Court File No. CV-09-8122-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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.

Applicants

FACTUM OF THE APPLICANTS
(Motion returnable August 28, 2009)

August 24, 2009

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PART I – OVERVIEW

1. The United Steel Workers (the "USW") and certain former executives[1] (the "Former Executives") have brought a motion in the within proceedings requesting, *inter alia*, a declaration that the proceeds derived from the sale of the Applicants' assets are subject to a deemed trust pursuant to the *Pension Benefits Act* (Ontario) (the "PBA") for the benefit of beneficiaries of certain pension plans administered by Indalex Limited, namely the Salaried Plan[2] and the Executive Plan[3]. If successful, the USW and the Former Executives request that the Monitor be directed to immediately pay in priority to the DIP Lenders Charge (as defined below) the deemed trust amounts to fund the wind-up deficiencies in both the Salaried Plan and the Executive Plan.

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[1] Keith Carruthers, Leon Kozierok, Bertram McBride, Max Degen, Eugene D'Iorio, Richard Smith, Robert Leckie and Neil Fraser

[2] The "Salaried Plan" is the Retirement Plan for Salaried Employees of Indalex Limited and Assocaited Companies, registered with the Financial Services Commission of Ontario and the Canadian Revenue Agency under Registration No. 0533646

[3] The "Executive Plan" is the Retirement Plan for Executive Employees of Indalex Limited and Associated Companies, registered with the Financial Services Commission of Ontario and the Canadian Revenue Agency under Registration No. 0455626.

2. In the Applicants' view, there is no deemed trust which applies to the wind-up deficiency of the pension plans and even if such a deemed trust existed, it could not rank in priority to the DIP Lenders Charge. As a result, and having received the full post-filing benefit of the DIP financing, the Applicants oppose the relief sought by the USW and the Former Executives in order to allow them to discharge the prior ranking obligation owing to the beneficiaries of the DIP Lenders Charge.

3. As there is no longer a need for the debtor to remain in possession in the within proceedings, the shareholder of the Applicants (and subrogee to the DIP Lenders Charge, as described below) by way of a unanimous shareholder declaration, also seeks to cause the Applicants to file voluntary assignments in bankruptcy in order to bring immediate resolution to the aforementioned disputed deemed trust claims. Such relief should be granted for the following reasons:

   (i) it is well established law that utilizing the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "BIA") to alter priorities is a legitimate reason to file a voluntary assignment in bankruptcy;

   (ii) the within CCAA proceedings are spent and there are no entities to reorganize and no further compromises can be negotiated between the Applicants and their creditors; and

   (iii) there remains a pool of money to distribute, and, subject to the interests of secured creditors, the BIA is the regime Parliament has chosen to effect this distribution.

PART II - FACTS

Background

4. On March 20, 2009, the Applicants' U.S. based affiliates[4] (collectively, "Indalex US") commenced reorganization proceedings under Chapter 11 of Title 11 of the United States Code. On April 3, 2009, the Applicants commenced parallel proceedings and filed for and obtained protection from their creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c.C-36, as amended (the "CCAA"), pursuant to an order of the Honourable Justice Morawetz (as amended, the "Initial Order").[5]

5. On April 8, 2009, the Court authorized Indalex Limited to borrow funds (the "DIP Borrowings") pursuant to a debtor-in-possession credit agreement (as amended, the "DIP Credit Agreement") among Indalex US, the Applicants and a syndicate of lenders (the "DIP Lenders") for which JPMorgan Chase Bank, N.A. is administrative agent (the "DIP Agent"). The Applicants' obligation to repay the DIP Borrowings was guaranteed by Indalex US. The guarantee by Indalex US was a condition to the extension of credit by the DIP Lenders to the Applicants.[6]

