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Our File No. 09-1426

August 20, 2009

Via Courier
SERIVCE LIST

Dear Sirs/Mesdames:

**Re: IN THE MATTER of the *Companies' Creditors Arrangement Act*,
R.S.C. 1985, c. C-36, as amended**

**AND THE MATTER of a Plan of Compromise or Arrangement of INDALEX
LIMITED, INDALEX HOLDINGS (B.C.) LTD., 6326765 CANADA INC. and
NOVAR INC.**

Please find enclosed the Factum of the Moving Party United Steelworkers (Motion Returnable August 28, 2009), served on you pursuant to the *Rules of Civil Procedure*.

Sincerely,



Darrell Brown
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JUST RESULTS

TORONTO • OTTAWA



ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

**IN THE MATTER OF the *Companies' Creditors
Arrangement Act*, R.S.C. 1985, c. C-36 as amended**

**AND IN THE MATTER of a Plan of Compromise or Arrangement
of INDALEX LIMITED, INDALEX HOLDINGS (B.C.) LTD., 6326765 CANADA INC.
and NOVAR INC.**

the Applicants

**FACTUM OF THE MOVING PARTY
UNITED STEELWORKERS**

(Motion Returnable August 28, 2009)

August 20, 2009

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TO: SERVICE LIST

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PART I - OVERVIEW

1. The moving party, the United Steelworkers (“USW”) has several locals certified as bargaining agents on behalf of members employed with the debtor, Indalex Limited (“Indalex”), including members who are beneficiaries of the Retirement Plan for Salaried Employees (“Salaried Plan”). The USW seeks a declaration that Indalex holds funds in trust for beneficiaries of the Salaried Plan.

2. The pension plan is in a deficit position as a result of Indalex’s failure to remit sufficient amounts of contributions. Indalex is deemed to hold amounts not remitted to its pension plan in trust for the benefit of the beneficiaries of the pension plan.

3. Pursuant to the herein proceeding, Indalex has sold all of its assets to a third party for substantial funds. The funds that Indalex receives are subject to the trust thereby requiring designation and segregation of sufficient funds to meet the obligations imposed under the Salaried Plan, giving effect to Indalex’s statutory, fiduciary and equitable obligations to remit pension contributions for the benefit of its employees.

PART II - FACTS

A. THE SALARIED PLAN IN DEFICIT

4. Indalex was the sponsor and administrator of a Retirement Plan for Salaried Employees (the “Salaried Plan”), registered with the Financial Services Commission of Ontario (“FSCO”) and the Canadian Revenue Agency.

5. The USW were certified to represent certain employees of Indalex, seven of whom were members of the Salaried Plan and have deferred vested entitlements under the Salaried Plan.

Braker Affidavit, Motion Record, Tab 2, pp. 5-6, para. 4-5

6. The Salaried Plan contained a defined benefit and defined contribution component. Indalex and members of the Salaried Plan were required to make joint contributions to the Plan.

Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies (the "Salaried Plan"), Braker Affidavit, Exhibit "A", Motion Record, Tab A, p. 8

Excerpt from Affidavit of Timothy R.J. Stubbs sworn April 3, 2009, Braker Affidavit, Exhibit "C", Motion Record, Tab C, p. 115, para. 61

7. Section 4.02 of the Salaried Plan obligates the employer, Indalex, to make sufficient contributions to the Salaried Plan and creates a legitimate expectation on the part of beneficiaries of the Salaried Plan that the promised pension benefits will be fully funded and paid in accordance with the Salaried Plan:

(1) Subject to [certain exclusions], the Employer will make such contributions to the Fund as are required, based on the advice of the Actuary, to provide;

(a) the normal cost of the defined benefits currently accruing to its Members under the Plan; and

(b) for the proper amortization of any liability or solvency deficiency,

both in accordance with the requirements of the Applicable Pension Legislation, after taking into account the assets of the fund and all other relevant factors.

Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies (the "Salaried Plan"), Braker Affidavit, Exhibit "A", Motion Record, Tab A, pp. 25-26

8. Section 14.03 of the Salaried Plan requires the employer to remit “amounts due or that have accrued up to the effective date of the wind-up and which have not been paid into the Fund, as required by the Plan and Applicable Pension Legislation”.

The Salaried Plan, Braker Affidavit, Exhibit “A”, Motion Record, Tab A, p. 26

9. The Salaried Plan was wound up on December 31, 2006.

Braker Affidavit, Motion Record, Tab 2, p. 5, para. 3

10. All current service contributions have been made to the plan.

Affidavit of Bob Kavanaugh sworn August 13, 2009 (“Kavanaugh Affidavit”), Responding Party’s Motion Record, para. 6

11. At the time of the windup of the Salaried Plan, there was a deficiency in Indalex’s contributions to the Plan. As at December 31, 2007, the deficiency under the Salaried Plan was \$2,252,900. As at December 31, 2008, the deficiency in the Salaried Plan was \$1,795,600 (the “Deficiency”).

Braker Affidavit, Motion Record, Tab 2, p. 6, paras. 6-7

12. The Report prepared pursuant to section 32 of Regulation 909 on the funded position of the Salaried Plan as at December 31, 2008, in respect of the wind-up as at December 31, 2008 indicates that the minimum annual special payments to fund the deficiency is \$626,100 per year with the last payment due December 31, 2011.

Mercer Report, Motion Record, Tab D, p. 8

13. Indalex asserts that in April, 2009, it made a special payment of \$601,000 to the Salaried Plan.

Kavanaugh Affidavit, Responding Party's Motion Record, para. 11

14. In June, 2009, Indalex filed with FSCO an actuarial valuation indicating that an additional catch-up payment of \$25,100, plus interest as of January 1, 2009 was required to be made to the Defined Benefit component of the salaried plan.

Kavanaugh Affidavit, Responding Party's Motion Record, para. 12

B. THE CCAA PROCEEDING GENERATES LIQUID ASSETS

15. On April 3, 2009, Indalex applied for and was granted protection under the *Companies' Creditors Arrangement Act* ("CCAA").

Order of the Honourable Justice Morawetz, April 3, 2009 re: Indalex Limited et al. ("Initial Order")

16. On July 20, 2009, the Honourable Justice Campbell approved the sale of Indalex's Canadian assets to Sapa Canada Inc.. The Applicant in the herein CCAA proceeding (which includes Indalex), will receive total consideration for the sale of its assets in the amount of approximately USD \$151,183,000.00 (subject to certain adjustments).

Order of the Honourable Justice Campbell, July 20, 2009 re: Indalex Limited et al. ("Sale Order")

Affidavit of Fred Fazio, sworn June 29, 2009, filed with Court, at para. 40

17. The Sale Order directs that the sale proceeds shall be paid to the Monitor on behalf of Indalex.

Sale Order, *supra* at para. 14

18. In the result, the Monitor currently has substantial assets it could use to eliminate the deficiency in the Salaried Plan or it will shortly come into possession of such assets.

PART III - LAW AND ARGUMENT

A. INDALEX SUBJECT TO DEEMED TRUST FOR BENEFICIARIES OF SALARIED PLAN

19. Section 57 of the Ontario *Pension Benefits Act* (“PBA”) establishes a statutory deemed trust with respect to contributions owing, but not yet remitted, to the pension fund. In particular, s. 57(4) applies in respect of the wind-up of a pension plan:

(4)Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations.

Pension Benefits Act, R.S.O. 1990, c. P.8 at 57(4)

As a result of the operation of section 57(4) of the PBA, the employer is deemed to be holding in trust for the beneficiaries of the Plan.

20. The purpose of the statutory deemed trust in s. 57 of the PBA is to protect employees’ pension benefits by creating a trust over employer contributions that are required to be paid to a pension plan but which have not been paid, so that such amounts are paid into the pension plan ahead of payments to creditors.

