CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

S.C.: 500-11-048114-157

C.A.: 500-09-

COURT OF APPEAL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

Appellants

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

Debtors

and

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

Mises-en-cause

and

SYNDICAT DES METALLOS SECTIONS LOCALES 6254 ET 6285, MORNEAU SHEPELL LTD. , in its capacity as Replacement Pension Plan Administrator, RETRAITE QUEBEC, THE ATTORNEY GENERAL OF CANADA, acting on behalf of the OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented by the SUPERINTENDENT OF PENSIONS, VILLE DE SEPT-ILES

Mises-en-cause

FTI CONSULTING CANADA INC.

Monitor-Respondent

NOTICE OF APPEAL

(Article 352 *C.C.P.*)
Appellant
Dated: October 2, 2017

1. The Appellants appeal from the Judgment on the Amended Motion by the Honourable Mr. Justice Stephen Hamilton (the "**CCAA Judge**") of the Québec Superior Court (Commercial Division), District of Montreal, rendered on September 11, 2017 (the "**Pension Claims Order**"), wherein it was rendered;

(a) granting the Motion by the Monitor for Directions with respect to Pension Claims;

(b) declaring that the trusts created under the Québec *Supplemental Pension Plans Act*, chapter R-15.1 ("**SPPA**"), *Pension Benefits Standards Act*, 1985, R.S.C., 1985, c. 32 ("**PBSA**"), and the Newfoundland *Pension Benefits Act*, 1997, S.N.L.1996 Chapter P-4.01 ("**NLPBA**") are not enforceable in the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**") proceedings; and

(c) declaring that the employee contributions and the normal cost payments are protected to the extent provided by sections 6(6) and 37(6) of the CCAA;

2. The date of the Judgment is September 11, 2017;

3. The duration of the hearing was from June 28 to 29, 2017;

4. The Appellants file with this Notice of Appeal a copy of the judgment in first instance in **Schedule [1];**

INTRODUCTION:

5. In 2013, the Supreme Court of Canada released its decision in *Indalex* where the court held, *inter alia*, that provincial statutory pension deemed trusts in favour of pension plan beneficiaries for amounts owing to a pension plan by their employer apply as a priority claim in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("**CCAA**"), subject only to the doctrine of paramountcy.

6. Paramountcy was applied in *Indalex* to the limited extent of subordinating the deemed trusts in the Ontario *Pension Benefits Act*, RSO 1990, c P.8 ("**PBA**") (which operate in a very similar manner to the pension deemed trusts in the SPPA, NLPBA and the PBSA which are the three relevant pension statutes in this appeal) to the priority of the DIP lender's priority granted by the CCAA court in *Indalex*.

7. The Supreme Court in *Indalex* made significant progress in settling many legal issues pertaining to the application of pension deemed trusts in CCAA proceedings. *Indalex* has been applied and followed in subsequent cases. Following the Supreme Court's decision, the CCAA court in *Indalex*[1] approved a settlement that distributed estate funds in that case to the pension plan members. In *Timminco*[2], the Ontario Timminco pension plan recovered as first priority distribution in respect of the underfunded Ontario pension plan deficit, and the Québec Timminco pension plan also recovered a priority payment pursuant to the decision of Mr. Justice Mongeon of the Québec Superior Court who held, relying on *Indalex*, that the deemed trusts in section 37 of the SPPA are valid and enforceable with respect to unpaid current service payments and unpaid special payments[3].

8. In his sweeping decision covering many areas of pension and insolvency law in different provinces (Québec and Newfoundland) and different jurisdictions (provincial and federal), the CCAA Judge ruled broadly with different interpretations and on different theories, that the pension deemed trusts in the NLPBA, SPPA, and PBSA are of no force or effect in the CCAA proceedings. He thereby rendered all of the Québec and Newfoundland retirees as unsecured creditors without any priority in the CCAA proceedings.

9. The decision of the CCAA Judge in the case under appeal is, in many respects, contrary to the Supreme Court of Canada's decision in *Indalex,* completely contradictory to

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[1] *Indalex Ltd., Re,* 2013 ONSC 7932 (Ont. S.C.J.)
[2] *Timminco ltée (Arrangement relatif à),* 2014 QCCS 174 (Que. S.C.)
[3] *Ibid* at para 135

the decision of Mr. Justice Mongeon in *Timminco*, and injects new uncertainty into pension and insolvency law with respect to the SPPA, NLPBA, and the PBSA pension deemed trusts. It would have the effect of rendering the Québec and Newfoundland retirees of Wabush Mines as unsecured creditors with virtually no hope for recovery for their substantial pension losses in the Wabush Mines CCAA proceedings.

The decision of the CCAA Judge

10. In his decision, the CCAA Judge made at least 13 determinations:

a) that the Salaried Plan (and Union Plan) are governed by the PBSA with respect to the employees who worked on the railway, by the SPPA with respect to the non-railway employees who reported for work in Sept-Iles, Québec, and by the NLPBA with respect to the non-railway employees who reported for work in Newfoundland[4];

b) that the combined effect of section 8(1) and (2) of the PBSA create a deemed trust in the event of a liquidation of the employer, and that the liquidation was a "triggering event" for the deemed trust[5];

c) that the statutory deemed trust language identifying the property covered on a so-called "triggering event" is necessary for the effectiveness of a statutory deemed trust based on the reasons of the Supreme Court of Canada in Sparrow Electric (a GST case) which was followed by the Québec Superior Court in *Aveos* (a PBSA deemed trust case)[6];

d) that the deemed trust under section 49 of the SPPA and the unseizability provision under section 264 of the SPPA are not effective to a deemed trust for Québec pension plan members[7];

