

## Addendum

A question is raised in the document entitled, "Memorandum on the Administration of the CN Pension Plan", as to the documentation which constitutes the CN trustee pension plan. In my opinion the By-Law containing the Consolidated Rules of the 1935 and 1959 Plans, and By-Law No. 80 concerning the investment of funds by the Company in its capacity as Trustee, together constitute the Pension Plan. It is usual drafting practice for there to be a trust deed (apart from the plan) which creates the office of trustee, provides for the appointment and discharge of the trustees, and sets out their duties and powers, which includes the power of investment. The trustees determine their investment policy within the scope of the power given to them by this deed. It is widely considered undesirable to have any outside body or person with the power to determine policy for the trustee or trustees, especially when that body or person is the employer or, for that matter, the labour union. Under trust law it would be most undesirable if the trust is truly to be seen as an independent arrangement having as its sole purpose the benefit of all the members, namely, active employees, retired employees, and other pensioners, such as surviving spouses. See, e.g., *Cowan v. Scargill*, [1984] 2 All E.R. 750.

If it would be helpful for me to add a closing comment, I would reiterate my support of the recommendation that CN divorce itself from the role of trustee, and transfer this task to another who is independent of both employer and employees. At least, as an alternative, the trustees — with the usual plenary powers of such an office — should be drawn from both the employer and the employees, provided it is recognized by each such nominee that he or she sits as a trustee on behalf of all plan members, and not in any way as a mandatory of the Company or of the union. See *Cowan v. Scargill*, *supra*. I would also commend that after 40 years of the consolidated Plans, during which time the attitude of society towards the nature and role of pension plans and pension funds has so dramatically changed, the moment has come for the redrafting of the Plan. In my opinion much needs to be thought through afresh in the structure and administration both of the trusteeship and of the plan; the present Consolidated Rules are often repetitive, there are ambiguities in the relationship of the two sets of rules, and there are silences, for instance, on surpluses, where a contemporary plan would provide. There are also instances where the policies of the Plan should be considered. For example, no interest is paid on employee withdrawals (Rule 144(9)(a)); this is a provision which may be thought to ill-fit a generation which is striving for equity and portability. In short, in my opinion there is a good case for termination of the consolidated 1935 and 1959 Plans, and their replacement with a totally new Plan.

Whether benefits should be changed at all, or in any new Plan, is a matter for others to decide, but it may be that in the present climate of collective agreements over wages and benefits it might assist all sides if a study could be conducted on the advantages and fiscal possibilities of some indexing, in place of regular ad hoc increases.

(Signed)  
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