21. The statutory deemed trust provisions were first introduced into the PBA in 1973 as an amendment to the PBA. *The Pension Benefits Amendment Act, 1973* began as Ontario Bill 200. In the debates of the Ontario Legislature at the time of Bill 200, it is clear that the legislative intent was to introduce changes to the PBA to provide additional protection to members of pension plans. The Debates from October 19, 1973 record the following:

PENSION BENEFITS ACT

Hon. Mr. Clement moves first reading of bill entitled, An Act to amend the Pension Benefits Act.

Motion agreed to; first reading of the Bill.

Hon. Mr. Clement: Mr. Speaker, because of the importance of the changes proposed **and the additional protection afforded to the participants in a pension plan**, I thought I should bring some of these initiatives to your attention.

These amendments provide, first, that when, at the time of an employee's termination of employment or membership in a plan, his pension benefit credit is less than the value of his contributions to that plan, his pension benefit credit shall be increased to an amount not less than the value of his contributions.

Second, that any sums received by an employer from employees as pension contributions are deemed to be held in trust by the employer for his own purposes. **Similarly, employer contributions are to be deemed trust funds from the time they are required to be paid into that plan.** [emphasis added]

Legislature of Ontario Debates, Friday, October 19, 1973

22. The overall purpose of the PBA is to protect employees' pension benefits. This has been stated in numerous cases and is well summarized in the unanimous decision in *Huus v. Ontario Superintendent of Pensions*:

[25] I start with this observation: pension plans are for the benefit of the employees, not the companies which create them. They are a particularly important component of the compensation employees receive in return for their labour. They are not a gift from the employer; they are earned by the employees. Indeed, in addition to their labour, employees usually agree to other trade-offs in order to obtain a pension. As explained by Cory J. in *Schmidt v. Air Products Canada Ltd.*, [1994] 2 S.C.R. 611 at 646:

In the case of pension plans, employees not only contribute to the fund, in addition they almost invariably agree to accept lower wages and fewer employment benefits in exchange for the employer's agreeing to set up the pension trust in their favour.

[261] Similar statements have been expressed by this court in several cases. In *Gencorp Canada Inc. v. Ontario (Superintendent of Pensions)* (1998), 39 O.R. (3d) 38 at 43 (C.A.), Robins J.A. said:

[T]he Pension Benefit Act is clearly public policy legislation establishing a carefully calibrated legislative and regulatory scheme prescribing minimum standards for all pension plans in Ontario. It is intended to benefit and protect the interests of members and former members of pension plans....

[27] In *Firestone Canada Inc. v. Ontario (Pension Commission)* (1990), 1 O.R. (3d) 122 at 127 (C.A.) (“Firestone”), Blair J.A. stated that the PBA “is clearly intended to benefit employees” and “[i]n particular. . . evinces a special solicitude for employees affected by plant closures”.

Huus v. Ontario (Superintendent of Pensions) (2002), 58 O..R. (3rd) 380 of paras. 25-27

23. The Supreme Court of Canada has recognized that the underlying and paramount purpose of the PBA is to establish a regulatory regime to protect the legislated rights of members.

38. The Act is public policy legislation that recognizes the vital importance of long-term income security. As a legislative intervention in the administration of voluntary pension plans, its purpose is to establish minimum standards and regulatory supervision in order to protect and safeguard the pension benefits and rights of members, former members and others entitled to receive benefits under private pension plans (see *GenCorp*, supra; *Firestone Canada Inc. v. Ontario (Pension Commission)* (1990), 1 O.R. (3d) 122 (C.A.), at p. 127). This is especially important when, as recognized by this Court in *Schmidt v. Air Products Canada Ltd.*, [1994] 2 S.C.R. 611, at p. 646, it is remembered that pensions are now generally given for consideration rather than being merely gratuitous rewards.

Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services), [2004] 3 S.C.R. 152, paras. 37, 38

24. The PBA requires an employer to pay any amounts that remain owing to the pension plan:

Liability of employer on wind up

75. (1) Where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund,

(a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and

(b) an amount equal to the amount by which,

(i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Superintendent declares that the Guarantee Fund applies to the pension plan,

(ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and

(iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 39 (3) (50 per cent rule) and section 74,

exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario. R.S.O. 1990, c. P.8, s. 75 (1); 1997, c. 28, s. 200.