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[4] Pension Claims Order, at para. 80, Schedule 1.
[5] Pension Claims Order, at para. 88, Schedule 1
[6] Pension Claims Order, at para. 99, Schedule 1
[7] Pension Claims Order, at para. 112, Schedule 1

e) that the SPPA deemed trust, even if effective, would cover only the unpaid going concern payments and unpaid special payments (to the extent that they relate to Wabush non-railway employees who reported for work in Québec)[8];

f) that the NLPBA deemed trusts do not apply to the assets of Wabush Mines located within the province of Québec[9];

g) that the Wabush Mines CCAA proceedings was a liquidation (as compared to a restructuring) that started on May 19, 2015 (the date Wabush Mines obtained protection under the CCAA from the CCAA Judge)[10], and that the deemed trust under section 8(2) of the PBSA and section 32(2) of the NLPBA came into effect on that date, and that the liquidation is the so-called "triggering event" for the creation of the deemed trust in section 32(2) in NLPBA, and further that there is no need for the court to decide whether the "triggering event" must occur prior to the CCAA Initial Order or prior to the sale of the assets[11];

h) that the NLPBA deemed trusts are inoperable in a CCAA proceeding based on the doctrine of paramountcy[12];

i) that the lien and charge created by section 32(4) of the NLPBA is a valid fixed charge under the law of Newfoundland and Labrador[13];

j) that the PBSA deemed trust attaches to the debtor's current property, with effect retroactive to the date that the contributions become due; however,

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[8] Pension Claims Order, at para. 131, Schedule 1
[9] Pension Claims Order, at para. 154, Schedule 1
[10] The CCAA Judge reversed himself on this finding in his decision of June 26, 2015, where he held that the Wabush CCAA proceedings was not a liquidation at paragraph 79, Exhibit 2
[11] Pension Claims Order, at paras. 173 and 175, Schedule 1.
[12] Pension Claims Order, at para. 210, Schedule 1.
[13] The Court assumes that the lien and charge under section 32(4) of the NLPBA is a valid fixed charge under the law of Newfoundland and Labrador. See Pension Claims Order, at para. 126, Schedule 1

such priority is subordinate to pre-existing secured creditors with a fixed charge[14];

k) that the PBSA deemed trust is not effective in the CCAA proceedings for reasons other than paramountcy[15];

l) that the Pension Claims are only protected to the extent provided for by sections 6(6) and 37(6) of the CCAA[16]; and

m) that the scheme of distribution to creditors in the Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3 ("**BIA**") should be incorporated into the CCAA[17];

I - GROUNDS OF APPEAL

The CCAA Judge erred in his decision as follows:

11. **Error #1:** concluding that the Salaried Plan (as well as the Union Plan) is regulated on a compartmentalized basis by three different pension statutes for different groups of Wabush Mines pension plan members to be determined either by the province in which they reported for work while they were active employees, or whether the employees worked on an aspect of the Wabush Mines mining operations that in and of itself is subject to federal jurisdiction (e.g., the federal regulation of railways under the *Constitution Act*). Specifically, he erred by finding that the PBSA applies exclusively to the Wabush railway retirees, the SPPA applies exclusively to the Wabush non-railway employees who reported for work in Québec, and that the NLPBA applies exclusively to the non-railway employees who reported for work in Newfoundland. In so doing, he erred by, *inter alia*,:

a) misinterpreting and misapplying the interpretative principles applicable to multi-jurisdictional pension plans, including, but not limited to, certain inter-

[14] Pension Claims Order, at paras. 122-124, Schedule 1.
[15] Pension Claims Order, at para. 126, Schedule 1.
[16] Pension Claims Order, at para. 217, Schedule 1.
[17] Pension Claims Order, at para. 208, Schedule 1.

provincial agreements respecting pension plans with members in more than one province;

b) misinterpreting the Salaried Plan, including but not limited to section 12.06 which states that Newfoundland law is the applicable law to the plan;

c) failing to conclude that the railway workers and those reporting for work in Québec are also concurrently subject to and protected by the NLPBA deemed trusts;

d) misinterpreting section 5 of the NLPBA to limit the application of the NLPBA deemed trusts to only the Newfoundland-resident members of the Salaried Plan; and

e) failing to recognize the historical context of the Salaried Plan, which militates in favour of applying the NLPBA deemed trusts to all employees, including that since the inception of the Salaried Plan in 1968 and for the next 47 years until the CCAA proceedings in 2015, the Salaried Plan had been regulated exclusively by the Newfoundland Superintendent of Pensions in accordance with the NLPBA only including with respect to the funding of the plan; and the federal regulator of the PBSA has had no regulatory involvement with the Salaried Plan;

12. **Error #2:** concluding that the property covered on an event he called a deemed trust "triggering event" is necessary for a statutory deemed trust to be valid, and further erred by misconstruing and misapplying the decision of the Supreme Court of Canada in *Sparrow Electric*[18] (a GST case) which was adopted by the Québec Superior Court in *Aveos*[19] (a PBSA case) in forming the above conclusion. In particular, he erred, *inter alia*, by:

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[18] *Royal Bank v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411.
[19] *Aveos Fleet Performance Inc./Aveos Performance aéronotique inc. (Arrangement relative à)*, 2013, QCCS 5662.

