Court File No. CV-21-656040-00CL

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 **LAURENTIAN UNIVERSITY OF SUDBURY**

Applicant

FACTUM OF THE APPLICANT
(Pension Motion)

March 10, 2021

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PART I - OVERVIEW

1. Laurentian University of Sudbury ("**LU**" or the "**Applicant**") seeks an order (the "**Pension Order**") substantially in the form of the draft order attached to the Motion Record of the Applicant, dated March 8, 2021 (the "**Motion Record**"), at Tab 3, which, among other things:

   (i) permits LU to apply the Transfer Ratio (as defined below) to commuted value transfer requests made by the 27 individuals who received a retirement or termination statement and election form indicating that they may elect to receive a 100% commuted value transfer from the Pension Plan that remains available for acceptance and for whom such transfers have not yet been completed from the Pension Plan (the "**CV Interim Applicants**"), pursuant to the terms of the Pension Plan, the *Ontario Pension Benefits Act* (the "**PBA**"),[1] and Regulation 909 thereto (the "**Regulations**"); and

[1] R.S.O. 1990, c. P.8.

(ii) confirms that the payment by LU of its portion of the assessment in respect of the Pension Benefits Guarantee Fund ("**PBGF**") due on March 30, 2021 for the Pension Plan pre-filing period of July 1, 2019 to June 30, 2020 is stayed pursuant to the terms of the Amended and Restated Initial Order dated February 11, 2021 (the "**Amended and Restated Initial Order**").

PART II - FACTS

2. Capitalized terms used herein but not otherwise defined have the meanings ascribed to them in the Affidavit of Dr. Robert Haché sworn January 30, 2021 (the "**Haché Affidavit**"). All references to currency in this factum are to Canadian dollars, unless otherwise noted.

A. Overview of the Applicant

i. Background and Corporate Structure

3. LU is a non-share capital corporation incorporated pursuant to *An Act to Incorporate Laurentian University of Sudbury*, S.O. 1960, c. 151 C. 154 (the "**Act**") and is a registered charity pursuant to the *Income Tax Act*, R.S.C. 1985, c. 1.[2]

ii. LU's Registered Pension Plan

4. LU is the administrator of, and the largest participating employer in, the Pension Plan. The Federated Universities, SNOLab, MIRARCO and CEMI also participate in the Pension Plan.

[2] Haché Affidavit at paras. 21-23.

5. The Pension Plan is registered with the Financial Services Regulatory Authority of Ontario ("**FSRA**") under the PBA and with the Canada Revenue Agency under the *Income Tax Act*.[3]

6. The last actuarial valuation conducted in respect of the Pension Plan was as of January 1, 2020. The valuation demonstrated that the Pension Plan is 104.7% funded on a going-concern basis (approximately 99% once the provision for adverse deviation is added to the going-concern liabilities), 85.4% funded on a solvency basis and 65.8% funded on a hypothetical wind-up basis.[4]

7. The future of the Pension Plan may be uncertain given LU's insolvency and the restructuring steps required to be undertaken in this proceeding.

iii. Commuted Value Transfers

8. Former members of the Pension Plan are entitled to commute their pension entitlements at any age and at any time prior to commencing receipt of their pension.

9. The PBA and Regulations provide that, as a minimum standard, if a pension plan has a transfer ratio of less than 1, commuted value transfers under a pension plan may be paid in two installments.[5] The first installment is paid at a reduced percentage of their total value,

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[3] R.S.C. 1985, c. 1 (5th Supp).

[4] Exhibit "A" to the Affidavit of Bobbie-Jo Brinkman sworn March 8, 2021 (the "**Eckler CV Letter**"); page 34 of the Motion Record of the Applicant dated March 8, 2021 (the "**Motion Record**").

