SUPERIOR COURT
(Commercial Division)

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL
N°: 500-11-042345-120

DATE : November 20, 2013

PRESIDING : THE HONOURABLE MARK SCHRAGER, J.S.C.

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

AVEOS FLEET PERFORMANCE INC. /
AVEOS PERFORMANCE AÉRONAUTIQUE INC.
-and-
AERO TECHNICAL US, INC.
Insolvent Debtors

-and-

FTI CONSULTING CANADA INC.
Monitor

-and-

THE SUPERINTENDENT OF FINANCIAL INSTITUTIONS
Applicant

-and-

WELLS FARGO BANK NATIONAL ASSOCIATION, as holder of a power of attorney
-and-
CRÉDIT SUISSE AG, CAYMAN ISLAND BRANCH, as fondé de pouvoir and administrative agent and collateral agent for the Second Lien Lenders
-and-
AVEOS HOLDING COMPANY, as holder of a power of attorney

-and-

BREOF/BELMONT BAN L.P.
Respondents

-and-

AON HEWITT, as administrator of the pension plans of Aveos Fleet Performance Inc./ Aveos Performance Aéronautique Inc. and the former and retired employees of Aveos Fleet Performance Inc.
Impleaded party

JUDGMENT

INTRODUCTION

[1] Aveos Fleet Performance Inc. ("Aveos") and its related entity Aero Technical US, Inc. applied for and this Court issued an initial order ("Initial Order") under the *Companies' Creditors Arrangement Act*[1] ("C.C.A.A.") on March 19, 2012.

[2] Aveos' operations had largely had been shutdown prior to the C.C.A.A. filing. The remainder of its normal operations were shutdown following the C.C.A.A. filing and most of the remaining employees were laid off.

[3] The present litigation pits the rights of a pension fund to obtain priority for the payment of its deficit against the rights of the Respondent secured lenders ("Secured Lenders") to recover their loans and advances.

[4] The Superintendent of Financial Institutions (the "Superintendent") has filed a motion seeking a declaratory judgment which has been contested by the Secured Lenders. The Superintendent is supported by the pension plan administrator, Aon Hewitt ("Aon").

[5] Aveos has maintained neutrality on the aforementioned issue. However, Aveos has made representations on a secondary issue arising from a recent payment received from Air Canada which, according to the manner in which this payment is applied, could reduce the quantum of the priority treatment sought by the Superintendent.

---

[1] R.S.C., 1985, c. C-36.

[6] The Monitor has filed a report but also maintained neutrality.

FACTS

[7] With a view to using court time efficiently and focusing on legal issues, the parties have agreed on the essential facts in a document entitled "Agreed Statement of Facts", the first section of which reads as follows:

> "**I. FACTS RELATING TO THE NON-UNION PENSION PLAN:**
>
> 1. The Retirement Plan for Employees of Aveos that is the object of the motion (the "**Plan**") is a defined benefit pension plan. It was established by Aveos Fleet Performance Inc. (the "**Company**" or "**Aveos**") effective October 16, 2007;
>
> 2. An initial application for registration of a defined benefit plan was filed with the Office of the Superintendent of Financial Institutions ("**OSFI**") on September 5, 2008 and an amended application was filed on December 4, 2008, as appears from the September 5, 2008 cover letter to OSFI, the initial Application for Registration of a Pension Plan, and the revised Application for Registration of a Pension Plan attached en liasse as **Exhibit R-1;**
>
> 3. Thereafter, OSFI registered and assigned the Plan federal registration number 57573 and the Plan is governed by the *Pensions Benefits Standards Act* ("**PBSA**") and regulations thereunder;
>
> 4. The Plan covers all non-unionized employees of the Company who were employed by Air Canada as of October 15, 2007, who participated in the Air Canada Pension Plan or the Pension Plan for Air Canada Management Employees Formerly Employed by Canadian Airlines International Limited (the "**Air Canada Plans**"), and who became employed by the Company effective October 16, 2007;
>
> 5. Thereafter, assets and liabilities of the Air Canada Plans in respect of these employees were transferred from the Air Canada Plans to the Plan;
>
> 6. The Plan also provides pension benefits to former non-unionized employees of the Company who were hired after October 16, 2007 and who met the eligibility criteria under the Plan terms;
>
> 7. Contributions from both the Company and employees were required to be made to the Plan;

8. The Company was the sponsor and administrator of the Plan from inception until April 5, 2012, as detailed below, when OSFI removed the Company as administrator and named Aon Hewitt as the replacement Plan administrator;

9. As required by the PBSA, actuarial valuation reports for the Plan were prepared by an actuary and filed with OSFI annually;

10. The actuarial valuation report for the Plan as at December 31, 2010, dated June 2011 was prepared by Aon Hewitt Inc. and filed with OSFI in June, 2011 (the "**2010 Valuation Report**") filed as **Exhibit R-2;**

11. The 2010 Valuation Report revealed that as at December 31, 2010 the Plan was 79.4% funded on a solvency basis, and had an adjusted solvency deficiency of $15,297,000. As a result, annual special payments totaling $3,059,400 were required to be paid into the Plan fund in monthly installments in the amount of $254,950;

12. Until the 2010 Valuation Report was filed, Aveos continued to fund in accordance with the report filed the preceding year with respect to the Plan. Aveos made in September 2011 a catch up payment for the deficiency in payments made to the Plan for the first six months of 2011 in accordance with the 2010 Valuation Report. Aveos also made the special payment owed for that month. The 2011 Valuation Report that valued the Plan as at December 31, 2011 was due to be filed by June 30, 2012;

13. Special payments in the amount of $254,950 continued to be paid by the Company to the Plan fund in accordance with the 2010 Valuation Report until the last payment made on March 1, 2012 for the month of January, 2012;

14. In the days leading up to the Initial Order, Aveos employed approximately 2,620 employees working from approximately ten facilities across Canada and operated three main divisions, namely the Airframe, Engine and Component Divisions;

15. Approximately 88% of its workforce in Canada was unionized and represented by the International Association of Machinists and Aerospace Workers (the "**Union**");

