

# PENSION BULLETIN

December, 1998

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*The Financial Services Commission of Ontario Act, 1997, the Pension Benefits Act, R.S.O. 1990, c.P.8, Regulation 909 (as amended), the terms of the pension plan and trust, if any, and the policies and practices of FSCO should be considered in determining specific legal requirements, and professional advice should be sought.*

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## General Announcements

### Financial Services Commission of Ontario

The Financial Services Commission of Ontario (FSCO) was created on July 1, 1998, as an arm's-length agency of the Ministry of Finance. FSCO integrates the operations of the former Ontario Insurance Commission, Pension Commission of Ontario, and Deposit Institutions Division of the Ministry of Finance. FSCO is comprised of three key parts: the Commission or "Board"; the Financial Services Tribunal (Tribunal); and the Superintendent and Staff.

As an integrated regulator, FSCO merges Ontario's regulatory activities governing pensions, insurance, trust companies, credit unions, caisses populaires, co-operatives and mortgage brokers, into one body. FSCO's mandate is to enhance consumer confidence and public trust in the regulated sectors; and also to make recommendations to the Minister on matters affecting the regulated sectors.

### The Board

The Board is the oversight body of FSCO, and is comprised of five members: The Chair, Eileen Gillese; two Vice-Chairs, Martha Milczynski and Colin McNairn; the Director of Arbitrations, Elisabeth Sachs; and the Superintendent of Financial Services, Dina Palozzi. As Superintendent, Ms. Palozzi is also CEO of FSCO. The Chair and Vice-Chairs of the Board are also the Chair and Vice-Chairs of the Tribunal.

The Board's role is to provide regulatory services that protect the public interest and enhance public confidence in the regulated sectors; make recommendations to the Minister of Finance (Minister) about the regulated sectors; provide resources necessary for the proper functioning of the Tribunal; recommend to the Minister and the Lieutenant Governor-in-Council fees and assessments to cover regulatory costs; establish conflict of interest guidelines for the Superintendent, the Board, Tribunal Members, and staff; publish and deliver to the Minister

an annual statement of priorities of FSCO, and provide an annual report.

### Financial Services Tribunal

The Financial Services Tribunal is an independent, adjudicative body composed of nine to 15 members (currently 13), including the Chair and two Vice-Chairs. The Tribunal has exclusive jurisdiction to exercise the powers conferred under the *Financial Services Commission of Ontario Act* and other Acts that confer powers on or assign duties to the Tribunal. It also has exclusive jurisdiction to determine all questions of fact or law that arise in any proceeding before it. As well, the Tribunal has authority to make rules for the practice and procedure to be observed in a proceeding before it; and to order a party to a proceeding before it to pay the costs of another party or the Tribunal's costs of the proceeding.

### Members of the Financial Services Tribunal

#### Chair

Ms. Eileen E. Gillese was appointed Chair of the Board and Chair of the Financial Services Tribunal on July 8, 1998, for a one year term. Dean of the Law Faculty of the University of Western Ontario, she has been a Professor of the Faculty of Law, University of Western Ontario, for the past 15 years. Dean Gillese teaches pension law, administrative law, trust law, property law, legal research and writing. Between 1991 and 1994, she was Associate Dean, Administration. She has also been Associate Dean, Academic.

First appointed a member of the Pension Commission of Ontario ("PCO") in 1988, Dean Gillese became Vice-Chair of the PCO in 1989 and served as Chair of the PCO from 1994 to 1996.

Dean Gillese has received the 3M Fellowship for Excellence in Teaching, the University of Western Ontario's Edward G. Pleva Gold Medal for Excellence



in Teaching, and the Excellence in Teaching Award from the Legal Society of the Faculty of Law. Prior to joining academia, she was a lawyer with Reynolds, Mirth and Coté.

A Rhodes Scholar, Dean Gillese graduated from Oxford University with a B.C.L. First Class in 1980 and a B.A. Hons. Jurisprudence in 1979. In 1980 she received the Wadham College Prize for Academic Distinction. She also obtained a Bachelor of Commerce with distinction from the University of Alberta where she was Vice-President, Finance and Administration of the Students' Union.

#### *Vice-Chairs*

Ms. Martha Milczynski was appointed Vice-Chair of the Board and Vice-Chair of the Financial Services Tribunal on July 8, 1998, for a three year term.

Ms. Milczynski is a partner in the law firm of Gowling, Strathy & Henderson. She holds a B.A., University of Toronto, 1981, an LL.B. from Osgoode Hall Law School, 1987, and was called to the Bar of Ontario in 1989. Ms. Milczynski specializes in the area of pensions and benefits, and also practices labour and employment law and litigation. She was a member of the PCO's Legal Advisory Committee, a past member of the Executive of the Pension and Benefits Section of the Canadian Bar Association of Ontario ("CBAO") and is currently a member of the Canadian Pension and Benefits Institute and the International Foundation of Employee Benefits. Ms. Milczynski is on the editorial board of *Pension Planning* (Federated Press) and has been a contributor to the CBAO Pension & Benefits Newsletter. In addition, she has written a number of articles on pension matters, with a focus on fiduciary duties and liabilities.

Mr. Colin McNairn was appointed Vice-Chair of the Board and Vice-Chair of the Financial Services Tribunal on July 8, 1998, for a three year term. A partner in the Toronto-based law firm of Fraser &

Beatty, Mr. McNairn practices corporate and commercial law and specializes in financial services with particular reference to insurance. He holds a B.A. from McMaster University, an LL.B. from the University of Western Ontario and an LL.M. from Harvard University.

Mr. McNairn was a Professor of Law at the University of Toronto from 1967 until he joined Fraser & Beatty in 1975. He has authored and co-authored books on constitutional law and freedom of information and privacy and is the editor of the annual *Consolidated Insurance Companies Act of Canada, Regulations and Guidelines* (Carswell).

Mr. McNairn served as Director of the Ontario Insurance Legislation Review Project, whose report "Insuring for the Future" was published in 1991 and as Research Director for the Parliamentary Committee on Equality Rights, whose report "Equality for All" was published in 1985.

#### *Members*

Ms. Darcie L. Beggs continues her appointment to the PCO as a member of the Financial Services Tribunal. Originally appointed a member of the PCO on December 6, 1991, for a three year term, she was re-appointed on December 6, 1994, for a three year term, and on December 6, 1997 for a one year term. Ms. Beggs is Senior Research Officer, Pension and Benefits Specialist with the Canadian Union of Public Employees (CUPE).

Ms. Kathryn M. Bush continues her appointment to the PCO as a member of the Financial Services Tribunal. Originally appointed a member of the PCO on June 17, 1993, for a three year term, Ms. Bush was re-appointed for a three year term on June 17, 1996. Ms. Bush was appointed Vice-Chair of the PCO on May 14, 1997. Ms. Bush is a lawyer with the firm Blake, Cassels & Graydon. Her practice centres on the areas of pensions and taxation.



Mr. Louis Erlichman continues his appointment to the PCO as a member of the Financial Services Tribunal. He was appointed a member of the PCO on June 17, 1998, for a six month term. Mr. Erlichman has been Canadian Research Director for the International Association of Machinists and Aerospace Workers (“IAM”) since 1978. The IAM represents 55,000 Canadian workers in a wide range of Canadian industries. Mr. Erlichman works out of the IAM’s National Office in Ottawa. He provides research support on economic and collective bargaining issues, pensions, benefits and other matters to IAM locals and staff across the country.

From 1987 to 1995, Mr. Erlichman was Chairman of the Canada Pension Plan Advisory Board, which advised the responsible federal Minister on issues related to the Canada Pension Plan. He is a graduate in Economics from the University of Toronto and the London School of Economics. Before joining the IAM, Mr. Erlichman worked for the Canadian federal government, and in Uganda and Tanzania as an economic adviser.

Mr. Bill Forbes continues his appointment to the PCO as a member of the Financial Services Tribunal. He was appointed a member of the PCO on March 25, 1998, for a three year term. Since September, 1991, Mr. Forbes has been Director, Pensions, Investments & Insurance at Queen’s University in Kingston. Prior to that, he was a Vice President at Towers Perrin in the Toronto office. Mr. Forbes is a Fellow of the Canadian Institute of Actuaries and a Chartered Financial Analyst.

Ms. Elizabeth Greville continues her appointment to the PCO as a member of the Financial Services Tribunal. She was appointed a member of the PCO on February 8, 1996, for a three year term. Ms. Greville is a senior consultant with Towers Perrin. Her previous positions included Assistant General Counsel, Pension and Finance, at Ontario Hydro, and a Principal of William M. Mercer Ltd., both in Toronto and London,

UK. Ms. Greville holds a B.A. (Hons) from the University of British Columbia, and an LL.B from Osgoode Hall Law School.

Mr. Joseph P. Martin was appointed a member of the Financial Services Tribunal on July 8, 1998, for a three year term. Mr. Martin graduated from the University of Western Ontario with an Honours Business degree; he earned a CA degree with Clarkson Gordon & Co. Mr. Martin was employed in the food business for 12 years in various capacities ranging from financial management to general management, including that of Vice President of Consumer Products for the Canadian operations of a large multi-national company. Employed for 18 years with The Co-operators Group of Companies, as Chief Financial Officer and Vice President of Finance and latterly as Chief Executive Officer; Mr. Martin served for several years as Chairman of the Board of Trustees of The Co-operators Pension Plan, a defined contribution plan. He served as a Director on Insurance Industry boards - The Facility Association and the Property and Casualty Insurance Corporation. Mr. Martin represented Canada on the Board of the International Co-operative and Mutual Insurance Federation, the umbrella organization for co-operative insurance organizations from around the world. He has been involved with the broader co-operative and credit union movement, including terms as a Director of Co-operative Trust of Canada and of Credit Union Central system. Now retired, Mr. Martin sits as the outside trustee for a co-operative defined benefit pension plan.

Mr. Christopher (Kit) S. Moore was appointed a member of the Financial Services Tribunal on July 1, 1998, for a three year term. Mr. Moore served as Chair of the PCO from March 24, 1997, to June 30, 1998. He was first appointed a member of the PCO on June 8, 1994, coincident with his retirement as a senior pension actuary with a national consulting firm in Canada. His prior positions included pension consulting responsibilities with another large



consulting firm in Canada, and a 20-year career covering actuarial positions in a major Canadian insurance company. Mr. Moore is Past President of the Canadian Institute of Actuaries and continues to contribute actively within the profession. He has taken a particular interest in the debate on the future of the Canada Pension Plan.

Ms. Judith E. Robinson continues her appointment to the PCO as a member of the Financial Services Tribunal. She was appointed a member of the PCO on May 14, 1997, for a three year term. Ms. Robinson has been with George Weston Limited since 1980, currently as Senior Director, Pension and Benefits, and serves as trustee of the Canadian Commercial Workers Industry Pension Plan. She was a pension consultant with Wm. M. Mercer Ltd., and worked in the actuarial and investment departments at the Manufacturers' Life Insurance Company.

Ms. Joyce A. Stephenson continues her appointment to the PCO as a member of the Financial Services Tribunal. She was appointed a member of the PCO on October 28, 1992, for a three year term. She was reappointed on October 29, 1995, for a three year term and again on November 4, 1998. Ms. Stephenson is Director, Pension and Benefits, with Maple Leaf Foods Inc. Ms. Stephenson is Past Director of the Association of Canadian Pension Management, a Member of the Ontario Regional Council of the Canadian Pension and Benefits Institute and a Member of the Toronto Board of Trade.

Mr. David E. Wires continues his appointment to the PCO as a member of the Financial Services Tribunal. He was appointed a member of the PCO on February 26, 1997, for a three year term. Mr. Wires is a partner of the Toronto law firm McCague, Wires, Peacock, Borlack, McInnis & Lloyd. He practises as an advocate before the Ontario Court (General Division), the Ontario Court of Appeal, Ontario administrative tribunals, and commercial arbitration panels.

## Superintendent and Staff

The Superintendent of Financial Services administers and enforces the *Financial Services Commission of Ontario Act, 1997* and all other *Acts* that confer powers on or assign duties to the Superintendent. The Superintendent exercises the powers and duties conferred upon the Superintendent by these *Acts*; supervises the regulated sectors and is responsible for the financial and administrative affairs of FSCO. In carrying out her responsibilities the Superintendent is supported by a staff of approximately 400.

## Pension Staff

FSCO has a streamlined staff structure which delivers co-ordinated regulation, lower compliance costs, improved service and stronger consumer protection. Common areas have been combined for greater efficiency and ease of regulation. At the same time, however, the specialized expertise that has been developed in the program areas, has been preserved.

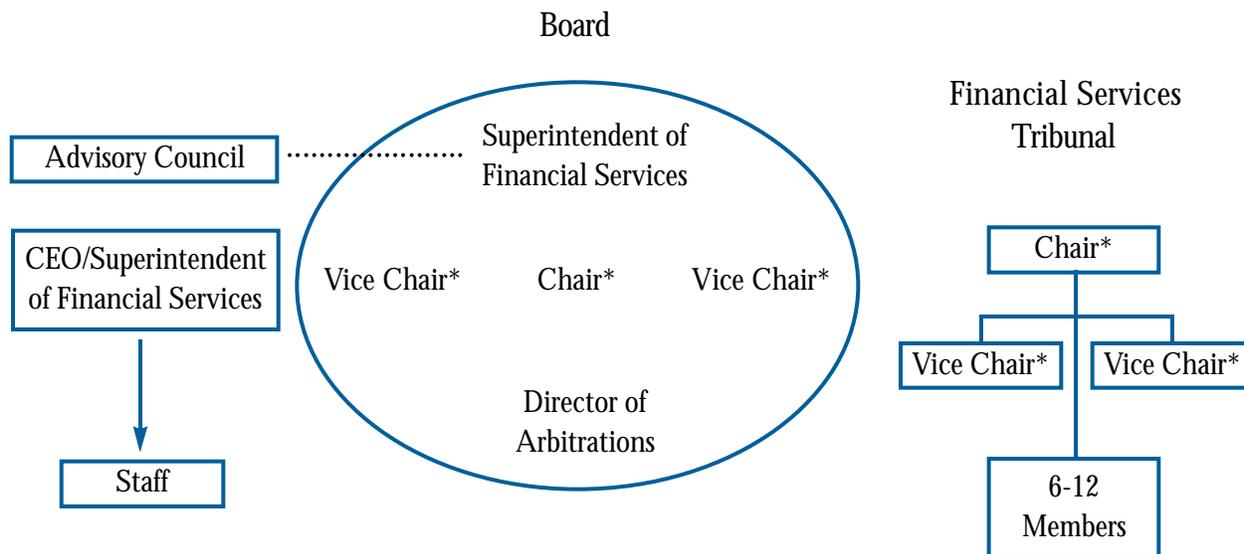
For example, the Pension Plans Branch has remained intact, with Pauline Dawson as Director. The Legal Services Branch includes a distinct pension counsel unit. And, Pension Policy has been maintained as a distinct unit within the Policy and Communications Branch, with Nurez Jiwani as Director.

## Staffing Changes

There have been some staffing changes within the Pension Plans Branch. David Gordon has replaced Rick Kennedy as Senior Technical Consultant; David can be reached at 416-226-7795. Marilyn Wang is now the Senior Manager of the Operations Branch; Marilyn can be reached at 416-226-7830. Nancy Kelly is the ASPIRE Project Co-ordinator and can be reached at 416-226-7817.



Financial Services Commission of Ontario



\* the Chair and Vice Chairs of the Board are also the Chair and Vice Chairs of the Tribunal



FSCO Website - [www.fSCO.gov.on.ca](http://www.fSCO.gov.on.ca)

The PCO had established a web presence in early 1998. Since then, a combined FSCO website has been established to keep all stakeholders informed and up-to-date, and provide consumers with easy access to information on the sectors regulated by FSCO.

## ASPIRE

In 1995 the Pension Commission of Ontario launched a project known as ASPIRE – Affordable Strategies for Process Innovation in Regulation – a multi-year initiative to restructure the pension regulatory process by streamlining procedures and capitalizing on information technology. The long-term objective is to use computerized screening to identify high-risk situations requiring close investigation. Ultimately, plan administrators will have the option of filing forms and other documents electronically, and plan members will have electronic access to FSCO services and information. In the short term, FSCO will continue implementation by redesigning forms to collect only essential information and by proceeding with the selection of a technology vendor for the project.

ASPIRE has tremendous significance for the pension industry. Through innovative technology, customer service will be improved and the cost of service delivery will be reduced.

Some elements of the ASPIRE redesign have been presented to industry representatives. During August and September, 1998, industry representatives were invited to attend presentations for the ASPIRE project. The presentation and comments from participants will be available for review on FSCO's website.

Additional comments can be submitted to:

Nancy Kelly  
ASPIRE Project Co-ordinator  
[nkelly@fSCO.gov.on.ca](mailto:nkelly@fSCO.gov.on.ca)

## New Address

Effective November 23, 1998, the Pension Plans Branch is located at 5160 Yonge Street, 4th floor, Toronto, Ontario M2N 6L9.



## Contacts for Plan Specific Enquiries

Allocations	Officer	Telephone
(DB) Agriculture/Mining/Construction plans (DC) M plans	David Allan	226-7803
(DB) Finance plans (DC) # and CAA-CHA plans	Andrew Gibbons	226-7811
(DB) Public Admin./Printing/Publishing plans (DC) F plans	Penny McIlraith	226-7822
(DB) Trade/Commercial plans (DC) T plans	Stanley Chan	226-7806
(DB) Rubber/Plastics	Gino Marandola	226-7820
(DB) Transportation/Equipment/Electrical plans (DC) W, X, Y and Z plans	Larry Martello	226-7821
(DB) Food/Beverages plans (DC) L and N plans	Irene Mook-Sang	226-7824
(DB) Textiles/Paper plans (DC) S plans	Jaan Pringi	226-7826
(DB) Primary Metals/Machinery plans (DC) D and O plans	Rosemine Jiwa-Jutha	226-7816
(DB) Non-Metallic/Chemicals plans (DC) G and I plans	Lynda Ellis	226-7808
(DB) A-BRI plans (DC) J plans	Rosemine Jiwa-Jutha	226-7816
(DB) BRO-CONR plans (DC) U plans	Jaan Pringi	226-7826
(DB) Cons-DS plans (DC) A plans	Irene Mook-Sang	226-7824
(DB) DU-FZZ plans (DC) P plans	Gwen Gignac	226-7812
(DB) G-HAZ plans (DC) H plans	Sharon Polischuk	226-7819
(DB) HEA-KMZ plans (DC) CHB-CZZ	David Allan	226-7803
(DB) KNA-MOQ plans (DC) B plans	Andrew Gibbons	226-7811
(DB) MOR-PNZ plans (DC) K plans	Gino Marandola	226-7820
(DB) POL-SHE plans (DC) R plans	Penny McIlraith	226-7822
(DB) SHI-TORO plans (DC) E plans	Stanley Chan	226-7806
(DB) TORR - #s (DC) Q&V	Gino Marandola	226-7820



## Joint Audits

FSCO and Revenue Canada are initiating a program of conducting joint audits. Under the program, examiners from both Revenue Canada and FSCO will conduct their audits simultaneously while visiting an employer's office. Due to differing regulatory concerns between Revenue Canada and FSCO, separate audit reports will be prepared and each organization will independently carry out any follow up activities to resolve identified compliance concerns.

To date three test audits have been initiated to test the program, two of which have been completed. An independent accounting firm was retained to assist and evaluate the program. FSCO is pleased with the test results to date. The accounting firm was also asked to provide comments on the adequacy of the audit program. They concluded that, "The programme is well organized. It separates compliance between the Income Tax Act and the Pension Benefits Act. It also separates testing into the four main risk areas namely funding, benefits calculated, benefits paid and asset management."

## Advisory Committees

### *FSCO Pension Investment Advisory Committee*

(chair vacant)

Jim Franks,  
Frank Russell Canada Limited

Bruce J. Grantier,  
Scotia Investment Management Limited

Claire O. Kyle,  
TD Investments

Thomas E. Phelps,  
Noranda Inc.

Robert R. Rafos,  
Newcastle Capital Management Inc.

Marc L. Rouillard,  
SEI Financial Services Limited

Alfred G. Wirth,  
Wirth Associates Inc.

### *FSCO Actuarial Advisory Committee*

(chair vacant)

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MLH + A Inc.

Art Bicknell,  
Sun Life Assurance Company of Canada

Sylvie Charest,  
William M. Mercer Limited

K. Paul Duxbury,  
The Segal Company Limited

Karen Figuerido,  
Towers Perrin

Patrick F. Flanagan,  
Eckler Partners Limited

Karen G. Long,  
KPMG Actuarial, Benefits & Compensation Inc.

Kem Majid,  
Watson Wyatt

Jean-Claude Primeau,  
William M. Mercer Limited

Rob Rosenblat,  
AON Consulting Inc.

Alnasir H. Samji,  
Towers Perrin

Allan H. Shapira,  
Hewitt Associates

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Richard Farrar,  
Doane Raymond

Wayne Gladstone,  
O. M. E. R. S.

Marie Holland,  
KPMG

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Price Waterhouse

Douglas Isaac,  
Coopers & Lybrand

Neil Jacoby,  
Aurion Capital Management Ltd.

Ron Koehli,  
The Institute of Chartered Accountants

Bryan Kogut,  
BDO Dunwoody Ward Mallette

Greg P. Shields,  
The Canadian Institute of Chartered Accountants

Kenneth J. Vallillee,  
Arthur Andersen & Co. SC

Karen A. Yule,  
Ernst & Young

*FSCO Legal Advisory Committee*

Dona Campbell, Chair  
Sack Goldblatt Mitchell

Leigh Ann Bastien  
William M. Mercer Limited

Jeremy Forgie,  
Blake Cassels & Graydon

Peter K. Fritze,  
Tory, Tory, Deslauriers & Binnington

Murray Gold,  
Koskie & Minsky

Bernard A. Hanson,  
Cavalluzzo Hayes Shilton McIntyre & Cornish

Priscilla H. Healy,  
Towers, Perrin

Rose Mark,  
State Street Trust Company Canada

Gary F. Nachshen  
Stikeman, Elliott

Mary M. Picard  
Fraser & Beatty

Clifton P. Prophet  
Gowling, Strathy and Henderson

Douglas Rienzo,  
Osler, Hoskin and Harcourt

**Volunteers Wanted for Consultation Roster**

To all administrators and sponsors of pension plans registered with the Superintendent of Financial Services:

We are looking for a limited number of pension plan administrators and sponsors to submit their names for a consultation roster.

Individuals on the roster would be called upon from time to time to participate in consultations, including the review of draft forms, guidelines and other documents.

It is hoped that this roster will facilitate timely and efficient consultation with interested plan administrators and sponsors on selected projects.

If you are interested in participating, please contact Mathew Ou, Senior Policy Analyst of the Financial Services Commission of Ontario's Pension Policy Unit at (416) 226-7772.



