

VANCOUVER
MAY 09 2012
COURT OF APPEAL
REGISTRY

This is the 1st Affidavit of
Michael J. Prokosh in this case and was
made on May 9, 2012

Court of Appeal File No. CA39754

COURT OF APPEAL

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

- AND -

**IN THE MATTER OF THE *CANADA BUSINESS CORPORATIONS ACT*,
R.S.C. 1985, c. C-44**

- AND -

**IN THE MATTER OF THE *BUSINESS CORPORATIONS ACT*,
S.B.C. 2002, c. 57**

- AND -

**IN THE MATTER OF THE CATALYST PAPER CORPORATION
AND THE PETITIONERS LISTED IN SCHEDULE "A"**

**AFFIDAVIT OF MICHAEL J. PROKOSH
(sworn May 9, 2012)**

I, Michael J. Prokosh of the City of Vancouver, in the Province of British Columbia, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a lawyer at McGrady and Company, assisting Koskie Minsky LLP, the law firm representing the Catalyst Salaried Employees and Pensioners Group ("CSE&P") and as such I have personal knowledge of the matters to which I hereinafter depose. I otherwise base this knowledge on information and belief as noted, which I verily believe to be true.

2. This affidavit is sworn in support of a motion to extend the time by which CSE&P may file their motion book in support of their Application to Vary the Order of Mr. Justice Hall, filed April 24, 2012.

3. Attached hereto as **Exhibit A** is a true copy of the memorandum of argument filed before Mr. Justice Hall in support of the Application for Leave to Appeal, which contents I verily believe to be true. This memorandum sets out both the legal argument and factual chronology relevant to this motion and appeal.

4. Both the Motion for Leave to Appeal and the Application to Vary the Order were filed within time.

5. The procedural chronology of this Application to Vary is as follows:

- a. April 18, 2012, hearing before Mr. Justice Hall; however his decision was reserved;
- b. April 19, 2012, decision and oral reasons delivered by Mr. Justice Hall;
- c. April 24, 2012, Notice of Application to Vary delivered (which is 2 days prior to the deadline set out in the British Columbia Court of Appeal Rules); and
- d. April 27, 2012 written reasons of Mr. Justice Hall released.

6. I am informed by James Hamum of Koskie Minsky LLP and verily believe that last week their firm contacted counsel for the Company, in an effort to resolve the within appeal. The parties are currently in settlement discussions.

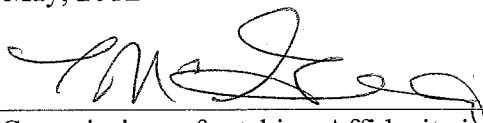
7. CSE&P requests a modest extension to file its motion book until the earlier of 2 business day after settlement discussions terminate or May 22, 2012.

8. At all times, CSE&P has expressed to the Respondents a bona fide intention to appeal.

9. Given the modest extension required and that the Notice of Application to Vary was filed 2 days early, it is in the interest of justice that an extension be granted. There is merit in the appeal as set out in Exhibit A. I am unaware of any prejudice that would result.

10. I make this affidavit for no improper purpose.

SWORN BEFORE ME at the City
of Vancouver, in the Province of
British Columbia, this 9th day
of May, 2012



A Commissioner for taking Affidavits in
the Province of British Columbia



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This is Exhibit "A" referred to in the
affidavit of Michael Prokesh
sworn before me at Vancouver
this 9 day of May 2012
[Signature]
A Commissioner for taking Affidavits
for British Columbia

