2017 01H 0029
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL

IN THE MATTER OF Section 13 of Part I of the *Judicature Act*, R.S.N.L. 1990, c. J-4, as amended

AND

IN THE MATTER OF Section 32 of the *Pension Benefits Act, 1997*, S.N.L. 1996, c. P-4.01

AND

IN THE MATTER OF a Reference of the Lieutenant Governor in Council to the Court of Appeal, for its hearing, consideration and opinion on the interpretation of the scope of section 32 of the *Pension Benefits Act, 1997*

FACTUM OF THE SUPERINTENDENT OF PENSIONS OF NEWFOUNDLAND AND LABRADOR

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A. INTRODUCTION AND CONTEXT OF THE REFERENCE

1. One of the basic purposes of the *Pension Benefits Act*, 1997, SNL 1996, c. P-4.01 ("*PBA*") is to ensure that pension benefits are adequately funded. Only then will employees receive the retirement income that they have been promised.[1]

2. In the dramatic circumstances following an employer's insolvency, sections 32 and 61 of the *PBA* are critical to ensuring that this basic purpose is fulfilled. Section 61 outlines what payments an employer owes to the pension fund when the pension plan is terminated, while section 32 deems the amounts owed to the pension fund to be held in trust by the employer.

3. In the Superintendent of Pensions' view, these provisions are complementary and work in lockstep towards their common purpose of protecting pension entitlements.

4. Unfortunately, the courts of Newfoundland & Labrador have not yet had the opportunity to opine on the relationship between sections 32 and 61 and, specifically, on whether the deemed trust triggered by the liquidation or bankruptcy of an employer extends to the wind-up deficit payments an employer is bound to pay into the pension fund when the plan has been terminated.

5. This legal issue became critically important when Wabush Mines JV and the other Wabush CCAA Entities[2] obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 on May 20, 2015.

6. The Wabush Mines JV had operated an open-pit iron ore mine in the Town of Wabush since 1965. Iron ore was mined in Wabush and transported by rail to processing and shipment facilities in Pointe-Noire, Québec.

7. Due ostensibly to financial difficulties, Wabush Mines JV suspended operations at the Wabush Mine in March 2014, and later commenced the process of permanently idling the Mine in November 2014.

8. Two defined benefit pension plans – one for salaried employees and retirees, and the other for unionized workers and retirees – were subsequently terminated on December 16, 2015. By this time, pursuant to an order of the CCAA Court in Montreal dated June 26, 2015[3], the Wabush CCAA Entities had suspended their special payments and catch-up special payments, and had also terminated their former employees' health benefits, life insurance benefits and supplemental pension benefits.

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[1] For a review of the importance of securing pension benefits generally, see *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, [2004] 3 SCR 152, 2004 SCC 54 [**Tab 8**], at paras. 1, 13 and 38; *Buschau v. Rogers Communications Inc.*, [2006] 1 S.C.R. 973, 2006 SCC 28 [**Tab 6**], at paras. 12-13; *Schmidt v. Air Products Canada Ltd.*, [1994] 2 S.C.R. 611 [**Tab 13**], at para. 66.

[2] This term is defined in the Statement of Facts to include Wabush Iron Co. Limited, Wabush Resources Inc., Arnaud Railway Corporation and Wabush Lake Railway Corporation Limited.

[3] *Bloom Lake, g.p.l.* (Arrangement relatif à), 2015 QCCS 3064 [**Tab 3**].

9. Shortly thereafter, in January 2016, the pension plan members reporting for work in Newfoundland & Labrador and in Québec received notice that the amount of monthly benefits being paid to them would decrease by 25% for the retirees of the salaried defined benefit plan ("**Salaried DB Plan**"), and by 21% for the retirees of the Union defined benefit plan ("**Union DB Plan**"), effective March 1, 2016.

10. Both plans are in the process of being wound up and possess significant wind-up deficiencies as determined at the date of termination: $27,450,000 for the Salaried DB Plan, and $27,486,548 for the Union DB Plan.

11. While the CCAA Court in Montréal retains exclusive jurisdiction over the insolvency proceedings and is responsible for making a final disposition as to the rights of the pension plan members, the Government of Newfoundland & Labrador nevertheless felt it important to request an advisory opinion from this Honourable Court on two issues, namely (1) the scope of the deemed trust and the lien and charge outlined in section 32 of the *PBA* and their relationship with the termination payments set out in section 61; and (2) how to determine the applicable law in the context of a multi-jurisdictional pension plan which includes some members governed by the *PBA*.

12. These questions were referred to this Honourable Court pursuant to an order of the Lieutenant-Governor in Council on March 27, 2017 (the "**Reference**"). The order reads as follows:

> In *Arrangement relatif à Bloom Lake*, 2017 QCCS 284 (CanLII), the Quebec Superior Court stated at paragraph 89: "If the Government of Newfoundland and Labrador wishes to obtain a judgment from the courts of the province on the interpretation of the *Pension Benefits Act, 1997*, SNL 1996 c P-4.01, it can refer a matter to the Court of Appeal of Newfoundland and Labrador". In that context, the following questions stated at paragraph 25 of that decision are referred:
>
> 1) The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36. What is the scope of section 32 of the *Pension Benefits Act, 1997*, SNL 1996 c. P-4.01 deemed trusts in respect of:
>
>   a) unpaid current service costs;
>   b) unpaid special payments; and
>   c) unpaid wind-up deficits?
>
> 2) The Salaried Plan is registered in Newfoundland and Labrador and regulated by the *Pension Benefits Act, 1997.*

a) (i) Does the federal *Pension Benefits Standards Act*, R.S.C. 1985, c-32 deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?

(ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and *Pension Benefits Standards Act*? If so, how is the conflict resolved?

b) (i) Does the Quebec *Supplemental Pension Plans Act*, CQLR, c. R-15.1 also apply to those members of the Salaried Plan who reported for work in Quebec?

(ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplemental Pension Plans Act*. If so, how is the conflict resolved?

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

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?

13. The Superintendent of Pensions of Newfoundland & Labrador would propose to answer these questions as follows.

B. SCOPE OF THE DEEMED TRUST AND LIEN AND CHARGE OUTLINED IN SECTION 32 OF THE *PBA*

14. Questions 1) and 3) concern the scope of the deemed trusts and the lien and charge outlined in section 32 of the *PBA*.

15. It is uncontroversial that they encompass the normal actuarial costs and the prescribed special payments which have accrued to date. The Superintendent submits that their scope is broader still, and can include the full amount of the wind-up deficiency payments an employer is bound to pay into the pension fund when the pension plan is terminated.

16. While this argument is set out more fully in the pages that follow, it can be summarized briefly.

17. As a general proposition, the deemed trust created by section 32 encompasses all amounts that are "due" to the pension fund by the employer.[4] Section 32's basic purpose, after all,

[4] In this, section 32 is comparable to section 8 of the federal *Pension Benefits Standards Act*, R.S.C. 1985, c-32. In

is to secure pension plan funding. In 2008, the *PBA* was amended to widen the scope of payments an employer is bound to pay into the pension fund when the plan is terminated: employers are now obliged to fund the full value of the actuarial wind-up deficit of the pension plan. Since these payments are "due" to the pension fund on termination of the plan, they ought to be captured by the protection set out in section 32.

18. This interpretation is supported by comparing the *PBA* with its highly similar federal counterpart, the *Pension Benefits Standards Act*, R.S.C. 1985, c-32 ("***PBSA***").

19. More importantly, this interpretation is the only one that respects the *PBA*'s basic purpose of ensuring that pension plans remain adequately funded. It is also the only interpretation that recognizes that sections 32 and 61 should work in tandem to fulfill this objective.

a. General overview of funding requirements under the *PBA* and their relationship with the *PBA*'s deemed trusts and lien and charge

20. It is worth noting at the outset that this debate concerns defined benefit pension plans specifically.

21. A defined benefit plan promises its members a specific benefit at retirement. This benefit will generally be a function of the employee's length of service and salary. [5] To ensure that these promised benefits can be paid out, the *PBA* and the *Pension Benefits Act Regulations*, NLR 114/96 impose strict funding requirements on employers.

22. In the context of an ongoing pension plan, an employer is bound to pay certain "normal costs" to service current benefits, as well as certain "special payments" which ensure that the pension fund is capable of meeting the plan's liabilities. Special payments may either fund a "going concern" deficiency or a "solvency" deficiency. In the latter case, the amount in question must be paid over a period of 5 years, while in the former case, the amount in question must be paid over a period of 15 years.[6] In the context of an ongoing pension plan, the employer is also bound to pay into the pension fund all contributions it withholds from its employees' salaries.

23. When a pension plan is terminated, the *PBA* sets out a comprehensive set of payment obligations that must be satisfied before the wind-up of the plan is complete and the plan can be de-registered.

24. When the *PBA* was initially enacted in 1996, it was of fundamental importance to the Newfoundland & Labrador legislature that this pension funding be adequately protected. To this end, section 32 of the *PBA* outlines no less than three separate deemed trusts and one lien and charge.

Bloom Lake, g.p.l. (Arrangement relatif à), 2015 QCCS 3064 **[Tab 3]**, Hamilton J. stated at para. 64 that section 8 of the *PBSA* is "intended to cover all amounts due by the employer to the pension fund".

[5] Ari Kaplan and Mitch Frazer, *Pension Law* (2nd edition: 2013), at p. 3 ("Kaplan and Frazer, *Pension Law*") **[Tab 15]**, at pp. 2-3.

[6] *Pension Benefits Act Regulations,* NLR 114/96, at section 12(c) and (d).

25. The first deemed trust relates to ongoing pension plans and is outlined in subsection 32(1), which reads as follows:

> 32. (1) An employer or a participating employer in a multi-employer plan shall ensure, with respect to a pension plan, that
>
> (a) the money in the pension fund;
>
> (b) an amount equal to the aggregate of
>
> (i) the normal actuarial cost, and
>
> (ii) any special payments prescribed by the regulations, that have accrued to date; and
>
> (c) all
>
> (i) amounts deducted by the employer from the member's remuneration, and
>
> (ii) other amounts due under the plan from the employer that have not been remitted to the pension fund
>
> 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.

26. Subsection 32(1) of the *PBA* obliges the employer to ensure that these amounts "are kept separate and apart from the employer's own money". When they are, these amounts are deemed to be held "in trust for members, former members, and other persons with an entitlement under the plan".

27. This deemed trust's scope includes the "normal actuarial cost[s]" and "any special payments prescribed by the regulations" which have accrued to date; all amounts deducted by the employer from member's remuneration; as well as all "other amounts due under the plan from the employer that have not been remitted to the pension fund". This sweeping reference to "all" amounts "due under the plan from the employer" refers to all sums that are due to the pension fund pursuant to the employer's obligations towards the pension plan. The obligation itself may be sourced either in the text of the pension plan, or imposed by law.

28. For its part, subsection 32(2) adds specific protections to ensure that these amounts are covered by a legally effective trust in the event that an employer is liquidated or enters federal insolvency proceedings. It provides that "[i]n the event of a liquidation,

assignment or bankruptcy of an employer", the amounts referred to in subsection 32(1) "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".

> (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.

29. Ever since the Supreme Court of Canada's decision in *British Columbia v. Henfrey Samson Belair Ltd.*, [1989] 2 S.C.R. 24, this additional stipulation has been required to create an effective "trust" that can be enforced against other creditors, both secured and unsecured.[7] In order for a legally recognizable trust to arise, the trust property must be separate and identifiable. This will occur either when the amounts in question were in fact held separately from the employer's own assets, or when the amounts in question are deemed by law to have been held separately, regardless of whether they were or not. The deemed trust set out in subsection 32(2) clearly satisfies this second exigency, and therefore gives rise to a valid legal priority.