16. On the eve of the Initial Order, Aveos ceased the operations of its Airframe Division and notified all other of its employees not to report to work as of March 19, 2012;

17. On March 19, 2012, Aveos and Aero Technical US, Inc. ("**Aero US**" and together with Aveos, the "**Debtors**") made an application

under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") and an Initial Order (the "**Initial Order**") was made by the Honourable Mr. Justice Schrager of the Superior Court of Quebec (Commercial Division) (the "**Court**"), granting, inter alia, a stay of proceedings against the Debtors until April 5, 2012, (as extended from time to time thereafter, the "**Stay Period**") and appointing FTI Consulting Canada Inc. as monitor of the Debtors (the "**Monitor**");

18. According to the Initial Order, a charge of $5,000,000.00 was granted in favour of the Debtors' directors, which was reduced to $2,000,000.00 by the Order of May 8, 2012. Paragraph 19 of the Initial Order suspended the making of special payments to the Debtors pension plans, including the Plan, but allowed for the making of normal cost contributions;

19. On March 19 and 20, 2012, all of the Debtors' directors resigned from their positions;

20. On the day following the issuance of the Initial Order, Aveos ceased the operations of its two other divisions, the Engine and Component Divisions, and terminated the employment of its remaining workforce save for a very limited number of key employees;

21. On March 20, 2012, the Court approved the appointment of Jonathan Solursh to act as Chief Restructuring Officer of the Debtors (collectively with R.e.l. Group Inc., the "**CRO**"), who developed and implemented, with the support of the Union and the Secured Lenders (defined below), a Court approved divestiture process (the "**Divestiture Process**");

22. By letter dated April 5, 2012, OSFI appointed Aon Hewitt Inc. as the replacement administrator of the Plan effective April 5, 2012, as appears from a letter produced under Exhibit R-3;

23. The Divestiture Process was approved by this Court on April 20, 2012 and has already resulted in numerous Court approved transactions; practically all if not all of the Debtors' assets have now been sold;

24. By way of letters dated May 10, 2012, the CRO informed OSFI that accruals would cease in respect of the Plan and another Aveos pension plan, being a Defined Contribution Plan ("**DC Plan**") effective May 19, 2012, as appears from said letters produced en liasse under **Exhibit R-4**. The letter respecting the Plan informed OSFI that the Plan had no future;

25. Aveos also had a defined benefit pension plan for union members ("**DB Union Plan**");

26. On May 14, 2012, legal representative for IAMAW informed legal counsel for OSFI that "that there are no longer any active IAMAW members in the (DB Union) Plan. In light of the circumstances, the IAMAW hereby requests that the (DB Union) Plan for IAMAW members be terminated and wound-up." This request was reaffirmed on May 23, 2012 following OSFI's receipt of information that two union employees were still engaged by Aveos;

27. OSFI terminated both the Plan and the DC Plan effective May 19, 2012 and terminated the DB Union Plan effective May 25, 2012, as appears from the letters issued by the OSFI on May 25, 2012 and produced en liasse under **Exhibit R-5**;

28. The following table summarizes the amounts owed in respect of the Plan per month :

Aveos Non Union Pension Plan				
Monthly Period covered	**Accrued on**	**Special payment required**	**Received amount**	**Outstanding**
January 2012	January 1. 2012	254,950.00 $	254,950.00 $	- $
February 2012	February 1, 2012	254,950.00 $		254,950.00 $
March 2012	March 1, 2012	254,950.00 $		254,950.00 $
April 2012	April 1, 2012	254,950.00 $		254,950.00 $
May 2012	May 1, 2012	254,950.00 $		254,950.00 $
June to December 2012	May 19, 2012	1,784,650.00 $		1,784,650.00$
		3,059,400.00 $	254,950.00 $	2,804,450.00 $

29. In respect of the Plan, the outstanding amount owed by the employer on the date of the Initial Order is $509,900. An additional amount of $2,294,550.00 is also owed by the employer upon termination of the Plan for a total of $2,804,450.00 representing amounts owed before and at the date of termination of the Plan for outstanding special payments owing to the Plan for the period ending December 31, 2012. This amount was confirmed by Aveos' counsel, as appears from a letter dated July 13, 2012, produced as **Exhibit R-6**;

30. An actuarial termination report for the Plan as at May 19, 2012 has been prepared by Aon Hewitt and is dated December 19, 2012, filed as **Exhibit R-7**. This report confirms that $2,804,450 in special payments is owing to the Plan in respect of amounts owed during the period January to December, 2012;

31. The termination report for the Plan shows that the Plan has a deficit (i.e., liabilities exceeds the assets of the Plan) of $29,748,200. This report has not yet been approved by OSFI;

32. While a deemed trust attaches to normal cost, special payments and other amounts owed or accrued to a pension plan as at the date of termination, the amount required to be paid by an employer in respect of the remaining deficit is an unsecured claim;

33. Aveos has not deposited the amounts which represent the special contributions owing in a separate bank account;

34. In the event that it is determined that such amounts are payable to the Plan in priority to the security of the Respondents, including the security of the Third Party Secured Lenders detailed below, Aveos does have sufficient funds to pay these special contributions as well as all CCAA Charges;

35. All Company normal cost and employee contributions owed to the Plan have been paid into the Plan fund."

[8] The balance of the Agreed Statement of Facts relates to the Secured Lenders security interests. The Agreed Statement of Facts document contains a summary of the security consisting of fixed charges perfected in favour of the Secured Lenders in Québec, as a hypothec under the Québec Civil Code and in Ontario, Alberta, British Columbia, Nova Scotia, Manitoba and the Northwest Territories as a security interest under the relevant provincial personal property security legislation.

[9] Registration dates confirm the initial perfection of the security in March 2010, except for the Northwest Territories where security was perfected in August 2011.

[10] Copies of the deed of hypothec and the general security agreement were filed in evidence also by consent. These documents confirm the existence of a hypothec and security interest in all present and future movable and personal property.