[5] Regulations, s. 19(2).

which percentage is calculated by application of the applicable transfer ratio. The remainder of the commuted value must be paid out within 5 years.[6]

10. The transfer ratio is a measure of a pension plan's assets versus its liabilities as if it were wound-up. The Pension Plan's transfer ratio, as described in the last valuation report, is 65.8% (the "**Transfer Ratio**").[7]

11. LU's past practice has been to pay commuted value transfers at 100%, in compliance with an exception applicable to low-volume commuted value activity under the PBA.[8] Given the estimated wind-up funded position of the Pension Plan referred to above and LU's current insolvency, if this practice were to continue it would add additional pressure on the funded status of the Pension Plan and could create unfairness in the event the Pension Plan were to be wound-up.

12. Upon termination or, in anticipation of retirement from employment, LU, as administrator of the Pension Plan, through its third-party administrator, Eckler Ltd., prepares and delivers to the Pension Plan member a package containing a retirement or termination statement, as applicable, an election form, and a request for supporting documents. Pension Plan members who previously elected a deferred pension in the past may also initiate a request for a commuted value transfer at any time prior to commencement of their pension.[9] The

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[6] Regulations, s. 19(7).

[7] Eckler CV Letter at page 34 of the Motion Record.

[8] Regulations, s. 19(6)(b).

[9] Eckler CV Letter at page 34 of the Motion Record.

election form permits members to elect to either keep their entitlement in the Pension Plan (i.e., receive a deferred pension or, if of retirement age, start an immediate pension) or to receive a commuted value.[10]

13. Until just after February 1, 2021, when this CCAA proceeding was commenced, pension statements continued to be prepared using LU's past practice of paying 100% commuted values.[11]

14. Commuted values, once authorized by LU, are paid by the trustee for the Pension Plan, RBC Investor Services Trust.[12]

15. Eight former members of the Pension Plan recently elected to receive a 100% commuted value transfer out of the Pension Plan. These elections have not yet been processed. A further 19 former members of the Pension Plan have recently received a retirement or termination statement and election form indicating they could transfer 100% of their commuted value out of the Pension Plan, which remains available for acceptance.[13]

16. Together, this group of 27 former members described in paragraph 15 are the Interim CV Applicants as defined in the draft Order sought herein. If transferred at 100% instead of 65.8%, the commuted values of the Interim CV Applicants would deplete the Pension

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[10] Eckler CV Letter at page 36 of the Motion Record.

[11] Eckler CV Letter at page 36 of the Motion Record.

[12] Eckler CV Letter at page 36 of the Motion Record.

[13] Eckler CV Letter at page 37 of the Motion Record.

Plan's assets by approximately $1.6 million.[14] As importantly, if transferred at 100% and if the Pension Plan was required to be wound-up, the Interim CV Applicants would receive an inequitable portion of the Pension Plan assets to the detriment of the remaining members of the Pension Plan. LU seeks to avoid this inequity.

17. The group of 27 former members includes six represented by the Laurentian University Faculty Association, six represented by the Laurentian University Staff Union, nine non-unionized staff of LU, and six who were non-unionized employees of other participating employers (SNOLab (three), MIRARCO (two), and Huntington University (one)).[15]

18. All new retirement and termination statements prepared by LU (through Eckler Ltd.) will indicate that commuted value transfers out of the Pension Plan are available at the Transfer Ratio based on the latest actuarial valuation report, not 100%, with the balance paid out within 5 years. As described above, LU is entitled to make this change pursuant to the Regulations without a court order.[16]

19. The Order sought on this motion is solely in respect of the application of the Transfer Ratio to the Interim CV Applicants.

20. All Interim CV Applicants have received notice of the relief sought on this motion.[17]

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[14] Eckler CV Letter at page 38 of the Motion Record.

[15] Eckler CV Letter at page 37 of the Motion Record.

[16] Regulations, s. 19(2).