Memorandum of Argument

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PART I - FACTS

1. This is a motion for leave to appeal by the Catalyst Salaried Employees and Pensioners Group (the "CSEP") from two decisions of Mr. Justice Sewell of the Supreme Court of British Columbia (the "CCAA judge"). The CSEP is composed of active and former employees of Catalyst and its predecessor and related companies (hereinafter "Catalyst", or the "company").
2. Through their years of employment with the company, the members of the CSEP earned an entitlement to pension benefits payable to them during their retirement years from the *Catalyst Paper Corporation Retirement Plan for Salaried Employees*, B.C. Registration No. 85400-1 (the "Salaried Plan" or the "Plan"). Catalyst is the administrator of the Salaried Plan. There are approximately 1477 members of the defined benefit portion of the Salaried Plan.
3. The Salaried Plan has been underfunded by Catalyst. As of December 31, 2010, the Salaried Plan had a wind up deficiency of approximately \$73.5 million. This means that if the Salaried Plan is wound up in this state, there are insufficient assets to pay the promised level of pension benefits. As a result, there will be significant reductions to the pension benefits paid to the Catalyst retirees.

First Affidavit of Brian Baarda sworn, at para. 73.

4. On January 31, 2012, following a failure to restructure under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44, Catalyst applied for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act* R.S.C. 1985, c.C-36 ("CCAA"). On this date, the CCAA Judge issued a lengthy Initial CCAA Order which, *inter alia*, created a series of priority payments ("Charges") over the company's property. These Charges include the Administration Charge, the DIP Lenders' Charge, the Directors and Officers Charge, and the Critical Supplier Charge (collectively, the "CCAA Charges").

Initial CCAA Order, paras. 55 and 57.

5. On further applications by Catalyst to the CCAA Judge, the Initial CCAA Order was amended several times, including on February 3, 2012, February 6, 2012, February 7, 2012, February 14, 2012, March 8, 2012 and March 9, 2012 resulting in the "Amended and Restated Initial Order". On February 6, 2012, the Critical Supplier Charge was added to the Order. On

March 8, 2012, the Directors and Officers Charge in the amount of approximately \$28 million was added to the Order. On March 9, 2012, the Financial Advisor Charge was added to the order. Also on March 9, 2012, the Key Employee Retention Program Charge ("KERP") in the amount of \$8 million was added to the list of CCAA Charges.

Orders of February 3rd, 6th, 7th and 14th, 2012 and March 8th and 9th, 2012.

6. As a result of these various orders and amendments, the CCAA Judge has determined that each of the CCAA Charges has priority recovery over certain potential employee and pensioner priorities, which include:

- a) any priority claims based on a statutory deemed trust, including the pension deemed trust for unpaid contributions and special payments owing to the Salaried Plan pursuant to the British Columbia *Pension Benefits Standards Act* R.S.B.C. 1996 (the "PBSA");
- b) claims based on a finding of any past or future breach of the fiduciary duty by the company or its agents which can arise under both the common law and section 8(5) of the PBSA; and
- c) super-priority secured claims for unpaid current service pension contributions owing by the company that are effective in a receivership or bankruptcy under sections 81.5 and 81.6 of the *Bankruptcy and Insolvency Act* (the "BIA").

7. The Applicants seek leave to appeal the decision of the CCAA Judge granting priority to the Critical Suppliers, the Directors and Officers Charge, the KERP Charge and the Financial Advisor (collectively, the "Appealed Charges") over

- (a) any employee or pensioner claims based on any past or future breach of fiduciary duty; and
- (b) sections 81.5 and 81.6 of the BIA. The Appealed Charges subordinate claims of the CSEP to virtually meaningless status: this CCAA proceeding.

8. For clarity, the Applicants do not seek leave to appeal the decision of the CCAA Judge granting priority to the CCAA Charges over the PBSA Deemed Trust. Further, the Applicants do not seek to appeal the decision granting priority to the DIP Lenders' Charge or the Administrative Charge over any claims for past or future breaches of fiduciary duty by the company.

9. On March 7, 2012, CSEP and the Company entered into an agreement under which the Company agreed to remove the provisions of the Amended and Restated Initial Order which placed the secured claims based on sections 81.5 and 81.6 of the BIA ahead the DIP Lenders' Charge and the Administration Charge. That settlement agreement, which was formally executed on March 9, 2012, also required the CSEP to drop any challenge to the priority of the DIP Lenders' Charge or the Administrative Charge over any claim for a past or future breach of fiduciary duty.

