S.C.C. File No. 34308

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO)

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.

B E T W E E N:

GEORGE L. MILLER, THE CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATES OF THE U.S. INDALEX DEBTORS

APPLICANT
(Respondent)

- and -

UNITED STEEL WORKERS, KEITH CARRUTHERS, LEON KOZIEROK, RICHARD BENSON, JOHN FAVERI, KEN WALDRON, JOHN (JACK) W. ROONEY, BERTRAM MCBRIDE, MAX DEGEN, EUGENE D'IORIO, NEIL FRASER, RICHARD SMITH, ROBERT LECKIE, FRED GRANVILLE, SUN INDALEX FINANCE, LLC and THE MONITOR, FTI CONSULTING CANADA ULC

RESPONDENTS
(Appellants/Respondents)

- and –

MORNEAU SOBECO LIMITED PARTNERSHIP and THE SUPERINTENDENT OF FINANCIAL SERVICES

PROPOSED INTERVENERS
(Interveners)

MEMORANDUM OF ARGUMENT OF THE RETIREES IN RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL OF THE APPLICANT, GEORGE L. MILLER, THE CHAPTER 7 TRUSTEE OF THE BANKRUPTCY ESTATES OF THE U.S. INDALEX DEBTORS

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MEMORANDUM OF ARGUMENT OF THE RETIREES IN RESPONSE TO THE U.S. TRUSTEE

PART I - OVERVIEW AND CONCISE STATEMENT OF FACTS

1. The three respondents in the decision below, FTI Consulting Canada ULC, in its capacity as the Monitor of Indalex Limited ("Indalex"), Sun Indalex Finance LLC ("Sun-Indalex") and George L. Miller, (the "U.S. Trustee") each seek leave to appeal from the unanimous decision of the Ontario Court of Appeal dated April 7, 2011 (the "Decision"). Each of the Applicants has filed a leave application. This is the Response of the Retirees to the memorandum of argument of the U.S. Trustee.

2. The Decision dealt with two appeals heard by the Ontario Court of Appeal at the same time. One was an appeal by the Retirees of Indalex who are members of the "Retirement Plan for Executive Employees of Indalex Limited and Associated Companies" (the "Executive Plan"), bearing Ontario Court of Appeal file number C52346. The other was an appeal by the United Steelworkers ("USW") on behalf of certain members of the "Retirement Plan for Salaried Employees of Indalex Limited and Associated Companies" (the "Salaried Plan"), bearing Ontario Court of Appeal file number C52187.

3. Both pension plans have been underfunded by Indalex. As a result of the underfunding, the Retirees have had their monthly pension benefits from the Executive Plan cut by 35%. Indalex also terminated the Retirees' supplemental pension benefits. Between the two cuts, the Retirees have lost between one-half and two-thirds of their pension benefits that they earned from Indalex. They have been severely prejudiced and are incurring financial hardship in their retirement years.

> **Reasons for Decision of the Court of Appeal for Ontario: 2011 ONCA 265 [Court of Appeal Reasons] at para. 40, Response of the Respondent Retirees to the Application for Leave to Appeal by the U.S. Trustee [Retirees' Record], Tab 3A.**

Appeal #1 - For the Retirees, the Court of Appeal found on the basis of breach of fiduciary duty

4. In the Retirees' appeal, the Court of Appeal found that on the facts of the case that Indalex breached its fiduciary duty to the Retirees of the Executive Plan, under both the common law and section 22(4) of the Ontario *Pension Benefits Act,* R.S.O. 1990, c. P.8 ("PBA"). The Court of Appeal expressly declined to decide whether the deemed trust applied to the Executive Plan.

> Court of Appeal Reasons at paras. 112, 116 and 144, Retirees' Record, Tab 3A.

5. As a remedy for the breach of fiduciary duty, the Court of Appeal imposed a constructive trust over a portion of the proceeds from the sale of Indalex's assets being held in reserve by the Monitor in the amount of the wind-up deficit owing to the Executive Plan as a priority payment over the claim of Sun-Indalex, the guarantor to a previous lender to Indalex known as the DIP lender. The DIP lender has been previously re-paid in full. It is not participating in these proceedings, nor did it participate in the appeal below.

> Court of Appeal Reasons at para. 204, Retirees' Record, Tab 3A.