[17] Affidavit of Service of Derek Harland, sworn March 10, 2021.

iv. Pension Benefits Guarantee Fund Assessment

21. The PBGF is a fund governed by the PBA and the Regulations, and administered by the Chief Executive Officer of FSRA. The PBGF provides protection, subject to specific maximums and exclusions, to Ontario members and beneficiaries of single-employer defined benefit pension plans, like the Pension Plan, in the event the pension plan is wound-up and the employer(s) is unable to meet the wind-up funding requirements of the PBA.[18]

22. The PBGF is funded through annual assessments required to be made by employers who contribute to pension plans subject to the PBGF.[19] These payments, which are due nine months after a pension plan's year-end, are determined with reference to the solvency liabilities disclosed in a pension plan's last-filed actuarial valuation report – which measure benefits earned in the pension plan up to the date of the valuation – and the number of the plan's Ontario beneficiaries as of the plan's most recent year-end.[20] The Pension Plan's last completed year-end is June 30, 2020.[21]

23. A payment is due in respect of a PBGF assessment for the Pension Plan on March 30, 2021 in the amount of $919,234.66 ($851,143.20, plus provincial tax of $68,091.46).[22] The

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[18] PBA, s. 82.

[19] PBA, s. 82(3.1).

[20] Regulations, s. 37.

[21] Exhibit "B" to the Affidavit of Bobbie-Jo Brinkman sworn March 8, 2021 (the "**Eckler PBGF Letter**"); page 91 of the Motion Record.

[22] Eckler PBGF Letter at page 91 of the Motion Record.

PBGF assessment is in respect of the July 1, 2019 – June 30, 2020 Pension Plan fiscal year, being the period prior to the commencement of this CCAA proceeding.[23]

24. The PBGF assessment for the Pension Plan is shared by all employers who contribute to the Pension Plan, of which LU is one. LU's pro rata share of the Pension Plan's solvency liabilities is 91.6%. Accordingly, the proportion of the PBGF assessment attributable to LU is $842,018.34 (the "**PBGF Payment**").[24] The stay of the PBGF Payment that is sought to be confirmed only applies to the LU portion, and not to the portion attributable to the other employers.

PART III - THE LAW AND ANALYSIS

25. This Motion raises two issues to be determined:

(i) Whether this Court should permit LU to apply the Transfer Ratio to commuted value transfer requests made by the Interim CV Applicants from the Pension Plan; and

(ii) Whether the Amended and Restated Initial Order stays the PBGF Payment.

A. This Court should authorize and direct LU to apply the Transfer Ratio.

i. Consistency with PBA Scheme

26. The Pension Plan permits members whose membership in the Pension Plan is terminated to be given the option to transfer their entitlements to another pension plan or other

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[23] Eckler PBGF Letter at page 91 of the Motion Record.

[24] Eckler PBGF Letter at page 92 of the Motion Record.

"locked-in" retirement arrangement. Where a commuted value option is available, section 42(2) of the PBA provides that the amount transferred is subject to the "prescribed limitations".[25]

27. Section 19 of the Regulations contains conditions and limits on the transfer of commuted values out of a pension plan. Specifically, subsections 19(2) and 19(7) of the Regulations provide:

> (2) That portion of the commuted value of a pension, deferred pension or ancillary benefit that can be transferred from a pension plan as of a given date shall be determined by multiplying the commuted value, as determined in accordance with subsection (1), by the lesser of,
>
> (a) the most recently determined transfer ratio;
>
> (b) one.
>
> (7) If less than 100 per cent of the commuted value of a pension, deferred pension, or ancillary benefit is transferred, the balance shall be transferred by the administrator within five years after the date of the initial transfer.[26]

28. These subsections require that a commuted value transfer be calculated by multiplying the commuted value of a member's entitlement by the lesser of the transfer ratio and one (1), and, if less than 100% of the commuted value can be transferred, to pay the balance within five (5) years.

29. LU's past practice of paying commuted values at 100%, despite its Transfer Ratio being less than one (1), is permitted by an exception under the Regulations applicable to low-

[25] PBA, ss. 42(1) and (2).