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## Legislative Changes / Regulatory Policies

SECTION	Procedures - Hearings
INDEX NO.	P520-784
TITLE	Continuation of Proceedings for Certain Applications Under the Current PBA once the <i>Financial Services Commission of Ontario Act, 1997</i> (FSCO) comes into Force.
APPROVED BY	The Pension Commission of Ontario
PUBLISHED	Mail Distribution (Apr. 24/98)
EFFECTIVE DATE	March 26, 1998

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It is anticipated that the FSCO Act (Bill 140) will come into force on July 1, 1998. Section 213(2) of that Act reads as follows:

Despite subsection (1), the Pension Commission of Ontario, as it was constituted immediately before this section comes into force, shall continue to exist for the sole purpose of concluding and disposing of hearings and proceedings that, before the day this section comes into force, were commenced before the Commission but not concluded.

Once Section 213(2) is in force, any proceeding commenced prior to July 1, 1998 before the Pension Commission tribunal under the current PBA will continue to be dealt with by the Pension Commission as it exists prior to July 1, 1998.

With respect to matters where the Pension Commission tribunal is the first instance decision-maker under the current PBA, the Pension Commission will consider a proceeding to have been commenced prior to July 1, 1998 if the following action has been taken:



Type of Proceeding Under Current PBA	Proceeding Commences on Date That Action Described Below is Taken, prior to full Proclamation of Bill 140*
I. Application for consent to withdraw surplus (section 78, PBA) a) wound-up plan	<p>The employer files its written notice of the application with the Commission Registrar, prior to transmitting it pursuant to s. 78(2). The proceeding commences on the date the notice of application is received by the Registrar, as evidenced by the Registrar's date stamp.</p> <p>The employer must file its complete application, including evidence that section 78(2) has been satisfied, with the Commission Registrar within one year after commencing the proceeding, as evidenced by the Commission Registrar's date stamp on the initial notice of application.</p>
b) continuing plan	Same as above.
II. Application for consent to refund of member or former member contributions (sections 63(7) & (8), PBA)	The plan administrator files its written application with the Commission Registrar. The proceeding commences on the date the application is received by the Registrar, as evidenced by the Registrar's date stamp.
III. Application for:	
a) a declaration that the PBGF applies to a pension plan (sections 83 & 90(1)(a), PBA)	The plan administrator files its written application with the Commission Registrar. The proceeding commences on the date the application is received by the Registrar, as evidenced by the Registrar's date stamp.
b) an allocation from the Guarantee Fund (Reg. 909, ss. 34(7))	The plan administrator files its written application with the Commission Registrar for an allocation from the Guarantee Fund with the Commission. The proceeding commences on the date the application is received by the Registrar, as evidenced by the Registrar's date stamp.
IV. Application for an order requiring administrator to take specific action respecting a report (sections 88 & 90(1)(b), PBA)	Any person affected by the report files a written application with the Commission Registrar. The proceeding commences on the date the application is received by the Registrar, as evidenced by the Registrar's date stamp.
V. Application for consent to refund of overpayment or expenses (ss. 78(4), PBA)	The employer files its written application with the Commission Registrar. The proceeding commences on the date the application is received by the Registrar, as evidenced by the Registrar's date stamp.

\* All requirements of the PBA, Regulation 909 and Commission policies as they existed prior to July 1, 1998 remain in force for purposes of these proceedings.



SECTION	Superintendent of Financial Services
INDEX NO.	S850-001
TITLE	General Announcement: The Status of Published PCO Policies under FSCO
APPROVED BY	Superintendent of Financial Services
EFFECTIVE DATE	July 1, 1998

## Introduction

The *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c.28 (“FSCO Act”), which was fully proclaimed on July 1, 1998, amends the *Pension Benefits Act*, R.S.O. 1990, c.P.8 (“PBA”). The FSCO Act replaces the Pension Commission of Ontario (“PCO”) with the Financial Services Commission of Ontario (“FSCO”). The FSCO Act also establishes the Superintendent of Financial Services (“Superintendent”) in place of the Superintendent of Pensions.

The PBA is further amended to provide that all decisions of first instance will be made by the Superintendent, including those decisions previously made by the Pension Commission.

This policy addresses the status of existing PCO policies, given the proclamation of the FSCO Act.

*Note: While this policy is meant to be a guideline, the Superintendent is not bound by it. Furthermore, the Superintendent is not bound by information or advice given by FSCO staff. This policy does not alter any of the requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 (“Regulation”). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern.*

## Status of Existing PCO Policies

1. All existing PCO policies remain in effect. If an existing policy conflicts with the FSCO Act, the policy must be read to be consistent with the FSCO Act. All policies published by the PCO will be reviewed, confirmed or updated as required.
2. Except as noted in point 3, references in existing policies to “Pension Commission of Ontario” should be read as “Superintendent of Financial Services”.
3. The exceptions to point 2 are the Pension Commission’s procedures related to its hearing activities. Under the FSCO Act, hearings will be conducted by the Financial Services Tribunal (“Tribunal”) and the Tribunal is publishing its own practices and procedures.



SECTION	Superintendent of Financial Services
INDEX NO.	S850-100
TITLE	Delegation of the Superintendent's Authorities – Financial Services Commission of Ontario Act, 1997, ss. 5(3)
APPROVED BY	Superintendent of Financial Services
EFFECTIVE DATE	July 1, 1998

### Introduction

The *Financial Services Commission of Ontario Act, 1997, S.O. 1997, c.28* ("FSCO Act"), which was fully proclaimed on July 1, 1998, amends the *Pension Benefits Act, R.S.O. 1990, c.P.8* ("PBA"). The FSCO Act replaces the Pension Commission of Ontario with the Financial Services Commission of Ontario ("FSCO"). The FSCO Act also establishes the Superintendent of Financial Services ("Superintendent") in place of the Superintendent of Pensions.

The PBA is further amended to provide that all decisions of first instance will be made by the Superintendent, including those decisions previously made by the Pension Commission.

Under the FSCO Act, the Superintendent is authorized to delegate any power or duty, including the duty to make decisions or proposed decisions on applications submitted to the Superintendent. Schedule A of this policy sets out the delegations of the Superintendent's powers and duties pursuant to subsection 5(3) of the FSCO Act.

*Note: While this policy is meant to be a guideline, the Superintendent is not bound by it. Furthermore, the Superintendent is not bound by information or advice given by FSCO staff. This policy does not alter any of the requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 ("Regulation"). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern.*

### Delegation of Authority

In order to provide for the efficient administration of the PBA, the Superintendent is delegating a number of the Superintendent's powers and duties. This policy contemplates two levels to which the Superintendent's powers and duties may be delegated:

1. Director of the Pension Plans Branch.
2. Staff: Persons holding the position of Pension Officer; Co-ordinator, Insolvencies; or Consultant in the Pension Plans Branch. The authorities delegated to Staff are also delegated to the Director of the Pension Plans Branch.



## Exercise of Non-Delegated Authorities

A Review Committee has been established that will review those matters the Superintendent will decide. The Review Committee consists of the Director of the Pension Plans Branch and the Director of the Policy and Communications Branch, with legal counsel acting as an advisor. The Review Committee will make a recommendation to the Superintendent. The Superintendent will review all submissions and related documents, including the Review Committee's recommendation, and form her own conclusions. These conclusions will be reflected in the Superintendent's Notice of Proposal or final decision, as the case may be.



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## SCHEDULE A

### Powers Delegated to Director of the Pension Plans Branch of the Financial Services Commission of Ontario

#### Statutory Authority Description

section 15	Issue acknowledgements of applications for registration of pension plans
section 16	Issue certificates of registration for pension plans
section 17	Issue notices of registration for amendments to pension plans
section 26(1)	Require a pension plan administrator to transmit written notice containing an explanation of an adverse amendment
section 26(2)	Register an adverse amendment or revised amendment following the expiry of 45 days after the date the last notice sent in accordance with s. 26(1) was transmitted
section 42(7)	Approve payment under s. 42(1) & (7), where no terms or conditions are imposed
section 43(3)	Approve purchase under s. 43(1) & (2), where no terms or conditions are imposed
section 70	Approve wind-up report
section 70(3)	Approve payment out of a pension fund where notice of proposal to wind up the plan has been given
section 71(1)	Appoint administrator where pension plan does not have one
section 80(4)	Approve a transfer of assets from one pension fund to the pension fund of the pension plan provided by the successor employer, where no terms or conditions are imposed
section 81(4)	Approve a transfer of assets from the pension fund of the original pension plan to the pension fund of the new pension plan, where no terms or conditions are imposed
section 81(8)	Approve a transfer of assets from one pension fund to another pension fund, where no terms or conditions are imposed
section 86(3)	Register notice of lien and charge in the proper land registry office on the real property of an employer(s) who provided a pension plan for amounts paid out of the Guarantee Fund as a result of the wind up, in whole or in part, of the pension plan
section 89(7)	Carry out the proposal stated in the notice of proposal, when no hearing is requested within the time limit
section 98(1)	Require an employer, administrator or any other person to provide information, within the required time period, to determine if the PBA and Regulation are being complied with
section 105	Extend any procedural time limit
section 112(3)	Authorize the giving of notices or documents or reasonable notice of the contents of notices or documents to persons by public advertisement or otherwise where it is not reasonable to give the notice or document to all or any of the persons individually



## SCHEDULE B

Persons holding the Position of Pension Officer; Co-ordinator, Insolvencies; or Consultant in the Pension Plans Branch, Financial Services Commission of Ontario

### Statutory Authority Description

section 15	Issue acknowledgements of applications for registration of pension plans
section 16	Issue certificates of registration for pension plans
section 17	Issue notices of registration for amendments to pension plans
section 26(2)	Register an adverse amendment or revised amendment following the expiry of 45 days after the date the last notice sent in accordance with subsection 26(1) was transmitted



SECTION	Superintendent of Financial Services
INDEX NO.	S850-200
TITLE	Filing Applications with the Superintendent of Financial Services - PBA ss. 63(7) & (8), 78, 79, 83, 88, 89, as amended - Regulation 909 s. 34(7)
APPROVED BY	Superintendent of Financial Services
EFFECTIVE DATE	July 1, 1998

### Introduction

The *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (“FSCO Act”), which was fully proclaimed on July 1, 1998, amends the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 (“PBA”). The FSCO Act replaces the Pension Commission of Ontario (“PCO”) with the Financial Services Commission of Ontario (“FSCO”). The FSCO Act also establishes the Superintendent of Financial Services (“Superintendent”) in place of the Superintendent of Pensions.

The FSCO Act makes several important amendments to the PBA in relation to certain applications. This policy outlines the general procedure for filing six types of applications with the Superintendent under the PBA. It concerns only those applications that were decided by the Pension Commission in the first instance before the full proclamation of the FSCO Act.

*Note: While this policy is meant to be a guideline, the Superintendent is not bound by it. Furthermore, the Superintendent is not bound by information or advice given by FSCO staff. This policy does not alter any of the requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 (“Regulation”). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern.*

### Status of Applications before the PCO prior to July 1, 1998

1. Subsection 213(2) of the FSCO Act provides that the Pension Commission, as it existed prior to July 1, 1998, “shall continue to exist for the sole purpose of concluding and disposing of hearings and proceedings that, before the day this section comes into force, were commenced before the Commission but not concluded.” Applicants should refer to policy P520-784 (“Continuation of Proceedings for Certain Applications Under the Current PBA once the *Financial Services Commission of Ontario Act, 1997* comes into Force”).

### Status of existing PCO policies

2. Over the years, the PCO has published policies that address these six types of applications. Although the FSCO Act changes decision-making processes, the compliance requirements for the applications have not changed. An applicant must satisfy the Superintendent that the application complies with the PBA and Regulation. The applicant should also demonstrate compliance with the relevant policies published by the former PCO and FSCO.



3. All references to “Pension Commission of Ontario” or “Superintendent of Pensions” in the policies that address these six types of applications should now be read as “Superintendent of Financial Services.” Applicants should refer to policy S850-001 (“General Announcement: The Status of Published PCO Policies under FSCO”)
4. Policies published from 1996 onwards are available on the Telix (BBS) system. The policies will soon be available on the FSCO website. The Internet address is <<http://www.fSCO.gov.on.ca>>.
6. The Superintendent’s proposed decision will be served on the applicant and any other person, as provided in the PBA, by way of a notice of proposal with written reasons.
7. A person on whom the notice of proposal is served is entitled to a hearing before the Financial Services Tribunal (“Tribunal”) under s. 89(6) if the person delivers to the Tribunal written notice requiring a hearing within 30 days after being served with the notice of proposal.

### Applications to the Superintendent

In this part, all section numbers refer to the PBA unless otherwise noted.

5. For the following applications, the Superintendent has the authority to propose (i) to consent or refuse to consent or (ii) to make an order or refuse to make an order, by serving a notice of proposal:
    - a) Application by an employer for consent to pay it the amount it overpaid into the pension fund or an amount it paid that should have been paid out of the pension fund ss. 78(4), 89(3.2)
    - b) Application by an employer for consent to pay it surplus from a continuing or wound-up plan ss. 78, 79, 89(3.1)
    - c) Application for an order declaring that the PBGF applies to a pension plan ss. 83, 89(2)(d.1)
    - d) Application for an order requiring the administrator to take action respecting a report ss. 88, 89(2)(f)
  8. The Superintendent has the authority to consent to the following applications without serving a notice of proposal, if the consent is not subject to terms or conditions:
    - a) Application to refund member or former member contributions ss. 63(7) & (8)
    - b) Application for an allocation from the PBGF s. 34(7) of the Regulation
- These decisions will be communicated to the applicant, along with written reasons.
9. If the Superintendent proposes i) to refuse to consent; or ii) to attach terms or conditions to a decision described in paragraph 8, above, the Superintendent will serve a notice of proposal, as required by s. 89(4), which will include written reasons.
  10. The notice of proposal will be served on the applicant and any other person, as provided in the PBA.
  11. A person on whom the notice of proposal is served is entitled to a hearing before the Tribunal under s. 89(6) if the person delivers to the Tribunal written notice requiring a hearing within 30 days after being served with the notice of proposal.



## Principles of the Decision-Making Process

12. The Superintendent's decisions or proposed decisions will comply with the PBA and Regulation.
13. The following principles will guide the Superintendent's decision-making:
  - a) It will be effective and efficient.  
It will include appropriate time frames.
  - b) It will be fair and equitable.  
Decisions will be made on an impartial basis by the Superintendent or a delegate.  
Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities").
  - c) It will display integrity .  
Decisions will be based on an objective and consistent application of the legislation.
  - d) It will be open and transparent.  
The application process, the decision-maker and the time frames for decisions will be published.

## The Application Process

### *General*

14. a) The onus is on the applicant to satisfy the Superintendent that an application complies with the requirements of the PBA and Regulation. The applicant should also demonstrate compliance with the relevant policies. It is the applicant's responsibility to consider whether plan-specific circumstances warrant the inclusion of additional information or documentation supporting the application.

- b) The applicant is required to provide notice to members, former members or other persons as required by the PBA, Regulation and policies. The applicant should also provide notice to the collective bargaining agent(s) that represents the members, former members or other persons affected by the application. The onus is on the applicant to satisfy the Superintendent that full and fair notice has been given.

15. The format required for various applications, as described in existing policies, remains unchanged. Applicants should refer to the relevant policies for assistance.

### *Required Documents and Acknowledgment of Receipt*

16. Applicants must file seven (7) copies of the application and any supporting materials.
17. The application, including attachments, should be submitted on 8-1/2" by 11" paper (subject to legibility).
18. These applications should be sent by first class mail or delivered to:

Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, Box 85  
Toronto, ON M2N 6L9

19. Upon receipt, the application will be acknowledged.



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### *Written Representations*

20. Upon receipt, a written representation made by any person will be acknowledged.

### *Staff Review*

21. Technical and professional support ensures quality control:  
These applications will be reviewed by a Pension Officer or Insolvency Coordinator in the Pension Plans Branch (“pension staff”), with appropriate technical and professional support.
22. Pension staff reviews application for completeness:
- a) If pension staff believe that an application is incomplete, they will advise the applicant in writing. The applicant must submit seven (7) copies of the documentation required to complete the application.
  - b) The review of the application will not proceed until the earlier of the date when:
    - (i) pension staff receive all of the information requested
    - (ii) the applicant submits a written request asking that the application proceed as is (i.e., without submitting the additional information staff have requested); or
    - (iii) the time period for a response, as set out in the letter from pension staff, expires.
23. Pension staff review of the application for compliance:
- a) Pension staff will review the application and any supporting documentation for compliance with the PBA and Regulation.
  - b) If any compliance concerns are identified by staff, the applicant and any person who has made written representations will receive a letter outlining the concerns.

- c) The letter will specify the time period which the applicant and any other person have to provide a written response, if they wish to have the response considered in the decision-making. Seven (7) copies of the written response must be submitted to the Superintendent.

### *Consideration by the Superintendent*

24. a) Following a review of the application and all related materials, the Superintendent will issue a proposed or final decision, as provided in the PBA.
- b) All decisions, proposed or final, with reasons will be communicated to the applicant and any other person, as provided in the PBA.

### *Time Line*

25. The decision or notice of the proposed decision will be issued within 90 days after:
- a) a complete application is received; or
  - b) the applicant submits a written request asking that the application proceed as is, provided that the applicant complies with the time frames, as specified in pension staff’s correspondence.

### *Hearings in respect of a proposed decision of the Superintendent*

26. A proposed decision is subject to a hearing before the Tribunal if a person on whom the notice of proposal is served asks the Tribunal for a hearing within 30 days after being served with the notice of proposal (PBA, s. 89(6)).

### *Finalization of the Proposed Decision*

27. If no notice requiring a hearing is received within the specified time frame, the Superintendent may carry out the proposed decision.



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SECTION	Surplus
INDEX NO.	S900-505
TITLE	Levels of Consent Required Pursuant to Section 10.1 of Regulation 909
APPROVED BY	The Pension Commission of Ontario
EFFECTIVE DATE	March, 1998

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Q. Where an employer applies under section 79 of the Act for the payment of surplus from a continuing pension plan, does section 10.1 of Regulation 909 have the effect of reducing the level of consent required from the pensioners under section 10 of the Regulation from 100% to 90%?

A. No. Under subsection 10(2) of Regulation 909, 100% of the pensioners must consent (i.e. former members in receipt of a pension payable from the pension fund). However, pursuant to subsections 10.1(1) and 10.1(3), if the Superintendent certifies to the Commission that the employer has obtained the consent of 90% of the pensioners to the terms of the surplus payment, then the court appointed representative may consent on behalf of those pensioners who have neither consented to nor objected to the terms of the surplus payment.

In addition, subsection 10(2) requires the consent of:

- (i) 100% of the plan members, and
- (ii) 100% of all the other persons entitled to receive benefits under the plan, such as former members who are not pensioners

(see definition of “former member”) or other persons who may be beneficiaries under the plan (such as spouses in certain circumstances).

Regulation 10.1 only allows the court appointed representative to consent on behalf of the pensioners. It does not allow the court appointed representative to consent on behalf of the “plan members” or other persons.

Q. Where an employer applies under section 79 of the Act for the payment of surplus from a wound-up plan, does section 10.1 of Regulation 909 increase the level of consent required from plan members under clause 8(1)(b)(ii) of the Regulation from 2/3rds to 90%?

A. No. Section 10.1 does not alter the level of consent required under clause 8(1)(b)(ii). Nor does it give the court appointed representative the authority to consent on behalf of plan members. Therefore, the consent required from plan members under clause 8(1)(b)(ii) is still 2/3rds.



- Q. Where an employer applies under section 79 of the Act for the payment of surplus from a wind-up plan, does section 10.1 of Regulation 909 alter the level of consent currently required from “former members and other persons” (excluding pensioners) under clause 8(1)(b)(iii), i.e., does it increase the level of consent to 90%?
- A. No. Section 10.1 does not alter the level of consent required from former members, including pensioners, or “other” persons under clause 8(1)(b)(iii). The level of consent required from former members (including pensioners) and other persons entitled to payments under the pension plan on the date of wind-up is “such number as the Commission considers appropriate in the circumstances”. Under clause 8(1)(b)(iii), the Commission determines the number who must consent on a case-by-case basis. This is solely within the Commission’s discretion.



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SECTION	Surplus
INDEX NO.	S900-506
TITLE	Subsections 79(2) and (4) of the PBA Came Into Effect January 1, 1998
APPROVED BY	Superintendent of Pensions & CEO, Financial Services Commission of Ontario
EFFECTIVE DATE	April, 1998

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Q. Has subsection 8(3) of Regulation 909 (“Reg. 909”) under the *Pension Benefits Act* (“PBA”) been extended?

A. Yes. Subsection 8(3) of Reg. 909 under the PBA was extended to December 31, 1998. The amendment extending the operation of section 8 of Reg. 909 under the PBA was filed on November 19, 1997 as O. Reg. 415/97.

Q. Have subsections 47(9) and (10) of Reg. 909 under the PBA been extended? If not, what is the effect?

A. No. Subsections 47(9) and (10) of Reg. 909 under the PBA were not extended by O. Reg. 415/97. The expiration of these subsections on December 31, 1997 has removed the temporary suspension of the application of subsections 79(2) and (4) of the PBA. As a result, effective January 1, 1998, this may have significant implications for surplus withdrawal applications for both ongoing plans and plans that are winding up.

These subsections state:

79(2) A pension plan that does not provide for the withdrawal of surplus money while the pension plan continues in existence shall be construed to prohibit the withdrawal of surplus money accrued after the 31st day of December, 1986.

79(4) A pension plan that does not provide for payment of surplus money on the wind up of the pension plan shall be construed to require that surplus money accrued after the 31st day of December, 1986 shall be distributed proportionately on the wind up of the pension plan among members, former members, and any other persons entitled to payments under the pension plan on the date of the wind up.



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SECTION	Surplus
INDEX NO.	S900-507
TITLE	Surplus Applications Affecting Members, Former Members or Other Persons with Employment in a Jurisdiction Other Than Ontario
APPROVED BY	Superintendent of Pensions & CEO, Financial Services Commission of Ontario
EFFECTIVE DATE	April, 1998

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A detailed administrative practice, which deals with applications to the Commission for surplus distribution to an employer pursuant to sections 78 and 79 of the *Pension Benefits Act* and section 8 of the Regulation, was made available to administrators in the Fall-Winter 1997 edition of the *PCO Bulletin* (Policy S900-504).

In addition to the material that must be attached to the Application as set out in paragraph 27 of Part I of Policy S900-504, the Application must also include:

1. disclosure as to whether or not the Application affects members, former members or other persons with employment in a jurisdiction other than Ontario;
2. where the Application affects members, former members or other persons with employment in a jurisdiction other than Ontario, a table indicating the number of members, former members or other persons in each jurisdiction, including Ontario, affected by the application; and

3. where the Application affects members, former members or other persons with employment in a jurisdiction other than Ontario, certification that the Applicant has complied with the requirements for surplus distribution of those jurisdictions with respect to the affected members, former members or other persons.

The information requirements contained in this notice apply to Applications involving both full and partial wind ups. In addition, the information requirements contained in this notice apply to Applications to the Commission for surplus distribution to an employer out of a continuing pension plan.

