

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "**PBA**");

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to approve, under section 70, the Second Addenda to the Wind Up Reports filed in respect of the Nortel Networks Negotiated Pension Plan, Registration Number 0587766 and the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan, Registration Number 0342048; and

AND IN THE MATTER OF a Notice of Intended Decision to Refuse to Make Orders under sections 87(1) and (4) of the PBA relating to the Nortel Networks Negotiated Pension Plan, Registration Number 0587766 and the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan, Registration Number 0342048;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the PBA.

B E T W E E N:

DONALD SPROULE, MICHAEL CAMPBELL, DAVID ARCHIBALD AND SUSAN KENNEDY

(Applicants)

- and -

SUPERINTENDENT OF FINANCIAL SERVICES

(Respondent)

- and -

MORNEAU SHEPELL LTD.

(Respondent)

WRITTEN ARGUMENT OF THE APPLICANTS

KOSKIE MINSKY LLP
20 Queen Street West
Suite 900, Box 52
Toronto, ON M5H 3R3

Mark Zigler (LSUC# 19757B)
(t) 416-595-2090

James Harnum (LSUC# 60459F)
(t) 416-542-6285

Representative Counsel for the Former
Employees of Nortel Networks Corporation
and Several of its Affiliated Companies

TO: MINISTRY OF THE ATTORNEY GENERAL CIVIL LAW DIVISION
Financial Services Commission of
5160 Yonge Street, 17th Floor
Toronto, ON M2N 6L9

Mark Bailey
(t) 416-590-7555
(f) 416-590-7556

AND TO: McCARTHY TÉTRAULT LLP
Suite 5300
Toronto-Dominion Bank Tower
66 Wellington Street West
Toronto, ON M5K 1E6

Randy Bauslaugh (LSUC# 22620K)
(t) 416-601-7695

Heather Meredith (LSUC# 48354R)
(t) 416-601-8342

Counsel for the Administrator, Morneau Shepell Ltd.

TABLE OF CONTENTS

TABLE OF CONTENTS

PART I - OVERVIEW.....	- 1 -
PART II - FACTS	- 2 -
PART III – ISSUES AND LAW	- 7 -
PART IV – ORDER REQUESTED	- 21 -
SCHEDULE 'A'	- 22 -
SCHEDULE 'B'	- 24 -

FINANCIAL SERVICES TRIBUNAL

IN THE MATTER OF the *Pension Benefits Act*, R.S.O. 1990, c.P.8, as amended (the "**PBA**");

AND IN THE MATTER OF a Notice of Intended Decision of the Superintendent of Financial Services to approve, under section 70, the Second Addenda to the Wind Up Reports filed in respect of the Nortel Networks Negotiated Pension Plan, Registration Number 0587766 and the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan, Registration Number 0342048; and

AND IN THE MATTER OF a Notice of Intended Decision to Refuse to Make Orders under sections 87(1) and (4) of the PBA relating to the Nortel Networks Negotiated Pension Plan, Registration Number 0587766 and the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan, Registration Number 0342048;

AND IN THE MATTER OF a Hearing in accordance with subsection 89(8) of the PBA.

B E T W E E N:

DONALD SPROULE, MICHAEL CAMPBELL, DAVID ARCHIBALD AND SUSAN KENNEDY
(Applicants)

- and -

SUPERINTENDENT OF FINANCIAL SERVICES
(Respondent)

- and -

MORNEAU SHEPELL LTD.
(Respondent)

WRITTEN ARGUMENT OF THE APPLICANTS

PART I - OVERVIEW

1. Despite a voluminous record and almost \$100 million being at stake, this is essentially a case about statutory interpretation. The matter hinges on whether the Pension Benefits Guarantee Fund ("**PBGF**") should recover amounts paid out in the Nortel insolvency that relate to benefits that it did not guarantee. The Applicants – and the other Plan members that they represent – have had their pensions reduced and have lost any chance of cost-of-living increases that they were owed due to their contractual entitlement to indexed pensions. A claim was filed against the Canadian Nortel estate for these amounts, and the pension plan administrator received hundreds of millions of dollars in dividends as a result. Some of those dividends directly relate to the loss of indexation (otherwise referred to as "future indexation" or "escalated adjustments"). This case concerns the issue of whether the affected Ontario pensioners should recover some of the amounts that relate to lost indexation, or whether all amounts should be

used to remedy losses to the base pension benefits of the Plan Members such that the liability of the PBGF towards the Plans is reduced by \$99,602,000.

2. In the Nortel insolvency, the vast majority of creditors received \$0.45 per dollar on their claims. The PBGF seeks a refund that would pay it approximately \$0.57 per dollar that it advanced to the Pension Plans. As a result of the suggested refund amount, and the fact that Ontario pension plan members have lost indexed pensions and have not received any amount on account of that loss, their recovery in Nortel's proceedings under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c, C-36 ("**CCAA**") with respect to their pensions is less than \$0.45 on the dollar. Pension Plan members who are not from Ontario have received a greater amount with respect to their claims.

PART II - FACTS

3. A detailed summary of the facts relied on by the Applicants is set out in the Agreed Statement of Facts ("**ASF**"), dated October 30, 2018, filed with the Tribunal in this proceeding. The Applicants also rely on the documents provided in the Agreed Book of Documents ("**ABD**") filed with the ASF. In this Written Argument, the Applicants rely on the facts set out in the ASF and provide a brief summary of the most relevant facts below.
4. On January 14, 2009, Nortel Networks Corporation, and several of its affiliated companies which employed the affected pensioners, (together, "**Nortel**" or the "**Canadian Debtors**") were granted protection from their creditors under the CCAA.
5. Nortel sponsored two pension plans (together, the "**Plans**"):
 - (a) the Nortel Networks Negotiated Pension Plan, Registration Number 0587766 (the "**Negotiated Plan**"). A copy of the most recent consolidated restatement of the plan text for the Negotiated Plan is at [ABD Tab 1A]; and
 - (b) the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan, Registration Number 0342048 (the "**Managerial Plan**"). A copy of the most recent consolidated restatement of the plan text for the Managerial Plan is at [ABD Tab 1B].
6. Each of the Plans provided pension and other benefits to employees in Ontario and other jurisdictions in Canada. The Plans provided for most post-1988 pension benefits to be partially indexed to inflation.
7. Donald Sproule, Michael Campbell, David Archibald and Susan Kennedy (the "**Applicants**") were appointed by the Ontario Superior Court as Representatives of Nortel's former employees, pensioners and long-term disability claimants. Koskie Minsky LLP was appointed as Representative Counsel.
8. By letters dated September 22, 2010, the Superintendent of Financial Services of Ontario (the "**Superintendent**") appointed Morneau Sobeco Limited Partnership (now Morneau Shepell Ltd., referred to herein in its capacity as administrator of the Plans under the *Pension Benefits Act* ("**PBA**" or the "**Act**"), as "**Morneau**") as the administrator of each of the Plans with effect October 1, 2010. [ABD Tab 6]

9. On March 8, 2011, the Superintendent issued orders winding up each of the Plans in full under section 69 of the PBA. The effective date of the wind ups, as specified in such orders, was October 1, 2010 (the "**Wind-up Date**"). [ABD Tab 7]
10. On April 5, 2011, Morneau made applications (the "**Applications**") for an "interim allocation" from the PBGF to each of the Plans. In support of the request for an interim allocation from the PBGF, Morneau filed actuarial opinions for each of the Plans as at December 1, 2010 which identified the benefits guaranteed by the PBGF, estimated the PBGF claims and stated, among other things, that:
 - (a) The estimated Ontario wind-up funded ratios are used only to approximate the Plans' PBGF claim and that the Ontario wind-up funded ratios for the purposes of section 34 of PBA General Regulation, R.R.O. 1990, Reg. 909 as amended (the "**Regulation**") will be established in the wind-up reports, subject to regulatory approval;
 - (b) The amount of the interim allocation is a "best estimate" based on the information then available and that, if the interim allocation is insufficient to settle the Plans' liabilities, further applications will be submitted; and
 - (c) The actuarial opinions supporting the interim allocation were prepared "without taking into account any potential recoveries" from the Nortel estate, noting that claims had been filed on behalf of the Plans in the CCAA Proceedings for the "funding deficiency" and that, it is not possible to quantify potential recoveries "at this time". [ABD Tab 10]
11. On May 26, 2011, the Superintendent issued orders, pursuant to section 83 of the PBA, declaring that the PBGF applied to the Plans. [ABD Tab 11] On May 27, 2011, the Superintendent approved the Applications. [ABD Tab 12] The approval letter for each of the Plans stated that any money allocated from the PBGF but not required to provide for the benefits determined in accordance with section 34 of the Regulation "shall be returned to the Guarantee Fund" and allocated \$383,977,000 in total from the PBGF to the Plans as follows (together, the "**Interim PBGF Payments**"):
 - (a) \$96,780,000 to the Negotiated Plan; and
 - (b) \$287,197,000 to the Managerial Plan.
12. In August of 2011, Morneau reduced the pension benefits payable to most beneficiaries of the Plans, and rolled back indexation increases for Ontario Plan members that had been provided after the appointment of Morneau and prior to the cessation of indexation increases in January 2011, all in a manner required by applicable legislation.
13. Morneau prepared the following actuarial valuation reports on the wind up of the Plans (the "**Wind-up Reports**"):
 - (a) Negotiated Plan: the Actuarial Report on the Wind Up of the Nortel Networks Negotiated Pension Plan Defined Benefit Provision Only Actuarial Wind Up Report as at October 1, 2010 (the "**Negotiated Wind-up Report**") was prepared in December 2013 and revised and resubmitted in August 2015. [ABD Tab 13A] The estimated PBGF allocation as at the wind up date as set out in the Negotiated Wind-up Report was \$79,884,000;