[26] Regulations, ss. 19(2)(7).

volume commuted value activity under the PBA.[27] Permitting transfers out of a pension plan in accordance with this past practice in effect “borrows” assets attributable to other pension plan members for the benefit of the member leaving the pension plan. Given the funded status of the Pension Plan and the fact that LU is insolvent, continuing this practice would create further strain on the Pension Plan when the next actuarial valuation is prepared, and risks inequity between classes of beneficiaries under the Pension Plan.

30. The application of the Transfer Ratio to the Interim CV Applicants is consistent with the scheme of the PBA and the Regulations. LU is seeking an Order to confirm its decision to apply the Transfer Ratio to the Interim CV Applicants despite the fact they received pension statements offering a commuted value transfer at 100%. Applying the Transfer Ratio is a prudent preservation of the assets of the Pension Plan in the best interests of its current and future Pension Plan beneficiaries.

ii. Applying the Transfer Ratio Appropriately Balances Interests

31. As the administrator of the Pension Plan, LU has a duty to treat all beneficiaries of the Pension Plan in an impartial or even-handed manner, often referred to as the duty of fairness. As a pension administrator, LU is a fiduciary at common law, which creates a special duty of care towards the Pension Plan’s beneficiaries.[28]

32. Further, LU has a statutory duty of care under the PBA, which provides that the administrator of a pension plan shall exercise the care, diligence and skill in the

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[27] Regulations, s. 19(6)(b).

[28] *Indalex Ltd., Re*, 2013 SCC 6 at para. 62.

administration and investment of the pension fund that a person of ordinary prudence would exercise in dealing with the property of another person.[29]

33. The fair and even-handed treatment of all beneficiaries in this case requires that the Interim CV Applicants (former members) have their commuted values paid out at the Transfer Ratio. To do otherwise would be inequitable to the active members and retired members of the Pension Plan, as it would further reduce their benefit security at a time when the Pension Plan is in deficit and LU's future and the future of the Pension Plan may be subject to uncertainty.

34. Applying the Transfer Ratio to the Interim CV Applicants will ensure that the Pension Plan is administered with an even-hand and in the best interests of all beneficiaries, as is required by LU's fiduciary duties.

iii. Interim CV Applicants will be Minimally Prejudiced

35. To ensure the Interim CV Applicants are treated equitably, the proposed form of Pension Order contemplates that the Interim CV Applicants will have the option to re-elect to receive their commuted value transfer based on the Transfer Ratio, or alternatively, receive an immediate or deferred pension, as applicable. This appropriately balances the interests of the Interim CV Applicants by allowing them to make an informed decision with regard to their entitlements under the Pension Plan based on current circumstances.

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[29] PBA, s. 22(1).

36. Further, the application of the Transfer Ratio to the Interim CV Applicants only delays their entitlement to an immediate payment. The PBA provides that the remainder of the commuted value must be paid out within 5 years.[30]

iv. Similar to Relief Granted in *Nortel*

37. In *Nortel Networks Corp., Re,*[31] Nortel Networks Limited ("**NNL**") was the sponsor and administrator of several pension plans. NNL brought a motion requesting direction from the Court regarding the determination of the appropriate transfer ratio to be applied to requests for commuted value transfer payments from two pension plans that it sponsored and administered.

38. The NNL pension plans had been in deficit and the most recently filed actuarial valuations indicated their transfer ratios at 0.86 and 0.85. However, actuarial evidence showed that if the pension plans' transfer ratio were re-calculated as at a more current date, the transfer ratios in both plans would have reduced to approximately 0.69. NNL proposed that the lower transfer ratio be applied to commuted value transfer payments out of both plans on a go-forward basis, despite that the Regulations required the transfer ratios in the plans' filed actuarial valuations reports be used.[32]

39. Justice Morawetz (as he then was), held that the proposed reduction in the applicable transfer ratio was consistent with the trust principles governing NNL's fiduciary duties and

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[30] Regulations, s. 19(7).

[31] 2009 CarswellOnt 3129 (Ont. S.C. [Commercial List]) [***Nortel***].