Payment

(2) The employer shall pay the money due under subsection (1) in the prescribed manner and at the prescribed times. R.S.O. 1990, c. P.8, s. 75 (2).

Pension Benefits Act, s. 75

25. Section 31 of Regulation 909 under the PBA states that the amounts to be paid to a pension plan on its wind up by an employer must be paid within a five year period starting from the date of the wind up:

31. (1) The liability to be funded under section 75 of the Act shall be funded by annual special payments commencing at the effective date of the wind up and made by the employer to the pension fund.

(2) The special payments under subsection (1) for each year shall be at least equal to the greater of,

(a) the amount required in the year to fund the employer's liabilities under section 75 of the Act in equal payments, payable annually in advance, over not more than five years; and

(b) the minimum special payments required for the year in which the plan is wound up, as determined in the reports filed or submitted under sections 3, 4, 5.3, 13 and 14,

multiplied by the ratio of the basic Ontario liabilities of the plan to the total of the liabilities and increased liabilities of the plan as determined under clauses 30(2)(b) and (c).

(3) The special payments referred to in subsections (1) and (2) shall continue until the liability is funded.

(4) Subsection (5) applies to a qualifying plan or to a plan with the following history:

1. An election was made in respect of the plan under subsection 5.1(1) or (2).
2. The election was rescinded in accordance with subsection 5.1(12).
3. After the date of the election but within five years after the date on which the election was rescinded, the plan was wound up.

(5) For a qualifying plan or a plan with the history described in subsection (4), the liability to be funded under section 75 of the Act shall be funded by monthly special payments by the employer to the pension fund over a period of not more than one year beginning on the effective date of the wind up. [emphasis added]

PBA Regulation 909, R.R.O. 1990, Amended to O. Reg. 570/06.

26. The Salaried Plan has been wound up as of December 31, 2006 and as of December 31, 2008 the Deficiency was \$1,795,600. There is no dispute that Indalex has not remitted contributions to the Salaried Plan that were accrued but not yet due.

C. THE DEEMED TRUST HAS PRIORITY OVER SECURED CREDITORS

27. Section 30(7) of the PPSA expressly gives priority to the deemed trust in the PBA over secured creditors. The section states:

Priorities

30. Deemed trusts

(7) A security interest in an account or inventory and its proceeds ***is subordinate to the interest of a person who is the beneficiary of a deemed trust*** arising under the *Employment Standards Act* or ***under the Pension Benefits Act***.

Personal Property Security Act, R.S.O. 1990, c. P. 10, s. 30

28. In *Usarco*, Farley, J. first gave effect to the deemed trust in section 57 of the PBA and then applied the priority rule in section 30(1) of the PPSA and ordered the receiver

to pay an amount of money equal to the regular and special payments required to have been made but not yet paid into the pension plan:

13 Therefore, since the bankruptcy petition has not been dealt with, we are presently dealing with a claim by the administrator for certain trust funds held by the receiver. **The security interest of the bank is subordinate to the interest of the beneficiaries of the deemed trust** (represented by the administrator) (see: s. 30(7), PPSA).

Re Usarco Limited (1991) 42 E.T.R. 235 (Ont. Gen. Div.), at para. 13 (“*Usarco*”)

D. THE MONITOR OUGHT TO BE DIRECTED TO MAKE IMMEDIATE PAYMENT

29. In these circumstances, there can be no dispute that those amounts referred to in paragraph 10 are deemed to be held in trust by Indalex as Tysoe J.A. stated this in a British Columbia Court of Appeal case involving the Crown’s deemed trust in a CCAA proceeding:

I do not quarrel with the proposition that an order under s. 11 of the CCAA can stay the enforcement rights of the Crown. However, **when the restructuring efforts have come to an unsuccessful end**, the Crown is then in a position to exercise its rights under the deemed trust. In addition, **the s. 11 stay powers do not permit the court to authorize a breach of the deemed trust for the benefit of another creditor.** [emphasis added]

Ted Leroy Trucking Ltd., Re 2009 BCCA 205, at para. 30

30. Indalex has a fiduciary duty to act in the best interests of the Salaried Plan beneficiaries. Despite this duty, Indalex has not acknowledged or acted on its statutory lien: section 57(5) of the PBA provides that “[t]he administrator of the pension plan has a lien and charge on the assets of the employer in an amount equal to the amounts deemed to be held in trust under subsections (1), (3) and (4).”