6. After a Court-approved marketing process, the Court approved the sale of the Applicants' assets as a going concern to SAPA Holding AB (including any assignees, "SAPA"), and ordered that upon closing of the SAPA transaction, the proceeds of sale (the "Canadian Sale Proceeds") were to be paid to the Monitor. The Monitor was directed to make a distribution to the DIP Lenders, from the Canadian Sale Proceeds, in satisfaction of the Applicants' obligations to the DIP Lenders, subject to a reserve that the Monitor considered to be appropriate in the circumstances (the "Undistributed Proceeds").[7]

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[4] Indalex Holdings Finance, Inc., Indalex Holding Corp. ("Indalex Holding"), Indalex Inc., Caradon Lebanon, Inc. and Dalton Aluminum Company, Inc.
[5] Affidavit of Keith Cooper, sworn August 24, 2009 at paras 4 and 5. [the "*Cooper Affidavit*"].
[6] Cooper Affidavit at paras 7 and 10.
[7] Cooper Affidavit at paras 16 and 18.

7. At the sale approval hearing, the Former Executives asserted a deemed trust claim over the Canadian Sale Proceeds, and requested that an amount representing their estimate of the wind-up deficiency in the Executive Plan, which they claimed was subject to a deemed trust, be included in the amount retained by the Monitor as part of the Undistributed Proceeds, pending further Order of the Court. The USW, while it supported the SAPA transaction, reserved its rights with respect to any deemed trust claim it may have with respect to the Salaried Plan.[8]

8. As a result of the Former Executives and the USW's reservation of rights, the Monitor retained the amount of $6.75 million as part of the Undistributed Proceeds, in addition to the other amounts reserved by the Monitor. This resulted in a deficiency of US$10,751,247.22 in respect of the DIP Borrowings, and accordingly, the DIP Agent called on the guarantee granted to the DIP Lenders by Indalex US for the amount of the deficiency (the "Guarantee Payment") and Indalex US has satisfied this obligation of the Applicants.[9]

9. Indalex US is fully subrogated to the rights of the DIP Lenders under the DIP Lenders Charge (as defined in the Initial Order) for the amount of the Guarantee Payment.[10] Accordingly, Indalex US is now a secured creditor with a super-priority charge against the assets of the Applicants in the amount of US$10,751,247.22.

Voluntary Assignment in Bankruptcy

10. On August 5, 2009, the Former Executives and the USW served their respective motion records asserting a deemed trust over the Canadian Sale Proceeds. Indalex US considered its options in light of the allegations and positions set out therein.[11]

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[8] Cooper Affidavit at paras 19 and 21.
[9] Cooper Affidavit at paras 22-24.
[10] Approval and Vesting Order dated July 20, 2009 at para 14; Cooper Affidavit at para 25.
[11] Cooper Affidavit at paras 27-29.

11. The Applicants are no longer carrying on business, have no active employees and no tangible assets, other than cash (including sale proceeds) and certain tax refunds. The board of directors of the Applicants has resigned and the former directors are all currently employed by SAPA. The Applicants are insolvent shells.[12] The Applicants do not have any domestic corporate governance, and the Applicants are now governed by their immediate parent, Indalex Holding pursuant to a unanimous shareholder declaration. There is no longer a purpose to having a debtor in possession in Canada.

12. Any purported priority claim by the USW and the Former Executives (which priority is disputed) is extinguished on bankruptcy. Given the status of the Applicants as insolvent shells, in order to provide conclusive certainty that any purported deemed trust does not rank in priority to the DIP Lenders Charge and bring immediate resolution of this issue, Indalex Holding instructed the Applicants to seek approval of the Court to file a voluntary assignment in bankruptcy to ensure that the priority regime set out in the BIA applies to the distribution of the Canadian Sale Proceeds.[13]

13. The only material obligation of the Applicants remaining under the SAPA transaction is the completion of the post-closing working capital adjustment. $2.75 million is currently being held in escrow by the Monitor, to ensure any adjustment in favour of SAPA will be satisfied with any balance to ultimately be made available to the Applicants' creditors, along with the Undistributed Proceeds, in accordance with their entitlement and priority.[14]

14. While a claims procedure was commenced in the within proceedings, at no point in time did the Applicants rule out an eventual filing of a voluntary assignment in bankruptcy.[15]

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[12] Cooper Affidavit at para 33.
[13] Cooper Affidavit at para 31.
[14] Cooper Affidavit at para 34.
[15] Cooper Affidavit at para 26.