[32] *Nortel* at paras. 4-5.

treated all beneficiaries with an even hand. Further, the relief granted was in the jurisdiction of the Court to make, whether its inherent jurisdiction or under section 11 of the CCAA. Accordingly, the reduced transfer ratio was determined to be the appropriate one to apply for most members of the pension plans.[33]

40. In this case, LU is not seeking to apply a reduced transfer ratio that has not been determined by an actuarial valuation filed with the FSRA (as in *Nortel*). Rather, LU is seeking only to apply the Transfer Ratio, which was determined in the actuarial valuation as of January 1, 2020 and filed with FSRA, all in accordance with the Regulations.

41. In *Nortel*, Justice Morawetz determined that those former members of the pension plans who had already received election forms indicating the plans' higher transfer ratios from the last-filed actuarial valuations ought to be entitled to receive commuted value transfers at those higher statutory transfer ratios. This was partly determined on the basis that the statutorily approved transfer ratio was the transfer ratio required to be applied in accordance with the PBA, and that those former members should not be deprived of their statutory entitlement.[34]

42. In this instance, the application of the Transfer Ratio to the Interim CV Applicants is in accordance with the PBA. Fair and even-handed treatment requires that the Transfer Ratio be applied to all members, including the Interim CV Applicants. The Pension Plan is in deficit and to transfer 100% of the Interim CV Applicants commuted values out of the

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[33] *Nortel* at para. 25.

[34] *Nortel* at para. 30.

Pension Plan would have the effect of preferring the Interim CV Applicants over the active members and retirees of the Pension Plan. This is inconsistent with LU's fiduciary obligation as administrator of the Pension Plan.

B. The PBGF Payment is Stayed by the Amended and Restated Initial Order

43. LU requests that it be confirmed that paragraph 12 of the Amended and Restated Initial Order has the effect of staying the PBGF Payment.

44. Paragraph 12 of the Amended and Restated Initial Order provides (emphasis added):

> **THIS COURT ORDERS** that, except as specifically permitted herein, **the Applicant is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicant to any of its creditors as of the date of this Order** (including for greater certainty in respect of the interest rate swap transactions); (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

45. Pursuant to paragraph 12, LU is prohibited from making payments on account of amounts owing by LU to its creditors on account of pre-filing obligations as of February 1, 2021. The PBGF Payment is due on March 30, 2021 but is in respect of the July 1, 2019 – June 30, 2020 Pension Plan fiscal year, prior to the commencement of the CCAA proceeding.

46. The determining factor of whether a payment is characterized as pre-filing or post-filing is not when the payment obligation crystallizes, but rather whether the amount of the payment was determined prior to the filing date.[35] For example, in *Collins & Aikman,* at issue was

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[35] *Collins & Aikman Automotive Canada Inc., Re*, 2007 CarswellOnt 7014 (Ont. S.C.) [***Collins & Aikman***] at para. 103; *Nortel Networks Corp., Re*, 2009 CarswellOnt 3583 (Ont. S.C. [Commercial List]) at para. 67.

whether the special payments the debtor company was required to make due to pension deficiencies was a pre-filing or post-filing obligation. The special payments were due post-filing, but were in respect of a pre-filing valuation. The Court held that since the amount of the special payments was determined pre-filing based on information relating to the pre-filing period and that ongoing operations in the post-filing period did not increase the amount, it would be inaccurate to characterize the special payments as a post-filing obligation.[36]

47. The principles in *Collins & Aikman* apply to the facts before us. As with the special payments stayed in that decision, the PBGF Payment is determined with reference to information relating to the pre-filing period, was determinable prior to the CCAA filing, and did not increase as a result of post-filing activites. In particular, the PBGF Payment is based on the Ontario solvency liabilities disclosed in the Pension Plan's last-filed actuarial valuation, dated January 1, 2020, and the Pension Plan's membership as of June 30, 2020.