Pension Benefits Act, R.S.O. 1990, c. P.8, s. 22 & 57(5)

31. Thus, in the case at bar, Indalex *qua* administrator has a lien and charge on the assets of Indalex *qua* employer equal to the amount of the deficiency in the Salaried Plan. As Indalex has not taken any step in these proceedings to enforce the lien and charge, the Court's intervention is necessary to give effect to the lien and charge.

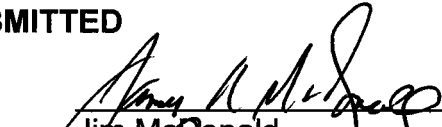
PART IV - ORDER SOUGHT

32. The Moving Party seeks the following Orders:

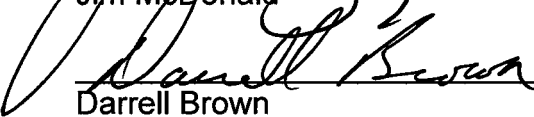
- a. A declaration that a deemed trust equal in amount to the Deficiency of assets in the Salaried Plan is enforceable against the assets of Indalex;
- b. An order that the amount of assets required to eliminate the Deficiency in the Salaried Plan be segregated from the general assets of Indalex;
- c. An order that the amount of assets segregated pursuant to (b) be paid to the fund of the Salaried Plan;
- d. An order for costs;
- e. Such further and other relief as to this Honourable Court seems just.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 20, 2009



Jim McDonald



Darrell Brown
Solicitors for the Moving Party

SCHEDULE "A"
List of Authorities

Huus v. Ontario (Superintendent of Pensions) (2002), 58 O.R. (3rd) 380

Re Usarco Limited (1991) 42 E.T.R. 235 (Ont. Gen. Div.)

Monsanto Canada Inc. v. Ontario (Superintendent of Financial Services), [2004] 3
S.C.R. 152

Ted Leroy Trucking Ltd., Re 2009 BCCA 205, at para. 30

SCHEDULE "B"

STATUTES AND REGULATIONS

s. 57(4) of the Pension Benefits Act, R.S.O. 1990, c. P.8

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations.

s. 75 of the Pension Benefits Act, R.S.O. 1990, c. P.8

75. (1) Where a pension plan is wound up in whole or in part, the employer shall pay into the pension fund,

(a) an amount equal to the total of all payments that, under this Act, the regulations and the pension plan, are due or that have accrued and that have not been paid into the pension fund; and

(b) an amount equal to the amount by which,

(i) the value of the pension benefits under the pension plan that would be guaranteed by the Guarantee Fund under this Act and the regulations if the Superintendent declares that the Guarantee Fund applies to the pension plan,

(ii) the value of the pension benefits accrued with respect to employment in Ontario vested under the pension plan, and

(iii) the value of benefits accrued with respect to employment in Ontario resulting from the application of subsection 39 (3) (50 per cent rule) and section 74,

exceed the value of the assets of the pension fund allocated as prescribed for payment of pension benefits accrued with respect to employment in Ontario. R.S.O. 1990, c. P.8, s. 75 (1); 1997, c. 28, s. 200.

Payment

(2) The employer shall pay the money due under subsection (1) in the prescribed manner and at the prescribed times. R.S.O. 1990, c. P.8, s. 75 (2).

Section 31 of Regulation 909 under the Pension Benefits Act

31. (1) The liability to be funded under section 75 of the Act shall be funded by annual special payments commencing at the effective date of the wind up and made by the employer to the pension fund.