Appeal #2 - For the USW appeal, the Court of Appeal found on the basis of both breach of fiduciary duty and the PBA deemed trust

6. For the USW appeal, the Court of Appeal found in favour of the USW on two basis. First, that the deemed trust in section 57(4) of the PBA applied to the sale proceeds being held in reserve by the Monitor in the amount of the wind-up deficiency owing to the Salaried Plan. Second, the Court of Appeal made the same finding it made with respect to the Retirees of the Executive Plan i.e., that Indalex breached its fiduciary duty to the Salaried Plan members.

> Court of Appeal Reasons at paras. 109, 112 and 139, Retirees' Record, Tab 3A.

7. In their leave materials, the three Applicants appear to have overlooked the key distinction between the Retirees' appeal and the USW appeal in the Decision. There was no finding by the Court of Appeal of a deemed trust in respect of the Retirees.

The leave application should be dismissed

8. The U.S. Trustee's leave application should be dismissed because it does not raise an issue of public importance. Likewise for the leave applications of Sun Indalex and the Monitor. All three Applicants, including the U.S. Trustee, seek to re-litigate the well-settled law of fiduciary duty which has been correctly applied to the facts of this case. There is no suggestion that the law is in any need of change or reform. The Court of Appeal also considered and correctly applied this Court's recent decision in *Century Services*. In fact, the Applicants rely on the same law that the Court of Appeal applied. It is trite to say that in certain circumstances that law will result in a finding of a breach of fiduciary duty. But the underlying law of fiduciary duty is settled. It is not in need of review or reform from this Court. There being no error in the legal test for fiduciary duty, leave to appeal should be dismissed.

9. On the facts of this particular case, a unanimous Court of Appeal found that Indalex breached its fiduciary duty to the Retirees. The facts clearly support the finding of a breach. Indalex was the administrator of the Executive Plan and as such had a duty to act in the best interests of the Retirees of the plan. Indalex commenced proceedings under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") knowing that the Executive Plan for the Retirees was underfunded and that unless additional funds were put into the plan, the Retirees' pension benefits would be reduced. Indalex did nothing to fund the deficit in the Executive Plan. It took no steps to protect the vested benefits of the plan members so they could continue to receive their full pension entitlements.

Court of Appeal Reasons at para. 139, Retirees' Record, Tab 3A.

10. Worse, Indalex actively undermined any possibility of additional funding to the Executive Plan (and the Salaried Plan). It applied for CCAA protection without notice to the Retirees. It obtained a CCAA order and covertly inserted a provision into the order that gave the DIP lender priority ahead of "statutory trusts", again without prior notice to the beneficiaries. It sold its assets without making any provision for the funding of the deficit in the Executive Plan. Indalex knew the purchaser was not taking over the Executive Plan. Indalex supported the disbursement of the sale proceeds of its assets in an attempt to ensure that no payment would be made to the underfunded Executive Plan. Once challenged in court by the Retirees, Indalex U.S., who was at this point also the management of Indalex in Canada, directed Indalex to bring a

bankruptcy motion with the intention of defeating the Retirees' deemed trust and to ensure that the amount in reserve with the Monitor would be transferred to Indalex U.S.

Court of Appeal Reasons at para. 139, Retirees' Record, Tab 3A.

11. Worse still, the Court of Appeal found that Indalex was in a conflict of interest. Indalex's duty as pension plan administrator was to act in the best interests of the Executive Plan beneficiaries. Indalex ignored this conflict. Instead, Indalex took active steps *against* the Retirees such as bringing a motion to try to bankrupt itself to block the Retirees from obtaining any recovery for the underfunded Executive Plan.

Court of Appeal Reasons at paras. 140-143, Retirees' Record, Tab 3A.

12. The Court of Appeal's findings that Indalex breached its fiduciary duty to the Retirees on these facts are unassailable. The issues raised by the U.S. Trustee have no public importance. No case is made for leave. The leave application of the U.S. Trustee should be dismissed.

13. In response to the U.S. Trustee, the Retirees repeat and rely upon the facts as set out in their Responses to the leave applications to the Monitor and Sun-Indalex.