10. On February 23, 2012, CSEP brought an application before the CCAA Judge for an order appointing CSEP as Representatives of the salaried employees and pensioners of Catalyst. On March 5, 2012, the CCAA Judge dismissed SCEP's application with reasons to follow. On March 28, 2012, the CCAA Judge issued reasons. CSEP does not to seek leave to appeal that decision. Despite the form of CSEP's Amended Notice of Application for Leave to Appeal

PART II - POINTS IN ISSUE

11. If this Honourable Court grants leave to appeal, the issues for this Court are:

1) Did the CCAA Judge err in ordering that the Critical Suppliers Charge, the KERP Charge, the Financial Advisor Charge and the Directors and Officers Charge rank ahead of employee and pensioner claims based on a finding by a court of past or future breaches of fiduciary duty?

2) Did the CCAA Judge err in ordering that the above-noted Charges rank in priority to the statutory super-priority secured claim for unpaid current service pension contributions under

sections 81.5 and 81.6 of the BIA that are effective in a receivership or bankruptcy?

PART III – WHY LEAVE SHOULD BE GRANTED

12. The CCAA provides that leave to appeal is required for an appeal of a decision CCAA Judge

13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

CCAA, section 13

13. This Court, as well as appeal courts across Canada, has stated that leave to appeal from the decision of a CCAA judge should be granted where the Court is satisfied there exists “serious and arguable grounds that are of real and significant interest to the parties”. This is assessed in accordance with the following four-pronged test:

- a) Whether the point on appeal is of significance to the practice;
- b) Whether the point raised is of significance to the action itself;
- c) Whether the appeal is *prima facie* meritorious or frivolous; and
- d) Whether the appeal will unduly hinder the progress of the action.

Pope & Talbot (Re), [2011] B.C.J. No. 1336 (C.A.).

Edgewater Casino (Re), 265 B.C.A.C. 274, 2009 BCCA 40.

Stelco Inc. (Re) (2005), 78 O.R. (3d) 241 (C.A.).

Country Style Food Service Inc. (Re), [2002] O.J. No. 1377, 158 O.A.C. 30 (C.A.), at para. 15.

Sigma Moulders v. Fantom Technologies Inc. (Interim Receiver of), [2003] O.J. No. 980, 41 C.B.R. (4th) 55 (C.A.) at paras. 17-18.

Resurgence Asset Management LLC v. Canadian Airlines Corp., 2000 ABCA 149, [2000] A.J. No. 610 (C.A.)

14. In *Edgewater Casino*, and *Pope and Talbot*, this Court has held that the above-noted test applies in CCAA proceedings in British Columbia. The Applicants submit that the proposed appeal satisfies this test.

The points on appeal are of significance to the practice

i. Subordination of BIA super-priority claims

15. The proposed appeal deals with the subordination of claims in a CCAA proceeding where pensioners are facing losses to their pension benefits. It also deals with the extent to which a CCAA Judge can override the statutory priority scheme in the BIA. Sections 81.5 and 81.6 of the BIA provide that, in a bankruptcy or receivership, claims for unpaid current service costs are secured and rank in priority to virtually all other claims, rights, charges and security¹. Despite the clear and express language in ss. 81.5 and 81.6 of the BIA, the CCAA Judge ordered that claims for unpaid service costs in a receivership or bankruptcy could never rank in priority to the Appealed Charges.

BIA Sections 67(3), 81.1, 81.2, 81.3, 81.4, 81.5 and 81.6

16. Section 6(6) the CCAA also expressly protects unpaid amount service contributions by mandating that no Plan of Arrangement can be approved by the Court unless the Plan of Arrangement provides for the payment of unpaid normal cost contributions owing to a pension plan.