30. It is worth noting that this deemed trust's continued operation during the course of federal insolvency proceedings may be subject to the doctrine of federal paramountcy.[8]

31. Subsection 32(3) of the *PBA* sets out another deemed trust that is triggered when a pension plan is terminated. It stipulates that an employer "who is required to pay contributions to the pension fund shall hold in trust ... an amount of money equal to employer contributions due under the plan to the date of termination". Unlike subsection 32(2), subsection 32(3) does not deem these amounts to be held separately from the employer's own assets, it only imposes an obligation on the employer to do so.

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

32. These deemed trusts are all buttressed by a second level of funding protection in section

[7] While this Honourable Court has not been asked to opine on any priority dispute whatsoever, it is worth noting that the deemed trust set out in subsection 32(2) creates a priority which would, at the very least, rank ahead of secured creditors whose real right is perfected after the deemed trust arises: see generally *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411, 1997 CanLII 377 (SCC) [**Tab 12**].

[8] This Honourable Court has not been asked to opine on whether the deemed trust or lien and charge created by the *PBA* remains operative in federal insolvency proceedings, an issue relating to the doctrine of federal paramountcy which is being considered by the CCAA Court in Montreal.

32(4), which creates a lien and charge in favour of the pension plan administrator[9] over the amounts described in both subsections 32(1) and 32(3).

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

b. The scope of the section 32(2) deemed trust encompasses the *PBA*'s wind-up deficit payments

33. The deemed trust that is of concern to this Reference is the one outlined in subsection 32(2), since it may be the only deemed trust that creates a valid legal priority that can be enforced against an insolvent employer's other creditors.

34. It is uncontroversial that this deemed trust includes both the "normal actuarial cost[s]" and "any special payments prescribed by the regulations [...] that have accrued to date".

35. What is at issue is the scope of subsection 32(1)(c)(ii). It includes within the deemed trust "all [...] other amounts due under the plan from the employer that have not been remitted to the pension fund". In the Superintendent's view, this sweeping legislative language is capable of covering all amounts due by the employer to the pension fund.

36. This plain meaning interpretation dovetails with the *PBA*'s basic purpose of securing retirees' promised pension benefits, an overarching goal that was described by Mr. Ernie McLean when he introduced the *PBA* for its second reading before the General Assembly of Newfoundland & Labrador in December 1996.

> Mr. Speaker, this act certainly secures the future for people in the Province who are looking to obtain funds from a pension. This act provides enhanced pension benefit coverage for the people of the Province through the increased payments, procedures and conditions, as well as improved investment regulations and monitoring requirements, and the act promotes increased security of pension benefits promised.[10]
>
> [Emphasis added]

37. The amounts that are "due" to the pension fund by the employer include the payments that the employer is bound to make when the pension plan is terminated.

38. Up until 2008, these termination payments were limited to the amounts described in

[9] It is worth noting that, in the context of the Wabush Mines CCAA proceedings, described above, Morneau Shepell was appointed by the Superintendent of Pensions as the replacement plan administrator for the Salaried and Union DB Plans on March 30, 2016.

[10] Legislative Assembly, Hansard, 43rd General Assembly, 1st Sess, No. 55 (17 December 1996) (Ernie McLean) [**Tab 17**], at p. 73 of the .pdf excerpt.

subsection 61(1). These are amounts that "would otherwise have been required to be paid to meet the requirements prescribed by the regulations for solvency", including the "normal actuarial cost" and the "special payments prescribed by the regulations", as well as "other amounts due to the pension fund from the employer that have not been remitted to the pension fund at the date of termination":

> 61. (1) On termination of a pension plan, the employer shall pay into the pension fund all amounts that would otherwise have been required to be paid to meet the requirements prescribed by the regulations for solvency, including
>
> (a) an amount equal to the aggregate of
>
> (i) the normal actuarial cost, and
>
> (ii) special payments prescribed by the regulations,
>
> that have accrued to the date of termination; and
>
> (b) all
>
> (i) amounts deducted by the employer from members' remuneration, and
>
> (ii) other amounts due to the pension fund from the employer
>
> that have not been remitted to the pension fund at the date of termination.

39. In 2008, section 61(2) was introduced to the *PBA* to increase the amounts that are due to the pension fund on termination. In the event that the assets of the pension fund are insufficient, employers must now pay certain additional amounts to fully fund the accrued benefits provided under the plan.

> (2) Where, on the termination, after April 1, 2008 , of a pension plan, other than a multi-employer pension plan, the assets in the pension fund are less than the value of the benefits provided under the plan, the employer shall, as prescribed by the regulations, make the payments into the pension fund, in addition to the payments required under subsection (1), that are necessary to fund the benefits provided under the plan

40. When the employer is solvent, section 25.1 of the *Pension Benefits Act Regulations*, NLR 114/96 ("***PBA Regulations***") provides that the obligation to fund the full wind-up deficit can be paid over a period of five years. The first payment must be paid – at the very latest

– two weeks after the date the first wind-up report required under subsection 60(2) has been filed with the Superintendent. It is important to note that this payment schedule is optional; the wind-up deficiency is due at the date of termination, and solvent employers may elect to pay the required amounts immediately, or over a period shorter than five years, in order to complete the plan's wind-up.[11]

41. This optional payment schedule is only meant to benefit ongoing, solvent businesses. As the Wabush Mines case demonstrates, wind-up deficiency payments may represent significant sums that could imperil the financial well-being of a solvent company if they had to be paid all at once. As the Ontario Court of Appeal observed in *Indalex Limited (Re)*, 2011 ONCA 265, employers therefore have "an interest in having a reasonable period of time within which to make the requisite" wind-up deficiency payments.[12]

42. However, when the employer is *already* insolvent and is being either liquidated or has been declared bankrupt, there is no longer any reason to spread the wind-up deficiency payments over a five-year period. In fact, such an approach would dilute this intended protection for plan members' benefits. Consistent with accepted principles of statutory interpretation, the optional payment schedule set out in subsection 25.1 of the *PBA Regulations* should therefore only be available to solvent, ongoing employers. [13] In any other case, the wind-up deficiency payments become due and payable immediately upon termination.