[11] The parties also agreed to further facts germaine to the submissions concerning the imputation of certain payments made or about to be made by Aveos with funds received from Air Canada, as mentioned above. Also, Aveos' chief restructuring officer, Jonathan Solursh, testified briefly on this subject.

[12] The deficit under the pension plan for non-unionized employees at the time of their transfer from employment with Air Canada to Aveos was approximately $1.7 million.

[13] It was agreed in 2007 that Air Canada would pay this sum to Aveos by way of equal consecutive quarterly instalments of $75,036.00 each on October 30, January 30, April 30 and July 30 of each year until the final payment on January 30, 2014.

[14] Air Canada made no further payment after January 2012 at which time the balance due was $600,288.00 (or 8 x $75,036.00).

[15] Air Canada and Aveos agreed on October 4, 2013 that Air Canada would pay $5,361,499.00 to be held in trust to be distributed to Aveos employees. This sum includes the $600,288.00. The agreement was approved by this Court by order issued on October 11, 2013. The agreement resolved outstanding matters between Air Canada and Aveos with respect to the payments to be made by Air Canada to Aveos regarding the former's pension obligations towards its former employees transferred to Aveos.

[16] While not wishing to admit that the $5,361,499.00 is not subject to its security, the Secured Lenders did not assert any rights that would impede Aveos directing these funds to/or for the benefit of the former employees.

POSITIONS OF THE PARTIES

The Superintendent of Financial Institutions

[17] Though not a creditor of Aveos, the Superintendent maintains that it has sufficient interest or standing to bring this matter before the Court and more specifically to seek relief regarding the deemed trust.

[18] Sections 5(1) and 33.2(1) of the *Pension Benefits Standards Act*[2] ("P.B.S.A.") provide as follows:

> "5(1) The Superintendent, under the direction of the Minister, has the control and supervision of the administration of this Act and has the powers conferred by this Act."

[2] R.S.C. , 1985, c. 32 (2nd Supp.).

"33.2(1) In addition to any other action that the Superintendent may take in respect of a pension plan, the Superintendent may bring against the administrator, employer or any other person any cause of action that a member, former member or any other person entitled to a benefit from the plan could bring."

[19] These enactments provide the standing for the Superintendent regarding the matter before this Court.

[20] None of the other parties involved have contested the Superintendent's standing.

[21] The Superintendent claims that the deemed trust created by Section 8 P.B.S.A. obliges Aveos to pay to the pension plan, or to Aon, the administrator of the pension plan, in priority to Crédit Suisse, the total of the prescribed special payments due to the plan for the period February to December 2012 or, $2,804,450.00.

[22] The relevant sections of the P.B.S.A. regarding the deemed trust are 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:

(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).

8(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."

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

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

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

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

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

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

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

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

[23] Once the plan was terminated on May 19, 2012, the balance of the prescribed special payments for 2012 became due pursuant to Section 29(6) P.B.S.A. The last payment made by Aveos was in January 2012. Thus, the payments for February to December 2012 totalling $2,804,450.00 are due and subject to the deemed trust.

[24] The Superintendent submits that this sum is protected by the deemed trust and as such ranks in priority to or is not charged or subject to the security in favour of the Secured Lenders.

[25] According to the Superintendent, the distribution of an employer's assets or the fact that an employer company has become subject to the C.C.A.A. or the *Bankruptcy and Insolvency Act*[3] ("B.I.A."), does not override the effect of the deemed trust. The divestiture process put in place by Aveos and the sale of all or almost all of its assets triggered Section 8(2) P.B.S.A. since there has been a "liquidation".

[26] Since the C.C.A.A. provides no scheme of collocation, the deemed trust in Section 8(2) P.B.S.A. continues to apply. Nothing in the C.C.A.A. says that it does not apply. The only specific provisions addressing the deemed trust are found in Sections 6(6) and 36(7) C.C.A.A., which provide, respectively, that no arrangement can be sanctioned nor any asset sale approved unless adequate measures are taken for the payment of "defined contribution provisions" under the P.B.S.A. These provisions are silent on the deemed trust and on prescribed special payments such as the $2,804,450.00 in this case. Given this silence and the fact that Section 8(2) P.B.S.A. is valid federal legislation, it continues to have its effect alongside the C.C.A.A. The Superintendent submits that there is no need to have specific recognition in the C.C.A.A. of the operation of the deemed trust. There is no incompatibility nor any issue of federal paramountcy as in the case of *Indalex*[4]. (In *Indalex*, the provincial law (specifically Section 30(7) of the *Personal Property Security Act*[5] provided that a security interest is subordinate to the deemed trust existing under the equivalent Ontario statute [6].)

[27] Thus, the Superintendent submits that the deemed trust has full effect to withdraw or to subtract the $2,804,450.00 (sometimes hereinafter "$2.8 million") from the ambit of the security of the Secured Lenders.

[28] The fact that the C.C.A.A. does not specifically recognize the priority of the Section 8(2) P.B.S.A. deemed trust is not relevant according to the Superintendent. The cases dealing with deemed trusts in favour of the Crown (particularly *Sparrow*[7] and *Century*[8]) do not apply or must be read with caution. The legislator caused the Crown to become an ordinary (unsecured) creditor from the amendments in 2005 (see Section 38 C.C.A.A.). By the same token, the legislator also stated that deemed trusts in favour of the Crown would have no effect except where specifically acknowledged, which is the case for deductions at source of taxes, unemployment insurance premiums and government pension contributions (see Section 37 C.C.A.A.). This legislative scheme and the case law interpreting and applying it is not applicable when considering Section 8(2) P.B.S.A., because the Section 8(2) deemed trust is not in favour of the Crown

---

[3] R.S.C., 1985, c. B-3.
[4] *Sun Indalex Finance, LLC vs. United Steelworkers*, 2013 SCC 6.
[5] R.S.O., 1990 c. P.10.
[6] *Pension Benefits Act,* R.S.O. 1990 c. P.8.
[7] *Royal Bank of Canada vs. Sparrow Electric Corporation*, [1997] 1 S.C.R. 411.
[8] *Century Services Inc. vs. Canada (P.G.),* [2010] 3 S.C.R. 379.

whose claims under the C.C.A.A. are stated to be ordinary, unless a Crown deemed trust is specifically acknowledged (see Section 37(2) C.C.A.A.).