The Commission will not consider an Application complete unless the information required by this notice is included with the Application. Applicants are reminded that complete Applications must be submitted at least ninety days prior to the date of the Commission meeting at which the Applicant wishes to have the Application considered.



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SECTION	Surplus
INDEX NO.	S900-508
TITLE	Application by an Employer for Payment of Surplus from a Wound-up Plan - PBA ss. 78 and 79, as amended - Regulation 909 s. 8
APPROVED BY	Superintendent of Financial Services
EFFECTIVE DATE	July 1, 1998
REPLACES	S900-504

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Subsection 78(1) of the *Pension Benefits Act*, R.S.O. 1990, c. P. 8 (“PBA”), as amended by the *Financial Services Commission of Ontario Act, 1997*, S.O. 1997, c. 28 (“FSCO Act”), provides that surplus may not be paid to an employer unless the Superintendent of Financial Services (“Superintendent”) consents to the payment. The Superintendent shall not consent to an application to distribute surplus to an employer (“surplus application”) until specific requirements and conditions have been satisfied. Statements and documents supporting the applicant’s assertion that the requirements and conditions have been satisfied should be included in the surplus application to the Superintendent.

This policy replaces S900-504 (“Surplus Distribution to an Employer, PBA ss. 78 and 79 and O. Reg. 909 s. 8”) in respect of surplus applications filed with the Superintendent on or after July 1, 1998.

Subsection 213(2) of the FSCO Act provides that the Pension Commission, as it existed prior to July 1, 1998, “shall continue to exist for the sole purpose of concluding and disposing of hearings and proceedings that, before the day this section comes into force, were commenced before the Commission but not concluded.” Applicants should refer to policy P520-784 (“Continuation of Proceedings for Certain Applications Under the Current PBA once the *Financial Services Commission of Ontario Act, 1997* comes into Force”).

Note: *While this policy is meant to be a guideline, the Superintendent is not bound by it. Furthermore, the Superintendent is not bound by information or advice given by FSCO staff. This policy does not alter any of the requirements of the FSCO Act, PBA or Regulation 909, R.R.O. 1990 (“Regulation”). Where this policy conflicts with the FSCO Act, PBA or Regulation, the FSCO Act, PBA or Regulation govern.*



Part I of this policy provides the procedure for bringing a surplus application to the Superintendent on a full wind up pursuant to section 78 of the PBA and section 8 of the Regulation.

Part II of this policy provides the modifications to Part I which apply to a surplus application made to the Superintendent on a partial wind up pursuant to section 78 of the PBA and section 8 of the Regulation.

### General

The onus is on the applicant to satisfy the Superintendent that the surplus application meets the requirements of the PBA and the Regulation.

The applicant should also demonstrate compliance with all relevant policies, procedures and administrative practices.

Policy S850-200 (“Filing Applications with the Superintendent of Financial Services”) outlines the general procedure for filing those applications, including surplus applications, previously decided by the Pension Commission in the first instance before the full proclamation of the FSCO Act.

It is the applicant’s responsibility to decide whether plan specific circumstances warrant the inclusion of additional information or documentation to support the surplus application. For example, additional information about members or former members or additional plan documentation may be relevant in the following circumstances:

- the source of all or a portion of the assets of the pension fund can be traced to the pension fund of another pension plan;
- all or a portion of the liabilities of a pension plan were converted to liabilities determined on another basis (a plan conversion);
- there was a partial wind up at any time prior to the date of wind up; or
- all or a portion of the liabilities of a pension plan relate to members, former members or other persons with employment in a jurisdiction other than Ontario.

If information necessary for the Superintendent to approve a surplus application is missing, the Superintendent will not be able to consent.



The content of this policy is set out as follows:

## PART I

### Distribution of Surplus to an Employer on Full wind up

General Principles  
Notice of the Surplus Application  
Written Agreement  
The Surplus Application  
Filing the Surplus Application

## PART II

### Distribution of Surplus to an Employer on Partial wind up

Modifications to Part I for Partial Wind ups

## SCHEDULE I

Surplus Application Format and Explanatory Notes

## PART I

### Distribution of Surplus to an Employer on Full wind up

#### General Principles

1. Where an employer wants to be paid surplus on plan wind up, section 78 of the PBA provides that the employer must apply and that no payment may be made without the Superintendent's prior consent. Before the Superintendent can propose to consent to a surplus application, the applicant must satisfy the requirements of subsection 78(2) of the PBA concerning notice and disclosure of all plan provisions relevant to surplus entitlement on wind up. In addition, the requirements of subsections 79(3) and (4) of the PBA must be satisfied, as well as all the requirements of the Regulation.
2. Generally, an employer winding up a pension plan should not file a surplus application until after the payment of basic benefits out of the plan has been approved.
3. Compliance with the requirements of the FSCO Act, PBA, Regulation and conditions identified in any policy, procedure and administrative practice of the former PCO or of FSCO, which affects the surplus application, is the responsibility of the applicant.
4. Applicants are responsible for ensuring that the information contained in the surplus application and any supporting documents is complete and accurate.



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## Notice of the Surplus Application

### *Content*

5. The Notice of the surplus application required by subsection 78(2) of the PBA must include the information prescribed under subsection 28(5) of the Regulation.
6. With respect to clause 28(5)(c) of the Regulation (i.e., surplus attributable to employee and employer contributions), the methodology used to determine the surplus attributable to employee and employer contributions should be consistent with policy S900-801 (“Surplus Attributable to Employer and Employee Contributions on Plan Wind up”).
7. With respect to clause 28(5)(e) of the Regulation (i.e., the statement that written submissions may be made to the Superintendent within 30 days of receipt of the notice), the notice must state that written submissions are to be directed to the Superintendent.
8. With respect to clause 28(5)(f) of the Regulation (i.e., authority for surplus reversion), there must be full and complete disclosure of all provisions of the plan and trust documentation from inception that may be relevant in determining entitlement to the payment of surplus on wind up, including provisions in all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant.

The actual wording of all the provisions from the plan and trust documentation from inception that may be relevant to surplus entitlement and to the question of authority to make plan amendments must be cited in the Notice of the surplus application, along with a full analysis of their implications. The Notice of the surplus application must also include a complete

historical analysis of all the plan and trust and other documentation that may be relevant to determine whether the plan constitutes a trust. If the plan at any time constituted a trust, the historical analysis must demonstrate that any amendment to the trust that has bearing on surplus entitlement was valid.

Where the plan and trust documentation do not contain explicit provisions addressing surplus entitlement, this fact must also be disclosed in the Notice of the surplus application. It is important to note that if, as of January 1, 1998, the pension plan did not provide for the distribution of surplus on wind up, the applicant must refer to s. 79(4) of the PBA and its consequences for the surplus application.

If a surplus application requires a court order pursuant to subsection 8(2) of the Regulation, the applicant should refer to the procedure under policy S900-600 (“Making Application Under ss. 7a(2)(c)”).

9. With respect to clause 28(5)(g) of the Regulation (i.e., notice concerning access to copies of the wind-up report), if the office or location where the members were employed is closed, the employer must make and communicate alternative arrangements close to the location(s) where business was conducted for plan beneficiaries to review the wind-up report filed with the Superintendent in support of the surplus request.
10. The Superintendent may require that the Notice of the surplus application be re-transmitted if the Superintendent determines that the requirements of the PBA and the Regulation have not been satisfied, if conditions identified in any policy, procedure and administrative practice of the former PCO or FSCO affecting surplus applications have not been met, or if there has not been complete, full and fair disclosure of all



information that may be relevant, including the proposed surplus distribution agreement. The employer has a very high obligation of good faith to ensure that full and fair disclosure is given.

11. Subsection 28(5.1) of the Regulation requires that the employer file a copy of the Notice of the surplus application with the Superintendent before it is transmitted.

The Notice of the surplus application should be filed with the Superintendent by sending one (1) copy to:

Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, Box 85  
Toronto M2N 6L9

12. With respect to paragraph 7 and subparagraph 27(j), a copy of any written representations filed with the Superintendent will be forwarded to the employer.

#### *Transmitting the Notice of the Surplus Application*

13. After the employer files its Notice of the surplus application with the Superintendent, the employer is required to transmit the Notice of the surplus application to all persons listed in subsection 78(2) of the PBA. The employer must satisfy the Superintendent that full and fair notice has been given to those persons.
14. Transmittal must be by personal delivery or first class mail in accordance with subsection 112(1) of the PBA (see paragraphs 16 and 17).
15. Where the plan wind up results from an event affecting the employment of the members, such as a plant closure, all members participating in the plan on or after the date notice of the event is given must be included as members for purposes of the wind up, including the surplus distribution.

This requirement applies even if a member terminates or is terminated after the notice date but prior to the event actually occurring. Applicants should also refer to policy W100-101 (“Filing Requirements and Procedure”).

#### *Public Advertisement*

16. The Superintendent may authorize delivery of the Notice of the surplus application by public advertisement or otherwise in accordance with subsection 112(3) of the PBA if the Superintendent is satisfied that it is not reasonable to give individual notice to all persons in accordance with paragraph 14.
17. Where an applicant requests the Superintendent’s authorization to deliver the Notice of the surplus application by public advertisement, the information provided in the draft public advertisement submitted with the request to the Superintendent must clearly indicate the following:
  - (a) to whom the notice is addressed (e.g. former members and other persons entitled to payments from the wound-up plan or any applicable predecessor plan(s));
  - (b) the reason that these persons are being contacted (i.e., wind up of the pension plan in a surplus position and the surplus application);
  - (c) where the details of the surplus application will be made available; and
  - (d) information that persons to whom notice has been transmitted may make written representations to the Superintendent with respect to the surplus application within thirty (30) days after receiving the notice.

Again, the onus is on the applicant to ensure that full and fair notice and disclosure is given.



## Written Agreement

(Surplus applications pursuant to clause 8(1)(b) of the Regulation)

### *Content*

18. When considering the surplus application, the Superintendent must be satisfied that the employer has:
  - (a) provided the affected members, former members and other persons with full and fair disclosure in the copy of the Notice of the surplus application and a copy of the proposed surplus distribution agreement, before obtaining the written consent of these persons;
  - (b) provided the affected members, former members and other persons with an opportunity to obtain independent legal advice with respect to the Notice of the surplus application and the proposed surplus distribution agreement;
  - (c) given these persons sufficient time to consider the surplus application, before the employer obtains the written consent of these persons; and
  - (d) obtained the number of written agreements required under the Regulation.
19. The surplus distribution agreement must be in writing and must provide for:
  - (a) the name of the individual;
  - (b) the signature of the individual;
  - (c) the name of a witness;
  - (d) the signature of the witness; and
  - (e) the date on which it is signed.

### *Transmitting the Written Agreement*

20. In order to obtain the written agreements required under clause 8(1)(b) of the Regulation, a copy of the proposed surplus distribution agreement must be given to all persons listed in subsection 78(2) of the PBA. In accordance with subsection 112(1) of the PBA, transmittal must be by personal delivery or first class mail.

A copy of the proposed surplus distribution agreement should be transmitted along with the notice of the surplus application.

### *Written Agreements*

21. Normally, to satisfy subclause 8(1)(b)(iii) of the Regulation, an applicant should obtain the written agreement of at least two-thirds of the aggregate of those former members and other persons who are entitled to payments under the pension plan on the date of wind up. This requirement is subject to the Superintendent's discretion following a review of the circumstances of each surplus application.
22. The appropriate collective bargaining agent for the purposes of subclause 8(1)(b)(ii) of the Regulation is the collective bargaining agent who represents certain plan members at the date the collective bargaining agent signs the agreement on behalf of those members.
23. A collective bargaining agent may enter into a written agreement only on behalf of those plan members represented by the agent. Therefore, if a pension plan involves more than one bargaining agent, the written agreement of each bargaining agent is required.



24. If a pension plan is provided for both unionized and non-unionized members, in addition to the written agreement of the collective bargaining agent(s), the written agreement of at least two-thirds of those members not represented by the bargaining agent(s) must be obtained.
25. The written agreement of a collective bargaining agent who represents the members of the pension plan must be obtained, even where the collective bargaining agent does not bargain the pension plan.

### The Surplus Application

26. The format and content of the surplus application should be consistent with Schedule I to this policy.
27. All material required by the PBA and Regulation must be attached to the surplus application, including:
  - (a) A list, by class, of the names of members, former members or other persons who are affected by the wind up.
  - (b) A certified copy of the notice referred to in subsection 28(5), pursuant to subsection 28(6) of the Regulation.
  - (c) A statement that the employer has complied with subsection 78(2) of the PBA.
  - (d) A list, by class, of the names of members, former members or any other persons who received the Notice of the surplus application, the date the last Notice was transmitted and the form of delivery of the Notice.
  - (e) Copies of all plan and trust documentation from inception, including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee

notices, collective bargaining agreements, information brochures and any other documents that may be relevant to surplus entitlement. The applicant should highlight the parts of the plan and trust documentation that the applicant believes may be relevant to surplus entitlement. Full documents should be arranged in chronological order and clearly labelled.

- (f) Copies of the title page and the balance sheet (or any updated balance sheet) of the wind-up report as of the effective date of the wind up giving rise to the surplus application and the actuary's certification from the wind-up report or any supplemental wind-up report.

A supplement to a wind-up report will be required if it is discovered that the initial report does not reflect the surplus distribution proposals outlined in the surplus application.

- (g) Information required to be submitted to staff in accordance with policy S900-801 ("Surplus Attributable to Employer and Employee Contributions on Plan Wind up").
- (h) The approval by the Superintendent of the payment of basic benefits based on the wind-up report and any supplementary report.
- (i) A copy of the most recent collective agreement(s) if some or all of the affected members are represented by a collective bargaining agent(s).
- (j) Any written representations objecting to the surplus application received by the applicant directly or through the Superintendent, as well as any response(s) by the applicant.



- (k) Disclosure as to whether or not the surplus application affects members, former members or other persons with employment in a jurisdiction other than Ontario. Applicants should refer to policy S900-507 (“Surplus Applications Affecting Members, Former Members or Other Persons with Employment in a Jurisdiction Other Than Ontario”).

Where the surplus application affects members, former members or other persons with employment in a jurisdiction other than Ontario,

- i) a table indicating the number of members, former members or other persons affected by the surplus application in each jurisdiction, including Ontario; and
  - ii) certification that the applicant has complied with the requirements for surplus distribution of those jurisdictions with respect to the affected members, former members or other persons.
- (l) Any submissions which may be relevant to the surplus application.

Where other materials or information which may be relevant are discovered after the surplus application has been filed, such materials or information must be filed as an addendum to the initial surplus application (see paragraph 29).

- (m) Where the surplus application is made pursuant to clause 8(1)(b) of the Regulation,
- i) a copy of the proposed surplus distribution agreement;

- ii) a list, by class, of the names of members, former members or other persons who received a copy of the proposed surplus distribution agreement, the last date the agreement was transmitted and the form of delivery of the agreement;
  - iii) a sample copy of the written agreement obtained from a plan member, former member, or other person with respect to the proposed surplus distribution agreement; and
  - iv) copies of the written agreement(s) between the employer and any collective bargaining agent(s) that pertain to the surplus distribution agreement.
  - v) list of the members, former members or other persons who did not agree to the proposed distribution agreement or did not respond.
- (n) Where the surplus application is made pursuant to subsection 8(2) of the Regulation, the applicant should refer to policy S900-600 (“Making Application Under ss. 7a(2)(c)”). If the applicant has already obtained a court order concerning entitlement to surplus and distribution of funds from surplus, a copy of the court order must be attached to the surplus application.



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## Filing the Surplus Application

28. a) The general procedure is outlined in policy S850-200 (“Filing Applications with the Superintendent of Financial Services”).  
b) The surplus application, including attachments, should be submitted on 8-1/2” x 11” paper (subject to legibility).
29. The surplus application is filed with the Superintendent by sending seven (7) copies to:  

Superintendent of Financial Services  
Financial Services Commission of Ontario  
5160 Yonge Street, Box 85  
Toronto M2N 6L9

Seven (7) copies of any information or materials which are supplemental to the initial filing and which are required in order to complete the surplus application should be filed with the Superintendent.
30. Upon receipt, the surplus application will be acknowledged.
31. The Superintendent will not consider the surplus application unless the Superintendent has approved the payment of basic benefits on the basis of the wind-up report.
32. The applicant must forward a copy of the surplus application to the plan administrator.
33. For surplus applications made pursuant to clause 8(1)(b) of the Regulation, a copy of a sample signed written agreement should be included in each of the seven (7) copies submitted to the Superintendent. As well, two full sets of all of the signed written agreements obtained from plan members, former members, and other persons with respect to the disclosed surplus distribution agreement must be filed with the Superintendent. One set should include all the original signed written agreements.

## Review Process

34. a) If staff believe that an application is incomplete, they will advise the applicant in writing. The applicant must submit seven (7) copies of the documentation required to complete the application.  
b) The review of a surplus application will not proceed until the earlier of the date when:
  - i) staff receive all of the information requested;
  - ii) the applicant submits a written request asking that the surplus application proceed as is (i.e., without submitting the additional information that staff have requested); or
  - iii) the time period for a response, as set out in the letter from staff, expires.
35. Staff will then review the surplus application and all other filed materials for compliance with the FSCO Act, PBA, Regulation and relevant policies, procedures and administrative practices. If any compliance concerns are identified, staff will send a letter outlining their concerns to the applicant, the collective bargaining agent(s) of the members (if applicable), and any person who has made written representations under section 78(3) of the PBA.
36. Staff’s letter will specify the time period in which the applicant, the collective bargaining agent(s) of the members (if applicable) or any person who has made written representations under section 78(3) of the PBA must provide a written response to the compliance concerns, if they wish to have the response considered in the decision-making.  

Seven (7) copies of the written response must be submitted to the Superintendent.



37. The Superintendent's proposed decision will be served on the applicant and on any person who has made written representations under s. 78(3) of the PBA, by way of a notice of proposal with written reasons.
38. A person on whom the notice of proposal is served is entitled to a hearing before the Financial Services Tribunal ("Tribunal") under s. 89(6) of the PBA if the person delivers to the Tribunal written notice requiring a hearing within thirty (30) days after being served with the notice of proposal.
39. If no notice requiring a hearing is received within the specified time frame, the Superintendent may carry out the proposed decision.
40. Applicants should refer to policy S850-100 ("Delegation of the Superintendent's Authorities") for additional information on the decision-making process.

## PART II

### Distribution of Surplus to an Employer on Partial wind up

Part I procedures will apply with respect to partial wind ups subject to the following:

1. For the purpose of a surplus application under Part II of this policy, any reference to "full wind up" or "wind up" under Part I of this paper should be read as "partial wind up".
2. Those persons listed in subsection 78(2) of the PBA must receive the Notice of the surplus application by personal delivery or first class mail in accordance with subsection 112(1) of the PBA.
3. The following persons must also receive a copy of the proposed surplus distribution agreement:
  - (a) all persons who are affected by the partial wind up (i.e., those persons who are entitled to receive payment from the pension plan as a result of the event which gave rise to the partial wind up),
  - (b) all persons who ceased to be employed as a result of the event which gave rise to the partial wind up, and
  - (c) each collective bargaining agent that represents any members under the plan at the date of partial wind up.

The applicant must satisfy the Superintendent that full and fair notice has been given.

4. For the purposes of obtaining written agreement in accordance with subclause 8(1)(b)(ii) of the Regulation, the appropriate collective bargaining agent is the collective bargaining agent who represents certain plan members at the date the collective bargaining agent signs the agreement on behalf of those members.



No written agreement is required from a collective bargaining agent who, at the date of partial wind up, does not represent members affected by the partial wind up.

5. Where written agreement is required pursuant to subclause 8(1)(b)(ii) of the Regulation, and there is no collective bargaining agent who represents the members who are affected by the partial wind up, written agreement must be obtained from at least two-thirds of the members who are affected by the partial wind up.
6. For the purposes of subclause 8(1)(b)(iii) of the Regulation, the written agreement of at least two-thirds of the aggregate of the former members and other persons who are directly affected by the partial wind up should be obtained. This requirement is subject to the Superintendent's discretion following a review of the circumstances which are applicable to each individual surplus application.
7. The applicant must satisfy the Superintendent that the requirements of the PBA and Regulation have been met.

## SCHEDULE I

### Format and Content of the Application to the Superintendent for Consent to the Refund of Surplus to an Employer

#### Date

*Enter the date of the surplus application.*

#### Employer

*Provide the correct legal name of the employer making the surplus application.*

#### Pension Plan

*Provide the full registered name of the pension plan and the registration number.*

#### Applicant

*Provide the name, title and business address of the corporate officer authorized to act on the employer's behalf. (Unless otherwise indicated in the surplus application, all communication from the Superintendent and staff of FSCO will be directed to the agent or counsel who files the surplus application on the applicant's behalf.)*

#### Nature of the Surplus Application

*Provide a full description of the surplus application to the Superintendent with reference to the specific section(s) of the PBA and Regulation pursuant to which the surplus application is being made.*

*For example:*

*Application for the Superintendent's consent pursuant to subsection 78(1) of the Pension Benefits Act, R.S.O. 1990, c. P. 8, as amended, and clause 8(1)(b) of Regulation 909, R.R.O. 1990, as amended, to a payment of surplus to (provide full legal name of the employer) in the*



amount of \$ (show the amount sought at the effective date of wind up) as at (show the effective date of wind up) plus investment earnings thereon to the date of payment (add reference if employer is seeking any other adjustment in its request for the surplus refund).

This application includes a surplus distribution agreement whereby (x) per cent of the surplus as of the effective date of wind up will be distributed to the members, former members and other persons entitled to benefits as of the effective date of wind up in the form of indexed benefits.

*Appropriate modifications will be required for surplus applications based on a court order pursuant to subsection 8(2) of the Regulation.*

#### Actuary/Counsel

*Provide the name of any person acting as the agent or counsel for the employer making the surplus application, or acting on behalf of the members, former members or other persons. If there are no such persons, please indicate "None".*

Actuary for the Applicant (and name of firm)

Counsel for the Applicant (and name of firm)

Counsel for the Members/former members/  
union/etc.

Actuary for the Members/former members/  
union/etc.