a) applying the reasoning of *Sparrow Electric* that deals with specific statutory language deemed trusts for GST under the *Income Tax Act* to pension deemed trusts despite the complete absence of *Sparrow* GST-type language for pension deemed trusts in the CCAA, SPPA, NLPBA, PBSA, or any other statute;

b) misinterpreting section 49 of the SPPA to conclude that property to which the deemed trust attaches must be identified for the SPPA deemed trusts to be effective, in contradiction to the decision of the same Québec court in *Timminco*, thus generating opposite legal results on the same issues by the same Québec court; and

c) rationalizing that since he found no deemed trust protection for the Québec members of the Salaried Plan under the SPPA, he ought to similarly penalize the NLPBA members by finding that the NLPBA deemed trust also does not attach to any of the company's assets in Québec;

13. **Error #3:** concluding that the deemed trusts in section 49 of the SPPA and the unseizability provision under section 264 of the SPPA are not effective to create a deemed trust for the amounts owing to a pension plan by an employer and do not create a property or security interest. In particular, he erred, *inter alia,* by:

a) finding that even if section 49 of the SPPA created a valid deemed trusts, the deemed trusts would be of no effect in a CCAA; and

b) mis-interpreting and applying sections 49 and 264 of the SPPA, and rejecting the ratio in *Timminco* which dealt with the same issue in a lengthy decision by a judge of the same court which found that the SPPA deemed trusts are effective in a CCAA proceeding.

14. **Error #4:** not determining the priority issues with respect to the Pension Plan Administrator's lien and charge (a secured claim) pursuant to section 32(4) of the NLPBA despite that the CCAA Judge assumed that such lien and charge is a valid fixed charge under the law of Newfoundland and Labrador;

15. **Error #5:** concluding that the NLPBA deemed trusts, even if valid (which the CCAA Judge held were not in CCAA proceedings, which is an error), do not apply to attach assets located in the Province of Québec. In particular, he erred, *inter alia,* by:

a) concluding that the Court would not recognize or enforce the deemed trusts under the NLPBA against assets of the employer located in the province of Québec; and

b) misinterpreting and misapplying Articles 1262, 3079, 3097, 3102 and 3118 of the *Civil Code of Québec*, CQLR c CCQ-1991 ("**CCQ**") regarding the NLPBA deemed trusts;

16. **Error #6:** determining that the scheme of distribution to creditors in the BIA should be incorporated into the CCAA, and thereby excluding the pension deemed trusts from application that are intended to protect pension plan beneficiaries from pension plan underfunding, in particular, he erred, *inter alia,* by:

a) disregarding the clear language of the Supreme Court of Canada in *Indalex* where the Supreme Court addressed this exact issue and held that BIA priorities are not to be read into the CCAA:

> "[51]... ***[T]his does not mean*** that courts may read bankruptcy priorities into the CCAA at will. Provincial legislation defines the priorities to which creditors are entitled ***until that legislation is ousted by Parliament. Parliament did not expressly apply all***

> ***bankruptcy priorities either to CCAA proceedings or to proposals under the BIA***."; [20] [emphasis added]

b) assuming wrong facts and outcomes in commercial transactions and CCAA proceedings without any evidence in order to support his legal conclusions summarized herein.

17. **Error #7:** concluding that the NLPBA deemed trust "frustrates the purpose of Parliament if it were to operate in the context of a CCAA proceeding" by misapplying the doctrine of paramountcy, and further misinterpreting the language of the CCAA and reading language into the CCAA that does not exist. In particular, he erred, *inter alia,* by:

a) not following the Supreme Court of Canada's decision in *Indalex* where the Court confirmed (in the context of the Ontario *Pension Benefits Act*) that provincial pension deemed trusts create a valid and enforceable deemed trust in CCAA proceedings, and instead deciding that the NLPBA deemed trusts are not effective in a CCAA proceeding;

b) finding that the retirees' pension claims are protected only to the limited extent provided for by sections 6(6) and 37(6) of the CCAA despite the complete absence any limiting language in the CCAA nor in the NLPBA, SPPA, and PBSA, and despite that similar arguments were asserted before the Supreme Court in *Indalex* by the company in that case and were rejected by the Supreme Court; and

c) interpreting the CCAA to conclude that Parliament only intended that the unpaid normal costs payments but not unpaid special payments and wind-up deficit are to be protected in a CCAA proceeding and that provincial pension deemed trust provisions are of no force or effect in a CCAA proceeding;

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[20] *Indalex Ltd., Re*, 2013 SCC 3, at para 51.

18. **Error #8:** concluding that the PBSA deemed trust is not effective in the CCAA proceedings, on the rationale of the timing of legislative amendments and concluding that since the pension provisions in the CCAA (and BIA) came into force in September 2009, which was after the deemed trust protections were inserted into sections 8 and 29 of the PBSA, it must mean that Parliament intended for the PBSA deemed trusts to no longer apply. In so doing, he failed to take into account that the PBSA was in fact amended by Parliament *years after* the pension provisions were added to the CCAA (and BIA) on April 1, 2011 to specifically remove only the wind up deficit deemed trust from the PBSA, giving rise to the inescapable conclusion that Parliament turned its mind to amending federal pension protections and intentionally kept the PBSA deemed trusts for unpaid current service costs and unpaid special payments in place, in addition to and as a supplement to the provisions it previously added to the CCAA in section 6(6) that requires a CCAA Plan of Compromise to provide for the payment of unpaid current service costs only as part of such plan, (unless expressly approved by the CCAA Judge to the contrary). Further, the CCAA Judge misinterpreted section 6(6) of the CCAA.

