Bid as set forth in paragraph 23 in the case of Sale Proposals, or paragraph 24 in the case of Plan Sponsorship Proposals, (in each case including in respect of its binding and irrevocable nature, and being open for acceptance until at least 11:59 p.m. Montréal Time on the Business Day after the closing of a Successful Bid relating to the same Property and/or Businesses); provided, however, that the Bid Deadline shall not apply and Overbids need not be accompanied by additional cash deposits during the Auction.
- (h) Determination and Announcing Highest Overbids. At the end of each round of bidding, the applicable Companies, in consultation with the Sale Advisor and Monitor, shall (i) review each Overbid made in such round, (ii) identify the highest and/or best such Overbid in accordance with paragraph 35(e), and (iii) announce to all Auction Bidders entitled to participate in the next round of bidding the terms of the highest and/or best Overbid and the identity of the Auction Bidder who submitted such Overbid. Such highest and/or best Overbid shall be the Opening Bid for the next round of such Auction.
- (i) Adjournments. The Companies reserve the right, in their reasonable business judgment, and after consultation with the Sale Advisor and Monitor, to make one or more adjournments in an Auction to, among other things: (i) facilitate discussions between the applicable Companies and individual Auction Bidders; (ii) allow individual Auction Bidders to consider how they wish to proceed;

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(iii) consider and determine the current highest and/or best Overbid at any given time during the Auction; and (iv) give Auction Bidders the opportunity to provide the applicable Companies with such additional evidence as they may require, in their reasonable business judgment and in consultation with the Sale Advisor and Monitor, to show that the Auction Bidder's bid complies with the requirements of an Overbid (including in respect of the required internal corporate or credit committee approvals and evidence of sufficient funding commitments or other financial capability to consummate the proposed transaction).

- (j) Closing the Auction. If, in any round of bidding, no new Overbid is made, such Auction shall be closed and the applicable Companies shall, in consultation with the Sale Advisor and Monitor, declare the last Opening Bid as a "**Successful Bid**" and the Auction Bidder submitting such Successful Bid a "**Successful Bidder**" and advise such Successful Bidder of such determination and all other applicable Auction Bidders that they are not a Successful Bidder. For greater certainty, the selection of a Successful Bid and a Successful Bidder shall not be deemed a rejection of any other Overbid or Qualified Bid and each Overbid and Qualified Bid shall remain binding, irrevocable and open for acceptance until at least 11:59 p.m. Montréal Time on the Business Day after the closing of a Successful Bid relating to the same Property and/or Businesses.
- (k) Successful Bidder's Deposit. To the extent not already provided, the Successful Bidder shall, within two (2) Business Days of the conclusion of the Auction, provide the Monitor with an additional Deposit to increase its original Deposit to equal five percent (5%) of the total cash purchase price or investment contemplated by the Successful Bid.
- (l) Portion Bids. Each Qualified Portion Bidder that is an Auction Bidder shall be entitled to submit Overbids at the applicable Auction (in a minimum increment to be determined by the Companies) with respect to the portion of the Property or Businesses it is bidding on, and is not individually subject to the full Minimum Overbid Increment; provided that one or more Qualified Portion

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Bids forming an Aggregated Bid in any round of the Auction shall collectively be subject to the full Minimum Overbid Increment. For greater certainty, the Companies may accept an Aggregated Bid as a "Successful Bid" and in such case, the applicable Auction Bidders will become "Successful Bidders".

- (m) Clarifications of Overbids and Waivers. For greater certainty, the Companies shall be entitled during an Auction, to discuss and clarify the terms of all Overbids and accept a revised, clarified Overbid, provided it is submitted before the end of the applicable round of bidding. The Companies, in consultation with the Sale Advisor and Monitor, may waive compliance with any one or more of the requirements specified in paragraph 35(g), and deem any non-compliant Overbid to be a qualifying Overbid.
- (n) Additional Procedures. The Companies may, with the assistance of their advisors (including the Sale Advisor) and in consultation with the Monitor, adopt rules for the Auction at or prior to the Auction that will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the SISP or the SISP Approval Order; provided that no such rules may change the requirement that all Overbids shall be made and received on an open, non-confidential basis, and all Auction Bidders entitled to participate in a further round of bidding shall be entitled to be present for all such bidding.