#### Plan Administrator

*Provide the name and address of the person designated to act as plan administrator, if different from the corporate officer acting for the applicant employer.*

#### Collective Bargaining Agent

*Provide the name of the Collective Bargaining Agent(s) who represent any members or former members of the pension plan.*

#### Background

*Provide a brief summary of the background of the plan leading up to the surplus application including:*

- *the effective date of the plan;*
- *the classes of members covered by the plan;*
- *the basic benefit structure (e.g. "non-contributory", "flat benefit plan");*
- *a brief chronology of the plan and prior versions thereof, including any pension plan from which assets of the wound-up pension plan can be traced (include references to asset transfers to or from the pension fund of another pension plan, plan conversions, and partial wind ups that may have occurred prior to the date of wind up);*
- *the corporate history relevant to the plan and any predecessor plans, including the background to any changes in the name of the employer associated with the pension plan;*
- *the effective date and reasons for the wind up of the pension plan; and*
- *any other information which will assist in understanding the surplus application.*



### Subsection 78(2) of the PBA - Notice Requirements

*The applicant must satisfy the Superintendent that the persons listed in subsection 78(2) have received full and fair notice and that the requirements of the PBA and Regulation have been satisfied.*

#### (a) Subsections 28(5) and 28(5.1) of the Regulation

*Provide information indicating how the applicant has complied with*

- *subsection 28(5) and any related policies, procedures or administrative practices setting out the minimum content to be included in the Notice of the surplus application required under subsection 78(2) of the PBA. This minimum content does not alter the applicant's obligation to ensure that full and fair notice is given.*
- *subsection 28(5.1) which requires that a copy of the Notice of the surplus application be filed with the Superintendent prior to transmittal to the members, former members and other persons.*

#### (b) Subsection 28(6) of the Regulation

*Provide information demonstrating compliance with subsection 28(6) of the Regulation which requires that the surplus application be accompanied by a certified copy of the Notice of the surplus application signed by the corporate officer authorized to act for the applicant, a statement signed by that corporate officer that subsection 78(2) of the PBA has been complied with, the date the last Notice of the surplus application was distributed and details as to the classes of persons who received notice. Include reference to the attachment or tab at which the certified copy of the notice may be found.*

### Subsection 112(3) of the PBA - Alternate Service

*If, in lieu of individual notice, the Notice of the surplus application is transmitted by public advertisement, indicate the classes or groups who were served by the public advertisement, the dates and newspapers in which the advertisement ran and provide a copy of the advertisement.*

*If, in lieu of individual notice, the Notice of the surplus application is transmitted by an alternative form of notice other than public advertisement, indicate the classes or groups who were served by the alternative form of notice, the dates and method by which the alternative form of notice was served and provide a copy of the alternative form of notice.*

*Refer to the attachment or tab in the surplus application where a copy of the public advertisement or alternative form of notice and the Superintendent's authorization for alternative service are found.*

### Subsection 79(3) of the PBA - Conditions Precedent to a Proposal to Consent

*In the following sections, the applicant must satisfy the Superintendent that all the conditions in the PBA and Regulation have been met.*

#### (a) Clause 79(3)(a) - The Plan has a Surplus:

*The applicant must demonstrate that the plan has a surplus.*

*Provide the date of the letter from the Superintendent approving the distribution of the members' and former members' basic benefits. Refer to the attachment or tab at which extracts of the wind-up report and supplemental report and a copy of the Superintendent's letter may be found. Include in the surplus application a brief summary of the balance sheet for the plan as at the effective date of wind up along with an updated balance sheet if there has been any significant change in the figures.*



*For example:*

Balance Sheet	As at effective date of wind up	As of (current date)
Market value of assets	\$ .00	\$ .00
Liabilities		
Basic benefit entitlements	\$ .00	\$ .00
Liabilities for enhancements	\$ .00	\$ .00
Expenses	\$ .00	\$ .00
Surplus		
Surplus distribution agreement	\$ .00	\$ .00
To employees	\$ .00 (%)	
To employers	\$ .00 (%)	

- (b) Clause 79(3)(b) of the PBA - The Plan Provides for the Payment of Surplus to the Employer on the Wind up of the Pension Plan:

*The applicant employer must satisfy the Superintendent that the plan provides for the payment of surplus to the employer on wind up. Therefore, the surplus application must establish that the employer is legally entitled to the payment of surplus on wind up. The employer must provide a complete chronological history of the plan, and any predecessor or prior plans that may be relevant, and copies of all plan and trust documentation since inception, including all current and prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer. The employer must also provide a full analysis showing how it reaches the conclusion that it, and not the plan beneficiaries, is entitled to the surplus.*

*Where there are prior pension plans from which the current plan assets can be traced, or that that may otherwise be relevant, the history must take into account the prior plan texts, trust agreements, insurance contracts, employee booklets, employee notices, collective bargaining agreements, information brochures and any other documents that may be relevant to the Superintendent's determination of whether a plan provides for the payment of surplus to the employer.*

*Where any plan or trust documentation that may be relevant has been amended since its inception, the history must spell out the authority under the plan or trust to amend the provision or document. The history must also refer to all provisions or documents that do not support the surplus application.*



*The applicant should highlight the portions of the documents that may be relevant to the Superintendent’s decision on surplus entitlement, including those provisions that do not support the applicant’s claim to surplus. Complete documents must be included as attachment(s) to the surplus application and must be clearly labelled.*

*All documents must be complete, arranged in chronological order and clearly labelled. All portions of the documents that may be relevant, whether or not they support the applicant’s claim to surplus, must be highlighted.*

*As of January 1, 1998, if the pension plan did not provide for the distribution of surplus on wind up, the applicant must refer to subsection 79(4) of the PBA and its consequences for the surplus application.*

- (c) Clause 79(3)(c) of the PBA - Provision has been made for the Payment of All Liabilities of the Pension Plan:

*Outline the status of the distributions of basic benefits and surplus to members, former members and any other persons entitled to payments. If the Superintendent is not satisfied that adequate provision has been made for the payment of all liabilities of the pension plan, the Superintendent may propose to refuse the surplus application.*

Clause 8(1)(b) of the Regulation -  
Written Agreement

Provide a summary of the notices issued and signed surplus distribution agreements provided.

For example:

	Total Number	Notices Issued	Written Consents	(%)
Employer	_____	_____	_____	_____
Collective Bargaining Agent(s)	_____	_____	_____	_____
Members	_____	_____	_____	_____
Former Members/ Other Persons	_____	_____	_____	_____

Subsection 8(2) of the Regulation -  
The Court Order

- (a) Clause 8(2)(b) of the Regulation - Eligibility as a “Grandfathered Plan”:

*Provide information supporting the applicant’s position that the surplus application is eligible to proceed under subsection 8(2), the “grandfathering provision.”*

The applicant may make application pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 as *(enter the reason why the plan is a “grandfathered plan,” i.e., “the notice of proposal to wind up was filed prior to December 18, 1991” - enter the date the notice of proposal to wind up the plan was given to the Superintendent).*



(b) Clause 8(2) (a) of the Regulation -  
The Status of the Application to Court:

*Provide information concerning the status of the application to the court. Refer to the attachment which indicates the applicant's intention or where the copy of the order is located.*

The applicant has applied to the court for an order pursuant to clause 7a(2)(c) of O. Reg. 708/87 as that section read immediately before December 18, 1991 (*enter "and has obtained" or "and is to obtain"*) an order for payment of the surplus assets to the applicant on termination of the Plan.

Representations

*The employer must specify whether or not it received any objections or representations and attach to the surplus application copies of those objections or representations and any response(s) by the employer.*

Attachments

*Provide an index of all attachments to the surplus application. The attachments should be listed in the order that corresponds to the order of the subject matter under this document and, where applicable, in chronological order. Where a surplus application is bound, the relevant tab numbers and their contents should also be included in the index.*

Other Jurisdictions

*The applicant must disclose whether or not the plan has members, former members or other persons with benefits resulting from employment in a jurisdiction other than Ontario. Where the surplus application affects members, former members or other persons with benefits resulting from employment in a jurisdiction other than Ontario, the employer must include a table indicating the number of members, former members or other persons in each jurisdiction, including Ontario, affected by the surplus application. The applicant must also provide certification that the applicant has complied with the requirements for surplus distribution of those jurisdictions with respect to the affected members, former members or other persons. Applicants should refer to policy S900-507 ("Surplus Applications Affecting Members, Former Members or Other Persons with Employment in a Jurisdiction Other than Ontario").*

[ Note: *The process for reviewing surplus applications that affect members, former members or other persons with benefits resulting from employment in a jurisdiction other than Ontario is under review.* ]



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SECTION	Transfer Values
INDEX NO.	T800-901
TITLE	Subsidized Early Retirement and Bridge Benefits where Eligibility Requirements have been Met and Plan Provides for Transfer Options - PBA, R.S.O. 1990, Chapter P.8
APPROVED BY	The Pension Commission of Ontario
EFFECTIVE DATE	March, 1998

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Q. An employer currently provides a subsidized early retirement pension and bridge benefits for members who retire from active service. Members terminating prior to eligibility for early retirement are not eligible for any early retirement subsidies or bridge benefits (i.e. on early retirement, they receive the actuarial equivalent of the benefit at normal retirement age). Pursuant to subsection 42(3) of the Act, the plan sponsor now wishes to add a commuted value option for active members who terminate employment after eligibility for early retirement. Does the commuted value option need to reflect the full value of the early retirement subsidies and bridge benefits?

A. Yes, as long as the member has met all of the conditions of eligibility for the early retirement and bridge benefits in question. Note that employer consent is also deemed to be given pursuant to subsection 40(3) if all other conditions have been met.

Subsection 40(2) of the Pension Benefits Act, R.S.O. 1990, Chapter P.8 states that:

An ancillary benefit for which a member has met all eligibility requirements under the pension plan necessary to exercise the right to receive payment of the benefit shall be included in calculating the member's pension benefit or the commuted value of the pension benefit. (emphasis added)

This subsection provides that the value of all ancillary benefits *for which the member has met all eligibility requirements* (in this case the subsidized early retirement pension and bridge benefits) must be included in the calculation of the commuted value. Therefore, it is not acceptable to calculate and offer the commuted value for an eligible member without the early retirement subsidies or the bridging benefits. To comply with subsection 40(2) of the Act, the plan member's commuted value option must include these ancillary benefits. Alternatively, the commuted value option need not be added for those who are eligible for early retirement and bridge benefits.



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## Enforcement Matters

*[In this section, “Superintendent of Pensions” refers to the former Superintendent of Pensions under the Pension Benefits Act]*

### Court Cases Concluded Under the PBA and Regulations

#### *Maysfield Property Management (1987) Inc.*

On August 15, 1996, charges were laid against Maysfield Property Management (1987) Inc. (“Maysfield”) as employer and administrator of its pension plan, and against a director and officer of Maysfield. The charges relate to failure to comply with the Superintendent of Pension’s demand for information under s. 98 of the PBA, and to failure to file valuation reports, annual information returns and financial statements. The first appearance was October 1, 1996. The trial began on April 3, 1997, and was completed on June 25, 1997. Three counts against the director and officer related to the Superintendent of Pension’s demand for information under s. 98 of the PBA were dismissed. The Court reserved judgment on the remaining 16 counts.

On January 15, 1998, the Court rendered its decision. Maysfield was convicted on five counts of failing to file annual information returns with the PCO for five separate fiscal years. As Maysfield is a dissolved corporation, no penalty was sought against it. The director and officer Carl Rahey was also convicted on five counts of failing to file annual information returns with the PCO for five separate years. The Crown requested a fine of \$1,000.00 per count against Mr. Rahey, for a total of \$5,000.00. The Court imposed a fine of \$100.00 against Mr. Rahey on the first count and suspended sentence on the remaining four counts, noting that he is now 69 years old, that

he lost over a million dollars in the Maysfield business enterprise, and that none of the members of the Maysfield pension plan suffered any loss. Mr. Rahey was given 60 days to pay the fine.

#### *Ingadale Precision Products Ltd. and Ingadale Industries Inc.*

In November 1997, charges were laid against Ingadale Precision Products Ltd. and Ingadale Industries Inc. (“Ingadale”) as employer and administrator of the Retirement Plan for Employees of Ingadale Precision Products Ltd., and against two directors and officers of Ingadale. The charges relate to:

1. failure to file annual information returns in accordance with ss. 20(1) of the PBA;
2. failure to file a valuation report in accordance with ss. 14(1) and 14(7) of the Regulation;
3. failure to remit funds to the pension plan in accordance with ss. 55(2) of the PBA; and
4. failure to comply with a request for information made by the Superintendent of Pensions under s. 98 of the PBA.

On March 24, 1998, Ingadale Precision Products Ltd. pleaded guilty to failing to file an annual information return for the year ending June 30, 1994. The corporation was given a suspended sentence and placed on probation for one year. The terms of the probation were that Ingadale wind up its pension plan effective November 1, 1990. The remaining charges were withdrawn.



The Court considered this a sufficient deterrent for the following reasons:

- the corporation had no prior record;
- the principals of the corporation had been misled by Revenue Canada and London Life into believing that the plan had been suspended and that no filings were required. Revenue Canada wrote to Ingadale on August 21, 1991, giving it permission to suspend contributions for one year. London Life wrote to Ingadale on July 26, 1991, enclosing an amendment suspending the contributions, which was stated to be registered with London Life;
- the principals were relatively unsophisticated individuals who said they were confused by pension laws and who thought that the pension plan had been wound up when contributions were suspended by Revenue Canada and London Life;
- Ingadale began experiencing financial difficulties in the late 1980's, and eventually discontinued business in 1993 when its property was taken over by its mortgagee; and
- the six members of the plan, which included the two principals, sent acknowledgments to the PCO indicating that they were aware that contributions to the plan had ceased and that the plan was to be terminated as of November 1, 1990.



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## Superintendent of Pensions - Notices and Orders

*[In this section, “Superintendent of Pensions” refers to the former Superintendent of Pensions under the Pension Benefits Act]*

### Notices of Proposal to Make an Order

The Superintendent, pursuant to subsection 89(5) of the PBA, [Notice of Proposed Wind-up Order], issued Notices of Proposal to Make an Order pursuant to section 69 of the PBA as follows (date of notice of proposal to make an order indicated):

- 1) The Pension Plan for Designated Employees of Saracini Investments Limited, Registration Number 529339, (effective October 1, 1989), February 10, 1998
- 2) Transcrane Manufacturing Limited Pension Plan, Registration Number 0464842, (effective November 18, 1994), February 12, 1998
- 3) Retirement Plan for Salaried Employees of Cooper Canada - Plan A, Registration Number 240622, (partially wound up in relation to those members and former members of the Plan who were employed by Cooper Industries (Canada) Inc. (“Cooper”) at its Port Hope, Ontario location and who ceased to be employed by Cooper effective from March 26, 1991 to March 30, 1992 or the date the last Plan member employed by Cooper at its Port Hope location ceased employment, whichever is later, as a result of: (i) the discontinuance of part of the business of Cooper; (ii) the reorganization of the business of Cooper; or (iii) the discontinuance of all or a significant portion of the business carried on by Cooper at its Port Hope, Ontario location), July 2, 1998
- 4) Pension Plan for Hourly Employees of Frink Environmental Inc. & Eastern Steel Products Inc., Registration Number 0354506, (effective September 20, 1994), July 9, 1998
- 5) Pension Plan for Hourly Rated Employees of Hamilton Gear, a Division of Compro Limited, Registration Number C-12052, (effective September 20, 1994), July 9, 1998
- 6) Retirement Plan for the Employees of Sprout, Waldron of Canada Limited, Registration Number 597542, (effective August 4, 1986), July 17, 1998
- 7) Pension Plan for Hourly-Rated Employees of Barrymore Carpet Division of Carpita Corporation, Registration Number C-14852, (effective June 29, 1990), September 10, 1998
- 8) AM International Inc. Pension Plan (1979), Registration Number 0202044, (effective October 17, 1996), September 11, 1998
- 9) AM International Inc. Pension Plan for Management Employees, Registration Number 0361980, (effective October 17, 1996), September 11, 1998
- 10) AM International Inc. Pension Plan for Hourly Employees, Registration Number 0361998, (effective October 17, 1996), September 11, 1998



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### Notices of Proposal to Refuse to Approve a Partial Wind-Up Report Subsection 70(5) of the PBA

The Superintendent, issued Notices of Proposal to Refuse to Approve a Partial Wind-Up Report pursuant to subsection 70(5) of the PBA (date of notice of proposal to make an order indicated):

- 1) Procter & Gamble Inc. Core Pension Plan, Registration Number 0681163, (effective May 15, 1995), November 17, 1997

### Wind-Up Orders - Section 69 of the PBA

The Superintendent issued Orders, pursuant to section 69 of the PBA [Wind-up Orders], as follows (effective date of wind up and date of order indicated, respectively):

- 1) Pension Plan for Employees of John T. Hepburn, Limited, Registration Number C-5215, (effective July 6, 1994), October 27, 1997
- 2) Retirement Plan for the Employees of Cody's Stores Limited, Registration Number 0401588, (effective April 30, 1996), December 22, 1997
- 3) The W.G. Young Co. Limited and Affiliated Companies Employees Pension Plan, Registration Number 325290, (effective November 10, 1995), February 12, 1998
- 4) Transcrane Manufacturing Limited Pension Plan, Registration Number 0464842, (effective November 18, 1994), May 26, 1998
- 5) The Pension Plan for Designated Employees of Saracini Investments Limited, 529339, (effective October 1, 1989), June 3, 1998

- 6) Pension Plan for Hourly Rated Employees of Hamilton Gear, a Division of Compro Limited, Registration Number C-12052, (effective September 20, 1994), September 1, 1998
- 7) Pension Plan for Hourly Employees of Frink Environmental Inc. & Eastern Steel Products Inc., Registration Number 0354506, (effective September 20, 1994), September 1, 1998
- 8) Retirement Plan for the Employees of Sprout, Waldron of Canada Limited, Registration Number 0597542, (effective August 4, 1986), September 8, 1998



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## Tribunal Activities

### Appointments of Financial Services Tribunal Members

Name and Order-in-Council (O.C.)	Effective Appointment Date	Expiry Date
Gillese, Eileen Elizabeth (Chair) O.C. 1807/98	July 8, 1998	July 7, 1999
Milczynski, Martha (Vice-Chair) O.C. 1808/98	July 8, 1998	July 7, 2001
McNairn, Colin (Vice-Chair) O.C. 1809/98	July 8, 1998	July 7, 2001
Bush, Kathryn M. O.C. 904/97	May 14, 1997	June 16, 1999
Beggs, Darcie L. O. C. 2185/97	December 6, 1997	December 5, 1998
Erlichman, Louis O.C. 1592/98	June 17, 1998	December 16, 1998
Forbes, William M. O.C. 520/98	March 25, 1998	March 24, 2001
Greville, M. Elizabeth O.C. 2405/95	February 8, 1996	February 7, 1999
Martin, Joseph P. O.C. 1810/98	July 8, 1998	July 7, 2001
Moore, C.S. (Kit) O.C. 1591/98	July 1, 1998	June 30, 2001
Robinson, Judy O.C. 905/97	May 14, 1997	May 13, 2000
Stephenson, Joyce Anne O.C. 1930/95	November 4, 1998	November 3, 2001
Wires, David E. O.C. 257/97	February 27, 1997	February 26, 2000



## Hearings Before The Commission

[In this section, “Commission” refers to the Pension Commission of Ontario]

*Pension Plan for Unionized Employees of Asea Brown Boveri Inc. Located at London, Burlington and St. Jean, Registration Number 683433*

In July 1996, the Superintendent of Pensions issued a notice refusing to approve the wind-up report filed by Asea Brown Boveri Inc. (“ABB”) on the grounds that the wind-up report did not provide “grow-in” benefits in accordance with s. 74 of the PBA. ABB requested a hearing. Plan members belong to the CAW. The Union advised the Registrar that it wished to be a party to the hearing. In September 1996, ABB submitted revisions to the wind-up report and asked the Superintendent to withdraw his notice of proposal. The Superintendent and the union are considering ABB’s revised wind-up report and its request regarding the notice of proposal. In May 1997, the Superintendent requested that the matter be adjourned until the *GenCorp* case is decided. In July 1997, the matter was adjourned *sine die* for a period not exceeding one year. A pre-hearing conference is scheduled for January 22, 1999.

*Non-Contributory Pension Plan for Represented Employees at Parts Distribution Centres, Chrysler Canada Ltd., Registration Number 337808*

In November 1997, a former plan member, Mr. Dwyer, requested a hearing by the Commission for a declaration that he is entitled to a deferred pension or a lump sum payment under the plan. The hearing request was opposed by Chrysler, the CAW-Canada and CAW Local 1285.

A pre-hearing conference was held on January 29, 1998. A hearing on certain preliminary issues was held on May 20, 1998. The Commission dismissed the

application. The decision with reasons was released on August 19, 1998.

*Clergy Retirement Pension Plan of the Diocese of Hamilton*

In September 1996, the Superintendent of Pensions issued a notice proposing to order the Diocese of Hamilton to register its pension plan in accordance with ss.9(2) of the Act. The Diocese of Hamilton requested a hearing. A pre-hearing commenced in May 1997, and was continued in September 1997 and on February 27, 1998. Hearing dates were scheduled for October 13, 14, 15 and 16, 1998. By letter dated August 26, 1998, Revenue Canada advised that the pension plan is, in part a retirement compensation arrangement (RCA) as defined in subsection 248(1) of the *Income Tax Act*. The Superintendent requested that the hearing be adjourned *sine die* to allow the Superintendent to consider the matter.

*CWA/ITU Pension Plan (Canada), Registration Number 554717*

In March 1998, the Communications, Energy and Paperworkers Union of Canada (“CEP”) requested a s.89 hearing regarding a proposed partial wind up of the Plan. It asked the Commission: (a) to rescind the resolution of the Trustees to partially wind up the plan; (b) to order the Trustees and Administrator not to take any steps to realize the partial wind up; (c) to require the Plan to accept employer contributions on behalf of active members for work performed after December 31, 1997; and (d) to order the Trustee to fully consider dividing the Plan’s assets and liabilities on an equitable basis between a CWA/ITU Plan and a Union Plan based on the number of retirees and the number of active participants. Hearing dates are scheduled on February 22, 23, 24, 25 and 26, 1999.



*McDonnell Douglas Canada Ltd. Salaried Plan,  
Registration Number 520593*

In November 1996, the Superintendent advised certain former members of the McDonnell Douglas Plan that he would not order the partial wind up they had requested. In December 1996, an individual, on behalf of a group of former McDonnell Douglas Employees, requested a hearing regarding the Superintendent's refusal to order a partial wind up of the Plan.

A pre-hearing was held in July 1997, and continued in October and November 1997. A jurisdictional hearing was held on March 27, 1998. The hearing panel decided that the Commission has jurisdiction to hear this matter pursuant to Section 89 of the Act. Reasons for Decision were issued on May 25, 1998. Hearing dates were held November 4, 5 and 6, 1998, and will continue on February 2, 3 and 4, 1999.

*Pension Plan for Hospital Employees of the Sisters  
of St. Joseph for the Diocese of Toronto in Upper  
Canada, Registration Number 302851*

In February 1997, the Canadian Union of Public Employees, Locals No. 1144 and 1590 ("CUPE") requested a s. 89 hearing pursuant to the Superintendent's decisions dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, 302851, to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan and the Morrow Park Plan. Four of the orders requested were intended to prohibit the asset transfers. The other four orders requested sought: (a) declarations that the Plan and the new Plans constitute a multi-employer pension plan ("MEPP") established pursuant to a collective agreement or trust agreement, and (b) orders that the Plan be administered by a board of trustees of whom at least half are member representatives.

A pre-hearing conference was held in July 1997. A hearing on jurisdictional issues was held in January 1998. The hearing panel decided that the Commission has the jurisdiction to hold a hearing into whether the Pension Plan is a MEPP. A Disclosure Motion was heard on July 27, 1998 before the full panel. A decision with reasons was released on September 9, 1998. Hearing dates were held October 27 and 28, 1998 and November 17, 1998.