14. The U.S. Trustee's leave memorandum refers only to the deemed trust under section 57(4) of the PBA. The U.S. Trustee's arguments with respect to the deemed trust have no application to the Retirees or the Executive Plan. As noted above, the Court of Appeal found that Indalex breached its fiduciary duty to the Retirees under both the common law and section 22(4) of the PBA:

> [139] As previously noted, when Indalex commenced CCAA proceedings, it knew that the Plans were underfunded and that unless additional funds were put into the Plans, pensions would be reduced. Indalex did nothing in the CCAA proceedings to fund the deficit in the underfunded Plans. It took no steps to protect the vested rights of the Plans' beneficiaries to continue to receive their full pension entitlements. In fact, Indalex took active steps which undermined the possibility of additional funding to the Plans. It applied for CCAA protection without notice to the Plans' beneficiaries. It obtained a CCAA order that gave priority to the DIP lenders over "statutory trusts" without notice to the Plans' beneficiaries. It sold its assets without making any provision for the Plans. It knew the purchaser was not taking over the Plans. It moved to obtain orders approving the sale and distributing the sale proceeds to the DIP lenders, knowing that no payment would be made to the underfunded Plans. And, Indalex U.S. directed Indalex to bring its

> bankruptcy motion with the intention of defeating the deemed trust claims and ensuring that the Reserve Fund was transferred to it. In short, Indalex did nothing to protect the best interests of the Plans' beneficiaries and, accordingly, was in breach of its fiduciary obligations as administrator.
>
> Court of Appeal Reasons at para. 139, Retirees' Record, Tab 3A.

15. In paragraphs 14-16 of its leave memorandum, the U.S. Trustee makes arguments under the guise of facts in Part II which warrant response. Generally, in these paragraphs, the U.S. Trustee seeks to re-litigate the arguments that it made before the Ontario Court of Appeal which were rejected.

16. At paragraphs 14 of its leave memorandum, the U.S. Trustee argues that the Decision is "irreconcilable" with *Century Services Inc. v. Canada (Attorney General)*. This argument was fully presented by the U.S. Trustee before the Court of Appeal (as well as by the other two Applicants) and dismissed:

> [191] The respondents contend that *Century Services* is crucial in the disposition of these appeals because it stands for the proposition that federal priorities under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (BIA) apply in CCAA proceedings. If Century Services stood for that proposition, I would agree. In a series of cases, the Supreme Court of Canada has repeatedly said that a province cannot, by legislating a deemed trust, alter the scheme of priorities under the BIA: see , for example, *British Columbia v. Henfrey Samson Belair Ltd.*, [1989] 2 S.C.R. 24.
>
> [192] However, in my view, *Century Services* does not stand for that unqualified proposition. In *Century Services*, Deschamps J. explains that the CCAA and BIA are to be read in an integrated fashion but she is at pains to say that the BIA scheme of liquidation and distribution is the backdrop for what happens *if a CCAA reorganization is unsuccessful.* Here, as I have noted, the CCAA proceedings were successful.
>
> [193] Moreover, Deschamps J. repeatedly distinguishes the two regimes on the basis that the *BIA* is "characterized by a rules-based approach" whereas the *CCAA* "offers a more flexible mechanism with greater judicial discretion". Permitting the *PBA* deemed trust to survive, absent an express finding of paramountcy, is consistent with both those key features of the *CCAA* proceedings — greater flexibility and greater judicial discretion on the part of the *CCAA* court. This flexibility and discretion on the part of the *CCAA* court enables it to meaningfully assess the baseline considerations of appropriateness, good faith and due diligence, referred to by Deschamps J. at para. 70 of Century Services.

> [194] The respondents point to paras. 47, 48 and 76 of *Century Services*, in which Deschamps J. notes the "strange asymmetry" that would occur if the ETA Crown priority were interpreted differently in CCAA proceedings than in BIA proceedings. She says this would encourage from shopping in cases where the debtor's assets cannot satisfy both the secured creditors' and the Crown's claims. **No "strange asymmetry" would occur in cases such as the present appeals.**
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> Court of Appeal Reasons at paras. 191-194, Retirees' Record, Tab 3A [emphasis added]; see also paras. 195-196.
>
> *Century Services Inc. v. Canada (Attorney General)*, [2010] 3 S.C.R. 379 [*Century Services*], Application Record for Leave to Appeal of FTI Consulting Canada ULC, in its capacity as the Court-Appointed Monitor, on behalf of Indalex Limited, Applicant [FTI's Application Record], Tab 7A [emphasis added].