19. The Appellants will ask the Court of Appeal to:

a) **ALLOW** the appeal;

b) **SET ASIDE** the judgment in first instance;

c) **DECLARE THAT**:

i) the NLPBA, PBSA, and SPPA deemed trusts concurrently apply in favour of all the members of the Salaried Plan, are enforceable in the CCAA proceeding, and generate a priority recovery for the Salaried Plan members in respect of the amounts owing that covered by the deemed trusts ahead of all other creditors, ranking only after the priorities granted to the DIP lender and other CCAA court-ordered charges in the CCAA proceedings;

ii) the pension plan administrator's lien and charge under section 32(4) of the NLPBA is a secured claim of the pension plan administrator for the amount of unpaid current service payments, unpaid special payments, and unpaid wind up deficit in respect of all members of the Salaried Plan, including the Wabush retirees who worked on the railway and the Wabush retirees who had reported for work in Québec;

iii) sections 49 and 264 of the SPPA create a valid and enforceable deemed trust over the amount of all unpaid current service payments, and unpaid special payments owing to the Salaried Plan with respect to the Québec retirees and that such contributions with interest are unassignable and unseizable;

iv) the NLPBA, SPPA, and PBSA deemed trusts charge or otherwise apply to all of the applicable Wabush CCAA Parties' assets, including its assets located in Québec;

v) the pension plan administrator's lien and charge under section 32(4) of the NLPBA charges or otherwise applies to all of the applicable Wabush CCAA Parties' assets, including its assets located in Québec;

vi) the scope of the NLPBA deemed trusts and the pension plan administrator's lien and charge covers the amount of unpaid current service payments, unpaid special payments, and the unpaid wind-up deficit of the Salaried Plan; and

vii) such other declarations and orders as counsel may request and this Honourable Court will grant.

Notice of this Notice of Appeal is given to:

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And to the Québec Superior Court (Commercial Division) of the Province of Québec, District of Montreal, located at 1, rue Notre-Dame Est, Montreal, Québec.

TORONTO, October 2, 2017

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CANADA

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

S.C.: 500-11-048114-157

C.A.: 500-09-

COURT OF APPEAL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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

Appellants

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

Debtors

and

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

Mises-en-cause

and

SYNDICAT DES METALLOS SECTIONS LOCALES 6254 ET 6285, MORNEAU SHEPELL LTD. , in its capacity as Replacement Pension Plan Administrator, RETRAITE QUEBEC, THE ATTORNEY GENERAL OF CANADA, acting on behalf of the OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented by the SUPERINTENDENT OF PENSIONS, VILLE DE SEPT-ILES

Mises-en-cause

FTI CONSULTING CANADA INC.

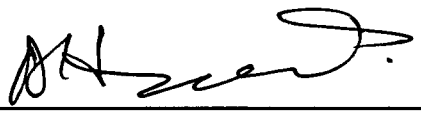
Monitor-Respondent

LIST OF SCHEDULES IN SUPPORT OF NOTICE OF APPEAL

(Article 352 *C.C.P.*)
Appellant
Dated: October 2, 2017

Schedule I	Judgment rendered by the Honourable Stephen W. Hamilton, J.S.C.of the Québec Superior Court (Commercial Division), District of Montreal with respect to the Motion of the Monitor for Directions with Respect to Pension Claims rendered on September 11, 2017, Court file no. 500-11-048114-157

TORONTO, October 2, 2017



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SCHEDULE 1

Judgment on the Amended Motion by the Honourable Mr. Justice Stephen Hamilton of the Québec Superior Court (Commercial Division), District of Montreal, rendered on September 11, 2017

SUPERIOR COURT

(*Commercial Division*)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No: 500-11-048114-157

DATE: September 11, 2017

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

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

BLOOM LAKE GENERAL PARTNER LIMITED
QUINTO MINING CORPORATION
8568391 CANADA LIMITED
CLIFFS QUÉBEC IRON MINING ULC
WABUSH IRON CO. LIMITED
WABUSH RESOURCES INC.
Debtors
And
THE BLOOM LAKE IRON ORE MINE LIMITED PARTNERSHIP
BLOOM LAKE RAILWAY COMPANY LIMITED
WABUSH MINES
ARNAUD RAILWAY COMPANY
WABUSH LAKE RAILWAY COMPANY, LIMITED
Mises en cause
And
MICHAEL KEEPER, TERENCE WATT, DAMIEN LEBEL AND NEIL JOHNSON
SYNDICAT DES MÉTALLOS, SECTIONS LOCALES 6254 ET 6285
MORNEAU SHEPELL LTD, IN ITS CAPACITY AS
REPLACEMENT PENSION PLAN ADMINISTRATOR
RETRAITE QUÉBEC
THE ATTORNEY GENERAL OF CANADA, ACTING ON BEHALF OF
THE OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS
HER MAJESTY IN RIGHT OF NEWFOUNLAND AND LABRADOR,
AS REPRESENTED BY THE SUPERINTENDENT OF PENSIONS

JH5439

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

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

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

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

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

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

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2 Exhibit R-23.
3 Exhibit R-24.
4 Exhibits R-23 and R-24, Section 12.06.
5 S.N.L. 1996, c. P-40.1.
6 It seems that OSFI acted on the erroneous view that no members of the Salaried Plan were covered by the PBSA.
7 R.S.C. 1985 (2nd Supp.), c. 32.