CCAA, Section 6(6)

17. The language in BIA (and the CCAA) both make clear Parliament's intention that amounts for unpaid normal cost contributions are to rank in priority to virtually all other claims, including other secured claims. It has been repeatedly noted by the Supreme Court of Canada that statutory interpretation should be approached in a manner which takes into consideration not only the words of the Act, but also the "scheme of the Act, the object of the Act, and the intention of Parliament".

¹ The only claims or rights that rank ahead of claims under ss. 81.5 and 81.6 are certain employment wage claims, claims by a farmer, fisherman or aquaculturist for unpaid amounts in respect of their products, a supplier's right to repossess goods and amounts deemed to be held in trust in relation to certain Federal statutes.

Bell ExpressVu Ltd. v. Partnership v. Rex, [2002] 2 S.C.R. 559.

Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27, at para. 21.

18. The scheme and object of the BIA and the CCAA, and the intention of Parliament all militate against a CCAA Judge being able to override the BIA priorities. Although written reasons have not been released for either decision, the Applicants understand that the CCAA Judge based his decision on section 11 of the CCAA. Although section 11 of the CCAA provides a broad discretion for a CCAA Judge to make any order, that discretion must be exercised "subject to the restrictions set out [in the CCAA]":

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, **subject to the restrictions set out in this Act**, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances. [Emphasis added].

19. Since section 6(6) of the CCAA states that a Plan of Arrangement cannot be approved by a court if unpaid pension contributions are not paid, the CCAA effectively puts in place a priority mechanism for the payment of such amounts. A CCAA Judge should not use the discretion in section 11 to override a priority for these amounts. As there is a restriction in the CCAA on orders overriding section 81.5 and 81.6 of the BIA, section 11 of the CCAA should not be interpreted to provide the jurisdiction to make such an order.

20. Given Parliament's clear statement that a CCAA Judge does not have the discretion to allow a company to pay off other creditors but not provide for the payment of unpaid pension cost contributions, and as the CCAA Judge has made an order which allows the apparently forbidden to happen, there is significant value to insolvency practice in having this Court review the CCAA Judge's decision.

ii. Subordination of claims based on breaches of fiduciary duty

21. A second important issue that warrants this Court's review is whether a CCAA Judge is allowed to effectively nullify the equitable jurisdiction of its own court as well as potentially

higher courts. The orders which place the Appealed Charges in priority to any claims for past or future breaches of fiduciary duty do exactly that.

22. Catalyst as a pension plan administrator, owes a fiduciary duty to Salaried Plan members under both section 8(5) of the PBSA and the common law.

PBSA, section 8(5).

Patrick v. Telus Communications Inc., 2006 BCSC 854, at para. 38.

Re Indalex, 2011 ONCA 265, at para. 117.

Burke v. Hudson's Bay Co., [2010] 2 S.C.R. 273, at paras. 39-41.

23. Catalyst must act in the best interests of the members of the Salaried Plan. In *Re Indalex*, the Ontario Court of Appeal found that the company's conduct constituted breaches of its fiduciary duties under the common law and under section 22(4) of Ontario *Pension Benefits Act*. and further that it warranted the imposition of the discretionary remedy of a constructive trust such that the claims of the pension plan members be paid in priority to a party who was an insider and claiming as a secured creditor.

Re Indalex, at para. 199.

24. In this case, the CCAA Judge has decided that no claim based on a finding of a breach of fiduciary duty could ever rank in priority to the Appealed Charges. The Supreme Court of Canada has held that equitable remedies are meant to be sufficiently flexible that they can be molded by a court to meet the requirements of fairness and justice in the circumstances of each case. The order of the CCAA Judge effectively strips the ability of the CCAA judge and any future court to grant a discretionary remedy that would be ahead of the charges rank.

Canson Enterprises v. Boughton & Co., 1991 CanLII 52 (SCC), [1991] 3 S.C.R. 534, at para. 86.

Soulos v. Korkontzilas, 1997 CanLII 346 (SCC), [1997] 2 S.C.R. 217, at para. 34.