17. At paragraph 14, the U.S. Trustee argues that the Decision is also "irreconcilable" with *Re Ivaco*. Again, this argument was fully made before the Ontario Court of Appeal by the Applicants and rejected. Furthermore, *Ivaco* is an Ontario case. There is no conflicting caselaw from the courts of appeal of different provinces:

> [105] Much reference has been made to the two cases in which s. 57(4) has been discussed: *Re Ivaco* (2005), 12 C.B.R. (5th) 213 (Ont. S.C.), aff'd (2006), 83 O.R. (3d) 108 (C.A.), and *Toronto-Dominion Bank v. Usarco* (1991), 42 E.T.R. 235 (Ont. Ct. (Gen. Div.)). **In my view, these decisions are of little assistance in deciding this issue.**
>
> [106] Factually, *Ivaco* and *Usarco* differ from the present case. In *Ivaco* and *Usarco*, the prospect of bankruptcy was firmly before the court whereas in this case, at its highest, there is a motion to lift the stay and file for bankruptcy.
>
> [107] Moreover, there are conflicting statements in *Ivaco* and *Usarco* regarding the applicability of the deemed trust to wind up deficiencies. In *Usarco*, a bankruptcy petition had been filed but no steps had been taken to proceed with the petition. The company was not under CCAA protection. In that context, Farley J., the motion judge, held that the deemed trust provision referred only to the regular contributions together with special contributions that were to have been made but had not been.8 In *Ivaco*, the major financers and creditors wished to have the CCAA proceeding, which was functioning as a liquidation, transformed into a bankruptcy proceeding. The case was focused primarily on whether there was a reason to defeat the bankruptcy petition. In *Ivaco*, Farley J. took a different view of the scope of the s. 57(4) deemed trust, stating that in a non-bankruptcy situation, the company's assets were subject to a deemed trust on account of unpaid contributions and wind up liabilities.9 On appeal, although this court indicated that it thought that

followed. The Retirees challenged the DIP priority with respect to their claims for the wind-up deficit owing to the Executive Plan. The Court of Appeal correctly rejected the U.S. Trustee's argument indicating that the doctrine of paramountcy that has been settled by this Court was not followed in this case:

> [179] While the super-priority charge provides that it ranks in priority over trusts, "statutory or otherwise", I do not read it as taking priority over the deemed trust in this case ***because the deemed trust was not identified by the court at the time the charge was granted and the affidavit evidence suggested such a priority was unnecessary. As no finding of paramountcy was made, valid provincial laws continue to operate: the super-priority charge does not override the PBA deemed trust.*** The two operate sequentially, with the deemed trust being satisfied first from the Reserve Fund.
>
> [180] Does this conclusion thwart the purpose of the CCAA regime, which is to facilitate the restructuring of failing businesses to avoid bankruptcy and liquidation? It does not appear that would have happened in the present case. The granting of a stay in a CCAA proceeding provides a company with breathing space so that it can restructure. In this case, the stay of proceedings gave Indalex the breathing space it needed to effect a sale of its business. Recall that this was a "liquidating CCAA" from the outset. There was no restructuring of the company. There was no plan of compromise or arrangement prepared and presented to creditors. Within days of obtaining CCAA protection, Indalex began a marketing process to sell itself. Very shortly thereafter, it sold its business as a going-concern. There is nothing in the record to suggest that giving the deemed trust priority would have frustrated Indalex's efforts to sell itself as a going-concern business.
>
> [181] What of the contention that recognition of the deemed trust will cause DIP lenders to be unwilling to advance funds in CCAA proceedings? It is important to recognize that the conclusion I have reached does not mean that a finding of paramountcy will never be made. That determination must be made on a case by case basis. There may well be situations in which paramountcy is invoked and the record satisfies the CCAA judge that application of the provincial legislation would frustrate the company's ability to restructure and avoid bankruptcy. But, this depends on the applicant clearly raising the issue of paramountcy, which will alert affected parties to the risks to their interests and put them in a position where they can take steps to protect their rights. That, however, is not this case.
>
> Court of Appeal Reasons at paras. 179-181, Retirees' Record, Tab 3A [emphasis added].