- (b) Managerial Plan: the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan Defined Benefit Provision Only Wind Up Actuarial Valuation as at October 1, 2010 prepared as at March 31, 2015 (the "**Managerial Wind-up Report**") was submitted by Morneau in November 2015. [ABD Tab 13B] The estimated PBGF allocation as at the wind up date as set out in the Managerial Wind-up Report was \$194,880,000;
- 14. The Superintendent approved the Negotiated Wind-up Report on September 15, 2015 and the Managerial Wind-up Report on June 30, 2016. The Wind-up Reports do not take into account or include any provision for funds received under the CCAA claims process in the CCAA Proceedings.
- 15. On August 11, 2015, Morneau filed the following Amended and Restated Proofs of Claim in the CCAA Proceedings (together, the "**Pension Claim**") "to take into account, among other things, the court-approved wind-up of the Plans with effect as of the Wind-up Date and the resulting obligation of Nortel pursuant to section 75 of the PBA to fund the deficiency in the assets of the Plans relative to the amount necessary to satisfy in full Nortel's pension benefit obligations under the Plans in the manner required by applicable legislation and all related costs in respect of the wind-up":
 - (a) Amended and Restated Proof of Claim in Respect of the Nortel Negotiated Plan (the "**Negotiated Plan Proof of Claim**") [ABD Tab 14A]; and
 - (b) Amended and Restated Proof of Claim in Respect of the Nortel Managerial Plan (the "**Managerial Plan Proof of Claim**"). [ABD Tab 14B]
- 16. The Pension Claim for each of the Plans identified the total estimated "Plan Wind-up Assets" and the total estimated "Wind-up Liabilities" used to calculate the total estimated wind-up deficit as at the Wind-up Date, and, included the following statement:

"Although this Schedule A discusses the Amended Claim with reference to several separate key assumptions and separate components, the assumptions and components are to be taken as a whole. It is the overall Amended Claim that is being estimated and that, in Morneau's view, as administrator, the deficit represents a reasonable estimate of...":

 - (i) \$520,835,000 in respect of the Negotiated Plan; and
 - (ii) \$1,368,644,000 in respect of the Managerial Plan.
- 17. In calculating the total wind-up deficiency in each Pension Claim, all benefit entitlements pursuant to the Plan were considered, including pension benefits guaranteed by the PBGF as well as benefits not covered by the PBGF, such as indexation entitlements. Although no specific breakdown was provided for any category of liabilities not guaranteed by the PBGF, it is possible to calculate the value of each element of the Plans' benefits and the resulting claim from the date of the wind up reports.
- 18. On October 12, 2016, after several years of litigation, the Canadian Debtors announced they had entered into a Global Settlement and Support Agreement with other Nortel entities in other countries and significant creditor constituents, which, among other things, provided for the Canadian Debtors to receive approximately 57% of the sale

proceeds that were then held in escrow, the release of additional sale proceeds to the Canadian Debtors and payment to the Canadian Debtors of amounts on account of reimbursement of various costs incurred in connection with the asset sales.

19. On or about July 6, 2017, the Plans' funds received an interim distribution from Nortel's estate (the "**CCAA Dividends**") with respect to each Pension Claim, as follows:
 - (a) \$236,941,937 was received in respect of the Negotiated Plan; and
 - (b) \$622,633,000 was received in respect of the Managerial Plan.
20. These amounts represented the dividend paid by Nortel's estate to the Pension Plans and were based on the unfunded liabilities of the Plans, which included an amount for the loss of indexation.
21. On August 31, 2017, Morneau filed an addendum to each of the Wind-up Reports with the Superintendent to account for receipt of the CCAA Dividends (the "**August Addenda**"). [ABD Tab 15]
22. On September 13, 2017, the Representatives objected to the August Addenda, claiming that a certain portion of the CCAA Dividends allocated to Ontario members should have provided recovery solely for lost indexation and should not have been included in the assets of the Plans used to calculate the PBGF refunds. Morneau disagreed that there was a portion of the CCAA Dividends that could be separated for that purpose. [ABD Tab 16]
23. On October 10, 2017, to permit the processing of benefit increases in respect of the portion of the Dividends not in dispute, Morneau filed revised addenda to the Wind-up Reports that address the portion of the CCAA Dividend not disputed by the Representatives, being the portion of the net CCAA Dividends (i) in respect of non-Ontario employment (to which the PBGF does not apply); and (ii) in respect of benefits for Ontario employment other than amounts the Representatives claim are attributable to indexation benefits (the "**Revised Addenda**"). Such Revised Addenda have been approved by the Superintendent and are not in dispute. [ABD Tab 17]. The estimated PBGF allocations as at the wind up date as set out in the Revised Addenda were:
 - (a) \$49,634,000 for the Negotiated Plan; and
 - (b) \$103,512,000 for the Managerial Plan.
24. On November 9, 2017, Morneau filed an additional addendum to each Wind-up Report to address the treatment of the portion of the net CCAA Dividend allocated for benefits in respect of Ontario employment that the Representatives claim is attributable to indexation (the "**Indexation Addenda**"), one for the Negotiated Plan and one for the Managerial Plan. [ABD Tab 18] The estimated PBGF allocations as at the wind up date as set out in the Indexation Addenda were:
 - (a) \$12,540,000 for the Negotiated Plan; and
 - (b) \$41,004,000 for the Managerial Plan.

25. If the amount to be refunded to the PBGF is calculated in accordance with the Indexation Addenda, in accordance with the principle, supported by Morneau and the Superintendent, that the CCAA Dividend is first included in the pool of assets available to satisfy Plan liabilities without removing individual portions for separate purposes, then the estimated amount to be refunded to the PBGF totals \$221,220,000 arising from its \$383.98 million payment (57.6% recovery) as follows:
 - (a) \$67,344,000 from the Negotiated Plan; and
 - (b) \$153,876,000 from the Managerial Plan.
26. The amount of the refunds to the PBGF set out in paragraph 25 above were calculated by subtracting the estimated PBGF allocations as set out in the Indexation Addenda (paragraph 24 above) from the estimated PBGF allocations as set out in the Wind-up Reports (paragraph 13 above).
27. If the amount to be refunded to the PBGF is calculated as supported by the Representatives (as set out in a report prepared by the Representatives' actuarial advisor, the Segal Company), in accordance the principle that the amounts they claim are attributable to indexation benefits should not be included in the pool of assets available to satisfy all liabilities of the Plans but rather should only be applied to pay for indexing of benefits, then the Representatives allege such refunds would total \$121,618,000 as follows:
 - (a) \$30,251,000 from the Negotiated Plan; and
 - (b) \$91,367,000 from the Managerial Plan.
28. The amounts to be refunded to the PBGF from the Plans' funds would decrease by \$99,602,000 if calculated as alleged by the Representatives rather than as calculated in accordance with the Indexation Addenda.

Procedural History

29. On November 22, 2017, Representative Counsel sent a letter to the Superintendent objecting to the distribution of amounts relating to indexation with respect to the Plans. [ABD Tab 19] An actuarial report by the Representative's actuary - Segal Company - was attached as an Appendix to that letter [ABD Tab 20].
30. On December 8, 2017, counsel to Morneau, as administrator, delivered a letter to the Superintendent replying to the November 22, 2017 letter from Representative Counsel. [ABD Tab 21]
31. Representative Counsel sent a further letter to the Superintendent with their reply to the letter of Morneau's counsel on December 21, 2017. [ABD Tab 22]
32. The Superintendent issued a Notice of Intended Decisions on March 12, 2018 (the "NOID") in respect of the Indexation Addenda. [ABD Tab 23] In the NOID, the Superintendent provided notice that he intended to make the following decisions:
 - (a) Approve, under sections 70 and 89(4) of the PBA, the Indexation Addenda.

(b) Refuse to make the following orders in respect of the Plans:

- (i) An Order pursuant to section 87(4) of the PBA requiring the Administrator of the Plans to prepare new Indexation Addenda, using assumptions and methods that calculate member entitlements and PBGF refunds in a manner which does not take into account certain amounts paid into the pension funds for the Plans from the estate of Nortel Networks Corporation and several of its Affiliated Companies;
- (ii) An Order pursuant to section 87(1) of the PBA requiring the Administrator to refrain from distributing funds to the PBGF, in accordance with the Indexation Addenda.

33. In the NOID, the Superintendent stated he was of the opinion that the Indexation Addenda meet the requirements of the PBA and regulations, that the interests of the members, retired members and other beneficiaries are protected, and that the requirements or preconditions to issuing orders pursuant to 87(4) and (5) and 87(1) were not met in this case. In the NOID, the Superintendent provided very brief reasons for this decision and did not address all of the issues. He also did not address the obvious conflict of interest that he is in as both initial adjudicator and, as administrator of the PBGF, as the recipient of the money that he was determining should not be paid to the pensioners whose indexation benefits have been eliminated. The reasoning in the NOID, to the extent that there is any, must be given no weight in this case.