[29] The Superintendent refutes that the granting of security in favour of the Secured Lenders prior in time to the deemed trust arising, makes it such that the property has already been encumbered, and thus not subject to the deemed trust. According to the Superintendent, the deemed trust's priority exists independently of the date of its creation or the date of perfection of the security held by the Secured Lenders.

[30] The intent of the legislator is to protect the pension plan for the benefit of the employees. Secured creditors should not be in an advantageous position where a company is liquidated under the C.C.A.A. and no plan of arrangement is proposed. On the other hand, the legislator with a view to balancing competing interests limited the deemed trust to actual payments due in a year of winding up and not to the entire actuarial deficit (in this case $29,748,200.00). This is the effect of the amendments in 2010 to the P.B.S.A. [9]

[31] Aside from considerations of rank, the Superintendent also submits that since the monthly payments of $254,950.00 (at least after the Initial Order) were discontinued based on paragraph 19 of the Initial Order. Such order can be amended according to the circumstances.

[32] The underlying rationale of such an order is to enhance a company's liquidity to allow it "breathing room" with a view to helping it move toward a restructuring of its business [10]. It was decided shortly after the Initial Order that none of the employees of Aveos (all of whom had been laid off) would be recalled, and that a process to sell the assets would be put in place. This "divestiture process" was approved by this Court on April 20, 2012. Accordingly, it was a matter of record that Aveos would not continue as the employer even if units of the business enterprise were sold on a going concern basis. In view of the foregoing on May 25, 2012, the Superintendent terminated the pension plan as it was empowered to do under Section 29(2) P.B.S.A.

[33] The Superintendent now submits that the undersigned should amend the Initial Order by eliminating Aveos' right to interrupt the monthly payments of $254,950.00 (at least post-filing) and order Aveos to pay the amount due to the pension fund. Sufficient funds are available to make the payment given the cessation of normal business activity and the asset sales. The rationale for permitting Aveos to cease or interrupt the special payments no longer obtains because of the cessation of normal business activities. Accordingly, the Initial

[9] Statutes of Canada, Chapter 12, 59 Elizabeth II, 2010 (July 12, 2010).
[10] *AbitibiBowater Inc.*, 2009 QCCS 2028 (Mayrand, J.); *Fraser Papers Inc. (Re),* 2009 Can LII 39776 (Pepall, J.); *United Airlines, Inc. (Re)*, (2005) 9 CBR (5th) 159 (Farley, J.).

Order should be amended and Aveos should be ordered to pay, independent of any consideration of the rank of security.

[34] To allow for this outcome, the Superintendent sought and was granted permission to amend the conclusions of its proceedings so as to ask this Court to "issue any other order deemed necessary in the circumstances" with a view to having the undersigned conclude in amending the Initial Order and ordering Aveos to pay the $2,804,450.00 as outlined hereinabove.

Aon Hewitt

[35] Aon is the plan administrator appointed in April 2012 to replace Aveos following the C.C.A.A. filing.

[36] Aon supports the representations of the Superintendent emphasizing that the Section 8(2) P.B.S.A. deemed trust applies to "any" liquidation, thus including a C.C.A.A. liquidation.

[37] Aon adds that the pension legislation is remedial and seeks to protect the employees whose entitlement to the pension proceeds is part of the remuneration for their labour[11]. They are the vulnerable party entitled to protection [12].

Secured Lenders

[38] The Secured Lenders take the position that any deemed trust for the pension special payments is subordinated to their secured rights. In other words, since all of the property of Aveos was, at the time the deemed trust came into existence, charged by the Secured Lenders security, there were no assets that could be subject to the deemed trust or at least any such assets are subject to a prior charge in favour of the Secured Lenders.

[39] The Secured Lenders rely on the Supreme Court of Canada decision in the matter of *Sparrow*[13]. Counsel underlines that the dissenting reasons in *Sparrow* do not differ from the majority on this point, i.e. that property subject to a fixed charge cannot be thereafter impressed with a deemed trust. The minority reasons of Justice Gonthier differed from the majority in that he relied on the license theory to the effect that the security documents in *Sparrow* permitted inventory to be sold in order that deductions at source be paid, so that if they

---

[11] *Buschau vs. Rogers Communications Inc.,* [2006] 1 S.C.R. 973 at p. 987; *Association provinciale des retraités d'Hydro-Québec vs. Hydro-Québec,* 2005 QCCA 304, para. 40 and 41.
[12] *Sun Indalex Finance, op.cit.,* para. 268, LeBel and Abella (dissenting).
[13] *Royal Bank of Canada vs. Sparrow Electric Corporation*, *op.cit*.

were not paid there was room, notionally for the deemed trust to charge the proceeds of the inventory sales.

[40] *Sparrow* dealt with a deemed trust in favour of the Crown. The legislative amendments to the tax statutes since *Sparrow* underscore that Section 8(2) P.B.S.A. (which reflects pre-*Sparrow* amendment language) does not create priority rights vis-à-vis secured fixed charges. Also, these amendments are the basis for the Secured Lenders' second argument that the deemed trust of Section 8(2) P.B.S.A. does not survive the C.C.A.A. filing.

[41] In this regard, the Secured Lenders submit that the statutory structure is such that certain limited payment obligations under the P.B.S.A. are protected under the C.C.A.A. (and the B.I.A.). Reference is made to Sections 6(6) as well as 37(6) C.C.A.A. (and Sections 81.5 and 81.6 of the B.I.A.). Given this protection following the history of the deemed trust legislation, it is clear, both structurally in the C.C.A.A. (and the B.I.A.) and in terms of the policy intent of the legislator that in the event of insolvency, the deemed trust of Section 8(2) P.B.S.A., for the special payments, will not be given effect, or at least will not trump the rights of secured creditors. The Secured Lenders submit that the Supreme Court has clearly stated that a deemed trust will be given effect in an insolvency estate only to the extent that it is recognized in the applicable insolvency legislation [14].