Approval Motion

36. Application to Court. After a definitive agreement(s) in respect of a Successful Bid has been finalized in accordance with the SISP, if such Successful Bid relates to the Property or Business of one or more ~~CCAA Parties~~Companies, the ~~CCAA Parties~~Companies shall apply to the Court as soon as reasonably practicable for an order approving such Successful Bid and authorizing the ~~CCAA Parties~~Companies to enter into any and all necessary agreements with respect to such Successful Bid and to undertake such other actions as may be necessary or appropriate to give effect to such Successful Bid, including for the approval of any Plan(s) pursuant to the CCAA, as applicable (an "Approval Motion").

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37. Scheduling of Approval Motion. An Approval Motion will be held on a date to be scheduled by the Court and to be heard as soon as possible. The ~~CCAA-Parties~~Companies reserve their right, as may be necessary or appropriate, to seek to proceed on an expedited basis and abridge the ten (10) day notice period provided for in the Bloom Lake Initial Order and the Wabush Initial Order. An Approval Motion may be adjourned or rescheduled by the ~~CCAA-Parties~~Companies by an announcement of the adjourned date at an Approval Motion or by notice to the Service List and no further notice shall be required.
38. Deemed Rejection. All Qualified Bids and Overbids (other than the Successful Bid(s)) will be deemed rejected at 11:59 p.m. Montréal Time on the Business Day after the closing of a Successful Bid relating to the same Property and/or Businesses.
39. Statutory Approvals. For the avoidance of doubt, the approvals required pursuant to the terms hereof are in addition to, and not in substitution for, any other approvals required by the CCAA or any other statute or as otherwise required at law in order to implement a Successful Bid.

Treatment of Deposit

40. Investment of Deposit. All Deposits will be invested by the Monitor in an interest bearing trust account.
41. Application of Deposit. If there is a Successful Bid, the Deposit (plus accrued interest) paid by a Successful Bidder whose bid is approved by the Court in respect of the ~~CCAA-Parties~~Companies or is approved by the applicable Companies that are not ~~CCAA-Parties~~Companies, will be released by the Monitor to the applicable Companies and applied to the purchase price to be paid, or investment to be made, by such Successful Bidder upon closing of the approved transaction or as otherwise set out in the definitive agreement.
42. Return of Deposits. The Deposits (plus applicable interest) of Qualified Phase I Bidders not selected as a Successful Bidder with respect to a particular Business, or not otherwise required by the Companies to complete the transaction contemplated by their Qualified Bid or Overbid, will be returned to such Qualified Phase I Bidders within ten (10)

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Business Days of the date of closing of the Successful Bid. If there is no Successful Bid with respect to a Business, subject to the following paragraph 43, all Deposits (plus applicable interest) with respect to such Business will be returned to all Qualified Phase I Bidders with respect to that Business, within ten (10) Business Days of the date on which the SISP with respect to that Business is terminated in accordance with the SISP.

43. Forfeit of Deposit. If (i) a Successful Bidder breaches any of its obligations under the terms of the SISP or any definitive transaction documentation, or (ii) a Qualified Phase I Bidder fails to complete the transaction contemplated by its Qualified Bid or Overbid if required by any of the Companies to complete such transaction, then, in each case, such bidder's Deposit will be forfeited to the applicable Companies as liquidated damages and not as a penalty. The ~~CCAA Parties~~Companies shall apply and use their share of any forfeited Deposit in a manner agreed upon by the ~~CCAA Parties~~Companies and the Monitor.

Reservation of Rights and Conduct of the SISP

44. No Binding Agreement. The SISP does not, and will not be interpreted to, create any contractual or other legal relationship between any of the Companies and any bidder, other than as specifically set forth in a definitive agreement that any such bidder may enter into with the applicable Companies.
45. Extension of Time Limits. The Companies may from time to time extend any of the time limits set out in the SISP, as the Companies determine appropriate, after consultation with the Monitor.