34. On April 4, 2018, the Representatives filed a Request for Hearing in regards to the NOID. [ABD Tab 24]

PART III – ISSUES AND LAW

35. The issues that are to be dealt with in this case are as follows:

- (a) Should the Superintendent be directed to make or refrain from making the intended decision in the Notice of Intended Decision approving the Second Addenda to the Wind Up Reports filed in respect of the Plans (the “**Indexation Addenda**”)?
- (b) Should the Superintendent be directed to make or refrain from making the intended decision in the Notice of Intended Decision refusing to issue:
 - (i) An Order pursuant to section 87(4) of the PBA requiring Morneau to prepare new Indexation Addenda, using assumptions and methods that calculate member entitlements and PBGF refunds in a manner which does not take into account certain amounts paid into the pension funds for the Plans from the Nortel estate which amounts the Applicants claim are attributable to indexation benefits; and
 - (ii) An Order pursuant to section 87(1) of the PBA requiring Morneau to refrain from distributing funds to the PBGF, in accordance with the Indexation Addenda.

Legal Argument

Legislative and Regulatory Scheme

36. This case principally concerns section 86(4) of the PBA and whether the refunds to the PBGF set out in the Indexation Addenda are in breach of that section. The Superintendent, as administrator of the PBGF, has rights as a subrogee under s. 86(4) of the PBA. This is the only statutory right of the Superintendent to obtain any part of the recovery of the pension plan from an administrator in an insolvency. These rights are limited by the PBA only to a recovery that has been received in respect of benefits guaranteed by the PBGF under section 84. Section 86(4) provides as follows:

Subrogation

(4) The Superintendent is subrogated to the rights of the administrator of a pension plan in respect of which the Superintendent authorizes payment from the Guarantee Fund in satisfaction of a pension, deferred pension, pension benefit or contribution guaranteed under section 84 (guaranteed benefits). R.S.O. 1990, c. P.8, s. 86 (4); 1997, c. 28, s. 206. [Emphasis added]

37. The calculations in the Indexation Addenda are based on the assumption that the entire CCAA Dividend is included in the assets of the Plans for PBGF purposes and therefore forms part of the asset pool used to calculate the funded ratio and resulting PBGF obligations. That assumption is not supported by the PBA, nor the principles of subrogation. Further, nothing within the Regulation can override the terms of the Act. The CCAA Dividend includes amounts in respect of claims that the PBGF does not guarantee, such as claims for lost future indexation. The PBGF or the Superintendent as its agent do not have a statutory right to be subrogated for the portions of the recovery that are in respect of claims that the PBGF does not guarantee.
38. Under the Indexation Addenda, the Superintendent would recover a greater benefit for the PBGF than is permitted under s. 86(4) of the PBA. At the same time, the methodology employed in the Indexation Addenda understates the recovery to the Plans' Members (as it provides them with no recovery for their lost future indexation; notwithstanding that the Pension Claim specifically included a component for lost future indexation) and also understates the PBGF's obligation to the Plans.
39. To fully understand why the Respondents' position is incorrect, it is necessary to examine the nature of the indexation promise, the precise wording of the statute and the principles of statutory interpretation, and the principles of subrogation and how they relate to section 86(4) of the PBA.

The Plans' Members have a contractual right to indexation under the Plans

40. Members of the Plans are contractually entitled to indexation under the terms of the Plans and there are no provisions in the PBA or the Regulation which limit such an entitlement.
41. Morneau filed the Pension Claim against Nortel for the breach of these contractual rights and was successful in recovering amounts relating to both underfunding of lost accrued basic pensions and loss of future indexation. It is now improper for recoveries in respect

of the Members' contractual rights to future indexation to be used by Morneau for other purposes, including a refund to the PBGF.

42. This section outlines the Ontario Members' contractual right to indexation; that no statutory provisions or terms of the Regulation limit such an entitlement; and that Morneau owes a fiduciary duty to the Members of the Plans to claim for lost indexation and to distribute any compensation received for lost indexation to Members directly.
43. The Regulation is silent on the treatment of amounts recovered by a plan administrator on behalf of plan members from an insolvent employer's estate after the Superintendent authorizes payment from the PBGF. Moreover, as detailed below, the only provision of the PBA that permits the Superintendent to receive a refund after authorizing a payment from the PBGF is the subrogation provision of s. 86(4) of the PBA. Under this provision, once the Superintendent authorizes a payment from the PBGF, he is only entitled to be subrogated in respect of amounts subsequently recovered by a plan administrator that are in respect of benefits guaranteed under s. 84 of the PBA. Indexation is not a benefit guaranteed under s. 84 of the PBA. Accordingly, the Superintendent is not entitled to be subrogated in respect of amounts recovered for lost future indexation. The Regulation must be read in a manner consistent with the clear wording of the Act and does not override its provisions.
44. The PBA is minimum standards legislation. Section 5 of the PBA reads:

Greater pension benefits

5. The requirements of this Act and the regulations shall not be construed to prevent the registration or administration of a pension plan and related pension fund that provide pension benefits or ancillary benefits more advantageous to members than those required by this Act and the regulations.¹

45. In this case, the Plans provide for mandatory indexation, which is a greater benefit than the minimum standards under the PBA. As such, the Plans contractually promise indexation to Members, a promise that is a greater benefit than would be provided by the PBA.
46. As nothing in the PBA or Regulation vitiates the promise of indexation made to members, or absolves Nortel of that promise, the administrator is obliged as a fiduciary to make a claim for the lost indexing amounts. Further, where such a claim is recovered, the administrator has a duty to compensate members with any amounts recovered for the indexation that was promised to the members.
47. In this case, the Plans provide a greater benefit than the minimum standards provided by the PBA, and no statutory provisions in the PBA or Regulations limit the right of Members to indexation, or explicitly remove such a right.

¹ PBA at s 5.

Principles of Statutory Interpretation

48. The Supreme Court of Canada ("SCC") has repeatedly affirmed that statutory interpretation in Canada is guided by Driedger's modern principle:

[...] the words of an Act are to be read in their entire context and in their ordinary sense harmoniously with the scheme of the Act, **the object of the Act and the intention of Parliament.** [Emphasis added].²

49. An Act must therefore be read as a whole. Locke J. wrote in *Greenshield v. the Queen*, "The broad general rule for the construction of statutes is that a section or enactment must be construed as a whole, each portion throwing light, if need be, on the rest."³
50. In *Bristol-Myers Squibb Co. v Canada (Attorney General)*, the SCC explained that regulations must be read in the context of their enabling Act.⁴ The Court cites Elmer Driedger in *Construction of Statutes* (2nd ed. 1983) favourably:

It is not enough to ascertain the meaning of a regulation when read in light of its own object and the facts surrounding its making; **it is also necessary to read the words conferring the power in the whole context of the authorizing statute. The intent of the statute transcends and governs the intent of the regulation.** [Emphasis added].⁵

51. Ruth Sullivan, in her book "Sullivan on the Construction of Statutes", summarizes following an overview of *Bristol-Myers*, "Regulations are interpreted so as to fit the scheme established by the Act and to further its purposes."⁶ Further, regulations must be read in a manner consistent with the provisions of the enabling statute.⁷
52. Finally, statutory interpretation is guided by a presumption against implicit alteration of law. Sullivan writes "It is presumed that the legislature does not intend to change existing law or to depart from established principles or practices."⁸ In *Parry Sound (District)*

² *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, 1998 CanLII 837 (SCC) at para 21; *R v Hydro-Québec*, 1997 CanLII 318 (SCC), [1997] 3 SCR 213 at para 144; *Royal Bank of Canada v Sparrow Electric Corp.*, 1997 CanLII 377 (SCC), [1997] 1 SCR 411 at para 30; *Verdun v Toronto-Dominion Bank*, 1996 CanLII 186 (SCC), [1996] 3 SCR 550 at para 22; *Friesen v Canada*, 1995 CanLII 62 (SCC), [1995] 3 SCR 103 at para 10.

³ *Greenshield v. the Queen*, [1958] SCR 216, [1959] CTC 77 at para 42..

⁴ *Bristol-Myers Squibb Co. v Canada (Attorney General)*, 2005 SCC 26, [2005] SCJ No 26 ["*Bristol-Myers*"].

⁵ *Ibid*, at para 38.

⁶ Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th Ed. (Toronto: LexisNexis Canada, 2014) ["*Sullivan*"] at § 13.21.

⁷ *Legislation Act*, 2006, SO 2006, c 21, Sched F at s 64(2) ["*Legislation Act*"].

⁸ *Sullivan*, *supra* note 6 at § 15.50.