25. In this case, the CCAA Judge has fettered the flexibility of those equitable remedies. Even if a critical supplier, the company's financial advisor, or a "Key Employee" of Catalyst were found to be integral in conduct that comprised a breach of fiduciary duty by the company, their claims to be repaid for their products or services would rank in priority to any employee or

pensioner claims that flow from that breach. That is a perverse and unjust result. It is important to the practice of CCAA proceedings generally that this decision be reviewed by this Court.

26. CCAA Judges should not be allowed to fetter their own discretion nor the discretion of other courts, including this court, to make equitable orders where, as the Supreme Court of Canada stated in *Soulos*, "good conscience requires". For this reason, this issue is of general importance to the practice. It is also of specific importance to the parties in this matter as the Salaried Plan is significantly underfunded and decisions are being made by the company which could have a profound effect on what happens to the Plan. If the CCAA Judge fetters his own discretion to deal with any alleged breaches of fiduciary duty, the already vulnerable pensioners and employees are put in an even more disadvantaged position by effectively being barred from being able to seek redress in the courts.

b) The points raised are of significance to the action itself

i. Subordination of BIA super-priority claims

27. This decision allows the claims of specific creditors to be placed ahead of the claims of active employees under section 81.5 and 81.6 of the BIA – active employees who are just as vital to Catalyst's restructuring as those creditors – seemingly without authority, this issue is of significant importance to the parties as well.

ii. Subordination of claims based on breaches of fiduciary duty

28. The issue of the subordination of claims for past and future breach of fiduciary duty is also important to the parties in this matter. The Salaried Plan is significantly underfunded and decisions are being made by the company which could have a profound effect on what happens to the Plan. If the CCAA Judge does not have the discretion to deal with any alleged breaches of fiduciary duty, the already vulnerable pensioners and employees are put in an even more disadvantaged position.

29. At the moment, Catalyst is in the process of presenting a Plan of Arrangement to its creditors. If that Plan is defeated, the company will immediately be sold under a Stalking Horse sale process. The proposed Stalking Horse Purchase Sale Agreement states the Salaried Plan will

be abandoned. This means it will be wound up in its underfunded state. It is essential to the orderly restructuring or sale of the company that all parties understand what the priorities of various claims are. In these circumstances, it is important for parties in this matter having this appeal and this Court.

c) The appeal is *prima facie* meritorious

i. Subordination of BIA super-priority

30. The Applicants submit that they have a meritorious claim. The BIA and the CCAA clearly evince that the intention of Parliament was to place claims for unpaid normal cost contributions ahead of virtually all other creditors. The CCAA Judge has, without clear authority, overridden these statutory priorities and frustrated Parliament's intention.

ii. Subordination of findings of breaches of fiduciary duty

31. The Applicants also submit that the issue of the priority of claims for breaches of fiduciary duty is meritorious. Judges of Canadian Superior Courts must retain the jurisdiction to remedy inequitable conduct "where good conscience requires" it. The decision of the CCAA Judge fetters this ability. Respectfully, the CCAA Judge erred in making such an order.

d) The appeal will not unduly hinder the progress of the action

32. There will be no undue hindrance on the progress of the action by this appeal, particularly if this motion is expedited. If leave is granted, the applicants will request that appeal will also be expedited.

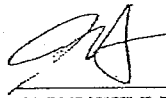
PART IV – ORDERS REQUESTED

33. An Order granting leave to appeal the provisions of the order of the CCAA Judge dated February 14, 2012 expressly dealt with herein.

34. An order granting leave to appeal the provisions of the order of the CCAA Judge dated March 9, 2012 expressly dealt with herein.