43. In sum, since the wind-up deficit payments are designed to fund benefits provided under the pension plan and are "due" to the pension fund – either on termination or according to the payment schedule set out in the *PBA Regulations* –, they naturally fall within section 32's sweeping reference to "all…other amounts due under the plan from the employer that have not been remitted to the pension fund".

44. This interpretation represents the ordinary meaning of the terms used in the *PBA*, read in their proper context. More importantly, this interpretation is faithful to section 32's underlying purpose, [14] which is to secure the payment of an employer's pension obligations and to safeguard the rights of pension plan beneficiaries.[15]

45. The importance of this basic objective was stressed in dramatic terms in the 2008

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[11] See Kaplan and Frazer, *Pension Law* **[Tab 5]**, *supra* note 5, at p. 538.

[12] *Indalex Limited (Re)*, 2011 ONCA 265 **[Tab 7]**, at para. 103; the Ontario Court of Appeal's analysis on this point was affirmed on appeal by Deschamps J. for a majority of the Supreme Court of Canada in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271 **[Tab 14]**.

[13] Ruth Sullivan, *Sullivan on the Construction of Statutes* (6th ed.: 2014) **[Tab 16]**, at pp. 195-196 ("Sullivan, *Construction of Statutes*"); citing *Apotex Inc. v. Merck & Co. Inc.*, 2009 FCA 187 (CanLII), [2010] 2 F.C.R. 389 **[Tab 1]**, at paras. 88-89; *Montréal (City) v. 2952-1366 Québec Inc.*, 2005 SCC 62 (CanLII), [2005] 3 S.C.R. 141 **[Tab 9]**.

[14] For the accepted modern approach to statutory interpretation, see *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, 1998 CanLII 837 (SCC) **[Tab 11]**, at para. 21.

[15] For a review of the importance of securing pension benefits generally, see *Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services)*, [2004] 3 SCR 152, 2004 SCC 54 **[Tab 8]**, at paras. 1, 13 and 38; *Buschau v. Rogers Communications Inc.*, [2006] 1 S.C.R. 973, 2006 SCC 28 **[Tab 6]**, at paras. 12-13; *Schmidt v. Air Products Canada Ltd.*, [1994] 2 S.C.R. 611 **[Tab 13]**, at para. 66.

legislative debates that resulted in the introduction of subsection 61(2) to the *PBA*. The then-Minister of Government Services, Mr. O'Brien, understood that the wind-up deficiency payments are integral to ensuring that pensioners can continue to live life fully in their retirement. He described the proposed amendment in these terms:

> [O]ne of the most important aspects of a person's life as they age is their benefit of having a pension that they would have when they retire to get older and enjoy life to the fullest once their work life is over. So, it is very, very important, as the minister responsible for my department, to make sure that we protect the employees in regard to that pension plan, in its fullest, all the way along until their eventual retirement. That is what this amendment does, Mr. Speaker.

46. The Member for Signal Hill-Quidi Vidi, Ms. Michael, later spoke of the intolerable hardship that ensues when the law fails to ensure that pension plans are adequately funded.

> We know that we have that issue in the Province, that we do have pensioners who are living in poverty. We have pensioners who are going to food banks. We have pensioners who cannot afford to pay for all their prescription drugs.

47. This protective purpose should guide this Honourable Court's interpretation of sections 32 and 61. These sections can and should work in lockstep to secure the payment of an employer's pension obligations, and to safeguard the benefits that were promised to plan members.

48. It was once thought that deemed trusts had to be interpreted narrowly, so as to accommodate the general principle that a debtor's assets are the common pledge of his creditors. This view is now outdated. A broad and purposive interpretation should instead be favoured, in line with section 16 of Newfoundland & Labrador's *Interpretation Act*, RSNL 1990, c. I-19:

> Rule of construction
>
> 16. Every Act and every regulation and every provision of an Act or regulation shall be considered remedial and shall receive the liberal construction and interpretation that best ensures the attainment of the objects of the Act, regulation, or provision according to its true meaning.[16]

49. In *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271, Justice Deschamps adopted a similarly broad and purposive interpretation of the equivalent provisions of Ontario's *Pension Benefits Act*. Noting that the "Ontario legislature has consistently expanded the protection afforded in respect of pension plan

[16] See also Sullivan, *Construction of Statutes* **[Tab 16]**, *supra* note 12, at pp. 488-489.

contributions", and that adopting a "narrow interpretation" would be contrary to this legislative trend "toward broadening the protection", Justice Deschamps concluded on behalf of the majority as follows:

> [44] [...] The deemed trust provision is a remedial one. Its purpose is to protect the interests of plan members. This purpose militates against adopting the limited scope proposed by Indalex and some of the interveners. In the case of competing priorities between creditors, the remedial purpose favours an approach that includes all wind-up payments in the value of the deemed trust in order to achieve a broad protection.[17]
>
> [Emphasis added]

c. A comparison of the *PBA* and its highly similar federal counterpart, the *PBSA*, supports this interpretation of sections 32 and 61

50. This interpretation of sections 32 and 61 is strengthened by comparing the *PBA* to the federal *PBSA*, one of the most similar pieces of pension legislation in Canada. Indeed, it appears that some of the relevant provisions of the *PBA* may have been modelled off of their equivalent provisions in the federal statute.[18]

51. Section 8 of the *PBSA* outlines the scope of federal pension law's deemed trust as follows:

> Amounts to be held in trust
>
> **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

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[17] *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, [2013] 1 S.C.R. 271 [**Tab 14**], at paras. 38, 43 and 44.