20. At paragraph 16, the U.S. Trustee speculates that as a result of the Decision, companies will increasingly file for bankruptcy instead of applying for CCAA protection. There is no

evidence to support that comment. In any event, the U.S. Trustee is again re-crafting the same argument it presented to the Court of Appeal which was rejected:

> [182] Nor am I persuaded by the argument that if the deemed trust is given effect in the unique circumstances of this case, companies will file for bankruptcy instead of moving for CCAA protection. This argument suggests that companies will act based on the desire to avoid their pension obligations. That motivation does not conform with the obligations that directors owe to the corporation. The obligation to act in the best interests of the corporation suggests that companies will choose the route that maximizes recovery for creditors. As the respondents point out, Indalex sought a going-concern sale for exactly that reason. In addition, by selling its business as a going concern, Indalex preserved value for suppliers and customers who can continue to do business with the purchaser and preserved approximately 950 jobs for its former employees. Surely the desire to maximize recovery for their creditors – along with those other considerations – would have prevailed had Indalex known it would have to satisfy the deemed trust when considering whether to pursue bankruptcy or CCAA proceedings. In this regard, it is worth recalling that consideration for the sale exceeded $151 million, all DIP lenders were repaid in full, the Reserve Fund consists of undistributed proceeds, and the total deficiencies in the Plans appear to be approximately $6.75 million.
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> Court of Appeal Reasons at para. 182, Retirees' Record, Tab 3A [emphasis added].

PART II - STATEMENT OF THE QUESTIONS IN ISSUE

21. In its leave application, the U.S. Trustee proposes three issues for this Court:

(a) Can a super-priority charge, granted by a supervising judge under the CCAA pursuant to an order that has been appealed, be retroactively revoked to the detriment of parties who have advanced funds in reliance thereon?

(b) Does the PBA create a deemed trust for a pension plan wind-up deficiency?

(c) In the absence of an approved plan of arrangement, does the distribution scheme established by Parliament under the BIA apply in the case of a liquidating CCAA proceeding, as was decided by this Court in *Century Services* or do courts have a discretion on a case-by-case basis to circumvent those priorities based on a subjective determination of whether or not a reorganization has been "successful" or otherwise?

22. None of the issues apply to the Retirees who were successful based on the Court of Appeal's finding that Indalex breached its fiduciary duty to the Retirees under the common law and section 22(4) of the PBA. None of the issues proposed by the U.S. Trustee have public importance that warrant this Court's review.

PART III - STATEMENT OF ARGUMENT

23. For its Statement of Argument, the U.S. Trustee states that it "agrees with and adopts the arguments advanced by Sun-Indalex LLC and FTI Consulting Canada ULC on their applications for leave to appeal to this Court from the CA Decision".

24. Accordingly, the Retirees incorporate their Responses to the leave applications of the Monitor and Sun-Indalex as their Response to the U.S. Trustee.

25. Although the Court of Appeal's finding of a breach of its fiduciary duty to the Retirees by Indalex under the common law and section 22(4) of the PBA is based on the particular facts of this case, the Court of Appeal's comprehensive Decision is a positive development in the law. It also has the potential to assist vulnerable retirees and pensioners who find themselves in similar factual situations. This is another reason that the leave applications of the U.S. Trustee and the other Applicants should all be dismissed.

> Affidavit of Robert F. Hilton, sworn September 1, 2011, Retirees' Record, Tab 4A.

PART IV - SUBMISSIONS ON COSTS

26. The Retirees are elderly and have had their pension benefits significantly reduced. They respectfully request their costs of this application in any event of the cause.

PART V - ORDERS SOUGHT

27. The Retirees respectfully request an order dismissing the U.S. Trustee's leave application, with costs.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of September, 2011.

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PART VI - TABLE OF AUTHORITIES

Authority	Paragraph
Century Services Inc. v. Canada (Attorney General), [2010] 3 S.C.R. 379.	16
Ivaco (Re) (2005), 12 C.B.R. (5th) 213 (Ont. S.C.), aff'd (2006), 83 O.R. (3d) 108 (C.A.).	17