2015.[16] The monthly normal cost payments for the Salaried Plan had been overpaid in the amount of $169,961 as of December 16, 2015.[17]

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

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

a) The special payments required to be paid prior to the date of the Wabush Initial Order were underpaid in the amount of $146,776;

b) One special payment in the amount of $393,337 was paid after the date of the Wabush Initial Order and before the Suspension Order, which payment constituted an overpayment of $16,308; and

c) The special payments after the date of the Suspension Order were not paid and amount to $3,016,232.[18]

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

a) The special payments required to be paid prior to the date of the Wabush Initial Order were paid in full except for $3;

b) One special payment in the amount of $273,218 was paid after the date of the Wabush Initial Order and before the Suspension Order, which payment constituted an underpayment of $1; and

c) The special payments after the date of the Suspension Order were not paid and amount to $2,185,752.[19]

[17] Further, the Wabush CCAA Parties did not make the lump sum "catch-up" special payments that came due after June 2015. The amount payable with respect to the Union Plan is $3,525,125.[20] There are no "catch-up" special payments due with respect to the Salaried Plan.

[18] Finally, the Plans are underfunded.

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

17 Exhibit R-16.

18 Exhibit R-17.

19 Exhibit R-16.

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

restructuring claim in the amount of $6,059,238,[23] and a proof of claim with respect to the Salaried Plan that includes a secured claim in the amount of $24 million and a restructuring claim in the amount of $1,932,940.[24]

[24] The differences in the numbers are not important at this stage. The numbers will be finalized in due course. It is sufficient to note that there are very large claims and that the plan administrator claims the status of a secured creditor with respect to a substantial part of the claims.

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

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

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

a) normal costs and special payments outstanding as at the date of the Wabush Initial Order are subject to a limited deemed trust;

b) normal costs and special payments payable after the date of the Wabush Initial Order, including additional special payments and catch up payments established on the basis of actuarial reports issued after the Wabush Initial Order, constitute unsecured claims;

c) the wind-up deficiencies constitute unsecured claims; and

d) any deemed trust created pursuant to the NLPBA may only charge property in Newfoundland and Labrador.

[28] The Monitor is supported by the Wabush CCAA Parties and the Ville de Sept-Îles. The Monitor's motion is opposed by the Representative Employees, the Union, the

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23 Exhibit R-19.
24 Exhibit R-18.
25 Exhibits R-10 and R-12.

- In any event, the deemed trusts under the SPPA, PBSA or NLPBA and the lien and charge under the NLPBA, if they exist, are not effective in proceedings under the CCAA;

2. Wabush CCAA Parties

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

3. Ville de Sept-Îles

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

4. Representative Employees

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

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

5. Union

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

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

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

under the NLPBA. He also pleads that the deemed trust under the NLPBA covers at least part of the wind-up deficiency and that it can attach to the proceeds of property formerly located in Québec.

ISSUES

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

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

ANALYSIS

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

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

[49] In the context of the Monitor's Motion for Directions, a preliminary issue arose as to whether the Court should request the aid of the Supreme Court of Newfoundland and

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

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

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

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

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

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

> [1] Having heard the submissions of counsel, we are satisfied that the questions set out in the reference put by the Lieutenant-Governor in Council in Order-in-Council 2017-103, should be considered at the hearing in the language stipulated in the Order-in-Council. Whilst we are mindful of the importance of promoting judicial efficiency, we do not consider ourselves to be in a position today to determine the extent to which, if at all, we should decline to answer one or more of the questions posed or to interpret their scope.
>
> [2] That said, we are cognizant of the concerns of some of the participants that the questions may invite the Court to opine in such a way as to impact the decisions of the Quebec CCAA Court that will determine the rights of the parties. Generally speaking, we subscribe to the view that questions posed on a

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

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

- Where the NLPBA is different from the PBSA, the Court will adopt the interpretation put forward by the NL Superintendent.

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

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

2. Application of the three pension statutes

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

- The SPPA applies to "pension plans provided for ... employees who report for work at an establishment of their employer located in Québec".[33]

- The PBSA applies to "a superannuation or other plan organized and administered to provide pension benefits to employees employed in included employment (and former employees)".[34] The notion of "included employment" includes railways[35] and "any work, undertaking or business ... declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more provinces".[36] The Arnaud Rail and Wabush Lake Rail are both railways and both were declared to be works for the general advantage of Canada.[37]

- The NLPBA applies to "all pension plans for persons employed in the province, except those pension plans to which an Act of the Parliament of Canada applies".[38]

[Emphasis added]

[62] To the extent that this raises a question of the interpretation of the NLPBA, the Court notes that the language is clear and that the NL Superintendent states only that

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33 SPPA, s. 1(1).
34 PBSA, s. 4(2).
35 PBSA, s. 4(4)(b).
36 PBSA, s. 4(4)(h).
37 *An Act respecting Wabush Lake Railway Company Limited and Arnaud Railway Company*, (1960) 8-9 Eliz. II, ch. 63, s. 3.
38 NLPBA, s. 5.

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

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

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

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

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

[72] This is consistent with Section 74 of the previous version of the SPPA[44] which was in force when the Memorandum was signed by Québec, which provides for reciprocal registration and inspection, delegation of functions and powers, and carrying out duties on behalf of the Board, but not the exclusion of Québec law. Agreements entered into under Section 74 of the former SPPA remain effective under the new SPPA.[45]

[73] This is to be contrasted with Section 249 of the current SPPA, which allows Retraite Québec to enter into agreements with other provincial authorities or the federal

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

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

45 SPPA, s. 285.

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

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

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

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

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

i. PBSA

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

> 8 (1) An employer shall ensure, with respect to its pension plan, that the following amounts are kept separate and apart from the employer's own moneys, and the employer is deemed to hold the amounts referred to in paragraphs (a) to (c) in trust for members of the pension plan, former members, and any other persons entitled to pension benefits under the plan:
>
> [...]
>
> (2) In the event of any liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that by subsection (1) is deemed to be held in trust shall be deemed to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own moneys or from the assets of the estate.