35. An order that if leave is granted, the appeal be heard on an expedited basis.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of April, 2012.


per Andrew Hatnay
ANDREW J. HATNAY


JAMES HARNUM

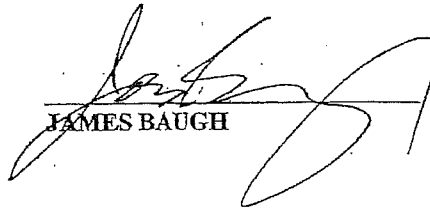

JAMES BAUGH

Table of Authorities

1. *Bell ExpressVu Ltd. Partnership v. Rex*, [2002] 2 S.C.R. 559.
2. *Burke v. Hudson's Bay Co.*, [2010] 2 S.C.R. 273.
3. *Canson Enterprises v. Boughton & Co.*, 1991 CanLII 52 (SCC), [1991] 3 S.C.R. 534.
4. *Country Style Food Service Inc. (Re)*, [2002] O.J. No. 1377, 158 O.A.C. 30 (C.A.).
5. *Edgewater Casino (Re)*, 265 B.C.C.A. 274, 2009 BCCA 40.
6. *Re Indalex*, 2011 QNCA 265.
7. *Patrick v. Telus Communications Inc.*, 2006 BCSC 854.
8. *Pope & Talbot (Re)*, [2011] B.C.J. No. 1336 (C.A.).
9. *Resurgence Asset Management LLC v. Canadian Airlines Corp.*, 2000 ABCA 149, [2000] A.J. No. 610 (C.A.).
10. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27.
11. *Sigma Moulders v. Fantom Technologies Inc. (Interim Receiver of)*, [2003] O.J. No. 980, 41 C.B.R. (4th) 55 (C.A.).
12. *Soulos v. Korkontzilas*, 1997 CanLII 346 (SCC), [1997] 2 S.C.R. 217.
13. *Stelco Inc. (Re)* (2005), 78 O.R. (3d) 241 (C.A.).

Legislative Enactments

Companies Creditors Arrangement Act, R.S.C. 1985, c. C-36

Section 6(6)

Restriction — pension plan

(6) If the company participates in a prescribed pension plan for the benefit of its employees, the court may sanction a compromise or an arrangement in respect of the company only if

(a) the compromise or arrangement provides for payment of the following amounts that are unpaid to the fund established for the purpose of the pension plan:

(i) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund,

(ii) if the prescribed pension plan is regulated by an Act of Parliament,

(A) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(B) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, and

(iii) in the case of any other prescribed pension plan,

(A) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(B) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament; and

(b) the court is satisfied that the company can and will make the payments as required under paragraph (a).

Section 11

General power of court

11. Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Section 13

13. Except in Yukon, any person dissatisfied with an order or a decision made under this Act may appeal from the order or decision on obtaining leave of the judge appealed from or of the court or a judge of the court to which the appeal lies and on such terms as to security and in other respects as the judge or court directs.

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Sections 81.5 and 81.6

Security for unpaid amounts re prescribed pensions plan — bankruptcy

81.5 (1) If the bankrupt is an employer who participated or participates in a prescribed pension plan for the benefit of the bankrupt's employees, the following amounts that are unpaid on the date of bankruptcy to the fund established for the purpose of the pension plan are secured by security on all the assets of the bankrupt:

(a) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund;

(b) if the prescribed pension plan is regulated by an Act of Parliament,

(i) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(ii) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*; and

(c) in the case of any other prescribed pension plan,

(i) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(ii) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament.

Rank of security

(2) A security under this section ranks above every other claim, right, charge or security against the bankrupt's assets, regardless of when that other claim, right, charge or security arose, except

(a) rights under sections 81.1 and 81.2;

(b) amounts referred to in subsection 67(3) that have been deemed to be held in trust; and

(c) securities under sections 81.3 and 81.4.

Liability of trustee

(3) If the trustee disposes of assets covered by the security, the trustee is liable for the amounts referred to in subsection (1) to the extent of the amount realized on the disposition of the assets, and is subrogated in and to all rights of the fund established for the purpose of the pension plan in respect of those amounts.