[42] Lastly, in reply to the Superintendent's argument that, the suspension of special payments in virtue of Section 19 of the Initial Order herein simply be reversed, the Secured Lenders submit that it is not open to the Court at this point to order payment, in effect, retroactively, of the pension special payments. The Secured Lenders invoke three (3) arguments in this regard.

[43] Firstly, the Secured Lenders submit that the special payments due after the March 19, 2012 C.C.A.A. filing represent a pre-filing obligation *albeit* payable in instalments which continued from the pre to the post-C.C.A.A. filing period.

[44] The special payments represent compensation for past services rendered. The services were rendered pre-filing and so was the obligation to remunerate the employee for such service. The crystallization of the obligation after filing does not change this. The Secured Lenders rely on the judgment in *Nortel* of the Ontario Court of Appeal [15].

---

[14] *Century Services Inc. vs. Canada (P.G.), op.cit.*

[15] *Sproule vs. Nortel Networks Corporation*, [2009] ONCA 833, para. 20 and 21; see also, *Fraser Papers Inc. (Re), op.cit*.

[45] Secondly, the Secured Lenders say that the Superintendent's argument is based on a false premise that it is unfair to give more protection to Secured Lenders in a liquidation under the C.C.A.A. than they would have if an arrangement was filed under the C.C.A.A. (Section 6(6)) or upon the sale of assets under the C.C.A.A. (37(6)) or in a bankruptcy or receivership (Sections 81.5 and 81.6 B.I.A.).

[46] Here, the Secured Lenders' argument rejoins its principal argument in that the text of the statutes and the intention of the federal legislator in the evolution of the statutory scheme is such that special payments to make good the deficit in the pension plan are not given priority in an insolvency. In this regard, the Secured Lenders rely on dicta of the minority of the Supreme Court of Canada in *Indalex* [16] to postulate that equity should not be used to move the law to where Parliament has clearly refused to move it [17].

[47] Thirdly, the Secured Lenders submit that it is unfair to them at least at this stage to amend the Initial Order and oblige Aveos to make the special payments due for the period February to December 2012.

[48] The Initial Order providing *inter alia* a stay of proceedings and the ability to interrupt the payments to the pension plan has been extended six (6) times since March 19, 2012. This does not include various amendments which have been incorporated into the Initial Order following motions and hearings. There have been twelve (12) asset sales according to the submissions of the Secured Lenders. There have been four (4) distributions of funds produced by these asset sales which distributions have taken place on order of this Court between October 24, 2012 and October 21, 2013. All of the process was public and the Superintendent received notices of all motions. However, neither the Superintendent nor Aon have made any application to change the Initial Order until this time. The last special payment was due on December 2012. The present motion was filed in April 2013.

[49] The Secured Lenders submit that faced with a timely application to amend the Initial Order to oblige Aveos to continue making special payments, they might have strategized differently if faced with an effective subordination of their position to a monthly payment of $250,000.00. The Secured Lenders submit by way of example that in such a scenario that they might have provoked a bankruptcy or a receivership.

---

[16] *Sun Indalex Finance, LLC vs. United Steelworkers*, *Op.cit*.

[17] *Sun Indalex Finance, LLC vs. United Steelworkers*, *Op. cit*., (Deschamps, J. and Moldaver, J.), para. 81 and 82.

Aveos

[50] As indicated, Aveos has taken no position on the principal debate concerning the priority as between the Secured Lenders' security and the deemed trust, over the sum of $2,804,450.00.

[51] Aveos has however taken the position that with respect to the sum received from Air Canada, it has the right to use these funds for the benefit of the employees in accordance with its agreement with Air Canada but more significantly to impute payment against specific amounts as it wishes. Accordingly, Aveos has made it known that it intends to use $600,288.00 of the $5,361,499.00 (i.e. the remaining sum Air Canada was contributing to its October 2007 pension deficit) to pay the Aveos special payments for Aveos' pension deficit which were due and unpaid for February and March 2012 in the amount of $254,950.00 each and an additional $90,388.00 on account of the special payment that was due for the month of April 2012. Such payments would operate to reduce the amount of $2,804,450.00 claimed by the Superintendent to be protected by the deemed trust. Accordingly, with such imputation and if the Superintendent is given priority for such sum, it will be reduced to $2,204,162.00.

[52] The Superintendent and Aon contest this imputation so as to preserve their deemed trust for the full amount of $2.8 million.

[53] The Superintendent and Aon submit that Aveos received the fund from Air Canada in trust (for the former employees of Air Canada). In Québec law, absent agreement, it is the debtor that has the right to impute payment. However, the Superintendent and Aon submit that the debtor of the sum of $600,288.00 is Air Canada and not Aveos since this sum represents the balance of special payments due to defray the deficit for the pension plan with regard to former Air Canada employees.

DISCUSSION

[54] One purpose of insolvency law is to provide for a fair distribution of a debtor's assets given that there is not enough money to pay all creditors [18]. The preferences accorded certain types of claim created by the laws passed by Parliament reflect policy decisions of the legislator. Parliamant decides what is fair.

---

[18] Houlden, Morawetz and Sarra, "*The 2012-2013 Annoted Bankruptcy and Insolvency Act*", Toronto, 2012, p. 2.

[55] The statutory mechanism of the deemed trust to protect sums due to the Crown has been given much attention before the courts. While the law appears settled regarding deemed trusts in favour of the Crown, questions remain concerning deemed trust claims of pension funds.

[56] An understanding of the state of the law and the policy reflected in this law requires a survey of the decisions of the courts considering such laws.

[57] The Superintendent did not urge that Section 8(2) P.B.S.A. creates a true trust. In similar circumstances, analyzing similar statutory language, the Supreme Court of Canada in *Sparrow*[19] stated that the deemed trust is not a real one as the subject matter cannot be identified from the date of the creation of the 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.