*Ontario Hydro Pension and Insurance Plan,  
Registration Number 352377*

In October of 1997, Ontario Hydro commenced an application in the Ontario Court (General Division) asking for a declaration that a dual valuation method was permissible under both the PBA and the Power Corporation Act. In December of 1997, the Power Workers Union asked the Commission to make an order under section 88 of the PBA requiring the plan administrator to cease using the dual valuation method and to submit a new report.

The Power Workers Union and the Society of Ontario Hydro Professional and Administrative Employees, the two respondents in the court application, brought a motion to have the court application dismissed or stayed on the ground that it was premature and that the Pension Commission was the appropriate adjudicative body to determine the issue. Intervention was granted to the Pension Commission of Ontario to participate in this motion as a friend of the court. The intervention motion was heard on February 2, 1998, and the prematurity motion was heard on February 2 and 3, 1998. On May 6, 1998, the court dismissed Hydro's application.

By letter dated June 22, 1998, the Power Workers Union withdrew their request for the Commission to deal with the matter.



On June 29, 1998, The Society of Ontario Hydro Professional and Administrative Employees requested that the Commission proceed with the matter. A pre-hearing conference was held on October 21, 1998.

In a separate matter, in March 1998, a former member, named Dr. Simon, of the Ontario Hydro Pension and Insurance Plan requested a hearing under s. 89 of the PBA, with respect to the refusal of the Superintendent of Pensions to issue a Notice of Proposal under s. 87 of the Act. A pre-hearing conference was held on September 16, 1998.

*Pension Plan for Employees of Zurich Canadian Holdings Limited, Registration Number 0319517*

In August 1996, a former member requested a hearing on the grounds that the Superintendent refused to order a partial wind up of the pension plan. The former member claims that a partial wind up should be ordered because a significant number of members ceased to be employed as a result of the reorganization of Zurich Canada. In the January 1997 pre-hearing, it was decided that the hearing would be held in two stages. Hearing dates were scheduled for November 1998 and March 1999. By letter dated September 30, 1998, the Applicant withdrew his Application in the matter.

*Pension Plan for Employees Catholic Cemeteries Archdiocese of Toronto, Registration Number 309278*

In March 1997, the Labourers' International Union of North America, Local 506, (the "Union") asked for a hearing on behalf of two seasonal employees pursuant to s. 89 of the PBA following the Superintendent's refusal to make orders requested by the Union.

The Union seeks the following orders: (1) that the Superintendent of Pensions require the Archdiocese of Toronto to admit the two seasonal employees as members of the Pension Plan for Employees Catholic Cemeteries - Archdiocese of Toronto, with service credit from their original dates of hire; (2) a declaration that the exclusion of seasonal employees from Plan membership contravenes s.31(3) of the PBA; and, (3) a declaration that the Superintendent of Pensions violated the principles of natural justice, and the PBA and Regulations, in failing to disclose to the Union and the seasonal employees, copies of submissions made by the Archdiocese of Toronto in response to the Union's request for an Order.

A pre-hearing conference was held on October 7, 1998. Hearing dates are scheduled for April 6, 7, 21 and 22, 1999.



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## Commission Decisions - Applications Approved Since October 1997

*[In this section, "Commission" refers to the  
Pension Commission of Ontario]*

*Surplus Withdrawal on Plan Wind Up Pursuant to  
a Surplus Sharing Agreement - clause 8(1)(b) of  
Reg. 909 (as amended by O. Reg. 743/91) and  
s. 78(1) and 79(3) of the Act*

Most of the following Commission decisions  
consenting to payment of surplus were made subject  
to the applicant satisfying the Commission that all  
benefits, benefit enhancements, including  
enhancements pursuant to the surplus sharing  
agreement, and any other payments to which members,  
former members and any other persons entitled to such  
payments have been paid, purchased or otherwise  
provided for to the satisfaction of the Commission.

At the Commission meeting held November 20, 1997,  
pursuant to subsection 78(1) of the PBA and clause  
8(1)(b) of the Regulations, the Commission consented  
to the payment of plan surplus plus investment  
earnings thereon to the date of payment as follows:

- (a) Pension Plan for the Hourly Employees of  
Powerlite Inc., Registration Number 585430
- Payment of surplus to Powerlite Inc. (a division of  
Kaufel Group Inc.), from the Pension Plan for the  
Hourly Employees of Powerlite Inc., Registration  
Number 585430, in the amount of \$346,675 as at  
June 30, 1995 plus investment earnings thereon  
to the date of payment and less any expenses  
incurred by the pension plan.

- (b) Retirement Plan for Employees of Playtex  
Apparel Canada Inc., Registration Number  
978395

Payment of surplus to Canadelle Inc., from  
the Retirement Plan for Employees of Playtex  
Apparel Canada Inc., Registration Number  
978395, in the amount of 30% of the surplus in  
the plan as at December 26, 1992, (estimated to  
be \$172,889) plus investment earnings thereon to  
the date of payment and adjusted for expenses.

- (c) Retirement Income Plan for Canadian  
Employees of Pyle-National of Canada Limited,  
Registration Number 901447

Payment of surplus to Pyle-National of Canada  
Limited, from the Retirement Income Plan for  
Canadian Employees of Pyle-National of Canada  
Limited, Registration Number 901447, in the  
amount of 80% of the surplus in the plan as at  
June 1, 1997, (estimated to be \$1,104,000) plus  
investment earnings thereon to the date of  
payment and subject to adjustments for any  
difference between actual and expected expenses  
in respect of this application.

- (d) Trailmobile Canada Limited Pension Plan for  
Hourly Employees in the Bargaining Unit  
Represented by International Molders and  
Allied Workers Union Local 28 (Plan A-2),  
Registration Number 354985

Payment of surplus to Trailmobile Canada Corp.  
from the Trailmobile Canada Limited Pension  
Plan for Hourly Employees in the Bargaining Unit  
Represented by International Molders and Allied  
Workers Union Local 28 (Plan A-2), Registration  
Number 354985, in the amount of 50% of the  
surplus in the plan as at December 31, 1996, (esti-  
mated to be \$100,000) plus investment earnings  
thereon to the date of payment less any additional  
expenses incurred in obtaining the surplus refund.



The Commission noted that it was relying upon Ms. Austin's statement in her letter dated November 12, 1997, that the union was contacted on several occasions and that Mr. Rodd Briggs, a director of the Union, advised that the Union was content with the high degree of Plan member acceptance and was not interested in becoming involved in the application.

(e) Pension Plan for the Employees of Hedwyn Communications Inc., Registration Number 0593541

At the Commission meeting on July 31, 1997, the Commission gave its consent to the application of Hedwyn Communications Inc. as follows:

Payment of surplus to Hedwyn Communications Inc., from the Pension Plan for Employees of Hedwyn Communications Inc., Registration Number 593541, in the amount of 50% of the surplus in the plan (approximately \$339,337.50 as at March 1, 1990) subject to adjustments as described on page 2 of the application.

This consent shall not be effective until the applicant satisfies the Commission that all benefits, benefit enhancements, including enhancements pursuant to the surplus sharing agreement, and any other payments to which members, former members and any other persons entitled to such payments have been paid, purchased or otherwise provided for to the satisfaction of the Commission.

At the Commission meeting on November 20, 1997, the Pension Commission of Ontario considered the proposal of the applicant and gave its consent to the administrator:

1. setting aside, from the assets held by Manulife Financial, which currently amount to about \$814,000, sufficient reserve, based on the

opinion of the actuary, needed to restore the pensions of the two pensioners which have been cut back because of Confederation Life insolvency (the "Restoration Reserve");

2. distributing 50% of the balance of the assets held by Manulife Financial, net of the Restoration Reserve, to the benefit of those members, former members and any other persons entitled to allocations as set out in the Application;
3. refunding to the Company the balance of the assets held by Manulife Financial, net of the Restoration Reserve, after the distribution to members, former members and any other persons entitled to allocations;
4. when the final determination of the pension amounts to the two pensioners is made by the liquidator of Confederation Life, using the Restoration Reserve to fully restore as necessary the pensions for the two affected pensioners;
5. as and when the final amount of the assets have been released from Confederation Life, distributing the net remaining assets as well as any balance of the Restoration Reserve, 50% to members, former members and any other persons entitled to allocations, and refund 50% to the Company. (For clarity, it is provided that in the event that the Restoration Reserve falls short of full restoration to the two affected pensioners, the final assets will first be used to restore those benefits before distribution to the parties.)

It was noted by the Commission that the Pension Benefits Act does not permit benefits payable under a pension plan to be waived.



At the Commission meeting held December 11, 1997, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Pension Plan for the Employees of Rhône-Poulenc Rorer Consumer Inc., Registration Number 0378695

Payment of surplus to Rhône Poulenc Rorer Canada Inc., from the Pension Plan for the Employees of Rhône-Poulenc Rorer Consumer Inc., Registration Number 0378695, in the amount of 50% of the surplus in the plan (estimated to be \$926,300 as at July 31, 1995), plus investment earnings and adjustments thereon to the date of payment.

- (b) Pension Plan for the Employees of Fashion Jewellery Company Limited, Registration Number 367730

Payment of surplus to Fashion Jewellery Company Limited, from the Pension Plan for the Employees of Fashion Jewellery Company Limited, Registration Number 367730, in the amount of 100% of the surplus in the plan (estimated to be \$15,287.35 as at March 1, 1992) plus investment earnings thereon to the date of payment.

- (c) Retirement Plan for Renald Malette of Malette Inc., Registration Number 967786

Payment of surplus to Malette Inc. from the Retirement Plan for Renald Malette of Malette Inc., Registration Number 967786, in the amount of 100% of the surplus in the plan (estimated to be \$140,066 as at August 1, 1995), plus investment earnings thereon to the date of payment.

- (d) VME Equipment of Canada Ltd. Clerical Employees' Pension Plan, Registration Number 389577

Payment of surplus to Volvo Construction Equipment North America Ltd. from the VME Equipment of Canada Ltd. Clerical Employees' Pension Plan, Registration Number 389577, in the amount of 20% of the surplus in the plan (estimated to be \$150,880 as at June 30, 1993) plus investment earnings thereon to the date of payment and adjusted for a proportionate share of the expenses.

At the Commission meeting held January 22, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Pension Plan for Designated Employees of Modern Track Machinery Canada Limited, Registration Number 480749

Payment of surplus to Modern Track Machinery Canada Limited, from the Pension Plan for Designated Employees of Modern Track Machinery Canada Limited, Registration Number 480749, in the amount of 50% of the surplus in the plan (estimated to be \$7,674 as at January 1, 1987), plus 50% of the investment earnings on the surplus to the date of payment, less 50% of legal fees and all other costs and expenses.

- (b) Retirement Plan for Gerald Brousseau of Malette Inc., Registration Number 962886

Payment of surplus to Malette Inc., from the Retirement Plan for Gerald Brousseau of Malette Inc., Registration Number 962886, in the amount of 100% of the surplus in the plan (estimated to be \$106,719 as at August 1, 1996) plus investment earnings thereon to the date of payment, less expenses.



(c) Retirement Plan for Donald Blouin of Malette Inc., Registration Number 967729  
Payment of surplus to Malette Inc., from the Retirement Plan for Donald Blouin of Malette Inc., Registration Number 967729, in the amount of 100% of the surplus in the plan (estimated to be \$29,118 as at August 1, 1994) plus investment earnings thereon to the date of payment, less expenses incurred in making the application.

(d) The Retirement Plan for the Employees of Patent Scaffolding Co. - Canada Ltd., Registration Number 228056  
Payment of surplus to Patent Scaffolding Co. - Canada, A Division of Harsco Canada Limited, from the Retirement Plan for the Employees of Patent Scaffolding Co. - Canada, Inc., Registration Number 228056, in the amount of 70% of the surplus in the plan (estimated to be \$820,473.50 as at March 31, 1997) plus investment earnings thereon to the date of payment.

With respect to Mr. Bok Wong, whose whereabouts cannot be ascertained despite reasonable efforts by both the applicant and counsel for all other members and former members of the plan, the Commission is agreeable to the applicant's proposal that the amounts payable under the surplus sharing formula to Mr. Wong be paid to the Applicant, in trust for Mr. Wong, to be held in an interest bearing account until such time that Mr. Wong's whereabouts are ascertained.

At the Commission meeting held January 22, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission denied consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

(a) The Revised Pension Plan for the Employees of Scarborough Tire and Spring Service Ltd., Registration Number 0360768

Denied the application of Scarborough Tire and Spring Service Ltd. pursuant to subsection 78(1) of the Act and clause 8(1)(b) of the Regulation 909 to a payment of surplus to Scarborough Tire and Spring Service Ltd., from The Revised Pension Plan for the Employees of Scarborough Tire and Spring Service Ltd., Registration Number 0360768, in the amount of 100% of the surplus in the plan (estimated to be \$6,065.49 as at June 30, 1995), plus investment earnings thereon to the date of payment.

The Commission was not satisfied that the application met the requirements of the Act and the Regulation for the following reasons:

1. it is not clear that Scarborough Tire & Spring Service Ltd. has the corporate capacity to be an applicant;
2. the applicant has not obtained the consent of the sole plan member, contrary to subclause 8(1)(b)(ii) of the Regulation;
3. the notice of application issued pursuant to subsection 78(2) of the Act was not submitted to the Superintendent prior to its transmittal contrary to subsection 28(5.1) of the Regulation;
4. the application does not contain a certified copy of the notice contrary to subsection 28(6) of the Regulation;



5. the notice of application issued pursuant to subsection 78(2) of the Act does not disclose all relevant provisions of prior plans, contrary to clause 28(5)(f) of the Regulation; and,
6. the application may not satisfy clause 79(3)(b) of the Act which requires that ... “the pension plan provides for payment of surplus to the employer on the wind up of the pension plan.”

At the Commission meeting held February 26, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) The Retirement Plan for Employees of Rubberset Company (Canada), Division of Sherwin-Williams Canada Inc., Registration Number 302588

Payment of surplus to Sherwin-Williams Canada Inc., from The Retirement Plan for Employees of Rubberset Company (Canada), Division of Sherwin-Williams Canada Inc., Represented by the United Steelworkers of America, Local 9213, Registration Number 302588, in the amount of 50% of the surplus in the plan after all expenses have been paid out (estimated to be \$379,848 as at December 31, 1995), plus investment earnings thereon to the date of payment and less any Plan expenses.

- (b) Pension Plan for Employees of Victory Insurance Management Canada Limited, Registration Number 403790

Payment of surplus to NRG Victory Canada Management Limited, from the Pension Plan for Employees of Victory Insurance Management Canada Limited, Registration Number 403790, in the amount of 50% of the surplus in the plan (estimated to be \$89,945 as at June 30, 1997) plus investment earnings thereon to the date of payment.

At the Commission meeting held March 26, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) XTEC Canada Ltd. Employee Pension Plan, Registration Number 564013

Payment of surplus to XTEC Canada Ltd., from the XTEC Canada Ltd. Employee Pension Plan, Registration Number 564013, in the amount of 50% of the surplus (estimated to be \$832,994 as at September 30, 1997) adjusted for investment earnings and actual expenses incurred in connection with the wind up of the Pension Plan.

At the Commission meeting held April 30, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Pension Plan for Significant Shareholders of N.V. Freeman & Sons Limited, Registration Number 409425

Payment of surplus to N.V. Freeman & Sons Limited, from the Pension Plan for Significant Shareholders of N.V. Freeman & Sons Limited, Registration Number 409425, in the amount of \$94,722 as at December 31, 1992, plus investment earnings thereon (less final settlement fees) to the date of payment.



- (b) The Salaried Employees' Pension Plan of Canada Alloy Castings Ltd., Registration Number 260158

Payment of surplus to Canada Alloy Castings Ltd. from The Salaried Employees' Pension Plan of Canada Alloy Castings Ltd., Registration Number 260158, in the amount of 60% of the surplus in the plan (estimated to be \$487,912 as at July 27, 1996) plus investment earnings thereon to the date of payment, less expenses and fees related to the wind up of the Pension Plan.

- (c) VME Equipment of Canada Ltd. Retirement Program for Salaried Employees at St. Thomas, Ontario, Registration Number 354589

Payment of surplus to Volvo Construction Equipment North America Ltd. from the VME Equipment of Canada Ltd. Retirement Program for Salaried Employees at St. Thomas, Ontario, Registration Number 354589, in the amount of 20% of the surplus in the plan (estimated to be \$467,443.00 as at June 30, 1997) plus investment earnings thereon to the date of payment and adjusted for a proportionate share of the expenses.

- (d) Unisys Canada Inc. Pension Plan, Registration Number 354670

Subject to certain conditions, payment of surplus to Unisys Canada Inc. in the amount of the Company Share of the Net Surplus as defined in the Application, which is estimated in the Application to be \$43,861,000 as at December 15, 1997. The Net Surplus is estimated in the Application to be \$70,122,000 as at December 15, 1997.

Unisys requested that the Company Share be paid to Unisys in three parts: first, by the payment to Unisys of an Initial Allocation of \$21,000,000 (the "Initial Payment"); second, by monthly payments to Unisys of 90% of the company's 50%

share of the remaining Net Surplus (the "Subsequent Payments"); and third, by payment to Unisys of the balance of the company's 50% share of the remaining Net Surplus (the "Final Payment").

The Commission's consent is given in two parts: first, its consent to the payment of the Initial Payment and Subsequent Payments; and second, its consent to the payment of the Final Payment. Neither part of the Commission's consent shall become effective until certain conditions are satisfied.

The first part of the Commission's consent, regarding the Initial Payment and the Subsequent Payments, shall not become effective until Unisys has provided to the satisfaction of the Commission fully executed documents in substantially the same form and content as those contained in the Application and listed in an Appendix to the Minutes.

The second part of the Commission's consent, regarding the Final Payment, shall not become effective until Unisys demonstrates to the satisfaction of the Commission that the Participants Share of surplus, as defined in the Application, has been paid or otherwise provided for.

- (e) Consolidated Pension Plan for Employees of Canadian Affiliates of BTR Canada Holdings, Inc., Registration Number 559716

Payment of surplus to Not HK Canada Inc. from the Consolidated Pension Plan for Employees of Canadian Affiliates of BTR Canada Holdings, Inc., Registration Number 559716, in the amount of 50% of the surplus in the plan (estimated to be \$280,000 as at November 4, 1994) plus investment earnings thereon to the date of payment less expenses.



At the Commission meeting held May 28, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Pension Plan of Scott's Hospitality Inc. For Geoff P. Davies, Registration Number 978957

Payment of surplus to Laidlaw Inc. from the Pension Plan of Scott's Hospitality Inc. for Geoff P. Davies, Registration Number 978957, in the amount of 91.031% of the surplus in the plan (estimated to be \$379,537.71 as at December 31, 1997) plus investment earnings thereon to the date of payment, with adjustments for expenses associated with the wind up and surplus application.

- (b) Procter & Gamble Inc. Core Pension Plan, Registration Number 681163

Payment of surplus to Procter & Gamble Inc. from the Procter & Gamble Inc. Core Pension Plan, Registration Number 681163, in the amount of approximately \$3,963,000 as at December 31, 1996, plus investment earnings and less costs and expenses and any adjustments resulting from annuity purchases to the date of payment.

At the Commission meeting held June 25, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulations, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Sherman Sand & Gravel Limited, Pension Plan for Group "A" Employees, Registration Number 907832

Payment of surplus to Sherman Sand and Gravel Limited from the Sherman Sand & Gravel Limited Pension Plan for Group "A" Employees, Registration Number 907832, in

the amount of 100% of the surplus in the plan (estimated to be \$333,247.52 as at November 30, 1997) plus investment earnings thereon to the date of payment.

- (b) Pension Plan for Employees of William Knell and Company Limited, Registration Number 265728

Payment of surplus to William Knell and Company Limited from the Pension Plan for Employees of William Knell and Company Limited, Registration Number 265728, in the amount of 100% of the surplus in the plan (estimated to be \$84,393 as at July 1, 1996) plus investment earnings thereon to the date of payment.

- (c) The Pension Plan for Hourly Employees of Waterbury Farrel Technologies Ltd. (formerly Wean Canada Ltd.), Registration Number 315259

Payment of surplus to Anker-Holth Limited from The Pension Plan for Hourly Employees of Waterbury Farrel Technologies Ltd. (formerly Wean Canada Ltd.), Registration Number 315259, in the amount of 50% of the surplus in the plan (estimated to be \$247,544.00 as at November 30, 1995) plus investment earnings thereon to the date of payment.

At the Commission meeting held July 28, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Sun Alliance Canadian Staff Pension Plan, Registration Number 328310

Payment of surplus to Royal Sun Alliance Insurance Company of Canada from the Sun Alliance Canadian Staff Pension Plan, in the



amount of 50% of the surplus in the plan (estimated to be \$1,352,600 as at June 30, 1994) plus investment earnings thereon to the date of payment.

- (b) Pension Plan for Bargaining Employees of the Toronto Warehouse of Western Star Trucks Inc., Registration Number 587063

Payment of surplus to Western Star Trucks Inc. from the Pension Plan for Bargaining Employees of the Toronto Warehouse of Western Star Trucks Inc., Registration Number 587063, in the amount of 50% of the surplus in the plan (estimated to be \$748,437 as at June 1, 1997) plus investment earnings thereon to the date of payment adjusted for expenses.

- (c) Pension Plan of Sisters of Charity of Ottawa, Registration Number 360362

Payment of surplus to the Sisters of Charity of Ottawa from The Pension Plan for Sisters of Charity of Ottawa, Registration Number 360362, in the amount of 100% of the surplus in the plan (\$14,082,980 as at December 31, 1997) plus investment earnings thereon to the date of payment.

At the Commission meeting held September 24, 1998, pursuant to subsection 78(1) of the PBA and clause 8(1)(b) of the Regulation, the Commission consented to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Retirement Plan for Employees of Welded Tube of Canada Limited, Registration Number 974675

Payment of surplus to Welded Tube of Canada Limited from the Retirement Plan for Employees of Welded Tube of Canada Limited, Registration Number 974675, in the amount of 100% of the

surplus in the plan (\$437,390 as at December 31, 1995) plus investment earnings thereon to the date of payment less any expenses incurred in making the application.

- (b) Terjess Holdings Inc. Executive Pension Plan, Registration Number 984492

Payment of surplus to Terjess Holdings Inc. from the Terjess Holdings Inc. Executive Pension Plan, Registration Number 984492, in the amount of \$68,347 as at May 1, 1997, plus investment earnings thereon to the date of payment and less interest paid in respect of final payment of wind-up benefits and less expenses incurred in connection with the Application.

- (c) Risdon Cosmetic Containers Inc. Executive Pension Plan, Registration Number 463984

Payment of surplus to Risdon \ AMS (Canada) Inc. from Risdon Cosmetic Containers Inc. Executive Pension Plan, Registration Number 463984, in the amount of \$37,169 as at December 1, 1988, plus investment earnings thereon to the date of payment.