Social Services Administration Board v. O.P.S.E.U., Iacobucci J. writes for the majority of the SCC:

To begin with, I think it useful to stress the presumption that the legislature does not intend to change existing law or to depart from established principles, policies or practices. In *Goodyear Tire & Rubber Co. of Canada v. T. Eaton Co.*, 1956 CanLII 2 (SCC), [1956] S.C.R. 610, at p. 614, for example, Fauteux J. (as he then was) wrote that "a Legislature is not presumed to depart from the general system of the law without expressing its intentions to do so with irresistible clearness, failing which the law remains undisturbed". In *Slaight Communications Inc. v. Davidson*, 1989 CanLII 92 (SCC), [1989] 1 S.C.R. 1038, at p. 1077, Lamer J. (as he then was) wrote that "in the absence of a clear provision to the contrary, the legislator should not be assumed to have intended to alter the pre-existing ordinary rules of common law".⁹

53. Sullivan quotes *Halsbury's Laws of Canada*, 32rd ed:

Except in so far as they are clearly and unambiguously intended to do so, statutes should not be construed so as to make any alteration in the common law or to change any established principle of law.¹⁰

54. As such, where a contractual right exists, courts will not find such a right is overruled unless legislation is explicit in removing such a right.
55. In light of these fundamental principles of statutory interpretation, there is nothing in the PBA or Regulation which removes the members' right to indexation or the right to make a claim for recovery of lost future indexation, which was contractually promised to them.

Breach of s. 86(4) of the PBA: the subrogation rights of the Superintendent

56. As discussed above, the Plan Members are contractually entitled to indexation. Though the PBGF does not guarantee escalated adjustments, the Plans are entitled to make a claim and receive a dividend from Nortel which partially compensates for lost future escalated adjustments, as well as compensation for benefits that are guaranteed by the PBGF. However, the Superintendent is not entitled to a recovery from the portion of the CCAA Dividend which compensates Members of the Plans for lost future escalated adjustments. Such a recovery would be contrary to the PBA, the Regulation, and common law principles applicable to the doctrine of subrogation. Put simply, the Superintendent is not entitled to recover from funds that compensate for a benefit that the PBGF did not guarantee.
57. Pursuant to s. 86(4) of the PBA, the Superintendent is "subrogated to the rights of the administrator". There is nothing in the PBA that defines "subrogation". However, there

⁹ *Parry Sound (District) Social Services Administration Board v OPSEU*, Local 324, 2003 SCC 42, [2003] 2 SCR 157 at para 39.

¹⁰ *Sullivan*, supra note 6 at § 17.50.

are common law principles that can aid in interpreting what the doctrine means in the context of this dispute. These principles include:

- (a) **The doctrine operates to prevent the mischief of over-recovery, not to compensate an insurer.** The objective of the doctrine of subrogation is to ensure that an insured party receives no more than a full indemnity for their loss—i.e. to ensure that an insured party does not profit unjustly from insurance.¹¹ The objective is not to compensate the insurer. Justice Iacobucci explains in *Somersall v Friedman*:

Consequently, if there is no danger of the insured's being overcompensated and the tort-feasor has exhausted his or her capacity to compensate the insured there is no reason to invoke subrogation.¹²

- (b) **Subrogation cannot create a right to funds that have been awarded in respect of a category of loss that the relevant insurer did not insure.** The doctrine of subrogation arises in respect of an *insured* loss.¹³ There can be no subrogated right to funds recovered in respect of an *uninsured* loss as no payment has been made by an insurer in such a circumstance.
- (c) **Where the insured recovers an unallocated lump sum that compensates for both insured and uninsured losses, a *pro rata* allocation shall split the settlement or award between multiples types of loss.**¹⁴ The proportion of recovery for uninsured loss(es) shall be determined based on the proportion of the uninsured loss(es) to the overall claim.¹⁵

58. Plainly, under the PBA, the Superintendent's right of subrogation extends only to a payment made from the PBGF in respect of a benefit guaranteed under s. 84. As such, the Superintendent's right to a recovery as subrogee pursuant to s. 86(4) does not extend over other components of the claims made on behalf of the Plans by Morneau, which components include, for example, claims in respect of indexed pension benefits, and other non-PBGF-guaranteed benefits. Pursuant to the common law of subrogation, the PBA should be interpreted to require that recovery in respect of non-PBGF-guaranteed claims be considered separately from PBGF-guaranteed claims by the Plans' administrator.

¹¹ *Somersall v. Friedman*, 2002 SCC 59, [2002] 2 SCR ["Somersall"], *Douglas v Stan Fergusson Fuels Ltd.*, 2018 ONCA 192, [2018] OJ No 1266; *Ledingham v Ontario Hospital Services Commission*, [1975] 1 SCR 332, [1975] 1 RCS 332.

¹² *Somersall*, *ibid* at para 50.

¹³ *Affiliated FM Insurance Co. v. Quintette Coal Ltd.*, 1998 CanLII 6536 (BC CA), [1998] BCJ No 100 ["Affiliated FM"]; *Napier and Ettrick (Lord) v RF Kershaw Ltd*, [1993] AC 713, [1993] 1 All ER 385 [*Napier and Ettrick*]; *Yorkshire Insurance Co. Ltd. v. Nisbet Shipping Co. Ltd.*, [1962] 2 QB 330, [1961] 2 All ER 487 at 339-341. *Castellain v. Preston*, (1883) 11 QBD 380, [1881-5] All ER Rep 493 at 495-496.

¹⁴ *Affiliated FM*, *ibid* at paras 35-40 and 49-55.

¹⁵ *Ibid* at para 54.

No statutory or regulatory provisions remove rights of members to contractually promised indexation

59. There are no provisions in the PBA or the Regulation precluding the administrator of a plan which is insolvent and receiving funding from the PBGF from making a claim in an insolvency proceeding for lost future indexation, and for receiving funds in satisfaction of such a claim. While the PBGF does not guarantee escalated adjustments (future indexation), there is no corresponding provision disallowing an administrator or plan from recovering on a claim for the contractual breach of indexation benefits against an employer. Indeed the fiduciary obligations of the Administrator require the filing of such a claim.
60. Morneau, the Administrator, and the Superintendent in the NOID, rely on s. 30 and 34 of the PBA Regulation for their conclusions that all CCAA proceeds must be used to top up basic benefits. These provisions contain no such requirement, nor do they purport in any way to remove the right to recoveries for lost indexing. These provisions do not address the current circumstance in which the plan administrator recovered amounts on behalf of plan members from an insolvent employer's estate after the Superintendent authorized payment from the PBGF.

Section 30 of the Regulation

61. Section 30 of the Regulation prescribes the details of preparing a wind up report. The relevant portions of this provision read:

1(2) "escalated adjustment" means an adjustment that is made to a deferred pension of a former member of a pension plan or to the pension of a retired member where,

(a) the adjustment is not capable of being determined with certainty at the time the plan or a relevant amendment to the plan is submitted for registration because the adjustment is related to the investment earnings of the pension fund or to future changes in a general wage or price index, or

(b) the adjustment is an increase in the pension or deferred pension at a fixed annual percentage rate specified in the plan; ("rajustement indexé")

30. (1) This section applies to a pension plan that provides defined benefits guaranteed in whole or in part by the Guarantee Fund.

(2) A wind up report for a pension plan shall be prepared by,

(a) determining the value of any additional voluntary contributions, including interest on such contributions, and providing for the immediate payment from the pension fund to each member, former member or retired member of the additional voluntary contributions made by him or her, plus interest;

(b) determining the liabilities for the commuted value of all benefits under the plan in respect of each member, former member and retired member, including,

(i) accrued benefits for members not yet vested under the terms of the plan,

(ii) **escalated adjustments that have been made before the effective date of the wind up,**

(iii) plant closure benefits payable on plan wind up,

(iv) permanent layoff benefits payable on plan wind up,

(v) funded consent benefits,

(v.1) benefit enhancements resulting from the application of section 74 of the Act, and

(vi) funded special allowances,

but **not including** the value of,

(vii) amounts determined under clause (a),

(viii) **escalated adjustments that have not been made as of the effective date of the wind up,**

(ix) Revoked: O. Reg. 570/06, s. 6 (4).

(x) prospective benefit increases, and

(xi) benefits provided under a qualifying annuity contract or a contract issued under the Government Annuities Act (Canada) if the contract was issued before the 1st day of January, 1988;

[...]. [Emphasis added].

62. Notably, s. 30 dictates when escalated adjustments shall be included in a wind up report as a liability. However, s. 30 does not eliminate contractual rights of Members, or a fiduciary obligation of the Administrator on their behalf, to make a claim for lost future indexation against the employer or its estate in the event of insolvency. In this case, Morneau has received an additional CCAA Dividend from Nortel, which is at least partially allocated to compensate members for lost future indexation (i.e. the lost future escalated adjustments). Indeed, with respect to pensioners outside of Ontario, compensation for members' pensions includes recoveries for lost indexing.
63. While s. 30 might prescribe how future indexation is to dealt with in a wind up report, s. 30 does not bar members from receiving compensation for lost future indexation, does not require that recoveries for lost future indexation be allocated to unfunded liabilities as defined in s. 30, nor does it entitle the PBGF to a proportionate recovery in respect of a

claim for lost future indexation. Section 30 does not address the treatment of a plan administrator's recovery on behalf of plan members from an insolvent employer's estate after the Superintendent authorizes payment from the PBGF.