[59] In *Sparrow*, the Supreme Court of Canada was faced with the deemed trust created by Section 227(4) and 227(5) of the *Income Tax Act* ("I.T.A.") [20] in effect in 1997 which read as follows:

> "(4) Every person who deducts or withholds any amount under this Act shall be deemed to hold the amount so deducted or withheld in trust for Her Majesty.
>
> (5) Notwithstanding any provision of the *Bankruptcy Act,* in the event of any liquidation, assignment, receivership or bankruptcy of or by a person, an amount equal to any amount
>
> (a) deemed by subsection 9(4) to be held in trust for Her Majesty […]
>
> shall be deemed to be separate from and form no part of the estate in liquidation, assignment , receivership or bankruptcy, whether or not that amount has in fact been kept separate and apart from the person's own moneys or from the assets of the estate."

[60] The text is similar to Section 8 P.B.S.A. It should be noted that Section 8(2) P.B.S.A. has not been amended since 1997.

---

[19] *Royal Bank of Canada vs. Sparrow Electric Corporation, op.cit.*, para. 31.
[20] R.S.C. , 1985, c. 1 (5th Supp.).

[61] In *Sparrow*, the secured creditor held perfected security interests over the debtors' inventory in virtue of the *Alberta Personal Property Security Act* [21] and Section 178 (now 427) of the *Bank Act* [22].

[62] Gonthier, J. while in dissent agreed with the basic analysis of Iacobucci, J. writing for the majority, that property validly encumbered by security was not attachable by the deemed trust under the I.T.A. [23].

[63] Iacobucci, J. for the majority was explicit on the competition of the deemed trust with the security interests:

> "The deeming is thus not a mechanism for undoing an existing security interest, but rather a device for going back in time and seeking out an asset that was not, at the moment the income taxes came due, subject to any competing security interest. In short, the deemed trust provision cannot be effective unless it is first determined that there is some unencumbered asset out of which the trust may be deemed. The deeming follows the answering of the chattel security question; it does not determine the answer." [24]

[64] Following *Sparrow*, Sections 227(4) and 227(5) I.T.A. were replaced by 227(4) and 227(4.1) [25] wherein language was added which was subsequently characterized by the Supreme Court as follows:

> 'It is apparent from these changes that the intent of Parliament when drafting Section 227(4) and 227(4.1) was to grant priority to the deemed trust in respect of property that is also subject to a security interest regardless of when the security interest arose in relation to the time the source deductions were made or when the deemed trust takes effect." [26]

[65] Similar amendments were brought in 1998 to the *Canada Pension Plan Act* [27] and the *Employment Insurance Act* [28] and in 2000 to the *Excise Tax Act* [29]. What is noteworthy in this legislative evolution, is that no similar amendments to overcome *Sparrow* were ever brought to Section 8(2) P.B.S.A.

[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

---

[21] S.A. 1988 c. P-4.05.
[22] R.S.C. 1985 c. B-1.
[23] Gonthier, J. at para. 39 and Iacobucci, J. at para. 98 to 99.
[24] *Ibid*.
[25] S.C. 1998, c.19.
[26] *First Vancouver Finance vs. M.N.R.*, [2002] 2 S.C.R. 720, para. 28.
[27] R.S.C. , 1985, c. C-8; amendments at S.C. 1998 c. 19.
[28] S.C. 1996, c. 23; amendments at S.C. 1998 c. 19.
[29] R.S.C. , 1985, c. E-15; amendments at S.C. 2000 c. 30.

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.

[68] This Court also agrees with the Secured Lenders second position, that is that the deemed trust to protect or give preferential treatment to the pension special payments is not effective in a C.C.A.A. proceeding at least where secured creditors with prior perfected security are not paid in full, for the reasons which follow.

[69] In the *Century* [30] case, the Supreme Court was called upon to consider whether a statutory deemed trust created under the *Excise Tax Act* [31] would be given effect in a C.C.A.A. matter.

[70] The deemed trust created under Section 222(3) of the *Excise Tax Act* operated "despite (…) any other enactment of Canada (except the Bankruptcy and Insolvency Act)". Section 18.3(1) C.C.A.A. (as it then read) negated the effect of any deemed trust in favour of the Crown except those created under the I.T.A., the *Canada Pension Plan Act* and the *Employment Insurance Act* all for source deductions.

[71] After examining the legislative history, Deschamps, J. writing for the majority, held that Parliament did not intend for the C.C.A.A. to protect the Crown's deemed trust priority for GST claims payable under the *Excise Tax Act*. Deschamps, J. stated that where Parliament's intent is to protect deemed trust claims in insolvency matters, Parliament clearly states so. Absent an express statutory basis for concluding that GST claims enjoy preferred treatment under the C.C.A.A. (or the B.I.A.), no such protection exists [32]. Fish, J. writing minority reasons was even more explicit that the protection of a deemed trust claim in an

---

[30] *Century Services Inc. vs. Canada (P.G.), op.cit*.
[31] *Op.cit.*
[32] *Century Services Inc. vs. Canada (P.G.), op.cit*., para. 45.

insolvency requires a statutory provision creating the trust and a provision in the B.I.A. or C.C.A.A. explicitly preserving the effective operation of the deemed trust [33].

[72] In the present case, while Section 8(2) P.B.S.A. creates the deemed trust, there is no provision of the C.C.A.A. that confirms or preserves it.

[73] Parliament has enacted such "preserving" provisions for deductions at source in Section 37(2) C.C.A.A. (see also Section 86(2) B.I.A.). This is a *Sparrow* legacy amendment. There is no such preservation for the Section 8(2) P.B.S.A. deemed trust.

[74] The Superintendent seeks to distinguish *Century* because there, the confirming provisions recognizing the deemed trust were necessary given that Parliament made the Crown an ordinary creditor in insolvencies in 2005. This is now reflected in Section 37(1) C.C.A.A. Thus, it was necessary for Parliament to specifically recognize the Crown deemed trusts for source deductions in Section 37(2) C.C.A.A. lest they be subsumed by Section 37(1) C.C.A.A. and treated as ordinary claims. Since the Section 8(2) P.B.S.A. deemed trust was never rendered ineffective by insolvency legislation (such as Section 37(1) C.C.A.A.) than there is no need for specific confirmation in the C.C.A.A., argues the Superintendent.