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

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[47] Exhibit R-25, p. 27-47.

which causes the property to be identified on liquidation, assignment or bankruptcy and deems it to be kept separate and apart even if it is not.

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

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

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

ii. SPPA

[89] Section 49 SPPA is very succinct:

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

[90] Section 49 SPPA simply deems "contributions" to be held in trust, whether or not they have been kept separate from the employer's other property. It includes the deemed trust language from Section 8(1) PBSA and the "whether or not the latter has kept them separate from his property" language from Section 8(2) PBSA, but it does not include the following key language found in Section 8(2) PBSA:

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

[91] This omission is fatal.

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

> Le premier paragraphe est identique; le législateur y prévoit expressément, en utilisant les mots «est réputée», qu'une personne qui a déduit, retenu ou perçu un montant en vertu d'une loi fiscale détient ce montant en fiducie et que Sa Majesté aux droits du Québec est la bénéficiaire de cette fiducie. Le début du deuxième paragraphe est également identique; le législateur y crée l'obligation pour la personne visée de tenir le montant ainsi déduit, retenu ou perçu «distinctement et séparément de ses propres fonds». Si tel est le cas, il y a fiducie réelle et, advenant faillite, ces montants constituent des «biens détenus par le failli en fiducie pour toute autre personne», au sens de l'alinéa 67(1)(a) de la Loi FI, et ils ne sont pas compris dans les biens du failli.
>
> La seconde partie du deuxième paragraphe a été modifiée par l'ajout des mots «un montant égal au montant ainsi déduit, retenu ou perçu [...]». L'ajout de ces mots ne s'explique, à mon avis, que par la volonté du législateur de créer une fiducie réputée et de la distinguer de la fiducie réelle en éliminant expressément la nécessité de respecter la troisième des conditions essentielles à l'existence d'une fiducie, soit le fait pour le fiduciaire de conserver les biens affectés à la fiducie séparément et distinctement de son patrimoine. En effet, les mots «un montant égal au montant ainsi déduit, retenu ou perçu» sont inutiles dans le contexte où le failli tient un compte distinct et séparé de ses propres fonds pour les montants déduits, retenus ou perçus; les mots n'ont de sens que si le failli ne tient pas un tel compte distinct et séparé. Dans le contexte, ces mots suffisaient pour conclure à la création d'une fiducie réputée; le premier paragraphe de l'article 20 et le début du second visaient la fiducie réelle alors que le premier paragraphe et la fin du second visaient la fiducie réputée.
>
> D'où, à mon avis, la conclusion que le législateur a ainsi créé une fiducie réputée même s'il n'a pas repris tous les mots du législateur fédéral au paragraphe 5 de l'article 227. L'utilisation des mots «un montant égal au montant ainsi déduit, retenu ou perçu» rendait, à mon avis, inutile l'utilisation des mots «que ce montant ait été ou non, en fait, tenu séparé des propres fonds de la personne».[52]
>
> [Emphasis added]

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

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

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

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

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

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

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

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

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

> **264.** Unless otherwise provided by law, the following amounts or contributions are unassignable and unseizable:
>
> (1) all contributions paid or payable into the pension fund or to the insurer, with accrued interest;
>
> (2) all amounts refunded or pension benefits paid under a pension plan or this Act;
>
> (3) all amounts awarded to the spouse of a member following partition or any other transfer of benefits effected pursuant to Chapter VIII, with accrued interest, and the benefits deriving from such amounts.

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

creditors cannot seize them. Section 49, on the other hand, is intended to protect pension plans from the creditors of the employer.[57]

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

[111] Finally and in any event, even if Section 264 SPPA applied to the amounts held by the employer to be paid into the pension plan, it is not clear how that would fix the deemed trust under Section 49 SPPA. Simply declaring amounts to be unassignable and unseizable does not make them any more identifiable. There is still no triggering event. Justice Mongeau suggests that the sums are identifiable under Section 49 SPPA, but the Court has already rejected that argument as a result of *Sparrow Electric*.

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

iii. NLPBA

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

> **32.** (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that
>
> [...]
>
> are kept separate and apart from the employer's own money, and shall be considered to hold the amounts referred to in paragraphs (a) to (c) in trust for members, former members, and other persons with an entitlement under the plan.
>
> (2) In the event of a liquidation, assignment or bankruptcy of an employer, an amount equal to the amount that under subsection (1) is considered to be held in trust shall be considered to be separate from and form no part of the estate in liquidation, assignment or bankruptcy, whether or not that amount has in fact been kept separate and apart from the employer's own money or from the assets of the estate.

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

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

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

> [66] In the present case, when the deemed trust for the special payments arose, the property of Aveos was encumbered by fixed charges in favour of the Secured Lenders. Those fixed charges were created in 2010, except for the security in the Northwest Territories which was perfected in 2011. The deemed trust arose either upon the liquidation of Aveos (which would not have been before the C.C.A.A. filing on March 19, 2012) or at the earliest when a special payment became due following the actuarial valuation report filed in June 2011. Even if the obligation to make the special payments was somehow retroactive to December 31, 2010 (which was not argued by the Superintendent), the fixed charges in favour of the Secured Lenders were already perfected at such date. Moreover, Aveos made the special payments up to and including January 2012 so it is difficult to deem the trust prior to any payments being in default.
>
> [67] Consequently, this Court agrees with the Secured Lenders first position that their security was created before any deemed trust for the $2.8 million could have existed. Since the assets were already charged, any deemed trust under Section (8)(2) P.B.S.A. is at best subordinate to the security of the Secured Lenders.[60]
>
> [Emphasis added]

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

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59 *Sparrow Electric*, *supra* note 48, par. 34.
60 *Aveos*, *supra* note 50, par. 66-67.
61 *First Vancouver*, *supra* note 58, par. 46.