(2) The special payments under subsection (1) for each year shall be at least equal to the greater of,

(a) the amount required in the year to fund the employer's liabilities under section 75 of the Act in equal payments, payable annually in advance, over not more than five years; and

(b) the minimum special payments required for the year in which the plan is wound up, as determined in the reports filed or submitted under sections 3, 4, 5.3, 13 and 14, multiplied by the ratio of the basic Ontario liabilities of the plan to the total of the liabilities and increased liabilities of the plan as determined under clauses 30(2)(b) and (c).

(3) The special payments referred to in subsections (1) and (2) shall continue until the liability is funded.

(4) Subsection (5) applies to a qualifying plan or to a plan with the following history:

1. An election was made in respect of the plan under subsection 5.1(1) or (2).
2. The election was rescinded in accordance with subsection 5.1(12).
3. After the date of the election but within five years after the date on which the election was rescinded, the plan was wound up.

(5) For a qualifying plan or a plan with the history described in subsection (4), the liability to be funded under section 75 of the Act shall be funded by monthly special payments by the employer to the pension fund over a period of not more than one year beginning on the effective date of the wind up. . [emphasis added]

Section 30(7) of the PPSA

(7) A security interest in an account or inventory and its proceeds is subordinate to the interest of a person who is the beneficiary of a deemed trust arising under the Employment Standards Act or under the Pension Benefits Act.

s. 22 and 57 (5) of the *Pension Benefits Act*, R.S.O. 1990, C. P.8

22.(1)The administrator of a pension plan shall exercise the care, diligence and skill in the administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.

Special knowledge and skill

(2)The administrator of a pension plan shall use in the administration of the pension plan and in the administration and investment of the pension fund all relevant knowledge and skill that the administrator possesses or, by reason of the administrator's profession, business or calling, ought to possess.

Member of pension committee, etc.

(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

Conflict of interest

(4) An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund.

Employment of agent

(5) Where it is reasonable and prudent in the circumstances so to do, the administrator of a pension plan may employ one or more agents to carry out any act required to be done in the administration of the pension plan and in the administration and investment of the pension fund.

Trustee of pension fund

(6) No person other than a prescribed person shall be a trustee of a pension fund.

Responsibility for agent

(7) An administrator of a pension plan who employs an agent shall personally select the agent and be satisfied of the agent's suitability to perform the act for which the agent is employed, and the administrator shall carry out such supervision of the agent as is prudent and reasonable.

Employee or agent

(8) An employee or agent of an administrator is also subject to the standards that apply to the administrator under subsections (1), (2) and (4).

Benefit by administrator

(9) The administrator of a pension plan is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits, a refund of contributions and fees and expenses related to the administration of the pension plan and permitted by the common law or provided for in the pension plan.

Member of pension committee, etc.

(10) Subsection (9) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan.

Payment to agent

(11) An agent of the administrator of a pension plan is not entitled to payment from the pension fund other than the usual and reasonable fees and expenses for the services provided by the agent in respect of the pension plan. R.S.O. 1990, c. P.8, s. 22.

...

57.(1) Where an employer receives money from an employee under an arrangement that the employer will pay the money into a pension fund as the employee's contribution under the pension plan, the employer shall be deemed to hold the money in trust for the employee until the employer pays the money into the pension fund.

Money withheld

(2) For the purposes of subsection (1), money withheld by an employer, whether by payroll deduction or otherwise, from money payable to an employee shall be deemed to be money received by the employer from the employee.

Accrued contributions

(3) An employer who is required to pay contributions to a pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to the employer contributions due and not paid into the pension fund.

Wind up

(4) Where a pension plan is wound up in whole or in part, an employer who is required to pay contributions to the pension fund shall be deemed to hold in trust for the beneficiaries of the pension plan an amount of money equal to employer contributions accrued to the date of the wind up but not yet due under the plan or regulations.

Lien and charge

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

Application of subss. (1, 3, 4)

(6) Subsections (1), (3) and (4) apply whether or not the money has been kept separate and apart from other money or property of the employer.

Money to be paid to insurance company

(7) Subsections (1) to (6) apply with necessary modifications in respect of money to be paid to an insurance company that guarantees pension benefits under a pension plan.
R.S.O. 1990, c. P.8, s. 57.