48. In at least one decision, CCAA courts have suspended payments to the PBGF. In *U.S. Steel Canada Inc., (Re)*,[37] U.S. Steel Canada sought Court approval of a Business Preservation Plan which contained cash conservation measures including, among other things, "the immediate suspension of payments to the PBGF in respect of assessments."[38] The suspension was sought to apply to PBGF assessments for the remainder of the CCAA proceedings. U.S. Steel Canada's 2015 PBGF assessment required a payment of $4.4

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[36] *Collins & Aikman*, *ibid*.

[37] 2015 ONSC 6331.

[38] *Ibid* at para. 82.

million by no later than September 30, 2015. None of the parties, including the Financial Services Commission of Ontario (the predecessor to FSRA) opposed the granting of this relief. Justice Wilton-Siegel approved the Business Preservation Plan, including the cash conservation measures, finding that the debtor company did not have sufficient assets to make these payments and if required to make the payments, the cessation of operations would result.[39]

49. In an analogous situation, special payments made to pay down pension plan solvency deficits are commonly stayed in CCAA proceedings where the debtor company does not have the cash to make such payments and the deferral is required to facilitate a successful restructuring.[40]

50. In these circumstances, it is appropriate for this Court to confirm the stay of the PBGF Payment as it will assist LU with its severe liquidity crisis and maximize the probability that a successful restructuring can be negotiated and effected. This stay is limited to LU's portion of the PBGF assessment related to the 2019-2020 Pension Plan year, and does not impact those portions of the PBGF assessment payable by the Federated Universities and the other participating employers.

51. FSRA does not oppose the relief sought by LU on this motion.

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[39] *Ibid* at paras. 100 and 139-140.

[40] *Fraser Papers Inc., Re,* 2009 CarswellOnt 4469 (Ont. S.C. [Commercial List]); *AbitibiBowater inc., re*, 2009 QCCS 2028; *Timminco Ltd., Re*, 2012 ONSC 506 [Commercial List] [***Timminco***].

PART IV - RELIEF REQUESTED

52. For all of the foregoing reasons, the Applicant requests an Order substantially in the form of the proposed Pension Order attached at Tab 3 of the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of March, 2021.

Thornton Grout Finnigan LLP

Thornton Grout Finnigan LLP

Counsel for the Applicant

SCHEDULE "A" – LIST OF AUTHORITIES

1. *Indalex Ltd., Re*, 2013 SCC 6.
2. *Nortel Networks Corp., Re*, 2009 CarswellOnt 3129 (Ont. S.C. [Commercial List]).
3. *Collins & Aikman Automotive Canada Inc., Re*, 2007 CarswellOnt 7014 (Ont. S.C.).
4. *Nortel Networks Corp., Re*, 2009 CarswellOnt 3583 (Ont. S.C. [Commercial List]).
5. *U.S. Steel Canada Inc., Re*, 2015 ONSC 6331 [Commercial List].
6. *Fraser Papers Inc., Re*, 2009 CarswellOnt 4469 (Ont. S.C. [Commercial List]).
7. *AbitibiBowater inc., re*, 2009 QCCS 2028.
8. *Timminco Ltd., Re*, 2012 ONSC 506 [Commercial List].

SCHEDULE "B" – RELEVANT STATUTES

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

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.

***Pension Benefits Act*, R.S.O. 1990, c. P-8**

Section 22

Care, diligence and skill

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.

Section 42

Transfer

42(1) A former member of a pension plan is entitled to require the administrator to pay an amount equal to the commuted value of the former member's deferred pension,

(a) to the pension fund related to another pension plan, if the conditions set out in subsection (1.1) are satisfied;

(b) into a prescribed retirement savings arrangement; or

(c) if the pension plan so permits, for the purchase for the former member of a life annuity that will not commence before the earliest date on which the former member would have been entitled to receive payment of pension benefits under the pension plan.

Limitation

42(2) The entitlement under subsection (1) is subject to the prescribed limitations in respect of the transfer of funds from pension funds.

Section 82

Guarantee Fund continued

82(1) The Pension Benefits Guarantee Fund is continued under the name Pension Benefits Guarantee Fund in English and Fonds de garantie des prestations de retraite in French.