64. Section 47(2) of the Regulation provides that the PBGF does not guarantee escalated adjustments. Section 47(2) provides:

(2) The following pension benefits and ancillary benefits are not guaranteed by the Guarantee Fund:

1. Consent benefits, other than funded consent benefits.
2. Special allowances, other than funded special allowances.
3. Prospective benefit increases.
4. Escalated adjustments.
5. Potential early retirement window benefit values.
6. Plant closure benefits, other than plant closure benefits for which a member has met the age and service eligibility requirements.
7. Permanent layoff benefits, other than permanent layoff benefits for which a member has met the age and service eligibility requirements. O. Reg. 712/92, s. 25 (1); O. Reg. 178/12, s. 45 (1). [Emphasis added]

65. Section 47(2), however, does not prevent Members from seeking compensation for lost future escalated adjustments.

Section 34 of the Regulation

66. Similarly, under s. 34.1 of the Regulation, escalated adjustments are not guaranteed by the PBGF. Nothing in s. 34.1 precludes the administrator from claiming for lost future indexation against the employer or its insolvent estate, nor does it require that all recoveries of the CCAA Dividend for lost escalated adjustments be applied to reduce PBGF liability.

67. Section 34.1 is one of the sections of the Regulation addressing the PBGF on wind up. The Plans were wound up as of October 1, 2010. As this date is before December 8, 2010, s. 34.1(1) applies and provides:

34.1 (1) This section applies if the Guarantee Fund applies to a pension plan with a wind up date before December 8, 2010. O. Reg. 466/11, s. 3.

(2) If, when the order is made declaring that the Guarantee Fund applies to the pension plan, the plan's Ontario assets are less than its Ontario wind up liability,

(a) the administrator of the plan shall provide benefits under the plan in accordance with section 34 of this Regulation as it read on December 31, 2011; and

(b) on application by the administrator, the Superintendent shall allocate from the Guarantee Fund and pay to the plan sufficient money to provide, together with the Ontario assets, for those benefits.

68. As the Plans were wound up as of October 1, 2010, the old s. 34, as it read on December 31, 2011, applies. The old s. 34 reads:

34. (1) Where an order has been made under subsection 83 (1) of the Act in respect of a plan where the effective date of the wind up is before the Regulation date and when the order is made the Ontario assets of the plan are less than its Ontario wind up **liability**, the administrator shall provide benefits under the plan in accordance with this section as it read immediately before the Regulation date. O. Reg. 712/92, s. 21; O. Reg. 307/98, s. 15 (1).

(2) Where an order has been made under subsection 83 (1) of the Act in respect of a plan where the effective date of the wind up is on or after the Regulation date and **when the order is made the Ontario assets of the plan are less than its Ontario wind up liability**, the administrator shall provide benefits under the plan in accordance with this section. O. Reg. 712/92, s. 21; O. Reg. 307/98, s. 15 (2).

(3) For purposes of this section,

"modified Ontario wind up liability" means the Ontario wind up liability excluding any liability for benefits described in subsection 47 (2). O. Reg. 712/92, s. 21.

(4) For purposes of this section,

"Guaranteed Benefit liability" means the total liability of the plan for benefits guaranteed by the Guarantee Fund and other amounts guaranteed by the Guarantee Fund, excluding the amount by which the contributions made by any member, plus interest, for such guaranteed benefits and other amounts exceeds the liability for the member's guaranteed benefits and other amounts. O. Reg. 712/92, s. 21.

(5) If, **on the date an order is made under subsection 83 (1) of the Act in respect of a plan, the Ontario assets of the plan are less than its Ontario wind up liability**, the administrator shall pay to each person entitled on wind up to payment of benefits guaranteed by the Guarantee Fund or other amounts guaranteed by the Guarantee Fund, the greater of,

(a) the sum of,

(i) 100 per cent of the benefits and other amounts for the person included in the calculation of the Guaranteed Benefit liability, and

(ii) the amount, determined under subsection (6), related to all other benefits for the person included in the calculation of the Ontario wind up liability; and

(b) the value of the person's contributions to the plan plus interest. O. Reg. 712/92, s. 21; O. Reg. 307/98, s. 15 (3).

(6) The amount referred to in subclause (5) (a) (ii) shall be determined as follows:

1. If the Ontario assets of a plan are less than its modified Ontario wind up liability, the amount to be used for purposes of subclause (5) (a) (ii) for the person shall be determined by,

i. calculating the ratio of the Ontario assets of the plan to its modified Ontario wind up liability, and

ii. multiplying the ratio obtained under subparagraph i by the value of 100 per cent of the benefits in respect of the person, included in the calculation of the modified Ontario wind up liability but not included in the calculation of the Guaranteed Benefit liability in respect of the person.

2. If the Ontario assets of a plan are equal to or exceed its modified Ontario wind up liability, the amount to be used for purposes of subclause (5) (a) (ii) for the person shall be the sum of,

i. 100 per cent of the benefits included in the calculation of the modified Ontario wind up liability in respect of the person but not included in the calculation of the Guaranteed Benefit liability for such person, and

ii. the total of the benefits referred to in subsection 47 (2) for the person, multiplied by the ratio of,

A. the amount by which the Ontario assets exceed the modified Ontario wind up liability,

to,

B. the amount by which the Ontario wind up liability exceeds the modified Ontario wind up liability. O. Reg. 712/92, s. 21.

(7) On application by the administrator, the Superintendent shall allocate from the Guarantee Fund and pay to the plan sufficient money to provide, together with the Ontario assets, for the benefits determined under this section. [Emphasis added]

69. Section 34 prescribes the amount of funding the PBGF will provide to a plan, and how the administrator must calculate the amount of PBGF funding required to meet

obligations to members on the date the Superintendent makes an order under s. 83(1) of the PBA declaring that the PBGF applies to the plan. It does not address the treatment of an amount recovered by the plan administrator from an insolvent employer's estate under s. 86(4) after an order is made under s. 83(1) declaring that the PBGF applies to a plan or after the Superintendent authorizes a payment from the PBGF.

70. There is nothing in s. 34 of the old Regulation, or s. 34.1 of the current Regulation, which precludes escalated adjustment claims by members of the Plans, separate and apart from PBGF entitlement.
71. Morneau states the following in the Indexation Addendum to the Managerial Plan:

Further, as the PBGF applies to the Plan, it requires Ontario assets to be administered in accordance with Section 34 of the Regulation. According to subsection 34(6)(1), when Ontario assets are less than Modified Ontario Wind Up Liability, the entire \$329,257,000 of the net CCAA proceeds must be applied to increase the OMWUFR (the ratio calculated according to subsection 34(6)(1)(i)).¹⁶

72. Morneau's interpretation of section 34 is incorrect. Section 34(5), which cross-references s. 34(6), states:

(5) If, **on the date an order is made under subsection 83(1)** of the Act in respect of a plan, the Ontario assets of the plan are less than its Ontario wind up liability, **the administrator shall pay to each person entitled on wind up to payment of benefits guaranteed by the Guarantee Fund** [...] [emphasis added]

73. Section 34(5) therefore clearly provides how an Administrator must calculate PBGF entitlements *going to members on the date an order is made* under s. 83(1) of the PBA declaring that the PBGF applies to a plan. That is precisely what occurred here. It only speaks to Ontario assets on the date the order is made and is silent with respect to the treatment of amounts recovered by the administrator after an order is made under s. 83(1) of the PBA. Accordingly, section 34 and specifically section 34(6)(1)(i) are of no assistance in dealing with the allocation of assets recovered in an insolvency after the date of the PBGF order. It would be contrary to the purpose of the section, and the entire scheme of the PBA and Regulation, to interpret s. 34 as *reducing* benefits going to members. Under Morneau's interpretation of s. 34, the distribution compensating Members for, *inter alia*, lost future indexation, would be used in part to refund the PBGF for benefits the PBGF does not guarantee. There is nothing which allows for this interpretation under s. 34, and, in any event, this runs contrary to the principles of subrogation under s. 86(4) of the PBA.
74. Section 86(4) of the PBA is the only provision of the PBA or Regulation that addresses these exact circumstances where a plan administrator has recovered amounts from an

¹⁶ See Managerial Plan Indexation Addenda, at pp 2-3. The Negotiated Plan Indexation Addendum has similar language, see p 2.

insolvent estate on behalf of plan members after the Superintendent has declared the PBGF applies and authorized a payment from the PBGF. Morneau's interpretation of s. 34 of the Regulation conflicts with s. 86(4) of the PBA. It would effectively provide the Superintendent with a right of subrogation that exceeds the Superintendent's subrogation right under the clear wording of s. 86(4) of the PBA. As detailed above, under principles of statutory interpretation, regulations must be read in the context of their enabling legislation. A Regulation cannot oust a statutory provision and must be interpreted consistent with the Act.¹⁷

75. Moreover, Morneau's interpretation of s. 34 of the Regulation results in a situation where s. 86(4) of the PBGF serves no purpose. If Morneau's interpretation of s. 34 of the Regulation is correct, s. 86(4) of the PBA would not be required. Under the principles of statutory interpretation, statutes are to be construed so that all provisions serve a purpose:

One of the presumptions the courts rely on is that Parliament "does not speak in vain;" in other words, Parliament does not include words in enactments which have no meaning or are redundant." As the Supreme Court observed, "no legislative provision should be interpreted so as to render it mere surplusage."¹⁸

Summary of statutory provisions

76. There are no statutory or regulatory provisions that explicitly remove the Members' contractual rights to recover for breach of contract with respect to their indexation benefits. Further, there are no provisions in the Regulation that address a scenario in which the administrator collects money in a CCAA process after a PBGF allocation. In fact, the only provision in the PBA or Regulation that addresses recoveries made after a PBGF allocation is s. 86(4) of the PBA. As discussed below, s. 86(4) gives the Superintendent rights as a subrogee, but the Superintendent is not permitted to recover benefits which the PBGF did not guarantee.
77. Finally, even if any part of the Regulation directly or indirectly limited the Members' right to indexation, under the principles of statutory interpretation outlined above, section 86(4) of the PBA would override any such interpretation of the Regulation. Under section 86(4), the Superintendent as subrogee of the PBGF may only recover what the PBGF guaranteed. Since section 86(4) therefore limits the recovery of the PBGF, it would be against foundational principles of statutory interpretation to interpret the Regulation in such a way as to provide a greater recovery to the PBGF than s. 86(4) of the PBA permits.
78. As such, Morneau had a fiduciary obligation to file a claim for breach of contract for the loss of indexation, which it has successfully recovered from Nortel and now has a

¹⁷ *Legislation Act* at s 64(2).