Security for unpaid amounts re prescribed pensions plan — receivership

81.6 (1) If a person who is subject to a receivership is an employer who participated or participates in a prescribed pension plan for the benefit of the person's employees, the following amounts that are unpaid immediately before the first day on which there was a receiver in relation to the person are secured by security on all the person's assets:

(a) an amount equal to the sum of all amounts that were deducted from the employees' remuneration for payment to the fund;

(b) if the prescribed pension plan is regulated by an Act of Parliament,

(i) an amount equal to the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that was required to be paid by the employer to the fund, and

(ii) an amount equal to the sum of all amounts that were required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*; and

(c) in the case of any other prescribed pension plan,

(i) an amount equal to the amount that would be the normal cost, within the meaning of subsection 2(1) of the *Pension Benefits Standards Regulations, 1985*, that the employer would be required to pay to the fund if the prescribed plan were regulated by an Act of Parliament, and

(ii) an amount equal to the sum of all amounts that would have been required to be paid by the employer to the fund under a defined contribution provision, within the meaning of subsection 2(1) of the *Pension Benefits Standards Act, 1985*, if the prescribed plan were regulated by an Act of Parliament.

Rank of security

(2) A security under this section ranks above every other claim, right, charge or security against the person's assets, regardless of when that other claim, right, charge or security arose, except rights under sections 81.1 and 81.2 and securities under sections 81.3 and 81.4.

Liability of receiver

(3) If the receiver disposes of assets covered by the security, the receiver is liable for the amounts referred to in subsection (1) to the extent of the amount realized on the disposition of the assets, and is subrogated in and to all rights of the fund established for the purpose of the pension plan in respect of those amounts.

Definitions

(4) The following definitions apply in this section.

"person who is subject to a receivership"

« *personne faisant l'objet d'une mise sous séquestre* »

"person who is subject to a receivership" means a person any of whose property is in the possession or under the control of a receiver.

"receiver"

« *séquestre* »

"receiver" means a receiver within the meaning of subsection 243(2) or an interim receiver appointed under subsection 46(1), 47(1) or 47.1(1).

Pension Benefits Standards Act, R.S.B.C. 1996, c. 352

Section 8

General responsibilities of administrators

8 (1) An administrator of a pension plan is responsible for the administration of the plan and must administer the plan in accordance with this Act and the regulations.

- (2) The administrator must ensure that the pension plan, including the plan's contractual provisions, complies with this Act and the regulations.
- (3) If a plan is terminated, the administrator must ensure that the plan is wound up in accordance with this Act and the regulations.
- (4) If the plan contains a defined benefit provision, the administrator must
 - (a) have the plan reviewed in accordance with the regulations, and
 - (b) have the results of the review set out in the form of an actuarial valuation report.
- (5) In the administration of a pension plan, the administrator must
 - (a) act honestly, in good faith and in the best interests of the members and former members and any other persons to whom a fiduciary duty is owed, and
 - (b) exercise the care, diligence and skill that a person of ordinary prudence would exercise when dealing with the property of another person.
- (6) The provisions of subsection (5) are in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of a trustee.
- (7) If an administrator employs an agent to carry out some of the duties of the administrator, the administrator must be satisfied of the agent's qualifications to perform the duties for which the agent is employed, and must carry out such supervision of the agent as is prudent and reasonable.
- (8) An agent or employee of an administrator is subject to the standards that apply to the administrator under this section.
- (9) An administrator or, if the administrator is a board of trustees, a member of the board who is the administrator, must not knowingly permit the administrator's

interests to conflict with the administrator's duties and powers in respect of the pension plan.

(10) For the purpose of subsection (9), entitlement to a pension or other benefit under the plan does not constitute a conflict of interest.

Court of Appeal File No. CA39754
Action No. S120712
Vancouver Registry

COURT OF APPEAL

BETWEEN:

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

AND:

IN THE MATTER OF THE CANADA BUSINESS CORPORATIONS ACT, R.S.C.
1985, c. C-44

AND:

IN THE MATTER OF THE BUSINESS CORPORATIONS ACT, S.B.C. 2002, c. 57

AND:

IN THE MATTER OF THE CATALYST PAPER CORPORATION AND THE
PETITIONERS LISTED IN SCHEDULE "A"

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