Administration

82(2) The Chief Executive Officer is responsible for the administration of the Guarantee Fund including the investment of the assets of the Guarantee Fund.

Expenses

82(3) The Chief Executive Officer may charge to the Guarantee Fund the reasonable expenses incurred by the Chief Executive Officer in the administration of the Guarantee Fund.

Funding of the Guaranteed Fund

82(3.1) Subject to subsection 102.1 (10), the Guarantee Fund is to be funded by all employers required to make contributions under pension plans that provide defined benefits that are not exempt from the application of the Guarantee Fund by this Act or the regulations.

Same

82(3.2) The amounts to be paid under subsection (3.1) by employers to the Guarantee Fund shall be determined in accordance with the prescribed rules.

<u>R.R.O. 1990, Regulation 909: General to the *Pension Benefits Act*</u>

Section 19

Commuted value

19(1) For the purposes of section 42 of the Act, the commuted value of a pension, deferred pension or ancillary benefit shall not be less than the value determined in accordance with section 3500 (“Pension Commuted Values”) of the Standards of Practice of the Actuarial Standards Board, published by the Canadian Institute of Actuaries, as amended from time to time.

(2) That portion of the commuted value of a pension, deferred pension or ancillary benefit that can be transferred from a pension plan as of a given date shall be determined by multiplying the commuted value, as determined in accordance with subsection (1), by the lesser of,

(a) the most recently determined transfer ratio;

(b) one.

(3) Subject to subsection (4), where the transfer ratio of a pension plan is equal to or greater than one, the administrator may transfer the commuted value of a pension, deferred pension or ancillary benefit in accordance with section 42, 43, 48 or 67.6 of the Act.

(4) Where the administrator of a plan knows or ought to know that, since the valuation date of the report most recently filed or submitted in respect of the plan under section 3, 4, 13 or 14, events have taken place that may result in the reduction of the transfer ratio of the plan to a value less than 0.9, the administrator shall not undertake the transfer described in subsection (3) without the prior approval of the Chief Executive Officer under subsection 42 (8) of the Act.

(5) If the transfer ratio of a plan is less than one and the administrator of the plan knows or ought to know that, since the valuation date of the report most recently filed or submitted in respect of the plan under section 3, 4, 13 or 14, events have taken place that may result in the reduction of the transfer ratio by 10 per cent or more of the most recently determined transfer ratio, the administrator shall not undertake a transfer of any part of the commuted value without the prior approval of the Chief Executive Officer under subsection 42 (8) of the Act.

(5.1) If the commuted value of the pension, deferred pension or ancillary benefit is calculated on a basis that produces a commuted value higher than the value calculated on the basis prescribed under subsection (1), the administrator shall not make any transfer calculated on the higher basis until the administrator files a statement describing in detail the basis for calculating the commuted value.

(6) Subject to subsections (4) and (5), the administrator may transfer 100 per cent of the commuted value of a pension, deferred pension or an ancillary benefit from a pension plan that has a transfer ratio that is less than one where,

(a) the administrator of the plan is satisfied that an amount equal to the transfer deficiency has been remitted to the pension fund; or

(b) the aggregate of transfer deficiencies for all transfers made since the last review date does not exceed 5 per cent of the assets of the plan at that time.

(7) If less than 100 per cent of the commuted value of a pension, deferred pension or ancillary benefit is transferred, the balance shall be transferred by the administrator within five years after the date of the initial transfer.

(7.1) Interest shall accumulate, at the same rate used to calculate the commuted value of the pension, deferred pension or ancillary benefit, on the balance to be transferred under subsection (7).

(7.2) A transfer under subsection (7) after the initial transfer shall be made in accordance with subsection (6).

Section 37

Guarantee Fund assessments

37(1) An employer who is required to make contributions to a pension plan providing defined benefits, other than a designated plan, an individual pension plan or a plan described in subsection 6 (1), shall, subject to subsections 7 (5) and 7.0.3 (2), pay to the Guarantee Fund on or before each assessment date an annual assessment determined in accordance with subsections (3) to (12).