PART III – ARGUMENT

15. There are two issues to be determined by this Honourable Court:

A. Should the stay of proceedings be lifted for the purposes of allowing the Applicants to file a voluntary assignment in bankruptcy?

B. If the answer to (A) above is in the affirmative, is it necessary for the Court to consider the deemed trust claims asserted by the USW and the Former Executives, in that the bankruptcy will conclusively determine the issue of priority of such purported deemed trust?

A. Assignment in Bankruptcy

(i) Lifting the Stay of Proceedings is Appropriate

16. The Initial Order provides that no proceeding in any court shall be commenced against or in respect of the Applicants, except, *inter alia*, with leave of the Court.[16] A voluntary assignment in bankruptcy is a "proceeding" and accordingly, leave of the Court is required for the purposes of making a voluntary assignment in bankruptcy.[17]

17. The requirement for the Applicants to obtain leave prior to filing a voluntary assignment in bankruptcy does no more than permit the court supervising the CCAA proceedings to control its own process and does not restrict the Applicants' ability to file an assignment in bankruptcy where that step is otherwise proper.[18]

(ii) The Assignment in Bankruptcy is Proper

18. The Court should exercise its discretion and lift the stay for the purposes of allowing the Applicants to file a voluntary assignment in bankruptcy, because

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[16] Paragraph 15 of the Initial Order.
[17] *Ed Mirvish Enterprises Ltd. v. Stinson Hospitality Inc.* (2007), 37 C.B.R. (5th) 13 (Ont. C.A.) at para 2.
[18] *Ibid.* at para 4.

such a step is otherwise proper. There is nothing inappropriate or improper in seeking to ensure the priority regime that Parliament intended to apply to the distribution of proceeds from insolvent shells, actually applies.

19. The facts of this case are strikingly similar to those in *Re Ivaco Inc.*, wherein the beneficiaries of Ivaco's underfunded pension plans claimed a deemed trust over the proceeds of sale of Ivaco's assets to the extent of the underfunded deficiency. In response, the financial and trade creditors of Ivaco sought to put the company into bankruptcy in order to take advantage of the scheme of distribution under the BIA.[19] The Honourable Mr. Justice Laskin J.A., on behalf of the Ontario Court of Appeal, held that the desire of the petitioning creditors to use the BIA to alter priorities is a legitimate reason to seek a bankruptcy order.[20] Courts have also held that it is a legitimate reason to make a voluntary assignment in bankruptcy. For example, in several cases, courts have refused to annul a voluntary assignment in bankruptcy where the assignment was filed for the purposes of defeating priorities of creditors, at the urging of other creditors.[21]

20. Accordingly, the desire on the part of the Applicants and Indalex US to ensure the BIA priority regime applies is a legitimate reason to file a voluntary assignment in bankruptcy.

21. In *Ivaco,* the Court of Appeal held that there were numerous considerations which supported the motions judge's decision to lift the stay and permit the bankruptcy petitions to proceed. Many of those considerations are equally applicable to this case. For example, as in *Ivaco*, the within CCAA proceedings are spent and there are no entities to reorganize and no further compromises to be negotiated between the Applicants and their creditors.[22] Moreover, as in *Ivaco*, there remains a pool