¹⁸ Nancy McCormack, *How to Understand Statutes and Regulations, Second Edition*, (Toronto: Thomson Reuters Canada, 2017) at p. 155-156. See also *R v Proulx*, 2000 SCC 5, [2000] SCR 61 at 28.

fiduciary duty to distribute the CCAA Dividend amounts relating to indexation to those Members who were entitled to the benefit.

Breach of fiduciary duty to the Members by Morneau and the Superintendent

79. Morneau's proposed method of allocating the CCAA Dividend with respect to the breach of contract for the loss of indexation from Nortel to the PBGF would amount to a breach of its fiduciary duties to the Plans' Members, and of s. 22 of the PBA.
80. Morneau is the administrator of the Plans and owes fiduciary duties to the Members.¹⁹ The Superintendent is not a beneficiary of the Plans, and is not owed a fiduciary duty by Morneau. In fact, the Superintendent himself owes a fiduciary obligation to the Members with respect to the administration of the PBA.²⁰
81. In allocating the dividend to refund the PBGF in priority to other components of the Pension Claim, Morneau would, in effect, be placing a third party's interest (the Superintendent's subrogated claim) ahead of the Plans' Members interests. Fiduciaries have the "utmost duty of loyalty" and "will be held to a stringent standard"²¹ in discharging that duty, particularly where there is a conflict or potential conflict of interest.
82. As discussed above, the Members of the Plans are contractually promised indexation, and this contractual promise is not limited by statute or regulation. Morneau has a fiduciary duty to protect the interests of the Members. In this case, Morneau has a fiduciary duty to distribute any amounts received from Nortel for lost indexation claims to the Members and the Members alone.
83. In allocating the CCAA Dividend from Nortel to PBGF-protected liabilities only, and in priority over other claims made on behalf of the Plans' Members, Morneau would fail to satisfy on a *pro rata* basis claims based on indexation and other liabilities not guaranteed by the PBGF.²²
84. The Superintendent also owes a fiduciary duty to the Members in administering the PBA. Regulators of pension plans were established by the province to "safeguard the plan members' interests".²³ Courts have held that for this reason pension regulators, such as the Superintendent, owe a fiduciary duty to the pension plan beneficiaries.²⁴ The Superintendent's approval of the Indexation Addenda is a breach of its duty to the Plan Members. Where a conflict of interests exists between the interests of Morneau or the

¹⁹ PBA, s 22(1).

²⁰ *Re Collins et al. and Pension Commission of Ontario et al. Re Batchelor et al and Pension Commission of Ontario et al.*, 1986 CanLII 2568 (ON SC), 56 OR (2d) 274 ["Collins"]; *Buschau v Rogers Communications Inc.*, 2006 SCC 28, [2006] 1 SCR 973 ["Buschau"].

²¹ See *Keech v Sandford*, [1558-1774] All ER Rep 230, (1726) 2 Eq Cas Abr 741; *Hodgkinson v Simms*, [1994] 3 SCR 377, [1994] SCJ No 84.

²² *Nortel Networks Corporation (Re)*, 2009 CanLII 27842 (ON SC), [2009] OJ No 2257.

²³ *Collins*, *supra* note 20 at para 36.

²⁴ *Ibid* at para 40; *Retirement Income Plan for Salaried Employees of Weavexx Corp v Ontario (Superintendent of Pensions)*, 2002 CanLII 23593 (ON CA), [2002] OJ No 524 at para 28; *Buschau*, *supra* note 20 at paras 55-56.

Superintendent and the beneficiaries that they owe a fiduciary duty to, it must be resolved in favour of the beneficiaries.


PART IV – ORDER REQUESTED

85. The Applicants request the following orders from the Tribunal:

1. An Order directing the Superintendent to refuse to approve the Indexation Addenda pursuant to s. 89(4) of the PBA;
2. An Order directing the Superintendent to make an order pursuant to s. 87(4) and 87(5) of the PBA requiring Morneau to prepare new Indexation Addenda, using assumptions and methods that accurately calculate member entitlements and PBGF refunds;
3. An Order directing the Superintendent make an order pursuant to s. 87(1) of the PBA requiring Morneau to refrain from distributing funds to the PBGF, except those funds to which the PBGF is entitled under the PBA; and
4. An Order directing the Superintendent to withdraw the NOID.



Counsel for the Applicants



Date

SCHEDULE "A"

SCHEDULE 'A'

CASELAW

1. *Affiliated FM Insurance Co. v. Quintette Coal Ltd.*, [1998] B.C.J. No. 100
2. *B.H. Shopping Centre Ltd. v. Marrazzo*, [1993] A.J. No. 781
3. *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, [2005] S.C.J. No. 26
4. *Buschau v. Rogers Communications Inc.*, [2006] 1 S.C.R. 973
5. Carswell - How to Understand Statutes and Regulations, 2nd ED. (26. Textual Meaning - Presumption of Knowledge pp. 155 – 157)
6. *Castellain v. Preston*, [1881-85] All ER Rep 493
7. *Collins et al. and Pension Commission of Ontario et al. Re Batchelor et al. and Pension Commission of Ontario et al.*, 56 O.R. (2d) 274
8. *Confederation Life Insurance Co. v. Causton (B.C.C.A.)*, [1989] B.C.J. No. 1172
9. *Douglas v. Stan Fergusson Fuels Ltd.*, [2018] O.J. No. 1266
10. *Friesen v. Canada*, [1995] 3 S.C.R. 103
11. *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377
12. *HSBC Bank of Canada v. Maple Leaf Loading Ltd.*, [2016] B.C.J. No. 419
13. *Hunjan International Inc. (Re)*, [2006] O.J. No. 3110
14. *Keech v. Sanford*, [1558-1774] All ER Rep 230
15. *Ledingham v. Ontario (Hospital Services Commission)*, [1975] 1 S.C.R. 332
16. *Medican Holdings Ltd. (Re)*, [2013] A.J. No. 403
17. *Napier and Ettrick (Lord) v. RF Kershaw Ltd.*, [1993] 1 All ER 385
18. *Nortel Networks Corp. (Re)*, [2009] O.J. No. 2257
19. *Parry Sound (District) Social Services Administration Board v. Ontario Public Service Employees Union, Local 324 (O.P.S.E.U.)*, [2003] 2 S.C.R. 157

20. *R. v. Greenshield*, [1958] S.C.R. 216
21. *R. v. Hydro-Quebec*, [1997] 3 S.C.R. 213
22. *R. v. Proulx*, [2000] 1 S.C.R. 61
23. *Retirement Income Plan for Salaried Employees of Weavexx Corp. v. Ontario (Superintendent of Pensions)*, [2002] O.J. No. 524
24. *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27
25. *Royal Bank of Canada v. Sparrow Electric Corp.*, [1997] 1 S.C.R. 411
26. *Somersall v. Friedman*, [2002] I.L.R. I-4114
27. Sullivan on the Construction of Statutes, 6th Ed. – Chapter 13 (The Act as a Whole, the Statute Book as a Whole, the Statute Book as a Whole and Related Legislation)
28. Sullivan on the Construction of Statutes, 6th Ed. – Chapter 17 (Common Law – Part 1 Governing Principles)
29. *Verdun v. Toronto-Dominion Bank*, [1996] 3 S.C.R. 550
30. *Winnipeg Motor Express Inc. (Re)*, [2009] M.J. No. 284
31. *Yorkshire Insurance Co. Ltd. v. Nisbet Shipping Co. Ltd.*, [1961] 2 All ER 487

SCHEDULE "B"

SCHEDULE 'B'

TEXT OF STATUTES & REGULATIONS

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

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. R.S.O. 1990, c. P.8, s. 22 (1).

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. R.S.O. 1990, c. P.8, s. 22 (2).

Member of pension committee, etc.

(3) Subsection (2) applies with necessary modifications to a member of a pension committee or board of trustees that is the administrator of a pension plan and to a member of a board, agency or commission made responsible by an Act of the Legislature for the administration of a pension plan. R.S.O. 1990, c. P.8, s. 22 (3).