- (d) Staff Pension Plan for Employees of Brant Dairy Company, Limited, Registration Number 407841

Payment of surplus to Natrel Inc. from Staff Pension Plan for Employees of Brant Dairy Company, Limited, Registration Number 407841, in the amount of \$323,309 as at December 31, 1994, plus investment earnings thereon to the date of payment and any adjustments for expenses.

- (e) The Retirement Plan for Raymond Malette of Malette Inc., Registration Number 0967745

Payment of surplus to Malette Inc. from The Retirement Plan for Raymond Malette



of Malette Inc., Registration Number 0967745, in the amount of \$95,196 as at September 30, 1996, plus investment earnings thereon to the date of payment less any expenses.

- (f) The Retirement Plan for Rejean Malette of Malette Inc., Registration Number 0967778

Payment of surplus to Malette Inc. from The Retirement Plan for Rejean Malette of Malette Inc., Registration Number 0967778, in the amount of \$26,440 as at September 30, 1996, plus investment earnings thereon to the date of payment less any expenses.

- (g) The Retirement Plan for Real Malette of Malette Inc., Registration Number 0967737

Payment of surplus to Malette Inc. from The Retirement Plan for Real Malette of Malette Inc., Registration Number 0967737, in the amount of \$105,142 as at December 1, 1996, plus investment earnings thereon to the date of payment less any expenses.

- (h) Plessey Canada (1987) Limited Pension Plan, Registration Number 940312

Payment of surplus to Plessey Canada (1987) Limited from the Plessey Canada (1987) Limited Pension Plan, Registration Number 940312, in the amount of \$385,074 as at June 30, 1997, adjusted to reflect investment earnings or losses and expenses.

Payment to Plessey Canada (1987) Limited of 50% of any further Plan assets received from the liquidator of Confederation Life, with the balance to be distributed to the employees on the same basis as other surplus funds.

- (i) Pension Plan for the Executive Employees of E. & E. Seegmiller Limited and Associated Company, Registration Number 992503

Payment of surplus to E. & E. Seegmiller Limited and Associated Company from Pension Plan for the Executive Employees of E. & E. Seegmiller Limited and Associated Company, Registration Number 992503, in the amount of \$163,632 as at April 30, 1996, plus investment earnings thereon to the date of payment, and adjusted for expenses.

Applications Under Section 8 of the Regulation, and subsection 78(1) of the PBA - Request for Consent of the Commission to Surplus Withdrawal on Plan Wind Up to be filed in Court

At the Commission meeting held November 20, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulation, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Bull Moose Tube Limited Salaried Employees' Pension Plan, Registration Number 221887

Payment of surplus to the Applicant, Bull Moose Tube Limited from the Bull Moose Tube Limited Salaried Employees' Pension Plan, Registration Number 221887, in the amount of \$90,000.00.



At the Commission meeting held December 11, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulation, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Pension Plan for Hourly-Rated Unionized Employees of Ivaco Inc. at its Lundy Steel Division in Dunnville, Ontario, Registration Number 548073

Payment of surplus to the Applicant, Ivaco Inc., from the Pension Plan for Hourly-Rated Unionized Employees' of Ivaco Inc. at its Lundy Steel Division in Dunnville, Ontario, Registration Number 548073, in the amount of \$245,966 as at June 30, 1989 plus investment earnings thereon to the date of payment less permitted expenses in accordance with the Court Order.

At the Commission meeting held January 22, 1998, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulation, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Retirement Income Plan for Union Employees of International Tools (1973) Limited, Registration Number 379859

Payment of surplus to the Applicant, Ventra Group Inc., from the Retirement Income Plan for Union Employees of International Tools (1973) Limited, Registration Number 379859, in the amount of \$114,643 as at September 11, 1987 plus investment earnings thereon to the date of payment minus any expenses for professional services related to the wind up.

At the Commission meeting held March 26, 1998, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulation, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Pension Plan for Salaried Employees of Dorr-Oliver Limited (Text A and Text B), Registration Number 341495

Payment of surplus to the Applicant, QIT-fer et Titane Inc., from the Pension Plan for Salaried Employees of Dorr-Oliver Limited (Text A and Text B), Registration Number 341495, in the amount of 66% of the surplus (estimated to be \$3,459,700 as at May 1, 1987), plus investment earnings thereon to the date of payment, less 66% of the legal costs payable from the surplus pursuant to an order of the Honourable Mr. Justice Cameron made January 9, 1997, less 66% of the reasonable costs and expenses related to the continuing administration and wind up of the plan.

- (b) Pension Plan for Hourly-Paid Employees of Dorr-Oliver Limited, Registration Number 3924155

Payment of surplus to the Applicant, QIT-fer et Titane Inc., from the Pension Plan for Hourly-Paid Employees of Dorr-Oliver Limited, Registration Number 392415, in the amount of 66% of the surplus (estimated to be \$620,100 as at May 1, 1987), plus investment earnings thereon to the date of payment, less 66% of the legal costs payable from the surplus pursuant to an order of the Honourable Mr. Justice Cameron made January 9, 1997, less 66% of the reasonable costs and expenses related to the continuing administration and wind up of the plan.



- (c) The Great-West Life Assurance Company Canadian Agents' Pension Plan, Registration Number 355271

Payment of surplus to the Applicant, The Great-West Life Assurance Company from The Great-West Life Assurance Company Canadian Agents' Pension Plan, Registration Number 355271, estimated to be \$1,972,979 as at December 31, 1985, plus investment earnings thereon to the date of payment, minus: (i) the legal fees and disbursements incurred by the Applicant in respect of this Application; and, (ii) all other costs and expenses related to the continuing administration and wind up of the plan.

As required by the Quebec Supplemental Pension Plans Act, payment of surplus relating to Quebec members and former members will be determined by arbitration. The surplus allocable to Quebec members and former members is estimated to be \$331,800 as at March 31, 1997.

At the Commission meeting held September 24, 1998, the Commission consented pursuant to subsection 78(1) of the PBA and clause 8(2) of the Regulations, to filing with the Court a consent to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Pension Plan for Employees of Contractors Machinery & Equipment and Grove Industrial Products, Divisions of Kidde Canada Limited, Registration Number 243907

Payment of surplus to the Applicant, 833610 Ontario Inc., from the Pension Plan for Employees of Contractors Machinery & Equipment and Grove Industrial Products, Divisions of Kidde Canada Limited, Registration Number 243907, in the amount of 92.4% of the surplus (estimated to total \$4,094,451 as at September 30, 1997), plus investment earnings

thereon to the date of payment, less any discount realized on the liquidation of assets held by Confederation Life Insurance Company.

As required by the Quebec Supplemental Pension Plans Act, payment of surplus allocable to Quebec members and former members will be determined by arbitration. The amount subject to arbitration is estimated to be 7.6% of the surplus, or \$313,032 as at September 30, 1997.

#### Applications under subsection 78(1) of the PBA and section 10 of the Regulation Request for Consent of the Commission to Surplus Withdrawal from a Continuing Plan

At the Commission meeting held December 11, 1997, the Commission consented pursuant to subsection 78(1) of the PBA and s. 10 of the Regulations, to the payment of plan surplus plus investment earnings thereon to the date of payment as follows:

- (a) Eaton Retirement Annuity Plan III, 1037035

Payment of surplus to The T. Eaton Company Limited ("Eaton's") from the Eaton Retirement Annuity Plan III ("ERAP3") in the amount of the "Company's Surplus Share" as set out in the Application. The full amount of the Company's Surplus Share has been estimated in the Application to be approximately \$26,605,000 as at November 1, 1997.

Eaton's requested that the Company's Surplus Share be paid to Eaton's in two parts: first, by the payment to Eaton's of an initial payment from the Company's Surplus Share, as defined in the Application, which is estimated in the Certification to be \$23,300,000 as at December 8, 1997 (the "Initial Payment"); and second, by payment to Eaton's of the balance of the Company's Surplus Share (the "Subsequent Payment").



The Commission's consent is given in two parts: first, its consent to payment of the Initial Payment; and second, its consent to payment of the Subsequent Payment. Neither part of the Commission's consent shall become effective until certain conditions are satisfied.

The first part of the Commission's consent, regarding the Initial Payment, shall not become effective until Eaton's has provided to the Commission fully executed documents satisfactory to the Commission in substantially the same form and content as those contained in Eaton's Application and listed in the Appendix to the minutes.

The second part of the Commission's consent, regarding the Subsequent Payment, shall not become effective until Eaton's demonstrates to the satisfaction of the Commission that the Members' Surplus Share, as defined in the Application, has been paid or otherwise provided for.

(b) Pension Plan of The T. Eaton Company Limited for C. Reginald Hunter, 1031780

Payment of surplus to The T. Eaton Company Limited ("Eaton's") from the Pension Plan of the T. Eaton Company Limited for C. Reginald Hunter in the amount of the "Ongoing Surplus Withdrawal Amount" as set out in the Application. The full amount of the Ongoing Surplus Withdrawal Amount has been estimated in the Application to be approximately \$1,456,000 as at September 30, 1997.

Eaton's requested that the Ongoing Surplus Withdrawal Amount be paid to Eaton's in two parts: first, by the payment to Eaton's from the Ongoing Surplus Withdrawal Amount of an initial payment referred to in the Application as the "December Withdrawal Amount", which is estimated in the Certification to be \$1,400,000;

and second, by payment to Eaton's of the balance of the Ongoing Surplus Withdrawal Amount (referred to in the Application as the "February Withdrawal Amount").

The Commission's consent is given in two parts: first, its consent to payment of the December Withdrawal Amount; and second, its consent to payment of the February Withdrawal Amount.

(c) Pension Plan of The T. Eaton Company Limited for Roy Evans, 1031798

Payment of surplus to The T. Eaton Company Limited ("Eaton's") from the Pension Plan of the T. Eaton Company Limited for Roy Evans in the amount of the "Ongoing Surplus Withdrawal Amount" as set out in the Application. The full amount of the Ongoing Surplus Withdrawal Amount has been estimated in the Application to be approximately \$1,460,000 as at September 30, 1997.

Eaton's requested that the Ongoing Surplus Withdrawal Amount be paid to Eaton's in two parts: first, by the payment to Eaton's from the Ongoing Surplus Withdrawal Amount of an initial payment referred to in the Application as the "December Withdrawal Amount", which is estimated in the Certification to be \$1,410,000; and second, by payment to Eaton's of the balance of the Ongoing Surplus Withdrawal Amount (referred to in the Application as the "February Withdrawal Amount").

The Commission's consent is given in two parts: first, its consent to payment of the December Withdrawal Amount; and second, its consent to payment of the February Withdrawal Amount.



(d) Pension Plan of The T. Eaton Company Limited for R.A. Hubert, 1029321

Payment of surplus to The T. Eaton Company Limited (“Eaton’s”) from the Pension Plan of the T. Eaton Company Limited for R.A. Hubert in the amount of the “Ongoing Surplus Withdrawal Amount” as set out in the Application. The full amount of the Ongoing Surplus Withdrawal Amount has been estimated in the Application to be approximately \$1,105,000 as at September 30, 1997.

Eaton’s requested that the Ongoing Surplus Withdrawal Amount be paid to Eaton’s in two parts: first, by the payment to Eaton’s from the Ongoing Surplus Withdrawal Amount of an initial payment referred to in the Application as the “December Withdrawal Amount”, which is estimated in the Certification to be \$1,050,000; and second, by payment to Eaton’s of the balance of the Ongoing Surplus Withdrawal Amount (referred to in the Application as the “February Withdrawal Amount”).

The Commission’s consent is given in two parts: first, its consent to payment of the December Withdrawal Amount; and second, its consent to payment of the February Withdrawal Amount.

(e) Pension Plan of The T. Eaton Company Limited for Rex P. Prangley, 1031806

Payment of surplus to The T. Eaton Company Limited (“Eaton’s”) from the Pension Plan of the T. Eaton Company Limited for Rex P. Prangley in the amount of the “Ongoing Surplus Withdrawal Amount” as set out in the Application. The full amount of the Ongoing Surplus Withdrawal Amount has been estimated in the Application to be approximately \$938,000 as at September 30, 1997.

Eaton’s requested that the Ongoing Surplus Withdrawal Amount be paid to Eaton’s in two parts: first, by the payment to Eaton’s from the Ongoing Surplus Withdrawal Amount of an initial payment referred to in the Application as the “December Withdrawal Amount”, which is estimated in the Certification to be \$890,000; and second, by payment to Eaton’s of the balance of the Ongoing Surplus Withdrawal Amount (referred to in the Application as the “February Withdrawal Amount”).

The Commission’s consent is given in two parts: first, its consent to payment of the December Withdrawal Amount; and second, its consent to payment of the February Withdrawal Amount.

#### Applications Approved under subsections 63(7) and (8) of the PBA Return of Member Contributions

At the Commission meeting held December 11, 1997, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

- (a) Retirement Income Plan for the Salaried Employees of Cabot Canada Ltd.,  
Registration Number 213231

Refund of member contributions from the Retirement Income Plan for the Salaried Employees of Cabot Canada Ltd., Registration Number 213231, in the amount of \$51,994.46 as at June 1, 1997, plus investment earnings to the date of payment.



- (b) Revised Pension Plan for the Teaching Staff of the Royal Conservatory of Music of Toronto, Registration Number 213231

Refund of member contributions from the Revised Pension Plan for the Teaching Staff of the Royal Conservatory of Music of Toronto, Registration Number 686170, in the aggregate amount of \$782,913.61 as at December 31, 1995, plus investment earnings to the date of payment.

At the Commission meeting held December 11, 1997, the Commission denied consent pursuant to subsections 63(7) & (8) of the PBA, the refund of member required contributions as follows:

- (a) Canada Colors and Chemicals Limited Employees' Pension Plan, Registration Number 233080

Denied the application for a refund of member contributions from the Canada Colors and Chemicals Limited Employees' Pension Plan, Registration Number 233080, in the amount of \$119,161.39 as at May 1, 1997, plus investment earnings to the date of payment.

The reason for the decision is as follows:

Since the refund of member contributions requested in the application applies only to the President of the Company, the application does not provide for equitable treatment of all individuals within the membership category. Accordingly, the Commission exercised its discretion and declined to consent to the application since it benefitted only one member of the plan.

At the Commission meeting held January 22, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

- (a) Ault Foods Limited Retirement Plan for Salaried Non-Union Employees, Registration Number 907295

Refund of member contributions from the Ault Foods Limited Retirement Plan for Salaried Non-Union Employees, Registration Number 907295, in the aggregate amount of \$71,803 as at March 1, 1997, plus investment earnings thereon to the date of payment, as shown in the letter dated January 8, 1998, from Mr. Aubin.

At the Commission meeting held February 26, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

- (a) Retirement Plan for Employees of Raytheon Canada Limited, Registration Number 297275

Refund of member contributions from the Retirement Plan for Employees of Raytheon Canada Limited, Registration Number 297275, in the aggregate amount of \$1,777,118.38 as at September 30, 1997, plus credited interest at an annual rate of 5.33% to the date of payment.

At the Commission meeting held March 26, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

- (a) Canada Colors and Chemicals Limited Employees' Pension Plan, Registration Number 233080

Refund of member contributions from the Canada Colors and Chemicals Limited Employees' Pension Plan, Registration Number 233080, in the amount of \$119,161.39 as at May 1, 1997, plus credited interest to the date of payment.



At the Commission meeting held April 30, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

- (a) Parkdale International Limited Salaried Employees' Pension Plan, Registration Number 425801

Refund of member contributions from the Parkdale International Limited Salaried Employees' Pension Plan, Registration Number 425801, in the amount of \$86,000 as at January 1, 1997, plus credited interest to the date of payment.

- (b) Ontario Teachers' Federation Final Average Earnings Pension Plan, Registration Number 597252

Refund of member contributions from the Ontario Teachers' Federation Final Average Earnings Pension Plan, Registration Number 597252, in the amount of \$88,300 as at July 1, 1997, plus credited interest to the date of payment.

At the Commission meeting held June 25, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

- (a) Pension Plan for Employees of The Professional Institute of the Public Service of Canada, Registration Number 293597

Refund of member contributions from the Pension Plan for Employees of The Professional Institute of the Public Service of Canada, Registration Number 293597, in the amount of \$844,561 as at January 1, 1997, plus credited interest to the date of payment.

- (b) Public Service Pension Plan, Registration Number 208777

Given the circumstances of this case and the written submissions received from the

applicant and the Superintendent of Pensions, as follows:

Submissions of the Superintendent of Pensions  
Superintendent of Pensions' Book of Authorities  
Reply of the Ontario Pension Board Authorities Relied on by the Ontario Pension Board  
Reply Submissions of the Superintendent of Pensions

Refund of member contributions from the Public Service Pension Plan, Registration Number 208777, in the aggregate amount of \$102,506.69 as at December 31, 1997, plus credited interest to the date of payment.

At the Commission meeting held September 24, 1998, the Commission consented pursuant to subsections 63(7) & (8) of the PBA to the refund of member required contributions as follows:

- (a) Revised Pension Plan for the Employees of Canadian Hair Cloth Co. Limited, Registration Number 213033

Refund of member contributions from the Revised Pension Plan for the Employees of Canadian Hair Cloth Co. Limited, Registration Number 213033, in the amount of \$398,248.73 as at December 1, 1996, plus interest to the date of payment.

Applications Approved under section 105 and subsection 78(4) of the PBA Extension of Time and Return of Overpayment

At the Commission meeting held December 11, 1997, the Commission consented to the refund of an overpayment as follows:



- (a) Hospitals of Ontario Pension Plan,  
Registration Number 0346007

In light of the representations in the application set out in letters dated October 20, 1997, and November 5, 1997, from Mr. Ron Laffin of HOOPP that an overpayment has been made, the Pension Commission of Ontario consented:

1. pursuant to section 105 of the Act, to extend the time limit, specified under subsection 78(4) of the Act, for filing the application;
2. pursuant to subsection 78(4) of the Act, to a refund of \$50.83 to Lennox Addington Community Mental Health Centre, a participating employer under the Hospitals of Ontario Pension Plan, Registration Number 0346007, which represents the overpayment made to the plan in 1996; and,
3. pursuant to subsection 78(4) of the Act, to a refund of \$1,118.39 to Beechgrove Children's Centre, a participating employer under the Hospitals of Ontario Pension Plan, Registration Number 0346007, which represents the overpayment made to the plan in 1996.

At the Commission meeting held March 26, 1998, the Commission consented to the refund of an overpayment as follows:

- (a) Pension Plan for Employees of the Ontario Public Service Employees Union, Registration Number 339861

The Pension Commission of Ontario:

- (a) made an order pursuant to section 105 of the Act, to extend the time limit specified under subsection 78(4) of the Act, for filing the application; and,
- (b) consented pursuant to subsection 78(4) of the Act, to a refund to the applicant from the Pension Plan for Employees of the

Ontario Public Service Employees Union,  
Registration Number 339861, of \$116,492.24  
which represents an employer overpayment  
to the pension fund made in February 1997.

### Pension Benefits Guarantee Fund ("PBGF")

#### *Notice of Proposed Declarations*

On January 22, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

- (a) Pension Plan for Designated Employees of Saracini Investments Limited, Registration Number 529339

On April 30, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Notice of Proposal to make a Declaration pursuant to subsection 83(1) of the PBA that the PBGF applies to the following pension plan:

- (a) The Pension Plan of Union Drawn Steel Company Limited for Eligible Salaried Employees Effective December 15, 1955, Registration Number 312124

#### *Declaration that the PBGF Applies to Pension Plans*

On February 26, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

- (a) Pension Plan for Designated Employees of Saracini Investments Limited, Registration Number 529339



On June 25, 1998, the Commission, pursuant to subsection 90(1) of the PBA, issued a Declaration that the PBGF applies to the following pension plan:

- (a) The Pension Plan of Union Drawn Steel Company Limited for Eligible Salaried Employees Effective December 15, 1955, Registration Number 312124

*Allocations, subsection 34(7) of Regulation 909 under the PBA*

On December 11, 1997, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

- (a) Pension Plan for Salaried Employees of Carpita Corporation and Subsidiary and Affiliated Companies, Registration Number 0598425

Allocate and pay an amount not to exceed \$310,701.53 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.

On February 26, 1998, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plan to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

- (a) Pension Plan for Designated Employees of Saracini Investments Limited, Registration Number 529339

Allocate and pay the amount of \$39,293.84, to provide interim funding to the Pension Plan, as follows:

- (a) \$8,302.58, being the amount of \$638.86 per month for ongoing monthly pension payments for the period December 1, 1997 to December 31, 1998;
- (b) a lump sum payment in the amount of \$7,025.26, which represents retroactive pension payments for the period of January 1, 1997 to November 31, 1997;
- (c) wind up administration costs of \$23,966.00 as follows:

Administrator	\$17,700
Plan Trustee	\$ 1,266
Plan Actuary	\$ 5,000

On June 25, 1998, the Commission, pursuant to subsection 34(7) of Regulation 909 under the PBA, authorized an allocation of money from the PBGF to be paid (as outlined below) to the following plans to provide, together with the Ontario assets, for the benefits determined under section 34 of the Regulation. Any money not required to provide such benefits shall be returned to the PBGF.

- (a) The Pension Plan of Union Drawn Steel Company Limited for Eligible Salaried Employees Effective December 15, 1955, Registration Number 312124

Allocate and pay an amount not to exceed \$928,568 to provide, together with the Ontario assets of the Plan, for the benefits determined in accordance with section 34 of the Regulation.



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## Commission Decision with Reasons

INDEX NO.	XDEC-37
PLAN	Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, (PN 302851)
DATE OF AMENDED DECISION	May 13, 1998
AMENDMENT PUBLISHED	Telix - May 13, 1998

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In the Matter of the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act");

and in the Matter of the decision of the Superintendent of Pensions for Ontario dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan, and the Morrow Park Plan (the "New Plans");

and in the Matter of a Hearing in accordance with subsection 89(8) of the Act.

Between

THE CANADIAN UNION OF PUBLIC  
EMPLOYEES, LOCALS No. 1144 and 1590

-and-

SUPERINTENDENT OF PENSIONS, THE SISTERS  
OF ST. JOSEPH FOR THE DIOCESE OF  
TORONTO IN UPPER CANADA, ST. MICHAEL'S  
HOSPITAL, ST. JOSEPH'S HEALTH CENTRE  
and PROVIDENCE CENTRE

Respondents

Before

C.S. (Kit) Moore, Chair  
M. Elizabeth Greville, Member  
David E. Wires, Member

Appearances

For the applicant:

Mr. M. Zigler  
Mr. R. Tomassini

For the Superintendent of Pensions:

Ms. D. McPhail  
Ms. L. McDonald

For the respondents:

Mr. M. Freiman  
Mr. G. Winfield  
Mr. J. Buhlman  
Ms. F. Kristjanson  
Mr. J. Leon  
Ms. A. Finn



## Hearing Date

January 27, 1998  
Toronto, Ontario

## Amended Decision Released

May 13, 1998  
Toronto, Ontario

## Reasons for the Decision

### *Nature of the Application*

The Superintendent of Pensions for Ontario (the “Superintendent”) refused to grant relief requested by the Canadian Union of Public Employees Locals No. 1144 and 1590 (“CUPE”), including a request by CUPE that the Superintendent issue an order under s. 87(1) of the Act that the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the “Pension Plan”) and its successors constitute a multi-employer pension plan (a “MEPP”). In a letter written to the Superintendent and other interested parties, CUPE indicated its intention to appeal certain decisions of the Superintendent. Subsequently, a Request for Hearing under s. 89 of the Act was submitted to the Pension Commission of Ontario (the “Commission”).