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[19] *Re Ivaco Inc.* (2006), 83 O.R. (3d) 108 (Ont. C.A.) at para 1 ["*Ivaco*"].
[20] *Ivaco* at para 76; *Bank of Nova Scotia v. Huronia Precision Plastics Inc.* (2008), 50 C.B.R. (5th) 58 (Ont. S.C.J. [Commercial List]) at para 19; *Re Develox Industries Ltd.* (1970), 14 C.B.R. (N.S.) 132 (Ont. S.C. In Bankruptcy) at para 8.
[21] *Gasthof Schnitzel House Ltd. v. Sanderson* (1978), 27 C.B.R. (N.S.) 75 (B.C.S.C.) at para 11; *Re Public's Own Market (Prince George) Ltd.* (1984), 54 C.B.R. (N.S.) 222 (B.C.S.C. In Bankruptcy) at para 10; *Re Koprel Enterprises Ltd.* (1978), 27 C.B.R. (N.S.) 22 (B.C.S.C.) at para 8.
[22] Cooper Affidavit at paras 33 and 34; *Ivaco* at para 76.

of money to distribute and, subject to the interests of secured creditors, the BIA is the regime Parliament has chosen to effect this distribution.[23]

22. Lifting the stay of proceedings under the CCAA to permit the Applicants to make an assignment in bankruptcy ought not to be denied on the grounds that Indalex Limited is the administrator of the Executive Plan and the Salaried Plan. As Indalex Limited has duties to a broad cross section of stakeholders, this cannot be the single determining factor that supersedes and negates all other considerations. Indalex Limited is both sponsor and administrator of the Executive Plan and the Salaried Plan. Indalex Limited's role as administrator of the pension plans is separate and independent from its role as sponsor of the pension plans.[24]

23. Under the PBA, the administrator of a pension plan is charged with primary responsibility for administering the plans in accordance with the PBA and the plan documents. In performing its duties as plan administrator, Indalex Limited is subject to certain duties imposed under section 22 of the PBA.

24. When fulfilling its responsibility as plan sponsor, such as establishing, amending and terminating the plans or engaging in any action not connected with the administration of the pension plans, Indalex Limited can consider, where appropriate, a broad plurality of legitimate interests, rather than solely the interests of the beneficiaries of the pension plans to the exclusion of all others.[25]

25. Accordingly, in this case, there is a clear distinction between:

(a) actions taken by Indalex Limited as administrator of the Salaried Plan and Executive Plan, such as properly dealing with pension plan funds and the administration of benefits, in respect of which Indalex Limited must comply with the duties imposed under section 22 of the PBA; and,

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[23] *Ivaco* at para 76
[24] *Lloyd v. Imperial Oil Limited,* 2008 ABQB 379; *OMERS Sponsors Corp. v. OMERS Administration Corp.*, [2008] O.J. No. 425 (Gen. Div.); *Sutherland v. Hudson's Bay Co.*, [2007] O.J. No. 2979 (Sup. Ct.); Affidavit of Bob Kavanaugh sworn August 12, 2009 at paras 5 and 15.
[25] *Ibid.*

(b) actions taken by Indalex Limited (or any of the other Applicants) in the management of its own affairs, such as the pursuit of the Court approved SAPA transaction and ultimately, the decision to have the BIA priority regime apply to the distribution from the Applicants' insolvent shells.

26. The decision as to whether to file an assignment in bankruptcy or any other decision concerning the structure or continued existence of Indalex Limited is independent from and entirely distinct from any of its obligations regarding the administration of the pension plans.

27. In *Re General Chemical Canada Ltd.*, the company, which was also the plan administrator, sought to assign itself into bankruptcy, upon the failure of attempts to identify a going concern purchaser in its CCAA proceedings.[26] This Court held that a result which deprived the Superintendent of Financial Services of a determination with respect to priority prior to a voluntary assignment in bankruptcy does not bring the bankruptcy process into disrepute.[27] Further, while it was argued that the assignment was a breach of fiduciary duty, no such finding was made by the Court and the assignment in bankruptcy was authorized by the Court.

28. In summary, the Applicants assert that there are no legal grounds under the PBA for the deemed trust claim that is now being asserted by the USW and the Former Executives and any such purported deemed trust does not rank in priority to the DIP Lenders' Charge. The assignment in bankruptcy will establish certainty by ensuring that the deemed trust (the existence of which is disputed) will be extinguished, rendering the motion by the USW and the Former Executives moot and will bring this matter to an immediate and conclusive resolution. For the foregoing reasons, the filing of a voluntary assignment in bankruptcy is a proper step and the Court ought to exercise its discretion to lift the stay for such purposes.