Conflict of interest

(4) An administrator or, if the administrator is a pension committee or a board of trustees, a member of the committee or board that is the administrator of a pension plan shall not knowingly permit the administrator's interest to conflict with the administrator's duties and powers in respect of the pension fund. R.S.O. 1990, c. P.8, s. 22 (4).

Employment of agent

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

Winding up order by Superintendent

69 (1) The Superintendent by order may require the wind up of a pension plan if,

- (a) there is a cessation or suspension of employer contributions to the pension fund;
- (b) the employer fails to make contributions to the pension fund as required by this Act or the regulations;
- (c) the employer is bankrupt within the meaning of the *Bankruptcy and Insolvency Act* (Canada);
- (d) all or substantially all of the members of the pension plan cease to be employed by the employer;
- (e) Repealed: 2010, c. 9, s. 50 (2).
- (f) all or substantially all of the employer's business or all or substantially all of the assets of the business are sold, assigned or otherwise disposed of and the person or entity who acquires the business or assets does not provide a pension plan for the members of the employer's pension plan who become employees of the person or entity;
- (g) the liability of the Guarantee Fund is likely to be substantially increased unless the pension plan is wound up;
- (h) in the case of a multi-employer pension plan,
- (i) there is a significant reduction in the number of members, or
- (ii) there is a cessation of contributions under the pension plan or a significant reduction in such contributions; or
- (i) any other prescribed event or prescribed circumstance occurs. R.S.O. 1990, c. P.8, s. 69 (1); 2002, c. 18, Sched. H, s. 5 (1); 2010, c. 9, s. 50 (1-4).

Effective date

(2) The order must specify the effective date of the wind up. 2010, c. 9, s. 50 (5).

Notice of the order

(3) The administrator of the pension plan shall give notice of the order to the persons and entities listed in clauses 68 (2) (b) to (e) and shall include in the notice such information about the wind up as the order may specify. 2010, c. 9, s. 50 (5).

Duty to file notice

(4) The administrator shall file with the Superintendent a copy of the notice given under subsection (3). 2010, c. 9, s. 50 (5).

Interpretation

(5) A reduction or suspension of contributions under section 55.1 (contribution holidays) does not constitute a cessation or suspension of employer contributions for the purposes of clause (1) (a) or subclause (1) (h) (ii). 2010, c. 24, s. 22.

Wind up report

70 (1) The administrator of a pension plan that is to be wound up shall file a wind up report that sets out,

- (a) the assets and liabilities of the pension plan;
- (b) the benefits to be provided under the pension plan to members, former members, retired members and other persons;
- (c) the methods of allocating and distributing the assets of the pension plan and determining the priorities for payment of benefits; and
- (d) such other information as is prescribed. R.S.O. 1990, c. P.8, s. 70 (1); 2010, c. 9, s. 52 (1, 2).

Restriction on payments

(2) If the administrator has given notice under section 68 or 69 of the intended wind up of the pension plan, no payment shall be made out of the pension fund until the Superintendent has approved the wind up report. 2010, c. 24, s. 23.

Same

(3) However, subsection (2) does not prevent the continued payment of a pension or other benefit if the payment commenced before the administrator gave notice of the intended wind up and it does not prevent any other payment that is prescribed or that is approved by the Superintendent. 2010, c. 24, s. 23.

Approval

(4) An administrator shall not make payment out of the pension fund except in accordance with the wind up report approved by the Superintendent. R.S.O. 1990, c. P.8, s. 70 (4).

Refusal to approve

(5) The Superintendent may refuse to approve a wind up report that does not meet the requirements of this Act and the regulations or that does not protect the interests of the members, former members, retired members and other persons entitled to benefits under the pension plan. R.S.O. 1990, c. P.8, s. 70 (5); 2010, c. 9, s. 52 (3).

Guarantee Fund declaration

83 (1) Subject to section 89 (notices and hearings), the Superintendent shall by order declare, in the circumstances mentioned in subsection (2), that the Guarantee Fund applies to a pension plan. 1997, c. 28, s. 204 (1).

Conditions precedent

(2) The Superintendent shall make the declaration if,

(a) the pension plan is registered under this Act or is registered in a designated jurisdiction to provide for the reciprocal application of this Act;

(b) the pension plan provides defined benefits that are not exempt from the application of the Guarantee Fund by this Act or the regulations;

(c) the pension plan is wound up in whole or in part; and

(d) the Superintendent is of the opinion, upon reasonable and probable grounds, that the funding requirements of this Act and the regulations cannot be satisfied. R.S.O. 1990, c. P.8, s. 83 (2); 1997, c. 28, s. 204 (2); 2010, c. 1, Sched. 23, s. 9; 2010, c. 9, s. 72 (2).

Guaranteed benefits

84 (1) If the Superintendent by order declares that the Guarantee Fund applies to a pension plan, the following are guaranteed by the Guarantee Fund, subject to the limitations and qualifications as are set out in this Act or are prescribed:

1. Any pension in respect of employment in Ontario.

2. Any deferred pension in respect of employment in Ontario to which a former member is entitled, if,

i. the former member's employment or membership was terminated before January 1, 1988,

ii. the date of the wind up of the pension plan is before May 19, 2017, and

iii. the former member was at least 45 years of age and had at least 10 years of continuous employment with the employer, or was a member of the pension plan for a continuous period of at least 10 years, at the date of termination of employment.

2.1 If a former member's employment or membership was terminated before January 1, 1988 and if the date of the wind up of the pension plan is on or after May 19, 2017, a deferred pension in respect of employment in Ontario to which the former member is entitled.

3. If a member or former member's employment or membership was terminated on or after January 1, 1988 and if the date of the wind up of the pension plan is before May 19, 2017, a percentage of any defined pension benefits in respect of employment in Ontario to which the member or former member is entitled under section 36 or 37 (deferred pension), or both, equal to 20 per cent if the combination of his or her age plus years of employment or membership in the pension plan equals 50, plus an additional two-thirds of 1 per cent for each additional one-twelfth credit of age and employment or membership to a maximum of 100 per cent.

3.1 If a member or former member's employment or membership was terminated on or after January 1, 1988 and if the date of the wind up of the pension plan is on or after May 19, 2017, a deferred pension in respect of employment in Ontario to which the member or former member is entitled under section 36 or 37 (deferred pension), or both.

4. All additional voluntary contributions, and the interest thereon, made by members, former members or retired members while employed in Ontario.

5. The minimum value of all required contributions made to the pension plan by a member, former member or retired member in respect of employment in Ontario plus interest.

6. That part of a pension or deferred pension guaranteed under this subsection to which a former spouse of a member, former member or retired member is entitled under an order under the *Family Law Act*, a family arbitration award or a domestic contract.

7. Any pension to which a survivor of a former member or retired member is entitled under subsection 48 (1) (death before commencement of payment). R.S.O. 1990, c. P.8, s. 84 (1); 1997, c. 28, s. 205; 1999, c. 6, s. 53 (20); 2005, c. 5, s. 56 (26); 2010, c. 9, s. 73 (1-5); 2018, c. 8, Sched. 23, s. 12, 26.

Bridging benefits

(2) For the purpose of this section, if a member, former member or retired member has at least ten years of continuous employment with the employer, a deferred pension or a pension benefit includes bridging benefits. R.S.O. 1990, c. P.8, s. 84 (2); 2010, c. 9, s. 73 (6).

Part year

(3) In determining the combination of age and membership or employment for subsection (1), one-twelfth credit shall be given for each full month of age and for each full month of continuous employment or membership as of the date of termination of employment. R.S.O. 1990, c. P.8, s. 84 (3).

Application

(3.1) This section applies if the effective date of the wind up of the pension plan is on or after April 1, 1987. 2010, c. 9, s. 73 (7).

86 [...]

Subrogation

(4) The Superintendent is subrogated to the rights of the administrator of a pension plan in respect of which the Superintendent authorizes payment from the Guarantee Fund in satisfaction of a pension, deferred pension, pension benefit or contribution guaranteed under section 84 (guaranteed benefits). R.S.O. 1990, c. P.8, s. 86 (4); 1997, c. 28, s. 206.

Superintendent's orders

Order re administration in contravention of Act

87. (1) Subject to section 89, the Superintendent may make an order requiring an administrator or any other person to take or refrain from taking any action in respect of a pension plan or a pension fund if the Superintendent is of the opinion, upon reasonable and probable grounds,

(a) that the pension plan or pension fund is not being administered in accordance with this Act, the regulations or the pension plan;

(b) that the pension plan does not comply with this Act and the regulations; or

(c) that the administrator of the pension plan, the employer or the other person is contravening a requirement of this Act or the regulations. 2010, c. 9, s. 75. [...]

Order re preparation of report

(4) Subject to section 89, the Superintendent may make an order requiring an administrator to take an action specified in subsection (5) if the Superintendent is of the opinion,

(a) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are not consistent with accepted actuarial practice;

(b) that the assumptions or methods used in the preparation of a report required under this Act or the regulations in respect of a pension plan are inappropriate in the circumstances for the pension plan, whether or not those assumptions or methods are otherwise consistent with accepted actuarial practice; or

(c) that a report submitted in respect of a pension plan does not meet the requirements and qualifications of this Act, the regulations or the pension plan. 2010, c. 9, s. 75; 2010, c. 24, s. 39 (1).