Following an initial pre-hearing conference and telephone conference call among the parties, a further pre-hearing conference was held at which a preliminary question arose as to whether the Commission had jurisdiction to conduct the hearing. The parties agreed to argue the issue of jurisdiction in advance of the merits. The Commission received written submissions on the matter, heard oral argument and advised the parties, by way of letter dated March 13, 1998, that it had determined that the Commission had jurisdiction to determine whether the pension plan is a MEPP under the Act. These are the written reasons for that decision.

### *The Facts*

The following facts are included in the Agreed Statement of Facts on Jurisdictional Issues submitted to the hearing panel with the consent of all the parties to this hearing.

Effective January 1, 1958, the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada (the “Sisters”) established a pension plan for certain employees, and amended the plan from time to time. In Article 1.20 of the Pension Plan, amended and restated as at January 1, 1992, “employee” is defined as meaning “any employee who is employed on a full-time or less than full-time basis at a Hospital”, but not meaning “any person who is a casual or temporary employee of the Hospital or who is remunerated under contract for special services or on a fee for service basis”.

“Employer” is defined in Article 1.21 of the Plan as meaning “for the purposes of this Plan only, the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada in its personal capacity as employer with respect to the Hospitals”. The term “hospital” is defined in Article 1.23 of the Plan as follows:

“Hospital” means with respect to an Employee either Fort Bonne Association of Ontario, St. Joseph’s Health Centre, St. Michael’s Hospital, Providence Centre (formerly Providence Villa and Hospital) or the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada with respect to the employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada whose duties relate to the aforementioned hospitals plus any other health facility of the Sisters of St. Joseph as designated by the Sisters of St. Joseph from time to time.

The term “administrator” is defined in Article 1.03 of the Plan as meaning “the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada in its capacity as administrator under the Pension Benefits Act and Income Tax Act”.



Article 17.01 of the Plan deals with amendment of the Plan, and states:

The Sisters of St. Joseph may from time to time by instrument in writing vary or amend any of the provisions of the Plan provided that no such variation or amendment shall be made which would adversely affect the inherent or acquired rights of Members which have accrued to them as a result of their employment with the Employer or the inherent or acquired rights of any other person entitled to a benefit under the Plan, prior to the date of such variation or amendment. The decision of the Sisters of St. Joseph on the question of whether any proposed variation or amendment adversely affects the inherent or acquired rights of Members which have accrued to them as a result of their employment with the Employer prior to the date of such variation or amendment shall be conclusive.

Nothing in the Trust Agreement or in this Plan shall be deemed to permit any variation or amendment to the Trust Agreement or this Plan which would alter the main purpose of the Plan which is to provide for Retirement Benefits or would permit reversion to the Employer or the Sisters of St. Joseph of any part of the assets comprised in the Pension Fund prior to the provision for all liabilities with respect to Members, Spouses, former Spouses, joint annuitants, Dependent Children and their Beneficiaries under this Plan.

In the event that any provision of the Plan is less favourable than is required by the terms of any Applicable Legislation, the Plan shall be amended accordingly but only to the extent necessary to remedy any such deficiencies.

Notwithstanding the above, the Plan may be amended at any time to reduce any Member's benefit entitlement under this Plan to avoid the revocation of the Plan as a Registered Pension Plan subject to the consent of the Pension Commission of Ontario, if required, and in accordance with Applicable Legislation.

A Collective Agreement was in place from 1976 for full-time employees and from 1988 for part-time employees between Providence Centre (called the "Hospital" in the Collective Agreement) and the Canadian Union of Public Employees, Local 1590. A Collective Agreement was in place from 1968 to the present between St. Joseph's Health Centre (called the "Health Centre" in the Collective Agreement) and the Canadian Union of Public Employees, Local 1144.

In 1994, the Commission received a letter written on behalf of the Sisters, stating that St. Joseph's Health Centre and Providence Centre would be separately incorporated on January 1, 1995, that the Sisters' plan would be split as of that date so that two new plans would apply to the two new corporations, and that St. Michael's Hospital would be incorporated on January 1, 1996, at which time the Sisters' plan would become the St. Michael's Hospital Plan. On December 6, 1994, the Sisters sent letters to Pension Plan participants, informing them of the Sister's intent to incorporate Providence Centre and St. Joseph's Health Centre on December 31, 1994 and to incorporate St. Michael's Hospital a year later.

The Sisters amended and restated its plan as at January 1, 1995. The Preamble to the amended and restated plan states in part:

Effective January 1, 1995, all assets and liabilities with respect to the employees or former employees of the St. Joseph's Health Centre and the employees or former employees of Providence Centre, who were Members or the Spouses, former Spouses, Beneficiaries, Dependent Children or joint annuitants of former Members entitled to benefits pursuant to the terms of the Plan as of December 31, 1994, subject to regulatory approval, will be transferred to the St. Joseph's Health Centre Pension Plan and the Providence Centre Pension Plan, respectively.



On December 22, 1995, the Sisters applied to the Pension Commission of Ontario for registration of a pension plan amendment to “allow for change in Administrator”. The amendment was pursuant to a Resolution of the Board of Directors of the Sisters which provided in part:

Subject to the necessary approvals from the appropriate regulatory authorities, the following provisions are hereby added to section 17.02 of the Plan effective December 31, 1995:

The Administrator may transfer and assign to a Hospital its interest, rights and obligations as Administrator of the Plan, and including without limitation any powers it may have in any capacity to amend or terminate the Plan and Trust Agreement, by entering into a succession agreement with the Hospital. In such event, the Plan shall continue in force, with the Hospital acting as successor Administrator as of the effective date specified in the succession agreement. Such succession agreement shall be valid and binding if executed by one or more representatives of the Administrator and Hospital.

During 1996, the Superintendent received submissions written on behalf of CUPE, opposing the Sisters’ splitting of the Pension Plan and transfer of assets. The Superintendent also received written submissions made on behalf of the Sisters, responding to the submissions made on behalf of CUPE.

On January 13, 1997, the Superintendent wrote to CUPE’s legal counsel refusing to grant the relief requested in CUPE’s submissions. In particular, the Superintendent refused to issue an order under s. 87(1) that the Pension Plan and any of its successors constitute a MEPP established pursuant to a collective agreement or a trust agreement within the meaning of

s. 8(1)(e) of the Act. On the same day, the Superintendent consented to transfers of assets from the Pension Plan to the St. Joseph’s Health Centre Plan and to the Providence Centre Plan.

On January 27, 1997, on CUPE’s behalf, letters were sent to the Superintendent and to counsel for the Sisters stating that CUPE intended to appeal the Superintendent’s decisions dated January 13, 1997 and requesting that transfers of assets be held in abeyance pending the outcome of the appeal.

On February 11, 1997, a Request for Hearing Under Section 89 of the Act was submitted to the Commission on CUPE’s behalf.

#### *The Issue*

The preliminary issue for determination at this time is:

Does the Commission have the authority to hold a hearing, pursuant to s. 89 of the Act, into whether or not the Pension Plan constitutes a MEPP within the meaning of s. 8(1)(e) of the Act, where the Superintendent has refused to make an order, pursuant to s. 87(1) of the Act, that the Pension Plan and any of its successors constitute a MEPP established pursuant to a collective agreement or a trust agreement within the meaning of s. 8(1)(e) of the Act, and a corresponding order directing that the Pension Plan be administered by a board of trustees of whom at least half are member representatives?

#### *The Arguments*

The Sisters’ arguments against the Commission’s jurisdiction in this matter are supported by the other respondents and include reference to the two principles set out below:



1. Where no appeal is granted by statute, the only recourse to challenge a decision by a person exercising a power under the statute is by way of judicial review in the Courts. As the Sisters argue, there is no provision in s. 89 of the Act for a hearing where the Superintendent refuses to make an Order under s. 87, contrasted with s. 89(3) which specifically gives the right to a hearing where the Superintendent refuses to make an Order under s. 33 of the Act.
2. An unincorporated association, such as a trade union, is not a legal person and consequently does not have rights under a statute that a person does, including the right to appeal, unless the statute expressly provides to the contrary. In this matter, the Sisters argue that s. 89 of the Act provides that a person on whom a notice is served may require a hearing, and the Act does not extend the meaning of “person” to include an unincorporated association, such as CUPE.

The Superintendent also argues that the combined effects of s. 89(2) (e) and s. 89(6) of the Act confer an express right to a s. 89 hearing only where the Superintendent proposes to make an order under s. 87. In this case, the Superintendent declined to make an order that the Pension Plan was a MEPP. The Superintendent states that if, as in Entitlement 55 v. Imperial Oil Limited (1955), PCO Bulletin, Vol. 6, Issue 2, page 53 (“Imperial Oil”), the Commission finds that it has inferential jurisdiction to conduct a s. 89 hearing where the request is of substance, then the request for a MEPP determination must be one of substance. The Superintendent takes the position that CUPE has not raised the issue at hand for any substantive reason under s. 81 of the Act.

### *The Relevant Legislation*

8. – (1) A pension plan is not eligible for registration unless it is administered by an administrator who is,
  - (e) if the pension plan is a multi-employer pension plan established pursuant to a collective agreement or a trust agreement, a board of trustees appointed pursuant to the pension plan or a trust agreement establishing the pension plan of whom at least one-half are representatives of members of the multi-employer pension plan, and a majority of such representatives of the members shall be Canadian citizens or landed immigrants;
87. – (1) The Superintendent, in the circumstances mentioned in subsection (2) and subject to section 89 (hearing and appeal), by a written order may require an administrator or any other person to take or to refrain from taking any action in respect of a pension plan or a pension fund.
  - (2) The Superintendent may make an order under this section 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.

89. – (1) Where the Superintendent proposes to refuse to register a pension plan or an amendment to a pension plan or to revoke a registration, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the applicant or administrator of the plan.

- (2) *Where the Superintendent proposes to make an order under,*
- (a) subsection 42 (9) (repayment of money transferred out of pension fund);
  - (b) subsection 43 (5) (repayment of money paid to purchase pension, deferred pension or ancillary benefit);
  - (c) subsection 80 (6) (transfer of assets to pension fund of successor employer);
  - (d) subsection 81 (6) (transfer of assets to new pension fund); or
  - (e) *section 87 (administration of pension plan in contravention of Act or regulation),*

the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and on any other person to whom the Superintendent proposes to direct the order. (italics added)

- (3) Where the Superintendent proposes to make or to refuse to make an order requiring an administrator to accept an employee as a member of a class of employees for whom a pension plan is established or maintained, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator, and the Superintendent shall serve or require the administrator to serve a copy of the notice and the written reasons on the employee.

...

- (6) A notice under subsection (1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers to the Commission, within thirty days after service of the notice under that subsection, notice in writing requiring a hearing, and the person may so require such a hearing.

94. – (4) The Superintendent shall exercise the powers and perform the duties that are vested in or imposed upon the Superintendent by this Act, the regulations and the Commission.

96. – It is the duty of the Commission,

- (a) to administer this Act and the regulations;

The respondents argue that s. 89 of the Act provides no right to a hearing by the Commission where the Superintendent refuses to make an order under s. 87.



While the Commission recognizes that it is not bound by past decisions, the Commission has previously taken the position set out in C.U.P.E. v. O.H.A. (1990) PCO Bulletin, Vol. 1, Issue 4, affm'd (1992) 91 D.L.R. (4th) 436 (Ont. Div. Ct.) ("CUPE v. OHA"), that s. 89(2) can be read so that the phrase "proposes to make an order" includes a proposal to refuse to make an order, for the reasons set out in that decision and affirmed by the Divisional Court. This position was further confirmed by the Commission in its decision in Imperial Oil.

Before dealing with the specific issues and arguments of the matter at hand, it is appropriate to make reference to certain statements included in the Imperial Oil decision, regarding the Act and the Commission's role:

Section 96 of the Act places ultimate responsibility with the Commission to administer the Act and regulations. The Superintendent is appointed by the Commission and is obliged to "exercise the powers and perform the duties that are vested in or imposed on the Superintendent by this Act, the regulations and the Commission". (subs. 94 (4)).

The courts considered the role of the Commission in Collins v. Pension Commission of Ontario (1986), 56 O.R. (2d) 275 (Divisional Court). While the case was about surplus withdrawal under pre-reform legislation, there is little doubt that its comments were intended to be of general application. The flavour of the court's exhortations, we believe, should be kept in mind when considering the legislation. The Commission was called a fiduciary and, at p. 286 of the case, it was said "It is difficult to imagine why the commission was established without accepting that its principal function was to protect the interests of plan members."

Those are the contextual considerations which we brought to bear in considering whether the Commission had jurisdiction in this matter. However, we are mindful of the legal principle that the Commission is a creature of statute with only the powers bestowed upon it by the legislature.

### *Reasoning and Result*

The heart of the issues raised by CUPE is whether or not the Pension Plan was in fact a MEPP within the meaning of s. 8(1)(e) of the Act prior to January 1, 1995, and it is on the determination of this question that the Commission has been asked to take jurisdiction.

As stated in Imperial Oil, the Commission recognizes that it is not bound by past decisions. On the other hand, we continue to find the reasoning in CUPE v. OHA, in Imperial Oil, and in the Courts' review of those decisions, to be sound and we adopt it here.

Is the request for a hearing without substance, as argued by the Superintendent? In our view, CUPE's request that the Commission hold a hearing to determine whether or not the Pension Plan is a MEPP could have significant implications for members of the Pension Plan and goes to the very heart of the matter of pension plan administration. The request is one of substance, and we concur with the Applicant's position that a determination of whether or not the Pension Plan is a MEPP can be made only after having heard the arguments on the merits.



We do not agree with the argument put forward by the Sisters that CUPE is not a person and consequently not entitled to a hearing under the Act. We note that s. 8(1)(e) of the Act, which describes the administrator for a MEPP, makes reference to collective agreement and representatives of members of the MEPP, and that CUPE is a recognized bargaining agent representing members of the Pension Plan subject to the terms of collective agreements. In addition, as argued by the Applicant, "it has been the demonstrated practice and policy of the Commission, the Divisional Court, as well as the Court of Appeal, to recognize the status of trade unions and afford them standing in connection with hearings before the Commission." Therefore, we conclude that CUPE should be considered a "person" for purposes of standing before the Commission.

### *Conclusion*

For these reasons, the hearing panel finds that the Commission has jurisdiction to hold a hearing into whether or not the Pension Plan constitutes a MEPP within the meaning of s. 8(1)(e) of the Act.

Dated this 13th day of May, 1998 at the City of Toronto, Province of Ontario.

C.S. (Kit) Moore, Chair  
M. Elizabeth Greville, Member  
David E. Wires, Member



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Commission Decision with Reasons for XDEC-38

INDEX NO. XDEC-38

PLAN Pension Plan for Salaried Employees of McDonnell Douglas  
No. 520593

DATE OF DECISION May 25, 1998

PUBLISHED Telix - May 27, 1998

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In the Matter of the Pension Benefits Act, R.S.O.  
1990, c.P.8 (the "Act");

and in the Matter of the refusal of the Superintendent  
of Pensions to make an Order requiring the partial  
wind up of the Pension Plan for Salaried Employees  
of McDonnell Douglas Canada Ltd., Registration  
No. 520593 (the "Plan");

and in the Matter of a Hearing in Accordance with  
subsection 89(8) of the Act.

Between

GARY MAYNARD  
Applicant

- and -

SUPERINTENDENT OF PENSIONS  
Respondent

- and -

McDONNELL DOUGLAS CANADA LTD.  
Respondent

Reasons for the Decision

(Hearing on jurisdictional issues - March 27, 1998  
and supplementary written materials filed on or before  
April 6, 1998)

Before

Kathryn M. Bush, Panel Chair  
C.S. (Kit) Moore, Member  
Donald Collins, Member

Appearances

For the Applicant

Mr. Murray Gold  
Mr. Roberto Tomassini

For the Superintendent of Pensions

Ms. Deborah McPhail

For the respondent

Mr. Mark Freiman  
Mr. Greg Winfield

Hearing Date

March 27, 1998

Decision Released

May 25, 1998



## Reasons for Decision

### *Facts*

The Respondent, McDonnell Douglas Canada Ltd. (“MDCAN”) carries on the business of manufacturing aircraft wings for supply to its parent corporation. This business is carried out at a single location in Mississauga, Ontario.

The Superintendent of Pensions (the “Superintendent”) and the staff of the Pension Commission of Ontario undertook an investigation of the Plan in respect of the period from January 1, 1990 through December 31, 1994 to determine if a partial wind up of the Plan should be ordered.

After the conclusion of this investigation and consideration of these matters, the Superintendent declined to make the Order requested. In responding to the Applicant’s inquiry regarding a possible partial wind up, the Superintendent stated:

“... PCO staff have recently completed a review of the circumstances surrounding the termination of employees at McDonnell Douglas Canada Ltd. during the period of 1990 to 1994. I have fully and carefully considered the facts and issues from that review. After such consideration, I am unable to conclude that there are grounds to order a partial wind up of the Plan under subsection 69(1) of the Pension Benefits Act during that time period and I do not intend to make such an order...”

The Applicant, a member of the Plan, by filing a Request for Hearing under Section 89 of the Act dated January 22, 1997 has requested a hearing in connection with the Superintendent’s refusal to make the above-noted Order.

### *Issue*

MDCAN has raised as a preliminary matter that there is no jurisdiction in the Pension Commission of Ontario (“Commission”) to hear this matter as there is no ground under Section 89 of the Act for this hearing.

In determining whether the Commission has jurisdiction under Section 89 of the Act to hear the Applicant’s request the relevant case law was considered.

The case of The Canadian Union of Public Employees et al. v. The Ontario Nurses Association et al. involved a request by the applicant unions for a hearing under section 89 of the Act in circumstances where the Superintendent of Pensions had declined to issue an order requiring that an administrator be appointed in accordance with subsection 8(1)(e) of the Act. The respondents advanced the argument that the Commission had no jurisdiction to hear such a request because the combined effect of subsections 89(2)(e) and 89(6) meant that a hearing was available only in circumstances where the Superintendent proposed to make an order under section 87 of the Act, and not where the Superintendent declined to make such a proposal.

The Canadian Union of Public Employees et al. v. The Ontario Nurses Association et al., November 22, 1990, *PCO Bulletin* 1/4, pp. 12-16

The Commission ruled as follows in that case:

“First, the legislature would have intended fair play for both sides and, where possible, the Act should be construed to provide fair and equitable treatment for all concerned. It would take very clear language indeed to persuade the Commission that inequitable treatment of the sort envisaged by the OHA [Ontario Hospital Association] and the Superintendent was intended.

Second, the general scheme of the Act is that initial jurisdiction lies in the Superintendent with



rights of appeal or a hearing to the Commission. The supervisory power and obligation in the Commission over the Superintendent is apparent from a reading of subsection 95(2) [now 94(2)], wherein the Superintendent is appointed by the Commission, and subsection 95(4) [now 94(4)] under the terms of which the Superintendent is obliged to perform the duties vested in or imposed upon him by “this Act, the Regulations, and the Commission”. Where possible, clause 90(2)(e) [now 89(2)(e)] must be given an interpretation which enables the Commission to fulfill its supervisory obligations pursuant to subsection 95(4) [now 94(4)] and its overall duty “to administer this Act and the regulations” pursuant to subsection 97(1) [now 96(1)].

It may be that the practical necessity of reviewing the Superintendent’s decision creates certain powers in the Commission by necessary implication from the nature of the regulatory authority contained in subsection 97(1) [now 96(1)] but we leave that argument for another day.

Third, the Act is remedial in nature with one of its basic objectives to protect and enhance the rights of plan members. Section 10 of the Interpretation Act dictates a similar approach to construction...

Fourth, the Act creates, in section 90 [now 89], a process called a “hearing” which is not circumscribed by the rigid rules which apply to appeals. For example, a right of appeal cannot be implied as it must be expressly set out in legislation. The hearing as something procedurally distinct from an appeal, is not circumscribed by such a rule...

Returning to the key issue we ask again: can clause 90(2)(e) [now 89(2)(e)] be read so that the phrase “proposes to make an order” includes a proposal to refuse to make an order? We are of the

view that it can be. The fact that the Superintendent issued his decision in letter form thereby failing to comply with the formalities of subsection 90(2) [now 89(2)] does not make the decision any less a proposal to make an order (Firestone Canada Inc. v. Pension Commission of Ontario (1988) (CCH Canadian Employment Benefits and Pension Guides Report, paragraph 8070).

An order expressing the negative may still be in order in the sense contemplated by section 90(2) [now 89(2)] of the Act...

#### CONCLUSION

A refusal by the Superintendent to make an Order pursuant to subsection 88(1) [now 87] amounts to an order, within the meaning of clause 90(2)(e) [now 89(2)(e)], thereby triggering the right of the Unions and the ONA to hearing before the Commission pursuant to subsection 90(6) [now 89(6)] of the Act.”

On appeal, the Divisional Court found that the Commission’s decision on this point in this case was reasonable and should be upheld. The court stated:

“It is not reasonable, in our opinion, to think that a decision to refuse to issue an order requested under s. 88 [now 87] should be treated any differently, for the purposes of s. 90(6) [now 89(6)], than one to make such an order. In the first case, those interested and in disagreement with the decision would have to live with it, while in the second, they would have access to the Commission by way of an appeal and the power it possesses under s. 90(9) [now 89(9)].

Re Canadian Union of Public Employees et al. and Ontario Hospital Association; Superintendent of Pensions, Intervenant (1992), 91 D.L.R. (4th) 436 (Div. Ct.), at p. 441



The Commission followed the above reasoning in the Imperial Oil Limited Retirement Plan (1988) et al., April 28, 1995, *PCO Bulletin* 6/2, at pp. 52-53 of the case. That case involved a request by a group of members for a section 89 hearing in circumstances where the Superintendent had registered an amendment that the group of members alleged was void or adverse under the Act. The Commission found:

“While the sections of the Act challenged by plan members are different here than in CUPE v. OHA, it is essentially on all fours. In the case before us, plan members have objected to adverse plan amendments and the Superintendent has refused to issue a section 87 order...

In short, we reject the “complete code” argument and the contention that the Superintendent did not have the power to issue a section 87 order...

Thus, we do not accept that the Entitlement 55 Group asked for a section 87 order simply as a means of obtaining a hearing before the Commission. That is, a mere request for a section 87 order and consequent refusal by the Superintendent is not enough to entitle anyone to a hearing before the Commission. There must be substance to the section 87 request, as there was in this case.”