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[26] *Re General Chemical Canada Ltd.*, 51 C.C.P.B. 297 (Ont. S.C.J.) ["*General Chemical*"]
[27] *General Chemical* at para. 26.

B. Appropriate Priority Regime

29. In *Ivaco*, the Superintendent of Financial Services, on behalf of the pension beneficiaries, argued before the Ontario Court of Appeal that the motions judge was required in law to order that the amount of the deemed trust be paid at the end of the CCAA proceeding, but before bankruptcy. Justice Laskin J.A. rejected this argument and stated: "[w]here a creditor seeks to petition a debtor company into bankruptcy at the end of CCAA proceedings, any claim under a provincial deemed trust must be dealt with in bankruptcy proceedings". [Emphasis Added].

30. The principles established in *Ivaco* were applied in *Textron Financial Canada Ltd. v. Beta Brands Ltd.* wherein the Honourable Justice Leitch stated:

> The principles established in *Ivaco Inc., Re* support a determination that this court should not exercise its discretion to order distribution of vacation pay where a bankruptcy application is to be heard and the effect of the bankruptcy will be to subordinate the claim for vacation pay.[28]

31. Although in *Ted LeRoy Trucking Ltd. (Re)*, the British Columbia Court of Appeal applied the scheme of distribution in effect at the time the Court is asked to deal with sale proceeds (which in that case, meant the CCAA proceedings, as opposed to the bankruptcy proceedings),[29] *Ted LeRoy* expressly distinguishes *Ivaco* on a number of grounds.[30] Those grounds included the following:

(i) In *Ted LeRoy*, the Court found that an express trust existed, not just a statutory deemed trust;

(ii) In *Ted LeRoy*, the Court found that section 57 of the PBA which was considered in *Ivaco* (the same provision under consideration in this matter), was not as strong as the deemed trust and section 222 of *Excise Tax Act* ("ETA"), the section and statute in consideration in *Ted LeRoy*; and

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[28] *Textron Financial Canada Ltd. v. Beta Ltée/Beta Brands Ltd.* (2007), 37 C.B.R. (5th) 107 (Ont. S.C.J.) at para 47.
[29] *Re Ted LeRoy Trucking Ltd.*, 2009 BCCA 205 (reasons May 7, 2009), Docket CA036474 (B.C.C.A.) at para 23 ["*Ted LeRoy*"].
[30] *Ted LeRoy* at para 35.

(iii) In *Ted LeRoy*, the Court also notes that section 57 of the PBA does not contain the "notwithstanding" language or a requirement similar to the one in section 222(3) of the ETA that "proceeds of the property shall be paid to Receiver General in priority to all security interests."

32. Given that the facts presently before the Court are clearly analogous to those in *Ivaco* and *Textron*, the principles in *Ted LeRoy* are inapplicable and to the extent that the principles of *Ted Leroy* contradict the principles established by the Ontario Court of Appeal in *Ivaco*, the Court is bound to apply the principles established in *Ivaco*.

33. In these circumstances, the Court should not exercise its discretion to grant the relief requested by the USW and the Former Executives to make immediate payment of the deemed trust amounts (if established to be such), given that the CCAA proceedings are spent and the Applicants have brought a motion to lift the stay of proceedings for the purposes of filing an assignment in bankruptcy at the behest of their secured creditor, Indalex Holding. In bankruptcy, the deemed trust provisions under provincial legislation do not survive.[31] The bankruptcy of the Applicants will render the issue of the deemed trust moot.