[75] Whatever allure this logic may contain, the reasoning of Deschamps, J. and Fish, J. in *Century* does not appear restricted to considerations of Crown deemed trust though that is the factual background of the case. Deschamps, J. is explicit in referring to the "general rule that deemed trusts are ineffective in insolvency" [34].

[76] More significantly, however, to indicate the intention of the legislator not to preserve the Section 8(2) P.B.S.A. deemed trust, are the 2009 amendments to the C.C.A.A. (and the B.I.A.). Sections 6(6) and 36(7) C.C.A.A. provide that an arrangement may only be sanctioned or an asset sale approved by the court, if provision is made for the payment of certain enumerated pension obligations including obligations under the P.B.S.A. These obligations do not however include special payments but rather are limited to deductions from employee salaries and normal cost contributions of the employer (neither of which is in issue in the present case). Similar protection was given in the B.I.A. for bankruptcy liquidations and receivership sales (see Sections 81.5 and 81.6 B.I.A.).

[77] The protection of Section 6(6) C.C.A.A. is not extended specifically to Section 8(2) P.B.S.A. or generally to special payments for actuarial deficits.

---

[33] *Ibid,* para. 96.
[34] *Ibid,* para. 45.

Moreover, in the next seminal case of the Supreme Court of Canada dealing with deemed trusts in insolvency, Deschamps, J., in the matter of *Indalex* [35], quotes from the report of Parliament's Standing Committee on Banking, Trading and Commerce to conclude that Parliament considered giving special protection to pension plan members in matters of insolvency but chose not to [36].

[78] The deemed trust in Indalex was a deemed trust under the *Pension Benefits Act* (Ontario) [37] which is legislation similar to the P.B.S.A.

[79] Given that the liquidation of Aveos took place in a C.C.A.A. context and that this statute provides no order of collocation or preference, provincial priorities continue to apply [38].

[80] In Ontario, as disclosed in the *Indalex* case, Section 30(7) of the *Personal Property Security Act* [39], subordinates security interests to the deemed trust created by the *Pension Benefits Act* [40]. Counsel for the Superintendent conceded that there is no equivalent provision in Québec provincial law that would give priority to the deemed trust in the present case. Accordingly, there is no basis for a priority claim for the Section 8(2) deemed trust based on Québec law.

[81] The Superintendent argues that it is unfair that Secured Lenders have a better rank in a C.C.A.A. liquidation vis-à-vis the pension than they would have otherwise. This however is not the case. Section 6(6) C.C.A.A. and Sections 81.5 and 81.6 B.I.A. are in harmony. The special payments are not protected and would not have priority over the rights of a secured lender in any scenario: bankruptcy, receivership or C.C.A.A. regime.

[82] The Superintendent also submits that Parliament's intent should also be gleaned from the amendments to the P.B.S.A. in 2009 limiting the deemed trust to the actual payment deficit and not to the whole actuarial deficiency (see Sections 29(6.2) and 29(6.5) P.B.S.A.) The actuarial deficit of the Aveos non-unionized pension plan is approximately $29,748,200.00. This argument is not however logically helpful to extend the protection of Section 8(2) P.B.S.A. to special payments due by a company under C.C.A.A protection. It is plausible that such an amendment was motivated by Parliament's desire not to subordinate

[35] *Sun Indalex Finance, LLC vs. United Steelworkers, op.cit.*
[36] *Sun Indalex Finance, LLC vs. United Steelworkers*, *op.cit.,* para. 81 and 82.
[37] R.S.O. 1990, Chapter P-8.
[38] *Sun Indalex Finance, LLC vs. United Steelworkers, op.cit,* para. 51 and 52.
[39] *Op.cit.*
[40] Nevertheless, it was held in *Indalex* that any deemed trust would be superseded by the priority accorded to the interim (debtor in possession) lender by the C.C.A.A. judge because of the doctrine of federal paramountcy.

or dilute ordinary creditors by a mutli-million dollar pension claim. In any event, the argument does not bolster the position vis-à-vis secured claims.

[83] The Superintendent legitimately poses the rhetorical question of what use is the deemed trust? Certainly it is useful for the protection of special payments but only vis-à-vis creditors who do not hold security over the assets of the debtor company which was perfected prior to the deemed trust attaching to the assets.

[84] The beneficiaries of the pension plan may be vulnerable as the Superintendent and Aon submit and as such merit protection for their pension entitlements as a matter of public policy [41]. However, the balance of competing policies is a matter for Parliament whose task is to define policy priorities and to reflect such choices in statutes. As Fish, J. stated in *Century,* legislative discretion belongs to Parliament alone and is not to be exercised by the judiciary [42].

[85] Finally, the Superintendent submitted that paragraph 19 of the Initial Order of March 19, 2011, permitting Aveos to interrupt the payments of the pension plan should be abrogated and that Aveos should be ordered to pay the $2,804,450.00 to the pension fund.

[86] In this regard, an issue arises as to whether the special payments constitute pre or post-filing obligations. Of course, if the obligation is a pre-filing obligation (*albeit* payable in instalments after filing) then it is arguable such amounts be the subject of a proof of claim in an arrangement and not be paid after the C.C.A.A. filing.

[87] The reason advanced that the obligation is pre-filing is that pension entitlement is part of the consideration or remuneration for labour services rendered by employees which in this case were all rendered pre-filing. The undersigned does not think it is necessary to characterize the special payments as pre or post-filing to decide this point in the circumstances of this case.

[88] The interruption of payments to the pension plan has been allowed by C.C.A.A. courts when necessary to enhance liquidity to promote the survival of a company in financial distress [43]. In *Nortel* [44], the company was being put through a sales process and did not appear to be able to continue its normal business operations.