The jurisprudence suggests that, at least, in the circumstances considered to date, an order expressed in the negative, or a refusal to issue an order, gives rise to the same procedural rights that would flow from an order. The question to be determined in this matter was whether there is any difference in principle between the statutory wording of subsection 89(2)(e), which provides that where the Superintendent “proposes to make an order under section 87 (administration of pension plan in contravention of Act or regulation), the Superintendent shall serve notice of the proposal”, and the statutory wording of subsection 89(5), which provides:

“89 (5) Where the Superintendent proposes to make an order requiring the wind up of a pension plan or declaring a pension plan wound up, the Superintendent shall serve notice of the proposal, together with written reasons therefor, on the administrator and the employer, and the Superintendent may require the administrator to transmit a copy of the notice and the written reasons on such other persons or classes of persons or both as the Superintendent specifies in the notice to the administrator.”

The statutory right to a hearing which flows from both subsections 89(2)(e) and 89(5) is found in subsection 89(6), which provides that a notice under subsections 89(1), (2), (3), (4) or (5) shall state that the person on whom the notice is served is entitled to a hearing by the Commission if the person delivers certain material to the Commission within 30 days.

The Commission made the following statement in the Stelco Inc. and The Superintendent of Pensions (1993), *PCO Bulletin* 4/1 p. 48 at 49:

“This statutory scheme clearly contemplates that the Superintendent will inquire into a possible wind up before the Commission holds a hearing into the matter. Indeed, if the Superintendent declines to make an order, there will be no hearing. In short, the Superintendent must inquire into the matter before it comes before the Commission.

...



In our view, this two-step procedure, whereby the Superintendent's inquiry precedes the hearing before the Commission, promotes the good administration of the Act and is fair to all affected parties. An employer or administrator ought not to be forced to undergo the time and expense of a hearing in respect of a proposed wind-up order unless the Superintendent has concluded that one or more of the circumstances set out in subsection 69(1) of the Act exist."

There is a question as to whether the Commission's comments in the Stelco decision were obiter and only collateral to the decision. We have considered those comments at least to be relevant to the procedure to be followed in the consideration of partial wind-up matters.

In considering the matter at hand the Commission noted that the Superintendent did not, in this case, appear to exercise any discretion available to him under Section 69 of the Act. Instead the Superintendent stated that there were not grounds upon which to order a partial wind-up.

Having found that this is not a case where the Superintendent exercised discretion we conclude that there is no need to consider whether the Commission has jurisdiction to review a refusal by the Superintendent to order a partial wind-up under Section 69 of the Act where the Superintendent exercises discretion.

### *Conclusion*

In this matter we must determine only whether the Commission has jurisdiction to review a refusal by the Superintendent to order a partial wind-up under Section 69 of the Act where the Superintendent has not exercised any discretion. It would appear that in such a case the principles set down in CUPE and Imperial Oil would be of direct application. We find no reason to depart from those principles. Accordingly, we find that the Commission has jurisdiction to hear this matter pursuant to Section 89 of the Act.

Given the comments of the Commission in the Stelco, *supra*, matter it would appear that the proper procedure is to conduct this hearing with the Applicant being permitted to call fresh or additional evidence in order to prove that the Superintendent's decision is incorrect in the factual sense. The Applicant bears the onus of proving that the Superintendent's decision is incorrect and the hearing will proceed on the presumption that the Superintendent's decision is correct. If the Applicant fails to meet this onus the Commission will dismiss the Applicant's request. If the Applicant establishes that the Superintendent's decision is incorrect then the matter must be returned to the Superintendent for reconsideration.

Dated this 25th Day of May, 1998 at the City of Toronto, Province of Ontario.

Kathryn M. Bush, Panel Chair  
C.S. (Kit) Moore, Member  
Donald Collins, Member



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Commission Decision with Reasons for XDEC-39

INDEX NO. XDEC-39

PLAN Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, (PN 302851)

DATE OF DECISION May 29, 1998

PUBLISHED Telix - June 4, 1998

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In the Matter of the Pension Benefits Act, R.S.O. 1990, c. P.8 (the "Act");

and in the Matter of the decision of the Superintendent of Pensions for Ontario dated January 13, 1997, with respect to the transfer of assets from the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the "Pension Plan") to the St. Joseph's Health Centre Pension Plan, the Providence Centre Pension Plan, and the Morrow Park Plan (the "New Plans");

and in the Matter of a hearing in accordance with subsection 89(8) of the Act.

Between

THE CANADIAN UNION OF PUBLIC  
EMPLOYEES, LOCALS No. 1144 and 1590  
Applicant

-and-

SUPERINTENDENT OF PENSIONS,  
THE SISTERS OF ST. JOSEPH FOR THE  
DIOCESE OF TORONTO IN UPPER CANADA,  
ST. MICHAEL'S HOSPITAL, ST. JOSEPH'S  
HEALTH CENTRE and PROVIDENCE CENTRE  
Respondents

Before

C.S. (Kit) Moore, Chair  
M. Elizabeth Greville, Member  
David E. Wires, Member

Appearance

For the applicant:

Mr. M. Zigler  
Mr. R. Tomassini

For the Superintendent of Pensions:

Ms. D. McPhail  
Ms. L. McDonald

For the respondents:

Mr. M. Freiman  
Mr. G. Winfield  
Mr. J. Buhlman  
Ms. F. Kristjanson  
Mr. J. Leon  
Ms. A. Finn

Hearing Date

January 27, 1998  
Toronto, Ontario

Decision Released

May 29, 1998  
Toronto, Ontario

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## Reasons for Decision

### *Nature of the Application*

The Superintendent of Pensions for Ontario (the “Superintendent”) refused to grant relief requested by the Canadian Union of Public Employees Locals No. 1144 and 1590 (“CUPE”), including a request by CUPE that the Superintendent issue an order under s. 87(1) of the Act that the Pension Plan for Hospital Employees of the Sisters of St. Joseph for the Diocese of Toronto in Upper Canada, Registration Number 302851 (the “Pension Plan”) and its successors constitute a multi-employer pension plan (a “MEPP”). In a letter written to the Superintendent and other interested parties, CUPE indicated its intention to appeal certain decisions of the Superintendent. Subsequently, a Request for Hearing under s. 89 of the Act was submitted to the Pension Commission of Ontario (the “Commission”).

Following an initial pre-hearing conference and telephone conference call among the parties, a further pre-hearing conference was held at which a preliminary question arose as to whether the Commission had jurisdiction to conduct the hearing. The parties agreed to argue the issue of jurisdiction in advance of the merits. The Commission received written submissions on the matter, heard oral argument and advised the parties, by way of letter dated March 13, 1998, that it had determined that the Commission had jurisdiction to determine whether the pension plan is a MEPP under the Act. Written reasons were published in an amended decision released May 13, 1998 (the “May 13th Decision”). Where appropriate, reference is made to that decision in describing the background and reasoning for our subsequent decisions regarding the Commission’s jurisdiction in these matters.

At the hearing on jurisdiction, the hearing panel was also asked to determine its jurisdiction in respect of four other issues relating to division of the Pension Plan, transfer of assets, section 80 and section 81 of the Act. Details of these requests are set out below.

### *The Facts*

Reference should be made to the May 13th Decision for certain facts set out in that decision. Those facts were included in the Agreed Statement of Facts and Jurisdictional Issues submitted to the hearing panel with the consent of all the parties to the hearing.

### *The Issues*

The preliminary jurisdictional issues remaining to be determined are as follows:

- Issue #1 Does the Pension Commission of Ontario have jurisdiction to hold a hearing, pursuant to s. 89 of the Act, arising from the division of the Pension Plan into three plans in the circumstances of this case?
- Issue #2 Does the Pension Commission of Ontario have jurisdiction to hold a hearing, pursuant to s. 89 of the Act, as a result of the approval of the Superintendent of the transfer of assets from the Pension Plan to two other plans, in the circumstances of this case?
- Issue #3 Does the Pension Commission of Ontario have jurisdiction to hold a hearing, pursuant to s. 89 of the Act, arising from an issue under s. 80 of the Act in the circumstances of this case?
- Issue #4 Does the Pension Commission of Ontario have jurisdiction to hold a hearing, pursuant to s. 89 of the Act, arising from an issue under s. 81 of the Act in the circumstances of this case?



### *The Arguments*

Regarding Issue #1 (division of Pension Plan), the Superintendent and other respondents argue that the Act does not confer jurisdiction upon the Superintendent in the first instance to consent or to refuse to consent to the splitting of a pension plan, with the result that the Commission has no jurisdiction to consider this issue under s. 89 of the Act.

Regarding Issues #2 (transfer of assets) and #4 (section 81), the Superintendent and other respondents argue that there is no provision in s. 89 of the Act for a hearing where the Superintendent refuses to make an order under s. 81(6) requiring return of transferred assets. The other respondents also argue that there is no suggestion that the Act has not been complied with regarding transfer of assets, and that in any event there is no jurisdiction for the Commission to revoke a transfer of assets to which the Superintendent has already consented. The Superintendent also argued that if, as in Entitlement 55 v. Imperial Oil Limited (1955), PCO Bulletin, Vol. 6, Issue 2, page 53 (“Imperial Oil”), the Commission finds that it has inferential jurisdiction to conduct a s. 89 hearing where the request is of substance, then the request for an order returning transferred assets must be one of substance under s. 87(2) and s. 81(5). The Superintendent takes the position that CUPE has not made any allegation of substance in this regard.

CUPE argues that if the Pension Plan is determined to be a MEPP, then the Pension Plan has not been administered properly, and the Commission would have jurisdiction to hold a hearing into Issues #1, #2 or #4, where the Superintendent refuses to make orders under s. 87 of the Act. CUPE argues that its request for s. 87 orders are ones of substance, including principally that s. 8(1)(e) of the Act has been breached. CUPE also argues that a substance test would be premature prior to the holding of the hearing itself.

Regarding Issue #3 (section 80), the Superintendent argues that he has made no determination under s. 80 of the Act, with the result that the Commission has no jurisdiction to hold a s. 89 hearing until the Superintendent has looked into the matter. CUPE states that it “makes no request for a hearing pursuant to s. 80 of the Act, since it is irrelevant.”

In addition, the Sisters and other respondents argue that s. 89 of the Act provides that a person on whom a notice is served may require a hearing, and the Act does not extend the meaning of “person” to include an unincorporated association, such as CUPE.

### *The Relevant Legislation*

In addition to the legislation reproduced in the May 13th Decision, the following excerpts from the Act are also noted.

Section 80 (successor employer)...

- 80. – (5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the employer’s pension plan or that does not meet the prescribed requirements and qualifications.
- 80. –(6) The Superintendent by order may require the transferee to return to the pension fund, with interest, assets transferred without the prior consent required by subsection (4). 1987, c. 35, s. 81(1-6).



Section 81 (successor pension plan)...

81. – (4) No transfer of assets shall be made from the pension fund of the original pension plan to the pension fund of the new pension plan without the prior consent of the Superintendent or contrary to the prescribed terms and conditions.
81. – (5) The Superintendent shall refuse to consent to a transfer of assets that does not protect the pension benefits and any other benefits of the members and former members of the original pension plan or that does not meet the prescribed requirements and qualifications.

#### *Reasoning and Result*

Regarding the argument that s. 89 of the Act provides no right to a hearing by the Commission where the Superintendent refuses to make an order under s. 87 or s. 81, the Commission has previously taken the position set out in C.U.P.E. v. O.H.A. (1990) PCO Bulletin, Vol. 1, Issue 4, affirm'd (1992) 91 D.L.R. (4th) 436 (Ont. Div. Ct) (“CUPE v. OHA”), that s. 89(2) can be read so that the phrase “proposes to make an order” includes a proposal to refuse to make an order, for the reasons set out in that decision and affirmed by the Divisional Court. This position was further confirmed by the Commission in its decision in Imperial Oil and in the May 13th Decision.

Regarding the argument put forward by the Sisters and other respondents that CUPE is not a person and consequently not entitled to a hearing under the Act, we confirm the position, taken by the Commission in its May 13th Decision, that CUPE should be considered a “person” for purposes of standing before the Commission.

Regarding Issue #3 (section 80), we note that the Superintendent has made no determination of a s. 80 issue, nor has the Superintendent been requested to do so. Until such a request is made, and until the Superintendent inquires into the matter, the hearing panel declines to take jurisdiction regarding this issue.

For Issues #1 (division of Pension Plan), #2 (transfer of assets) and #4 (section 81), the hearing panel agrees that CUPE has standing before the Commission. The panel also agrees that Imperial Oil could be used to give the Commission jurisdiction to hold a s. 89 hearing for one or more of these three issues, provided that the request for such a hearing is indeed one of substance under the criteria specified in s. 87(2), which are:

87. – (2) The Superintendent may make an order under this section 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.

The Commission has yet to make a determination that the Pension Plan is or is not a MEPP. Such determination can be made only after hearing the merits. In the view of the present hearing panel, if the Commission determines that the Pension Plan is a MEPP, then the Applicant’s request may have substance and the Commission will be in a position to take jurisdiction regarding Issues #1, #2 and #4.



On the other hand, if after hearing the merits the Commission determines that the Pension Plan is not a MEPP, then the Applicant's request may be seen to lack substance, with the result that the Commission may not take jurisdiction on these issues. In the panel's view, the MEPP determination must first be made before the Commission decides whether or not to take jurisdiction on any one of these three issues.

### *Conclusion*

On the basis of the arguments made at the hearing on jurisdiction, the panel agrees that the Superintendent has made no determination under s. 80 of the Act, and in fact has not been requested to do so. Accordingly, the panel finds that for Issue #3 (section 80), the Commission does not now have jurisdiction to hold a hearing under s. 89 of the Act in the circumstances of this case.

For Issues #1 (division of Pension Plan), #2 (transfer of assets) and #4 (section 81), the panel determines that these issues could be substantive ones if the Pension Plan is determined to be a MEPP. If, after having held a hearing into the MEPP issue, the Commission determines that the Pension Plan is a MEPP, the panel concludes that CUPE will then have a right to a hearing under s. 89 of the Act regarding issues of division of the Pension Plan, transfer of assets and section 81 of the Act. If the Commission determines

that the Pension Plan is not a MEPP, the panel's view is that these three issues would be without substance, with the result that CUPE would have no right to a hearing under s. 89 of the Act regarding these issues. As no MEPP determination has yet been made by the Commission, we find that the Commission does not have jurisdiction now to hold a hearing under s. 89 of the Act regarding Issues #1, #2 or #4.

Dated this 29th day of May, 1998 at the City of Toronto, Province of Ontario.

C.S. (Kit) Moore, Chair  
M. Elizabeth Greville, Member  
David E. Wires, Member



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Commission Decision with Reasons for XDEC-40

INDEX NO. XDEC-40

PLAN Non-Contributory Pension Plan for Represented Employees at Parts Distribution Centres - Chrysler Canada Ltd., Ontario Registration Number 00337808

DATE OF DECISION August 19, 1998

PUBLISHED Telix & FSCO Internet Site

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In the Matter of the Pension Benefits Act, R.S.O. 1990, c.P.8 (the "Act");

and in the Matter of a complaint by Mr. Stanley Dwyer relating to the Non-Contributory Pension Plan for Represented Employees at Parts Distribution Centres - Chrysler Canada Ltd., Ontario Registration Number 0337808 (the "Plan").

Between

STANLEY DWYER  
Applicant

- and -

CHRYSLER CANADA LTD.

- and -

CAW CANADA and CAW, LOCAL 1285

- and -

SUPERINTENDENT OF PENSIONS  
Respondents

Before

Kathryn M. Bush, Chair  
Donald Collins, Member  
Joyce Stephenson, Member

Appearances

For the applicant:

Mr. Stanley Dwyer

For Chrysler Canada Ltd.:

Mr. Paul K. Carswell

For CAW Canada and CAW, Local 1285:

Ms. Celia Harte

For the Superintendent of Pensions:

Mr. L. Glenn Frelick

Ms. L. MacDonald

Hearing Date

May 20, 1998

Decision Released

August 19, 1998



## Reasons for Decision

### *Nature of the Application*

1. Mr. Stanley Dwyer (the “Applicant”) requested a hearing before the Pension Commission of Ontario (the “Commission”) relating to the Non-Contributory Pension Plan for Represented Employees at Parts Distribution Centres - Chrysler Canada Ltd., Ontario Registration Number 0337808 (the “Plan”).
2. The Applicant has requested that the Commission make a declaration that he is entitled to either a deferred pension or a lump sum payment under the provisions of the Plan.
3. A pre-hearing conference was held on January 29, 1998, at which time the Commission decided that a panel of the Commission will hold a hearing on certain preliminary issues (the “Hearing on Preliminary Issues”) before proceeding to a hearing on the merits (the “Hearing on the Merits”).
4. The parties identified the following preliminary issues to be decided at the Hearing on Preliminary Issues:
  - (1) Does the Commission have jurisdiction to hear the Applicant’s claim if the Superintendent of Pensions (the “Superintendent”) has not made a ruling?
  - (2) Does the Applicant’s hearing request raise an arguable issue of substance which falls within the jurisdiction of the Commission?
  - (3) Does the Applicant’s claim raise a *prima facie* case for relief?

### *Issues*

1. Does the Commission have jurisdiction to hear the Applicant’s claim if the Superintendent has not made a ruling?

With respect to the first preliminary issue the Superintendent has argued that the Applicant has not requested that the Superintendent review his complaint. The Superintendent then argued that if a matter has not been placed before the Superintendent for a determination, “the matter is not properly before the Commission under Section 89” of the Act (See *Molson Breweries Pension Plan*, PCO Bulletin / Vol. 6, Issue 5, at p. 40, and *Stelco Inc.*, PCO Bulletin / Vol. 4, Issue 1, at p. 49.).

We agree with the authorities cited by the Superintendent. We are however, concerned that in this case the Applicant received two letters from the Pension Officer responsible for the Plan apparently making a determination of Mr. Dwyer’s pension entitlement. Excerpts from those letters are as follows:

- i) September 29, 1995

“Based on our review of the documentation submitted by you and Mr. Carswell, it is the opinion of the staff of the Commission that the company is not in contravention of the provisions of the Plan or the requirements of the Pension Benefits Act.”

- ii) February 18, 1997

“Chrysler determined that Mr. Dwyer had 84 months or 7 years of Credited Service when he lost his seniority on July 9, 1976. Ten years of Credited Service is required under 5.1(A) of Article VI of the Plan to obtain entitlement to a deferred vested pension. Mr. Dwyer fails to meet this pre-requisite condition and thus is not entitled to a deferred pension from the Plan”.



The same Pension Officer later provided Mr. Dwyer with instructions on how to request a hearing before the Commission.

Further, the then Chair of the Pension Commission of Ontario wrote to Mr. Dwyer citing the Pension Officer's determination and indicating that given that determination she could not provide any assistance.

Without disagreeing with the propositions set forth in Molson Breweries and Stelco, supra, it would seem reasonable for the Applicant to believe that the Superintendent had considered this matter and there had been more than six months between the Applicant's request for a hearing and the hearing on preliminary issues so that it would appear that the Superintendent had sufficient time to consider this issue if desired. Accordingly, we do not believe that this preliminary issue should impede the consideration of this matter.

2. Does the Applicant's hearing request raise an arguable issue of substance which falls within the jurisdiction of the Commission?
3. Does the Applicant's claim raise a prima facie case for relief?

We will proceed to consider the remaining two preliminary issues together. Does the Applicant's hearing request raise an arguable issue of substance which falls within the jurisdiction of the Commission and does the Applicant's claim raise a *prima facie* case for relief?

To determine these preliminary issues it is necessary to outline the relevant factual background:

1. The Applicant was hired by Chrysler Canada Ltd. ("Chrysler") on September 16, 1968.
2. The Applicant's employment with Chrysler was terminated on July 9, 1976, when he had accrued 84 months (7.0) years of Credited Service under the Plan.
3. The Applicant's termination of employment on July 9, 1976 was upheld by Arbitrator J.D. O'Shea, Q.C. by decision dated October 23, 1978 (U.A.W. and U.A.W. Local 1285 and Chrysler Canada Limited (October 23, 1978)).
4. An application for judicial review of the Arbitrator's decision was dismissed on March 13, 1980.
5. The Applicant's application for leave to appeal to the Ontario Court of Appeal the judicial review request was denied.
6. Section 3(f) of Article IX of the Plan permits an employee who has seniority with Chrysler to continue to accrue Credited Service while in receipt of Worker's Compensation Benefits.

"If an Employee is absent from his plant

...

- (ii) owing to an injury for which he is in receipt of Workmen's Compensation Benefits,

He may count such time at the rate of 40 hours for each complete calendar week of such absence as though the Employee had received pay for working such hours. "(Emphasis Added)"



7. The Plan defines an “Employee” as follows:
- “Employee” shall mean an employee of the Corporation who is covered by the Collective Bargaining Agreement and who is on the Active Payroll or has seniority with the Corporation.
8. Both Chrysler and the CAW contend that pursuant to Section 23(c) of the Collective Bargaining Agreement in effect at the date of the Applicant’s termination of employment that the Applicant’s seniority ceased at his termination of employment
- Section 23 reads as follows:
- Seniority shall cease for any one of the following reasons:
- ...
- “(c) If the employee is absent for five (5) regular working days without advising his supervisor giving satisfactory reasons;”...
9. The Applicant contends that he was entitled to additional Credited Service for the period of time that he was in receipt of Worker’s Compensation benefits.

This Commission does not have jurisdiction to review the decisions under the *Labour Relations Act* (Ontario) which found that the Applicant’s employment was properly terminated on July 9, 1976.

S. 1(A) of Article VI of the Plan requires that an employee must have ten or more years of Credited Service “at the date his seniority ceases” to be entitled to a deferred pension. As noted above, the Divisional Court and arbitrators all held that Mr. Dwyer’s seniority had ceased on July 9, 1976. It is clear, therefore, that no time after July 9, 1976 should have been included in the calculation of Mr. Dwyer’s Credited Service.

In considering this matter, we have taken into account the following passage from page 11 of the arbitration award of October 23, 1978:

“... The Company did not take the grievor’s seniority away. The grievor’s seniority ceased to exist because of the contractual provisions of Section 23. His seniority automatically ceased because of his failure to report his absence for 5 regular working days giving satisfactory reasons. The Employer has no right under the Collective Agreement to unilaterally reinstate the grievor’s seniority once it is lost, since to do so could adversely affect the rights of other employees in the event of conflicting seniority rights, such as in a job posting.”

Pursuant to the above, Chrysler cannot be said to have used an act of dismissal to terminate its obligations under the Plan toward the Applicant. The Applicant’s loss of seniority and, accordingly, “employee” status under the Plan, occurred automatically when the Applicant did not report his absence from work in compliance with s.23 of the collective agreement.

#### *Conclusion*

We find that the Applicant failed to meet the vesting requirements under the Plan and therefore does not have a right to a deferred vested pension. Accordingly, the Applicant has not raised an arguable issue of substance nor a *prima facie* case for relief and his application is therefore dismissed.

Dated this 19th day of August, 1998 at the City of Toronto, Province of Ontario

Kathryn M. Bush, Chair  
Donald Collins, Member  
Joyce Stephenson, Member

PLACE  
STAMP  
HERE

The Editor, *Pension Bulletin*  
Financial Services Commission of Ontario  
5160 Yonge Street, 17th Floor  
Box 85  
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M2N 6L9

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