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

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

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

ii. PBSA

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

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

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

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

[Emphasis added]

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

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

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

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

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

iii. NLPBA

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

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

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

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

> **3079.** Where legitimate and manifestly preponderant interests so require, effect may be given to a mandatory provision of the law of another State with which the situation is closely connected.
>
> In deciding whether to do so, consideration is given to the purpose of the provision and the consequences of its application.

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

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

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

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

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

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

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

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[66] R.S.C. 1985, c. B-3.

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

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

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

[164] Finally, the conclusion that the deemed trust is triggered by a liquidation under the BIA but not a liquidation under the CCAA seems to run counter to the idea that creditors should have analogous entitlements under the CCAA and the BIA.[69] It would also allow the employer to avoid the deemed trust by choosing to proceed under the CCAA rather than the BIA. The Supreme Court addressed a similar concern in different circumstances in *Indalex* in the following way:

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

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

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

70 *Id.*, par. 47.

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

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

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

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

a. the NLPBA and the doctrine of federal paramountcy

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

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

- A provincial law will be deemed to be inoperative to the extent that it conflicts with or is inconsistent with a federal law;
- The first step in the analysis is to determine whether the federal and provincial laws are validly enacted;
- The second step requires consideration of whether any overlap between the two laws constitutes a conflict sufficient to render the provincial law inoperative;
- Two kinds of conflict are at play: (1) an *operational conflict*, where compliance with both the federal and provincial law is impossible; and (2) *frustration of purpose*, where the provincial law thwarts the purpose of the federal law;

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

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

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

NLPBA. The Court emphasized in its June 2015 decision that certain statements in *Century Services*[77] and *Aveos*[78] about deemed trusts should be limited to deemed trusts in favour of the Crown and should not be applied to all deemed trusts.[79]

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

> **6** (6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if
>
> (a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:
>
> (i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,
>
> (ii) if the prescribed pension plan is regulated by an Act of Parliament,
>
> (A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that was required to be paid by the employer to the fund, and
>
> (B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the Pension Benefits Standards Act, 1985,
>
> (C) an amount equal to the sum of all amounts that were required to be paid by the employer to the administrator of a pooled registered pension plan, as defined in subsection 2(1) of the Pooled Registered Pension Plans Act, and
>
> (iii) in the case of any other prescribed pension plan,
>
> (A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the Pension Benefits Standards Regulations, 1985, that the employer would be required to pay to the fund if the

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77 *Century Services Inc.* v. *Canada (Attorney General)*, 2010 SCC 60, par. 45 and 95.
78 *Aveos*, *supra* note 50, par. 74-75.
79 Suspension Order, *supra* note 9, par. 72.

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

> [81] There are good reasons for giving special protection to members of pension plans in insolvency proceedings. Parliament considered doing so before enacting the most recent amendments to the *CCAA*, but chose not to (*An Act to amend the Bankruptcy and Insolvency Act, the Companies' Creditors Arrangement Act , the Wage Earner Protection Program Act and chapter 47 of the Statutes of Canada, 2005*, S.C. 2007, c. 36, in force September 18, 2009, SI/2009-68; see also Bill C-501, *An Act to amend the Bankruptcy and Insolvency Act and other Acts (pension protection)*, 3rd Sess., 40th Parl., March 24, 2010 (subsequently amended by the Standing Committee on Industry, Science and Technology, March 1, 2011)). A report of the Standing Senate Committee on Banking, Trade and Commerce gave the following reasons for this choice:
>
> > Although the Committee recognizes the vulnerability of current pensioners, we do not believe that changes to the BIA regarding pension claims should be made at this time. Current pensioners can also access retirement benefits from the Canada/Quebec Pension Plan, and the Old Age Security and Guaranteed Income Supplement programs, and may have private savings and Registered Retirement Savings Plans that can provide income for them in retirement. The desire expressed by some of our witnesses for greater protection for pensioners and for employees currently participating in an occupational pension plan must be balanced against the interests of others. As we noted earlier, insolvency – at its essence – is characterized by insufficient assets to satisfy everyone, and choices must be made.
> >
> > The Committee believes that granting the pension protection sought by some of the witnesses would be sufficiently unfair to other stakeholders that we cannot recommend the changes requested. For example, we feel that super priority status could unnecessarily reduce the moneys available for distribution to creditors. In turn, credit availability and the cost of credit could be negatively affected, and all those seeking credit in Canada would be disadvantaged.
>
> (*Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act* (2003), at p. 98; see also p. 88.)

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[80] *Supra* note 39, par. 68.

recognizes the rights of secured creditors (Sections 127-134), it provides for the priority of certain claims (Section 136), it postpones the claims of non-arm's length parties (Section 137) and it pays all other claims rateably (Section 141).