---

[41] *Monsanto Canada Inc. vs. Superintendent of Financial Services*, [2004] 3 S.C.R. 152.
[42] *Century Services Inc. vs. Canada (P.G.), op.cit.,* para. 95.
[43] *Sproule vs. Nortel Networks Corporation, op. cit.,* para. 45 and 46; *AbitibiBowaters, op.cit.,* para. 49 and 50.
[44] *Sproule vs. Nortel Networks Corporation, op. cit.*

[89] The situation in the present case was not essentially different on March 19, 2012. However, the unfolding of the facts made it clear in short order that Aveos would not continue in business. Employees were not recalled to continue anything akin to normal business activity. The sales or divestiture process was approved by this Court on April 20, 2012. There were a number of sales and four (4) distributions of funds to the Secured Lenders between October 24, 2012 and October 21, 2013. The Superintendent was or should have been fully aware of the situation. However, no application was brought by the Superintendent or by Aon to vary the Initial Order as sought herein.

[90] Had an application been brought, the Secured Lenders could have decided on a course of action which may have included provoking a bankruptcy or a receivership.

[91] While the undersigned would not go so far as to say that priorities cannot be revisited following a sale, vesting order and distribution as did Campbell, J. recently in *Grant Forest* [45], I do believe that the Court should be extremely hesitant to alter the Initial Order, retroactively, after such a long period of time has elapsed and salient events in the C.C.A.A. process have occurred. As Farley, J. said :

> "Come back relief, however, cannot prejudicially affect the position of parties who have relied *bona fide* on the previous order in question." [46]

[92] The Initial Order was renewed six (6) times. The Superintendent has been on the service list. It is not sufficient to reserve one's rights. These rights must be exercised. Where a failure to exercise those rights, may cause prejudice to other parties, those rights, though not time barred by statute, may be subject to an estoppel in virtue of the doctrine of laches in common law or as a result of the doctrine of "fin de non-recevoir" [47] in civil law.

[93] It should also be noted that even in its petition for declaratory relief filed in April 2013, the Superintendent did not seek a modification of the Initial Order. The issue arose at the hearing.

[94] In the circumstance described above, the Superintendent's delay in seeking a modification to the Initial Order appears unreasonable given that the

---

[45] *Grant Forest Products Inc. (Re),* 2013 ONSC 5933.

[46] *MuscleTech Research and Development Inc.,* (2006) 19 C.B.R. (5th) 54; see also *Re White Birch Paper Holding Company (Arrangement relatif),* 2012 QCCS 1679, para. 245.

[47] *Banque Nationale du Canada vs. Soucisse et al*., [1981] 2 S.C.R. 339; see *also Baronet Inc. (Arrangement*), 2008 QCCS 288 (Parent, J.) where a three-month delay in a comeback motion was not considered unreasonable.

other parties, particularly the Secured Lenders have relied on that Initial Order, in good faith.

[95] Accordingly, in the opinion of the undersigned, the Superintendent is barred from seeking an amendment to the Initial Order at this time to, in effect, retroactively reverse the power of Aveos to interrupt the pension payments and to order Aveos to pay to the pension fund the $2,804,450.00.

[96] Given the conclusion on the priorities over the special payment of $2.8 million it is not strictly necessary to decide whether Aveos may impute $600,288.00 against the $2.8 million.

[97] However, should it become necessary for the parties, the Court will adjudicate on the question.

[98] In Québec law the general principle set out by Article 1569 C.C.Q. is that a debtor has the right to impute payment. Various exceptions and qualifications set out in the C.C.Q. do not apply to the present circumstances.

[99] Here it is agreed that Aveos received the $5.3 million from Air Canada in trust. The Superintendent and Aon plead that if the debtor is not Aveos, but rather Air Canada (who was liable to make the special payments to defray its pension deficit) then it is Air Canada and not Aveos that may impute the payment.

[100] In the opinion of the undersigned, though Air Canada may have been the debtor vis-à-vis Aveos in virtue of the agreement of 2007 (or even the October 2013 agreement), once in receipt of the funds, Aveos is the debtor vis-à-vis the former employees and thus has the right to impute payment.

[101] Even if Aveos holds the funds in trust, Aveos nevertheless has the right to impute payment of these funds since in Québec law, the trustee has "the control and exclusive administration of the trust patrimony" and "has the exercise of all of the rights pertaining to the patrimony" (Article 1278 C.C.Q). The undersigned would include in those rights, the right to impute payment as foreseen by Article 1569 C.C.Q.

[102] Accordingly this Court will declare as such in the conclusions of this judgment.

CONCLUSION

FOR ALL OF THE FOREGOING REASONS, THE COURT :

[103] **DISMISSES** the Motion for a Declaratory Judgment of the Superintendent of Financial Institutions;

[104] **DECLARES** that the rights of the Respondent secured lenders in virtue of their security rank in priority to the deemed trust created by Section 8(2) of the *Pension Benefits Standards Act* for the special payments due by Aveos Fleet Performance Inc. and aggregating $2,804,450.00.

[105] **DECLARES** that Aveos Fleet Performance Inc. has the right to impute payment of the sum of $600,288.00 forming part of the funds received or to be received from Air Canada in the amount of $5,361,499.00 as follows:

105.1. To the instalments for special payments to the Superintendent of Financial Institutions with respect to the pension plan for non-unionized employees of Aveos Fleet Performance Inc. for February 2012 ($254,950.00), March 2012 ($254,950.00) and April 2012 ($90,388.00);

[106] **THE WHOLE**, with costs against the Superintendent of Financial Institutions and Aon Hewitt.

MARK SCHRAGER, J.S.C.

Me Roger Simard
Me Ari Y. Sorek
Dentons Canada L.L.P.
Attorneys for Aveos Fleet Performance Inc.

Me Bernard Boucher
Me Katherine McEachern
Blake Cassels & Graydon, ***s.e.n.c.r.l.***
Attorneys for Crédit Suisse AG,
Cayman Islands Branch and Wells Fargo Bank National Association

Me Sylvain Rigaud
Norton Rose Fulbright Canada, ***S.E.N.C.R.L.,s.r.l.***
Attorneys for FTI Consulting Canada Inc.

Me Pierre Lecavalier
Me Antoine Lippé
Procureur général du Canada
Attorneys for the Superintendent of Financial Institutions

Me Claude Tardif
Rivest Schmidt
Attorneys for Aon Hewitt

Dates of Hearing: October 21 and 22, 2013