PART VII - STATUTORY PROVISIONS

Pension Benefits Act, R.S.O. 1990, c. P.8.	*Loi sur les régimes de retraite*, L.R.O. 1990, C. P.8.
Registration and Administration	**Enregistrement et Administration**
Care, diligence and skill	**Soin, diligence et compétence**
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. R.S.O. 1990, c. P.8, s. 22 (1).	22. (1) L'administrateur d'un régime de retraite apporte à l'administration et au placement des fonds de la caisse de retraite le soin, la diligence et la compétence qu'une personne d'une prudence normale exercerait relativement à la gestion des biens d'autrui. L.R.O. 1990, chap. P.8, par. 22 (1).
Special knowledge and skill	**Connaissances et compétences particulières**
(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. R.S.O. 1990, c. P.8, s. 22 (2).	(2) L'administrateur d'un régime de retraite apporte à l'administration du régime de retraite et à l'administration et au placement des fonds de la caisse de retraite toutes les connaissances et compétences pertinentes que l'administrateur possède ou devrait posséder en raison de sa profession, de ses affaires ou de sa vocation. L.R.O. 1990, chap. P.8, par. 22 (2).
Member of pension committee, etc.	**Membre d'un comité de retraite**
(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. R.S.O. 1990, c. P.8, s. 22 (3).	(3) Le paragraphe (2) s'applique avec les adaptations nécessaires à un membre d'un comité de retraite ou d'un conseil de fiduciaires qui est l'administrateur d'un régime de retraite et à un membre d'un conseil, d'une commission ou d'un organisme auquel une loi de la Législature confie l'administration d'un régime de retraite. L.R.O. 1990, chap. P.8, par. 22 (3).
Conflict of interest	**Conflit d'intérêts**
(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. R.S.O. 1990, c. P.8, s. 22 (4).	(4) L'administrateur, ou si l'administrateur est un comité de retraite ou un conseil de fiduciaires, un membre du comité ou du conseil qui est l'administrateur du régime de retraite ne permet pas sciemment que son intérêt entre en conflit avec ses attributions à l'égard du régime de retraite. L.R.O. 1990, chap. P.8, par. 22 (4).
Employment of agent	**Emploi de mandataires**
(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	(5) Si cela est raisonnable et prudent dans les circonstances, l'administrateur d'un régime de

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. R.S.O. 1990, c. P.8, s. 22 (5).

Trustee of pension fund

(6) No person other than a prescribed person shall be a trustee of a pension fund. R.S.O. 1990, c. P.8, s. 22 (6).

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. R.S.O. 1990, c. P.8, s. 22 (7).

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). R.S.O. 1990, c. P.8, s. 22 (8).

Benefits of administrator

(9) The administrator of a pension plan is not entitled to any benefit from the pension plan other than pension benefits, ancillary benefits and a refund of contributions. 2010, c. 24, s. 7.

Benefits of members 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 for the administration of a pension plan. 2010, c. 24, s. 7

retraite peut employer un ou plusieurs mandataires pour accomplir les actes nécessaires à l'administration du régime de retraite, et à l'administration et au placement des fonds de la caisse de retraite. L.R.O. 1990, chap. P.8, par. 22 (5).

Fiduciaire d'une caisse de retraite

(6) Seule une personne prescrite peut être fiduciaire d'une caisse de retraite. L.R.O. 1990, chap. P.8, par. 22 (6).

L'administrateur répond du mandataire

(7) L'administrateur d'un régime de retraite qui emploie un mandataire le choisit personnellement et doit être convaincu de l'aptitude du mandataire à accomplir l'acte pour lequel il est employé. L'administrateur exerce sur son mandataire une surveillance prudente et raisonnable. L.R.O. 1990, chap. P.8, par. 22 (7).

Employé ou mandataire

(8) Les normes qui s'appliquent à l'administrateur en vertu des paragraphes (1), (2) et (4) s'appliquent également à un employé ou à un mandataire de l'administrateur. L.R.O. 1990, chap. P.8, par. 22 (8).

Prestations de l'administrateur

(9) L'administrateur d'un régime de retraite n'a pas droit à des prestations du régime de retraite autres que des prestations de retraite, des prestations accessoires et un remboursement de cotisations. 2010, chap. 24, art. 7.

Prestations des membres d'un comité de retraite

(10) Le paragraphe (9) s'applique, avec les adaptations nécessaires, au membre d'un comité de retraite ou d'un conseil de fiduciaires qui est l'administrateur d'un régime de retraite et au membre d'un conseil, d'une commission ou d'un organisme auquel une loi confie l'administration d'un régime de retraite. 2010, chap. 24, art. 7.