[18] In *Bloom Lake, g.p.l.* (Arrangement relatif à), 2015 QCCS 3064 [**Tab 3**], after stating that section 8 of the *PBSA* is "intended to cover all amounts due by the employer to the pension fund" (para. 64), Hamilton J. observes that section 32(2) of the *PBA* is "virtually identical" to section 8(2) of the *PBSA*, and that "much of the analysis" regarding section 8's interpretation applies to section 32 of the *PBA* as well (para. 82).

(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

<u>(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).</u>

[Emphasis added]

52. Subsection 29(6) of the *PBSA*, which is explicitly referred in the closing words of subsection 8(1)(c)(ii), outlines the payments an employer must make on the termination of a pension plan. Subsection 8(1)(c)(ii) therefore makes explicit that all of the "other" amounts that are due to the pension fund include the payments that must be made upon termination.

53. In 2010, section 29 of the federal *PBSA* was amended. An employer sponsoring a federally-regulated pension plan is now obliged to pay the full actuarial wind-up deficit when the plan is terminated. Without any other legislative intervention, these wind-up deficit payments would have been included in the deemed trust outlined in section 8(1). However, subsections 29(6.2) and (6.5) were introduced to explicitly exclude the full actuarial wind-up deficiency from the scope of the deemed trust outlined in subsection 8(1):

Payment by employer of pension benefits

(6.1) If the whole of a pension plan that is not a negotiated contribution plan is terminated, the employer shall pay into the pension fund, in accordance with the regulations, the amount — calculated periodically in accordance with the regulations — that is required to ensure that any obligation of the plan with respect to pension benefits, as they are determined on the date of the termination, is satisfied.

Application of subsection 8(1)

<u>(6.2) Subsection 8(1) does not apply in respect of the amount that the employer is required to pay into the pension fund under subsection (6.1).</u> However, it applies in respect of any payments that are due and that have not been paid into the pension fund in accordance with the regulations made for the purposes of subsection (6.1).

> [...]
>
> Winding-up or bankruptcy
>
> (6.4) On the winding-up of the pension plan or the liquidation, assignment or bankruptcy of the employer, the amount required to permit the plan to satisfy any obligations with respect to pension benefits as they are determined on the date of termination is payable immediately.
>
> Application of subsection 8(1)
>
> <u>(6.5) Subsection 8(1) does not apply in respect of the amount that the employer is required to pay into the pension fund under subsection (6.4).</u> However, it applies in respect of any payments that have accrued before the date of the winding-up, liquidation, assignment or bankruptcy and that have not been remitted to the fund in accordance with the regulations made for the purposes of subsection (6.1).

54. Subsections 29(6.2) and (6.5) have since been relied on explicitly to exclude the wind-up deficit payments from the scope of the *PBSA*'s deemed trust.[19]

55. Since Newfoundland & Labrador's *PBA* has no equivalent provision to sections 29(6.2) or 29(6.5) – but is otherwise highly similar –, the *PBA*'s deemed trust should still include the wind-up deficiency payments that are "due" to the pension fund by virtue of subsection 61(2) of the *PBA*.

d. <u>Addressing two counter-arguments</u>

56. Two counter-arguments have been raised in response to the Superintendent's interpretation of sections 32 and 61 of the *PBA*. They represent, in both cases, overtly technical interpretations that are not informed by the protective purpose underlying the *PBA* generally, or sections 32 and 61 specifically.

57. First, it has been argued that the apparent symmetry between the amounts described in subsections 32(1) and 61(1), coupled with the distinction between subsections 61(1) and 61(2), creates the impression that the wind-up deficit payments outlined in subsection 61(2) are not included in the amounts described in 32(1).

58. In the Superintendent's view, subsections 61(1) and 61(2) were likely delineated for reasons that are of no import to section 32. For instance, the payments set out in subsection 61(2) may have been distinguished from those outlined in subsection 61(1) so that the *PBA Regulations* could impose a specific payment schedule over the wind-up deficit payments specifically. Moreover, there are conditions placed on the payments set out in subsection 61(2) that may also explain the need for this separation. Namely, the

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[19] *Aveos Fleet Performance Inc. (Re)*, 2013 QCCS 5762 [**Tab 2**], at para 82.

plan must have been terminated after April 1, 2008, and the plan must not be a "multi-employer pension plan" as defined in section 2(v) of the *PBA*.

59. This delineation may also reflect the reality that a separate provision – in this case subsection 61(2) – is required in order for the full wind-up deficiency to become payable on termination. This basic delineation in termination payments is replicated in other pension statutes, including in sections 29(6) and 29(6.4) of the *PBSA*. It is simply of no consequence to the interpretation of section 32 of the *PBA*.

60. The second counter-argument concerns subsection 32(3) of the *PBA*. This subsection establishes a separate deemed trust that appears to be more limited than the deemed trust outlined in subsections 32(1) and 32(2).

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

61. Subsection 32(3), however, is of no concern to the interpretation of subsection 32(2). These are simply separate deemed trusts.[20]

62. Subsection 32(2) governs what occurs specifically in the event of an employer's liquidation, assignment, or bankruptcy. This deemed trust covers the amounts listed in subsection 32(1), and *not* the amounts described in subsection 32(3).

63. Subsection 32(2) also establishes the only deemed trust that clearly creates a valid legal priority that can be enforced against both unsecured and secured creditors. In that sense, subsection 32(2) is expressly tailored to the insolvency context.