No Amendment

46. Amendments to SISP. There will be no amendments to the SISP without the approval of the Court on notice to the Service List, subject to such non-material amendments as may be agreed to by the Companies, including the ~~CCAA Parties~~Companies, and the Monitor.
47. Advice and Directions Generally. The ~~CCAA Parties~~Companies and the Monitor may seek advice and directions from the Court on notice to the Service List with respect to the conduct or any aspect of the SISP.

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48. Consent to Jurisdiction of the Court. Each Qualified Phase I Bidder, upon being declared as such under the SISF, shall be deemed to have irrevocably and unconditionally attorned and submitted to the jurisdiction of the Court in respect of any action, proceeding or dispute in relation to the conduct or any aspect of the SISF.

APPENDIX "A"
DEFINED TERMS

The following capitalized terms shall have the following meanings when used in the SISP:

- (a) **"Aggregated Bid"** shall have the meaning given to it in paragraph 31;
- (b) **"Approval Motion"** shall have the meaning given to it in paragraph 36;
- (c) **"Auction"** and **"Auctions"** shall have the meaning given to it in paragraph 32;
- (d) **"Auction Bidder"** shall have the meaning given to it in paragraph 32;
- (e) **"Bid Deadline"** shall have the meaning given to it in paragraph 22;
- (f) **"Bloom Lake Business"** means the business relating to the Bloom Lake Mine located in Fermont, Québec, the related port assets located in Pointe-Noire, Québec and the rail assets located in Newfoundland & Labrador;
- (g) ["Bloom Lake CCAA Parties"](#) shall have the meaning given to it in Recital A
- (h) ["Bloom Lake Initial Order"](#) shall have the meaning given to it in Recital A;
- (i) ~~(g)~~ **"Business Day"** shall mean any day other than (i) a Saturday or Sunday, or (ii) a day which is a statutory holiday in Montréal, Québec;
- (j) ~~(h)~~ **"Businesses"** shall have the meaning given to it in Recital F and **"Business"** shall mean any one of them;
- (k) ~~(i)~~ **"CCAA"** shall have the meaning given to it in Recital A;
- ~~(j)~~ **"CCAA Parties"** shall have the meaning given to it in Recital B;
- (l) ~~(k)~~ **"CCAA Proceedings"** means the CCAA Parties' proceedings under the CCAA commenced by the Initial Order, under Court file no. 500-11-048114-157 [has the meaning given to it in Recital A;](#)

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- (m) ~~(+)~~ “**Chromite Business**” shall mean the property, assets and undertaking of the Companies related to the chromite mineral claims and “Ring of Fire” projects and the related business of the Companies and certain of their subsidiaries located in Ontario (including Cliffs Chromite Ontario Inc. and Cliffs Chromite Far North Inc.) and certain of their affiliates (including subsidiaries of Cliffs Netherlands B.V. and Cliffs Greene B.V.);
- (n) ~~(+)~~ “**Companies**” shall have the meaning given to it in Recital ~~EB~~ and each shall be a “**Company**”;
- (o) ~~(+)~~ “**Confidentiality Agreement**” shall have the meaning given to it in paragraph 5(c);
- (p) ~~(+)~~ “**Contact List**” shall have the meaning given to it in paragraph 10(a);
- (q) ~~(+)~~ “**Court**” shall have the meaning given to it in Recital A;
- (r) ~~(+)~~ “**Data Room**” shall have the meaning given to it in paragraph 5(d);
- (s) ~~(+)~~ “**Deposit**” shall have the meaning given to it in paragraph 23(e) or 24(f), as applicable;
- (t) ~~(+)~~ “**Form of APA**” means the form of asset purchase agreement to be provided to Qualified Phase I Bidders who submitted an LOI in respect of a Sale Proposal as part of the SISP;
- (u) ~~(+)~~ “**Form of PSA**” means the form of plan sponsorship agreement which may be provided to Qualified Phase I Bidders who submitted an LOI in respect of a Plan Sponsorship Proposal as part of the SISP;
- ~~(+)~~ “**Initial Order**” shall have the meaning given to it in Recital A;
- (v) “**LOI**” shall have the meaning given to it in paragraph 12(b);
- (w) “**LOI Deadline**” shall have the meaning given to it in paragraph 12;
- (x) “**Minimum Overbid Increment**” shall have the meaning given to it in paragraph 35(g)(i);