Same

(5) An order under subsection (4) may include, but is not limited to, requiring the preparation of a new report and specifying the assumptions or methods or both to be used in the preparation of the new report. 2010, c. 9, s. 75.

89 [...]

Notice re terms and conditions of approval or consent

(4) If the Superintendent intends to refuse to give an approval or consent or intends to attach terms and conditions to an approval or consent under this Act or the regulations, other than a consent referred to in subsection (3.0.1) or (3.1), the Superintendent shall serve notice of the intended decision, together with written reasons for it, on the applicant for the approval or consent. 2010, c. 24, s. 42 (8).

Pension Benefits Act, R.R.O. 1990, Reg. 909: General

30. (1) This section applies to a pension plan that provides defined benefits guaranteed in whole or in part by the Guarantee Fund. O. Reg. 570/06, s. 6 (2).

(2) A wind up report for a pension plan shall be prepared by,

(a) determining the value of any additional voluntary contributions, including interest on such contributions, and providing for the immediate payment from the pension fund to each member, former member or retired member of the additional voluntary contributions made by him or her, plus interest;

(b) determining the liabilities for the commuted value of all benefits under the plan in respect of each member, former member and retired member, including,

(i) accrued benefits for members not yet vested under the terms of the plan,

(ii) escalated adjustments that have been made before the effective date of the wind up,

(iii) plant closure benefits payable on plan wind up,

(iv) permanent layoff benefits payable on plan wind up,

(v) funded consent benefits,

(v.1) benefit enhancements resulting from the application of section 74 of the Act, and

(vi) funded special allowances,

but not including the value of,

(vii) amounts determined under clause (a),

(viii) escalated adjustments that have not been made as of the effective date of the wind up,

(ix) Revoked: O. Reg. 570/06, s. 6 (4).

(x) prospective benefit increases, and

(xi) benefits provided under a qualifying annuity contract or a contract issued under the *Government Annuities Act* (Canada) if the contract was issued before the 1st day of January, 1988;

(c) increasing the liabilities determined under clause (b) in respect of each member, former member or retired member so that the liabilities in respect of him or her are not less than the minimum value of the required contributions made by him or her to the plan;

(d) allocating the liabilities determined under clauses (b) and (c) among,

(i) employment in Ontario,

(ii) employment in each designated jurisdiction, and

(iii) employment other than employment referred to in subclauses (i) and (ii);

(e) determining the difference between the solvency assets and the value of any additional voluntary contributions determined under clause (a), and allocating the difference among the categories of employment set out in clause (d) in proportion to the liabilities allocated under clause (d) to each of the categories;

(e.1) despite clause (e), if the pension plan is a designated multi-jurisdictional pension plan and if an agreement referred to in subsection 5.1 (1) of the Act provides for the allocation of the assets of the pension plan in accordance with paragraph 3 of subsection 100 (4) of the Act, allocating the assets in accordance with that agreement;

(f) determining the Ontario wind up liability;

(g) if the Ontario assets exceed the Ontario wind up liability, first applying the Ontario assets to provide for the Ontario wind up liability and then applying any remaining Ontario assets to provide, on an equitable basis determined by the person preparing the report and acceptable to the Superintendent, for those benefits included in calculating the basic Ontario liabilities but not included in calculating the Ontario wind up liability;

(h) dealing with the portion of the plan assets allocated for the provision of benefits resulting from employment in each designated jurisdiction in accordance with the laws of the jurisdiction; and

(i) Revoked: O. Reg. 342/10, s. 4 (2).

(j) dealing on an equitable basis with the portion of plan assets allocated for the provision of benefits from any other employment. O. Reg. 712/92, s. 18; O. Reg. 570/06, s. 6 (3, 4); O. Reg. 342/10, s. 4; O. Reg. 466/11, s. 2; O. Reg. 178/12, s. 30 (2-5).

(3) A wind up report shall describe everything done under subsection (2). O. Reg. 712/92, s. 18.

(4) This section as it read immediately before November 26, 1992 continues to apply with respect to a pension plan with an effective date of wind up before November 26, 1992. O. Reg. 178/12, s. 30 (6).

34. [As it read on the wind up date]

(1) Where an order has been made under subsection 83 (1) of the Act in respect of a plan where the effective date of the wind up is before the Regulation date and when the order is made the Ontario assets of the plan are less than its Ontario wind up liability, the administrator shall provide benefits under the plan in accordance with this section as it read immediately before the Regulation date. O. Reg. 712/92, s. 21; O. Reg. 307/98, s. 15 (1).

(2) Where an order has been made under subsection 83 (1) of the Act in respect of a plan where the effective date of the wind up is on or after the Regulation date and when the order is made the Ontario assets of the plan are less than its Ontario wind up liability, the administrator shall provide benefits under the plan in accordance with this section. O. Reg. 712/92, s. 21; O. Reg. 307/98, s. 15 (2).

(3) For purposes of this section,

“modified Ontario wind up liability” means the Ontario wind up liability excluding any liability for benefits described in subsection 47 (2). O. Reg. 712/92, s. 21.

(4) For purposes of this section,

“Guaranteed Benefit liability” means the total liability of the plan for benefits guaranteed by the Guarantee Fund and other amounts guaranteed by the Guarantee Fund, excluding the amount by which the contributions made by any member, plus interest, for such guaranteed benefits and other amounts exceeds the liability for the member’s guaranteed benefits and other amounts. O. Reg. 712/92, s. 21.

(5) If, on the date an order is made under subsection 83 (1) of the Act in respect of a plan, the Ontario assets of the plan are less than its Ontario wind up liability, the administrator shall pay to each person entitled on wind up to payment of benefits guaranteed by the Guarantee Fund or other amounts guaranteed by the Guarantee Fund, the greater of,

(a) the sum of,

(i) 100 per cent of the benefits and other amounts for the person included in the calculation of the Guaranteed Benefit liability, and

(ii) the amount, determined under subsection (6), related to all other benefits for the person included in the calculation of the Ontario wind up liability; and

(b) the value of the person’s contributions to the plan plus interest. O. Reg. 712/92, s. 21; O. Reg. 307/98, s. 15 (3).

(6) The amount referred to in subclause (5) (a) (ii) shall be determined as follows:

1. If the Ontario assets of a plan are less than its modified Ontario wind up liability, the amount to be used for purposes of subclause (5) (a) (ii) for the person shall be determined by,

i. calculating the ratio of the Ontario assets of the plan to its modified Ontario wind up liability, and

ii. multiplying the ratio obtained under subparagraph i by the value of 100 per cent of the benefits in respect of the person, included in the calculation of the modified Ontario wind up liability but not included in the calculation of the Guaranteed Benefit liability in respect of the person.

2. If the Ontario assets of a plan are equal to or exceed its modified Ontario wind up liability, the amount to be used for purposes of subclause (5) (a) (ii) for the person shall be the sum of,

i. 100 per cent of the benefits included in the calculation of the modified Ontario wind up liability in respect of the person but not included in the calculation of the Guaranteed Benefit liability for such person, and

ii. the total of the benefits referred to in subsection 47 (2) for the person, multiplied by the ratio of,

A. the amount by which the Ontario assets exceed the modified Ontario wind up liability,

to,

B. the amount by which the Ontario wind up liability exceeds the modified Ontario wind up liability. O. Reg. 712/92, s. 21.

(7) On application by the administrator, the Superintendent shall allocate from the Guarantee Fund and pay to the plan sufficient money to provide, together with the Ontario assets, for the benefits determined under this section. O. Reg. 712/92, s. 21; O. Reg. 307/98, s. 15 (4).

34.1 (1) This section applies if the Guarantee Fund applies to a pension plan with a wind up date before December 8, 2010. O. Reg. 466/11, s. 3.

(2) If, when the order is made declaring that the Guarantee Fund applies to the pension plan, the plan's Ontario assets are less than its Ontario wind up liability,

(a) the administrator of the plan shall provide benefits under the plan in accordance with section 34 of this Regulation as it read on December 31, 2011; and

(b) on application by the administrator, the Superintendent shall allocate from the Guarantee Fund and pay to the plan sufficient money to provide, together with the Ontario assets, for those benefits. O. Reg. 466/11, s. 3.

47. [...]

(2) The following pension benefits and ancillary benefits are not guaranteed by the Guarantee Fund:

1. Consent benefits, other than funded consent benefits.

2. Special allowances, other than funded special allowances.

3. Prospective benefit increases.

4. Escalated adjustments.
5. Potential early retirement window benefit values.
6. Plant closure benefits, other than plant closure benefits for which a member has met the age and service eligibility requirements.
7. Permanent layoff benefits, other than permanent layoff benefits for which a member has met the age and service eligibility requirements. O. Reg. 712/92, s. 25 (1); O. Reg. 178/12, s. 45 (1).

Legislation Act, 2006, S.O. 2006, c. 21, Sched. F

Rule of liberal interpretation

64 (1) An Act shall be interpreted as being remedial and shall be given such fair, large and liberal interpretation as best ensures the attainment of its objects. 2006, c. 21, Sched. F, s. 64 (1).

Same

(2) Subsection (1) also applies to a regulation, in the context of the Act under which it is made and to the extent that the regulation is consistent with that Act. 2006, c. 21, Sched. F, s. 64 (2).