64. By contrast, subsection 32(3) only requires the employer to hold certain amounts in trust, separate from his other property. It does not create a valid legal "trust" that can be enforced against unsecured and secured creditors. It is plainly not designed to apply in the context of an employer's liquidation or insolvency. It is better suited for circumstances where a solvent, ongoing business winds up its pension plan.

65. Subsection 32(2)'s deemed trust should also continue to apply notwithstanding the fact that another deemed trust has been triggered specifically by the wind-up of the pension plan. After all, an employer's insolvency will generally be accompanied by the winding-up of the pension plan.[21] The Newfoundland & Labrador legislature would not have

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[20] Subsection 32(4) of the *PBA* suggests that these deemed trusts are distinct where it provides that the administrator of a pension plan "has a lien and charge on the assets of the employer in an amount equal to the amount required to be held in trust under subsections (1) <u>and</u> (3)" (emphasis added).

[21] The Superintendent is even empowered to declare a pension plan terminated when the employer has been declared

enacted a deemed trust specific to liquidations and to bankruptcy if it was not also intended to apply when the plan is wound-up.

66. Furthermore, the wind-up deficiency payments are actually amounts that are "due" to the pension fund at the date of termination. An employer's obligation to fund the full wind-up deficiency arises – in all cases – on the day the plan is terminated. The wind-up deficit is determined as of that date, it is payable as of that date, and interest begins accruing as of that date. [22] For the reasons outlined above, an insolvent employer's wind-up deficiency payments are not even amortized over a five-year period; they are due immediately on termination. In this latter case, at the very least, the wind-up deficiency payments would therefore constitute an amount that is due to the pension fund "to the date of termination".

C. THE LAW APPLICABLE TO MULTI-JURISDICTIONAL PENSION PLANS

a. Overview of the factual and statutory context

67. Question 2) of the Reference concerns what law(s) must be applied to a pension plan which includes members who report for work in more than one jurisdiction. This issue is of significant general interest, since there are currently over 2,000 registered multi-jurisdictional pension plans in Canada.

68. The Reference anchors these questions in the factual context of the Wabush Mines insolvency. This was done only so that this Honourable Court could be asked pointed legal questions on which its guidance is most valued. Specifically, the Reference appears to ask whether the *PBA*'s deemed trust can apply to the benefit of those plan members who either reported for work in the Province of Québec, or on a federal undertaking.

69. Both the salaried and union defined benefit pension plans are multi-jurisdictional; they include employees who reported for work in Québec and in Newfoundland & Labrador, as well as employees employed in "included employment", as defined in the federal *PBSA*.

70. It is common ground that the membership breakdown of the two pension plans by jurisdiction is as follows:

	Salaried DB Plan	Union DB Plan	Total
Newfoundland and Labrador	323	1,005	1,318
Québec	329	661	990
Federal	14	66	80
Total	656	1,732	2,388

71. Section 5 of the *PBA* sets out the general principle that the *PBA*'s provisions apply "to all

bankrupt or where the employer has discontinued all or a substantial portion of its business: *PBA*, section 59(b) and (c); see also Kaplan and Frazer, *Pension Law* **[Tab 15]**, *supra* note 5 at p. 539.

[22] *PBA Regulations*, at section 25.1(2).

pension plans for persons employed in the province, except those pension plans to which an Act of the Parliament of Canada applies".

72. The *PBA* therefore expressly excludes those members who are governed by the *PBSA*, which applies to employees in "included employment", defined as follows:

> 4 (4) [...] employment, other than excepted employment, on or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of Canada, including, without restricting the generality of the foregoing,
>
> [...]
>
> (b) any railway, canal, telegraph or other work or undertaking connecting a province with another province or extending beyond the limits of a province;
>
> [...]
>
> Definition of *excepted employment*
>
> (5) In this Act, *excepted employment* means
> (a) employment by Her Majesty in right of Canada; and
> (b) any employment that is excepted from included employment by any regulation made under subsection (6).

73. Like the *PBA*, the Province of Québec's *Supplemental Pension Plans Act*, CQLR c. R-15.1 ("***SPPA***") also applies to employees who report for work in the Province. Section 1 of the *SPPA* provides as follows:

> 1. This Act applies to pension plans provided:
>
> (1) for employees who report for work at an establishment of their employer located in Québec or, if not, who receive their remuneration from such an establishment, provided, in the latter case, they do not report for work at any other establishment of their employer;
>
> (2) for employees not referred to in paragraph 1 who, while residing in Québec and being employed by an employer whose main establishment is located in Québec, work outside Québec, provided the plans are not governed by an Act of a legislative body other than the Parliament of Québec which provides for a deferred pension.

74. These provisions of the *PBA*, the *PBSA*, and the *SPPA* likely suffice to answer the questions posed in the Reference.

75. Of the members of the Salaried DB Plan, it is accepted that 323 reported for work in the Province of Newfoundland & Labrador. On the authority of section 5 of the *PBA*, only those members would be entitled to the protection afforded by section 32 of the *PBA*.

76. The 329 members who reported for work in the Province of Québec and the 14 members who reported for work on a federal undertaking would benefit from the protections afforded under the *SPPA* and the *PBSA*, respectively.

77. Consistent with section 5 of the *PBA* and section 1 of the *SPPA*, the Salaried DB Plan explicitly contemplates that the Quebec *SPPA* applies to members who report for work in Quebec. Specifically, section 14 sets out a list of provisions which "applies to Employees who report for work in the Province of Quebec and is included in the Plan in order for the Plan to comply with the *Supplemental Pension Plans Act (Quebec)* (the "SPPA") and shall supplement all other provisions of the Plan which are not inconsistent and shall replace any other provisions which are inconsistent".