34. In the event that the Court considers it necessary to determine the issue of the deemed trust claim that has been asserted, prior to lifting the stay to permit the filing of the assignment in bankruptcy, the Applicants repeat and rely on the submissions made in their factum filed in response to the motion by the USW and Former Executives to establish that a deemed trust exists in respect of the wind-up liabilities of the Salaried Plan and the Executive Plan (the "Applicants Responding Factum"). As outlined in the Applicants Responding Factum it is the position of the Applicants that no deemed trust arises under the provisions of the PBA, in respect of wind-up deficiencies and that in any event, any deemed trust

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[31] *British Columbia v. Henfrey Samson Belair Ltd.* (1989), 75 C.B.R. (N.S.) 1 (S.C.C.) at para 48; *GMAC Commercial Credit Corp. - Canada v. TCT Logistics Inc.* (2005), 7 C.B.R. (5th) 202 (Ont. C.A.) at paras 15 and 17; *Re Ivaco Inc.* (2005), 12 C.B.R. (5th) 213 (Ont. S.C.J. [Commercial List]) at paras 11-12, 17.

that may be found to exist under the PBA is subordinate to the DIP Lenders Charge provided for in the Initial Order, and to which Indalex US is now subrogated.

Conclusion

35. For the reasons set out above, an assignment in bankruptcy is appropriate in the circumstances and as any alleged priorities will be extinguished on the bankruptcy, it is unnecessary for the Court to consider the issue of the deemed trusts asserted by the USW and the Former Executives.

PART V – RELIEF SOUGHT

36. The Applicants request that this Honourable Court lift the stay of proceedings for the purposes of allowing the Applicants to file a voluntary assignment in bankruptcy, effective immediately.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 24, 2009

FOR: **KATHERINE MCEACHERN**
Counsel for the Applicants

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Ed Mirvish Enterprises Ltd. v. Stinson Hospitality Inc.* (2007), 37 C.B.R. (5th) 13 (Ont. C.A.).

2. *Re Ivaco Inc.* (2006), 83 O.R. (3d) 108 (Ont. C.A.).

3. *Bank of Nova Scotia v. Huronia Precision Plastics Inc.* (2008), 50 C.B.R. (5th) 58 (Ont. S.C.J. [Commercial List]).

4. *Re Develox Industries Ltd.* (1970), 14 C.B.R. (N.S.) 132 (Ont. S.C. In Bankruptcy).

5. *Gasthof Schnitzel House Ltd. v. Sanderson* (1978), 27 C.B.R. (N.S.) 75 (B.C.S.C.)

6. *Re Public's Own Market (Prince George) Ltd.* (1984), 54 C.B.R. (N.S.) 222 (B.C.S.C. In Bankruptcy)

7. *Re Koprel Enterprises Ltd.* (1978), 27 C.B.R. (N.S.) 22 (B.C.S.C.)

8. *Llyod v. Imperial Oil Limited*, 208 ABQB 379.

9. *OMERS Sponsors Corp. v. OMERS Administration Corp.*, [2008] O.J. No 425 (Gen Div.).

10. *Sutherland v. Hudson's Bay Co.*, [2007] O.J. No. 2979 (S.C.J.).

11. *Re General Chemical Canada Ltd.*, 2005 CarswellOnt 7306, 51 C.C.P.B. 297 (Ont. S.C.J.).

12. *Textron Financial Canada Ltd. v. Beta Ltée/Beta Brands Ltd.* (2007), 37 C.B.R. (5th) 107 (Ont. S.C.J.).

13. *Re Ted LeRoy Trucking Ltd.*, 2009 BCCA 205 (reasons May 7, 2009), Docket CA036474 (B.C.C.A.).

14. *British Columbia v. Henfrey Samson Belair Ltd.* (1989), 75 C.B.R. (N.S.) 1 (S.C.C.)

15. *GMAC Commercial Credit Corp. - Canada v. TCT Logistics Inc.* (2005), 7 C.B.R. (5th) 202 (Ont. C.A.).

16. *Re Ivaco Inc.* (2005), 12 C.B.R. (5th) 213 (Ont. S.C.J. [Commercial List]).

SCHEDULE "B"

RELEVANT STATUTES

Pension Benefits Act, R.S.O. 1990, CHAPTER 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.

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Proceeding commenced at Toronto

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