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- (y) “**Monitor**” shall have the meaning given to it in Recital C;
- (z) “**Monitor’s Website**” means the Monitor’s website for the CCAA Proceedings located at <http://cfcanada.fticonsulting.com/bloomlake>;
- ~~(aa) “**Non-CCAA Parties**” shall have the meaning given to it in Recital E;~~
- (aa) ~~(bb)~~ “**Opening Bid**” shall have the meaning given to it in paragraph 35(e);
- (bb) ~~(ee)~~ “**Overbid**” shall have the meaning given to it in paragraph 35(g);
- ~~(dd) “**Petitioners**” shall have the meaning given to it in Recital A;~~
- (cc) ~~(ee)~~ “**Plan**” shall have the meaning given to it in Recital ~~I~~J;
- (dd) ~~(ff)~~ “**Plan Sponsorship Proposal**” shall have the meaning given to it in paragraph 6;
- (ee) ~~(gg)~~ “**Plan Sponsorship Proposal Bid Criteria**” shall have the meaning given to it in paragraph 27;
- (ff) ~~(hh)~~ “**Plan Sponsorship Proposal LOI Criteria**” shall have the meaning given to it in paragraph 17;
- (gg) ~~(ii)~~ “**Port Business**” means the port facilities and related rail assets located in the Provinces of Newfoundland & Labrador and Québec owned by the Wabush Mines ~~Joint~~
~~Venture~~;
- (hh) ~~(jj)~~ “**Process Letter**” means a letter from the Sale Advisor to Prospective Bidders outlining, among other things, the SISP process and the SISP timelines and which sets out the contact information for the Sale Advisor and the Monitor for the submission of any LOIs and Qualified Bids;
- (ii) ~~(kk)~~ “**Property**” shall have the meaning given to it in Recital ~~E~~F;
- (jj) ~~(H)~~ “**Prospective Bidders**” shall have the meaning given to it in paragraph 10(a), and “**Prospective Bidder**” shall mean any one of them;

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- (kk) ~~(mm)~~ “**Qualified Bid**” shall have the meaning given to it in paragraph 23 or 24, as applicable, and “**Qualified Bids**” means more than one of them;
- (ll) ~~(nn)~~ “**Qualified Bidder**” shall mean a person who submits a Qualified Bid pursuant to the SISP, and for greater certainty, includes all Qualified Portion Bidders and “**Qualified Bidders**” means more than one of them;
- (mm) ~~(oo)~~ “**Qualified Phase I Bidder**” shall have the meaning given to it in paragraph 18, and “**Qualified Phase I Bidders**” means more than one of them;
- (nn) ~~(pp)~~ “**Qualified Portion Bid**” shall have the meaning given to it in paragraph 25, and “**Qualified Portion Bids**” means more than one of them;
- (oo) ~~(qq)~~ “**Qualified Portion Bidder**” shall have the meaning given to it in paragraph 25, and “**Qualified Portion Bidders**” shall mean more than one of them;
- (pp) ~~(rr)~~ “**Sale Advisor**” means Moelis & Company LLC, solely in its capacity as sale advisor to the Companies in connection with the SISP;
- (qq) ~~(ss)~~ “**Sale Proposal**” shall have the meaning given to it in paragraph 6;
- (rr) ~~(tt)~~ “**Sale Proposal Bid Criteria**” shall have the meaning given to it in paragraph 26;
- (ss) ~~(uu)~~ “**Sale Proposal LOI Criteria**” shall have the meaning given to it in paragraph 16;
- (tt) ~~(vv)~~ “**Service List**” means the service list in the CCAA Proceedings as posted on the Monitor's Website, as it may be updated from time to time;
- (uu) ~~(ww)~~ “**SISP Approval Order**” shall have the meaning given to it in Recital D;
- (vv) ~~(xx)~~ “**SISP**” shall have the meaning given to it in Recital D;
- (ww) ~~(yy)~~ “**Successful Bid**” shall have the meaning given to it in paragraph 31 or 35(j), as applicable;