78. Furthermore, the term *Pension Benefits Act* is defined in the Salaried DB Plan at paragraph 2.25 in such a way as to include the pension legislation of other jurisdictions:

> 2.25 *Pension Benefits Act*
>
> "*Pension Benefits Act*" means the Newfoundland *Pension Benefits Act 1997*, S.N. 1996, c.P-4.01, as amended from time to time, and the Regulations thereunder as well as any similar statute applicable in a particular circumstance and any regulation pursuant thereto adopted by the federal or any provincial government.
>
> [Emphasis added]

b. Multi-jurisdictional pension law agreements

79. The Newfoundland & Labrador *PBA* does recognize that the Province may enter into an agreement with another Province, or with Canada, to provide that where a pension plan is subject to the legislation of more than one jurisdiction, the pension legislation of one specific jurisdiction may apply to all members of the pension plan.

80. This is contemplated expressly by section 8.2 of the *PBA*, which was introduced to the *PBA* in an amendment in 2012:

> Multilateral agreement
>
> 8.2 (1) The minister may, subject to the approval of the Lieutenant-Governor in Council, enter into a multilateral agreement respecting multi-jurisdictional pension plans with the government of a designated province or of Canada, or with more than one of them.

(2) A multilateral agreement may provide for

(a) the application of this Act and the regulations to multi-jurisdictional pension plans;

(b) the application of the pension benefits legislation of a designated province or of Canada to multi-jurisdictional pension plans;

(c) the application of the multilateral agreement itself to multi-jurisdictional pension plans; and

(d) the supervision and regulation of multi-jurisdictional pension plans.

81. Section 8.2 was introduced to the *PBA* in response to the Agreement Respecting Multi-Jurisdictional Pension Plans, which was developed by the Canadian Association of Pension Supervisory Authorities in 2011 ("**2011 CAPSA Agreement**"). The 2011 CAPSA Agreement was only signed by the Provinces of Ontario and Québec.

82. CAPSA developed a revised version of this Agreement in 2016, and this later version was adopted by the Provinces of British Columbia, Nova Scotia, Ontario, Québec and Saskatchewan ("**2016 CAPSA Agreement**").

83. The 2011 and 2016 CAPSA Agreements provide that the deemed trust provisions of the major authority would apply to the benefit of all plan members:

> 6(1) While a pension supervisory authority is the major authority for a pension plan in accordance with this Agreement:
>
> (a) the provisions of the pension legislation of the major authority's jurisdiction in respect of matters referred to in Schedule B apply to the plan instead of those of the corresponding provisions of the pension legislation of any minor authority's jurisdiction that would apply to the plan if this Agreement did not exist; and
>
> (b) subject to the provisions of this Agreement, the provisions of the pension legislation of each jurisdiction that are applicable to the plan under the terms of such legislation apply to the plan in respect of matters not referred to in Schedule B.
>
> Schedule B:
>
> 8. Legislative provisions respecting: [...] requirements that the pension fund be held separate and apart from the employer's assets and deeming the pension fund to be held in trust for the active members of other pensions; (d) an administrator's lien and charge on the

employer's assets equal to the amounts deemed held in trust [...].

84. While the *PBA* was amended in 2012 to introduce section 8.2, the Province of Newfoundland & Labrador has yet to sign either the 2011 or the 2016 CAPSA Agreements.

85. The only agreement the Government of Newfoundland & Labrador has entered is known as the Memorandum of Reciprocal Agreement, signed *inter alia* by Québec in 1968, and later by Newfoundland & Labrador in 1986 (the "**Memorandum**"). Canada is not a party to the Memorandum.

86. The Memorandum seeks to provide a working arrangement for pension regulators exercising statutory responsibilities over multi-jurisdictional pension plans. The object of the Memorandum is merely to simplify pension plan administration and to eliminate the need to register plans in more than one jurisdiction.[23]

87. The preamble to the Memorandum reads as follows:

> WHEREAS each signatory hereto has statutory functions and powers with respect to pension plans covering employees in the jurisdiction represented by such signatory;
>
> AND WHEREAS, by reason of some pension plans covering employees in more than one jurisdiction, more than one signatory may have statutory functions and powers in respect of the same pension plan;
>
> AND WHEREAS the said signatories have deemed it desirable that statutory functions and powers in respect of any one pension plan be exercised by one signatory only, acting both on its own behalf and on behalf of any other signatory having statutory functions and powers in respect of such plan;
>
> AND WHEREAS each signatory has accordingly agreed with each other signatory to the effect hereinafter set forth.

88. The Memorandum provides that the "major authority" for each multi-jurisdictional pension plan will exercise both its own statutory responsibilities, as well as the statutory responsibilities of each minor authority:

> 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.

89. Sections 1 and 2 of the Memorandum define the terms "authority" and "major authority" as follows:

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[23] See Kaplan and Frazer, *Pension Law* [**Tab 15**], *supra* note 5, at p. 105.

> "authority" means a person or body having statutory functions and powers with respect to registration, funding, vesting, solvency, audit, obtaining information, inspection, winding up, and other aspects, of plans;
>
> [...]
>
> "major authority" means, with respect to a plan, the participating authority of the province where the plurality of the plan members are employed [...].

90. As can be readily seen from these provisions, the Memorandum only seeks to assign statutory administrative responsibilities and regulatory oversight to the "major authority". This kind of more limited inter-provincial agreement is contemplated by subsection 8(2) of the *PBA*, which was included among the *PBA*'s original provisions in 1996.