(2) For the purposes of this section, assessment dates shall be nine months after the last day of each fiscal year of the pension plan.

(4) If the assessment date falls on or after January 1, 2019, the amount of the annual assessment is the amount calculated using the formula,

$$A + B$$

in which,

"A" is the lesser of "C" and "D" where,

"C" is the sum of the following amounts:

1. 0.75 per cent of any portion of the PBGF assessment base that is less than 10 per cent of the PBGF liabilities.

2. 1.5 per cent of any portion of the PBGF assessment base that is 10 per cent or more but less than 20 per cent of the PBGF liabilities.

3. 2.25 per cent of any portion of the PBGF assessment base that is 20 per cent or more of the PBGF liabilities.

4. 0.015 per cent of PBGF liabilities; and

"D" is $600 multiplied by the number of persons who were Ontario plan beneficiaries at the end of the plan fiscal year immediately preceding the assessment date, and

"B" is zero or, if an election under subsection 5 (18) is in effect on the assessment date, three per cent of the amount by which "E" exceeds "F" where,

"E" is the amount of the additional liability that would result if, on the valuation date of the last report filed or submitted on or before the assessment date under any of section 3, 4 or 14 for the plan, all plant closure benefits and permanent layoff benefits under the plan were payable for those members in Ontario who, on that date, met the age and service requirements for those benefits, and

"F" is the amount, if any, by which the amount determined under clause (b) of the definition of "PBGF assessment base" in subsection 1 (2) exceeds the PBGF liabilities, both determined as of the valuation date referred to in the definition of "E".

(7) For the purposes of an assessment required under this section, the PBGF assessment base and the PBGF liabilities shall be as set out in the last report filed or submitted on or before the assessment date under any of section 3, 4, 13 or 14 for the plan.

(8) Despite subsection (7), where a payment is made in respect of an assessment under this section and a report is filed or submitted under section 3, 4, 13 or 14 after the payment date with a valuation date earlier than the assessment date, the amount of the assessment required under this section shall be recalculated with the PBGF assessment base and PBGF liabilities as set out in the report and shall be paid on that basis.

(9) Despite subsection (7), if a revised report under section 3, 13 or 14 is filed at the request of the Chief Executive Officer or is accepted by the Chief Executive Officer, the amount of the assessment required under this section shall be recalculated with the PBGF assessment base and PBGF liabilities as set out in the revised report and shall be paid on that basis.

(10) Where a report referred to in subsection (8) or (9) is filed, an increase in the assessment resulting from a recalculation based on the report is payable sixty days after the date on which the report is filed.

(11) A decrease in the assessment resulting from a recalculation shall be refunded.

(12) If between the valuation date of the last report filed or submitted and the assessment date the employer has made special payments in excess of the minimum special payments required in accordance with that report, the PBGF assessment base shall be decreased for the purposes of an assessment required under this section by the amount of the excess special payments.

(13) Despite subsection (4), the amount of the assessment is zero for a pension plan that was established fewer than five years before the assessment date, other than a pension plan that is a successor pension plan as described in subsection 80 (5) or section 81 of the Act.

(14) An employer who fails to pay an amount due under this section within the time provided by this section shall pay 120 per cent of the amount to the Guarantee Fund, together with interest on the 120 per cent calculated from the date the amount is due to the date of payment, at a rate equal to 3 per cent plus the chartered banks' rate on prime business loans as determined under subsection (15) for the month in which the amount is due.

(15) For the purposes of subsection (14), the chartered banks' rate on prime business loans for a month shall be determined using the rate reported for the last Wednesday of each month as determined from the Canadian Socio-Economic Information Management System (CANSIM) series V80691311 compiled by Statistics Canada and available on the website maintained by the Bank of Canada.

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 **LAURENTIAN UNIVERSITY OF SUDBURY**

Court File No. 21-CV-656040-00CL

ONTARIO
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(COMMERCIAL LIST)

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