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(xx) ~~(zz)~~ “**Successful Bidder**” shall have the meaning given to it in paragraph 31 or 35(j), as applicable;

(yy) ~~(aaa)~~ “**Summary of Businesses**” means a summary of the Businesses prepared by the Companies;

(zz) ~~(bbb)~~ “**Target Closing Date**” shall mean the date or dates determined by the Companies, in consultation with the Sale Advisor and the Monitor, and such later date or dates as the Companies, in consultation with the Sale Advisor and the Monitor, may determine from time to time;

(aaa) ~~(eee)~~ “**Teaser Letter**” shall have the meaning given to it in paragraph 10(d);

(bbb) “**Wabush Initial Order**” shall have the meaning given to it in Recital B;

(ccc) ~~(ddd)~~ “**Wabush Mine Business**” means the business relating to the Wabush Mine located in the Province of Newfoundland & Labrador owned by the Wabush Mines ~~Joint Venture~~; and

(ddd) ~~(eee)~~ “**Wabush Mines Joint Venture**” means the unincorporated joint venture of Wabush Iron Co. Limited and Wabush Resources Inc.

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Moved to	6
Style change	0
Format changed	0
Total changes	168

Attestation

ATTESTATION

We undersigned, Philion Leblanc Beaudry Avocats s.a., Department of Justice Canada, Québec Regional Office, Koskie Minsky LLP, Fishman Flanz Meland Paquin, IMK LLP, Norton Rose Fulbright Canada LLP, Stein Monast LLP, do hereby attest that the above Joint Schedules of the Parties in Support of the Proceedings in Appeal does comply with the requirements of the *Civil Practice Regulation of the Court of Appeal*.

Montréal, January 19, 2018

**Philion Leblanc Beaudry Avocats s.a.
(M^e Daniel Boudreault)
Lawyer for
Syndicat des Métallos, Sections locales
6254 & 6285**

Montréal, January 19, 2018

**Department of Justice Canada
Québec Regional Office
(M^e Pierre Lecavalier)
(M^e Michelle Kellam)
Lawyer for
The Attorney General of Canada, acting
behalf of the Office of the Superintendent
of Financial Institutions**

Attestation

Montréal, January 19, 2018

**Koskie Minsky LLP
(M^e Andrew J. Hatnay)
(M^e Amy Tang)
Lawyers for
Michael Keeper, Terence Watt, Damien
Lebel and Neil Johnson, as Representatives
of the Salaried / Non-Union Employees &
Retirees**

Montréal, January 19, 2018

**Fishman Flanz Meland Paquin
(M^e Mark E. Meland)
(M^e Nicolas Brochu)
Lawyers for
Michael Keeper, Terence Watt, Damien
Lebel and Neil Johnson, as Representatives
of the Salaried / Non-Union Employees &
Retirees**

Montréal, January 19, 2018

**IMK LLP
(M^e Douglas C. Mitchell)
(M^e Edward Béchar-Torres)
Lawyers for
Her Majesty in Right of Newfoundland and
Labrador, as represented by the
Superintendent of Pensions**

Attestation

Montréal, January 19, 2018

**Norton Rose Fulbright Canada LLP
(M^e Sylvain Rigaud)
(M^e Chrystal Ashby)
Lawyers for
FTI Consulting Canada Inc., in its capacity
as Court-appointed Monitor to Bloom Lake
General Partner Limited *et al***

Montréal, January 19, 2018

**Stein Monast LLP
(M^e Martin Roy)
Lawyer for
Ville de Sept-Îles**