91. In *Boucher v. Stelco*, 2005 SCC 64 (CanLII), [2005] 3 S.C.R. 279, LeBel J. observed that this Memorandum merely "entrusts the oversight of the plan, and decisions on the management and wind up of the plan" to the regulatory authority of the major jurisdiction, and that its purpose is to avoid subjecting multi-jurisdictional pension plans to multiple administrative controls.[24] Justice LeBel elaborated as follows:

> The delegation mentioned above, which applied to Stelco's pension plan, accordingly conferred on Ontario's Superintendent of Financial Services the authority to make any necessary decisions for the administration and wind up of the plan. The memorandum of agreement expressly granted him the right to exercise all the powers conferred by the Ontario legislature. On this point, it should be noted that s. 249 of the *Supplemental Pension Plans Act* authorizes such agreements. Moreover, the validity of the delegations of authority resulting from the Memorandum of Reciprocal Agreement has never been contested. It is therefore necessary to refer to the Ontario legislation to determine the scope of the powers delegated to the Superintendent in the context of the partial wind up of Stelco's plan.[25]

92. These observations have been echoed by Ari Kaplan and Mitch Frazer in their treatise on pension law. They mention that the minimum substantive standards imposed by the pension legislation of the minor authority continue to apply to those plan members reporting for work in the minor authority's jurisdiction:

> Under the Agreement, the province in which "the plurality of the plan members are employed" becomes the jurisdiction of registration (called the "major authority" of the pension plan). <u>However, the minimum standards contained in the pension laws of the other</u>

[24] *Boucher v. Stelco*, 2005 SCC 64 (CanLII), [2005] 3 S.C.R. 279 [**Tab 4**], at para. 3.
[25] *Ibid*, at para. 26.

provinces (called the "minor authorities") are believed to continue to apply to employees working in those provinces. 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. Moreover, where the legislation is silent on a matter, the regulator of the province in which the plan is registered, "as a matter of constitutional law", may be required to apply other provinces' pension standards laws.[26]

[Emphasis added]

93. In this, the authors Kaplan and Frazer cite the Ontario Divisional Court's well-known decision in *Régie des rentes du Quebec v. Pension Commission of Ontario*, (2000), 189 DLR (4th) 304 (Ont Div Ct), commonly referred to as the *Leco* decision.

94. In *Leco*, a pension plan had been registered in Ontario, but included employees who reported for work in Quebec and elsewhere. When the plan was wound up, the employer applied to the Ontario Superintendent of Financial Services for a withdrawal of pension surplus in accordance with the terms of Ontario's pension legislation. The Quebec pension regulator objected to these Ontario rules being applied with regards to members who reported for work in Quebec. The Ontario Divisional Court, on an application for judicial review from the Ontario regulator's decision, confirmed that the Ontario regulator was wrong to only apply the requirements of Ontarian law to the employer's pension surplus withdrawal application.

95. As "a matter of constitutional law", the court held that the Ontario regulator was required to interpret and apply Quebec's pension legislation to the matter of surplus withdrawal, in so far as Quebec members were affected.[27]

96. The Superintendent submits that this conclusion should be maintained in the context of determining which plan members are entitled to the protection of the Newfoundland & Labrador *PBA*'s deemed trust.

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[26] Kaplan and Frazer, *Pension Law* [**Tab 15**], *supra* note 5 at p. 106, citing *Régie des rentes du Québec v. Pension Commission of Ontario*, (2000), 189 DLR (4th) 304 (Ont Div Ct) [**Tab 10**], at para. 61.

[27] *Régie des rentes du Québec v. Pension Commission of Ontario*, (2000), 189 DLR (4th) 304 (Ont Div Ct) [**Tab 10**], at para. 61.

D. SUBMITTED ANSWERS

97. For these reasons, the Superintendent respectfully submits that this Honourable Court ought to answer the Reference questions as follows:

1) The Supreme Court of Canada has confirmed in *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6, that, subject only to the doctrine of paramountcy, provincial laws apply in proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36. What is the scope of section 32 of the *Pension Benefits Act, 1997*, SNL 1996 c. P-4.01 deemed trusts in respect of:

a) unpaid current service costs;
b) unpaid special payments; and
c) unpaid wind-up deficits?

Answer: The scope of the deemed trust under subsection 32(2) encompasses unpaid current service costs, unpaid special payments, as well as any unpaid wind-up deficit payments.

2) The Salaried Plan is registered in Newfoundland and Labrador and regulated by the *Pension Benefits Act, 1997.*

a) (i) Does the federal *Pension Benefits Standards Act*, R.S.C. 1985, c-32 deemed trust also apply to those members of the Salaried Plan who worked on the railway (i.e., a federal undertaking)?

Answer: The substantive provisions of the federal *PBSA* will apply to the portion of the Salaried DB Plan for those plan members who reported for work on a federal undertaking.

(ii) If yes, is there a conflict with the *Pension Benefits Act*, *1997* and *Pension Benefits Standards Act*? If so, how is the conflict resolved?

Answer: There is no conflict, since the Newfoundland & Labrador *PBA*'s substantive provisions only apply to the benefit of those plan members who reported for work in Newfoundland & Labrador.

b) (i) Does the Quebec *Supplemental Pension Plans Act*, CQLR, c. R-15.1 also apply to those members of the Salaried Plan who reported for work in Quebec?

Answer: The substantive provisions of Quebec's *SPPA* will apply to the portion of the Salaried DB Plan for those plan members who reported for work in Quebec.

(ii) If yes, is there a conflict with the *Pension Benefits Act, 1997* and the Quebec *Supplemental Pension Plans Act*. If so, how is the conflict resolved?

Answer: There is no conflict, since the Newfoundland & Labrador *PBA*'s substantive provisions only apply to the benefit of those plan members who reported for work in Newfoundland & Labrador.

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

Answer: The Quebec *SPPA* deemed trusts are the only deemed trusts that apply to the benefit of the Salaried DB Plan members who reported for work in Québec.

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?

Answer: Subject ultimately to the potential application of the doctrine of federal paramountcy, the lien and charge, like the deemed trust, is a valid secured claim. It would encompass unpaid current service costs, unpaid special payments and any unpaid wind-up deficit payments.

THE WHOLE RESPECTFULLY SUBMITTED

MONTREAL, July 26, 2017

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APPENDIX A: LIST OF AUTHORITIES

TAB

Jurisprudence

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Agreement Respecting Multi-Jurisdictional Pension Plans (2011) **19**

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