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

> (1) provinces cannot create priorities between creditors or change the scheme of distribution on bankruptcy under s. 136(1) of the Bankruptcy Act;
>
> (2) while provincial legislation may validly affect priorities in a non-bankruptcy situation, once bankruptcy has occurred section 136(1) of the Bankruptcy Act determines the status and priority of the claims specifically dealt with in that section;
>
> (3) if the provinces could create their own priorities or affect priorities under the Bankruptcy Act this would invite a different scheme of distribution on bankruptcy from province to province, an unacceptable situation; and
>
> (4) the definition of terms such as "secured creditor", if defined under the Bankruptcy Act, must be interpreted in bankruptcy cases as defined by the federal Parliament, not the provincial legislatures. Provinces cannot affect how such terms are defined for purposes of the Bankruptcy Act.
>
> [...]
>
> (5) in determining the relationship between provincial legislation and the Bankruptcy Act, the form of the provincial interest created must not be allowed to triumph over its substance. The provinces are not entitled to do indirectly what they are prohibited from doing directly;
>
> (6) there need not be any provincial intention to intrude into the exclusive federal sphere of bankruptcy and to conflict with the order of priorities of the Bankruptcy Act in order to render the provincial law inapplicable. It is sufficient that the effect of provincial legislation is to do so.[83]

[196] These principles have been applied by the Supreme Court to invalidate a number of attempts by the provinces to give the Crown priority for certain claims.[84] The argument was that the predecessors of the current Section 136(1)(j) BIA gave the federal and provincial Crown a limited priority, and that any attempt by the province to

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

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

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

[205] In that context, it is clear that the scheme of distribution under the BIA is very relevant. If the creditors are offered a plan in the context of a liquidating CCAA, it will be limited to distributing the proceeds of the sale of the debtor's assets. The creditors will inevitably compare what they are getting under the plan to what they would get under the BIA. If any creditor is offered less under the plan, he will likely vote against the plan or oppose its approval by the court, with a view to petitioning the debtor into bankruptcy. Justice Deschamps referred to this in *Indalex* as the creditors "bargain[ing] in the shadow of their bankruptcy entitlements"[85]. As Justice Deschamps wrote in *Century Services*:

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

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

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

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

[209] Under Section 81.6 BIA, the same amounts which are protected by Sections 6(6) and 36(7) CCAA are secured by security on all of the bankrupt's assets. There is no

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85 *Indalex*, *supra* note 69, par. 51.
86 *Century Services*, *supra* note 77, par. 47.

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

> Given that the pension provisions of the *BIA* and *CCAA* came into force much later than s. 8 of the *PBSA*, normal interpretation would require that the later legislation be deemed to be remedial in nature. Likewise, since those provisions of the *BIA* and *CCAA* are the more specific provisions, normal interpretation would take them to have precedence over the general. Finally, the limited scope of the protection given to pension claims in the *BIA* and the *CCAA* would, by application of the doctrine of implied exclusion, suggest that Parliament did not intend there to be any additional protection. In enacting *BIA* subs. 60(1.5) and 65.13(8) and ss. 81.5 and 81.6 and *CCAA* subs. 6(6) and 37(6), while not amending subs. 8(2) of the *PBSA* (by adding explicit priority language or by removing the insolvency trigger), Parliament demonstrated the intent that pension claims would have protection in insolvency and restructurings only to the limited extent set out in the *BIA* and the *CCAA*.[90]
>
> [Emphasis added]

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

6. Conclusions

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

1. The trusts created under the SPPA, PBSA and NLPBA are not enforceable in CCAA proceedings;

2. However, the employee contributions and the normal cost payments are protected to the extent provided for by Sections 6(6) and 37(6) of the CCAA.

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

a) "Liquidation" under Sections 8(2) PBSA and 32(2) NLPBA includes a liquidating plan under the CCAA;

b) A "liquidation" within the meaning of Sections 8(2) PBSA and 32(2) NLPBA commenced when the Wabush CCAA Parties made a motion seeking CCAA protection on May 20, 2015;

c) Not answered.

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

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

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

Stephen W. Hamilton, J.S.C.

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NOTICE FOLLOWING ARTICLE 26 OF THE *CIVIL PRACTICE REGULATION*

Within 10 days after notification, the respondent, the intervenors and the impleaded parties must file a representation statement giving the name and contact information of the lawyer representing them or, if they are not represented, a statement indicating as much. If an application for leave to appeal is attached to the notice of appeal, the intervenors and the impleaded parties are only required to file such a statement within 10 days after the judgment granting leave or after the date the judge takes note of the filing of the notice of appeal (Article 358, para. 2 *C.C.P.*).

If a party fails to file a representation by counsel (*or a non-representation statement*), it shall be precluded from filing any other pleading in the file. The appeal shall be conducted in the absence of such party. The Clerk is not obliged to notify any notice to such party. If the statement is filed after the expiry of the time limit, the Clerk may accept the filing subject to conditions that the Clerk may determine (Article 30 *Civil Practice Regulation)*.

The parties shall notify their proceedings (*including briefs and memoranda*) to the appellant and to the other parties who have filed a representation (*or non-representation statement*) (Article 25, para. 1 *Civil Practice Regulation*).

N° / No. C.S.: 500-11-048114-157
N° / No. C.S.:

COURT OF APPEAL OF QUÉBEC
(District of Montreal)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED
IN THE MATTER OF THE PLAN OF COMPROMISE OR ARRANGEMENT OF:

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

Appellants

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

Debtors

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

Mises-en-cause

SYNDICAT DES METALLOS SECTIONS LOCALES 6254 ET 6285, MORNEAU SHEPELL LTD. , in its capacity as Replacement Pension Plan Administrator, RETRAITE QUEBEC, THE ATTORNEY GENERAL OF CANADA, acting on behalf of the OFFICE OF THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS HER MAJESTY IN RIGHT OF NEWFOUNDLAND AND LABRADOR, as represented by the SUPERINTENDENT OF PENSIONS, VILLE DE SEPT-ILES

Mises-en-cause

and

FTI CONSULTING CANADA INC.

NOTICE OF APPEAL

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